

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

"Pesticides" include substances intended to destroy microorganisms (such as sanitizing products). NCGS § 143-460(26a) and (28). All pesticides in North Carolina must be registered to be sold/used. NCGS § 143-442(a). This is generally accomplished by companies registering the pesticide with the EPA and if a pesticide meets the EPA's registration approval process, it may be sold/used in North Carolina. NCGS § 143-442(d). The EPA may also approve the use of pesticides on an emergency basis under Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), known as the "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies" and codified at 40 C.F.R. Section 166 (this is incorporated by reference in 02 NCAC 09L .0318).

Other State's began applying for, and the EPA began approving pesticides used to combat COVID-19 under this emergency basis. However, under the current 02 NCAC 09L .0502(3), pesticides approved by the EPA under the emergency approval process (as opposed to the normal registration process) would be Restricted Use Pesticides in North Carolina (meaning only licensed pesticides dealers could sell them and old license pesticides applicators could buy/use them).

The pesticides approved by the EPA to address COVID-19 are sanitizing products that do not present the usual needs for the applicator to be licensed. Making these pesticides RUPs would significantly limit the public's ability to obtain and benefit from these pesticides in North Carolina.

A list of these applications/approvals is available at:

<https://iaspub.epa.gov/apex/pesticides/f?p=124:2::2.3::>

This website is updated on a rolling basis as new products are approved.

Therefore, for the reasons stated above, this Board finds it necessary and in the best interest of the State to not classify pesticides approved by the EPA for use in preventing, destroying, or mitigating COVID-19 as restricted use pesticides under the Board's Rules in 02 NCAC 09L .0502(3). This Board further finds that timing is the of essence in responding to COVID-19 and that temporary rulemaking are necessary. A public hearing was held and the Pesticide Board did not receive any comments at that time, or during the comment period.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Christina L. Waggett

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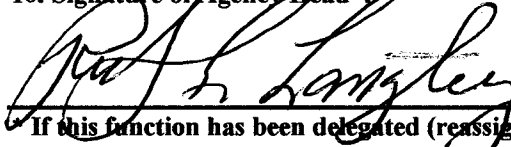
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Agency contact, if any:

Phone:

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10. Signature of Agency Head*:



If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

02 NCAC 09L .0502 is adopted under temporary procedures with changes as follows:

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

(a) For the purpose of this Subchapter a "restricted use pesticide" shall be:

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

(b) Any pesticide approved by the United States Environmental Protection Agency for use in the State of North Carolina in accordance with 02 NCAC 09L .0318 that is labeled as approved for use in preventing, destroying, or mitigating [Covid-19] COVID-19 shall be exempt from the provisions of [02 NCAC 09L .0502 (a)(3)] Subparagraph (a)(3) of this Rule and shall not be considered a Restricted Use Pesticide.

History Note: Authority G.S. 143-440(a),(b); 143-441; 143-458;
Eff. February 1, 1976;
Amended Eff. April 21, 1977;
Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977;
Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978;
Readopted Eff. August 1, ~~2020~~ 2020;
Emergency Amendment Eff. March 25, 2021.