



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Pesticide Board

2. Rule citation & name: 02 NCAC 09L .0502 List of Restricted Use Pesticides

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 03/25/2021

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 03/15/2021

b. Proposed Temporary Rule published on the OAH website: 03/18/2021

c. Public Hearing date: 03/30/2021

d. Comment Period: 3/22/2021-4/13/2021

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/19/2021

f. Adoption by agency on: 5/11/2021

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
☐ A recent change in federal or state budgetary policy.
Effective date of change:
☐ A recent federal regulation.
Cite:
Effective date:
☐ A recent court order.
Cite order:
☐ State Medical Facilities Plan.
☐ Other:

Explain: A serious and unforeseen threat to the public health, safety or welfare. Due to COVID-19, the North Carolina General Assembly in Session Law 2020-97 (H.B. 1105), Section 3.20, authorizes state agencies, including boards and commissions, to exercise regulatory flexibility during the emergency to protect the economic well-being of the citizens and businesses of the state. In accordance with the directive and spirit of Session Law 2020-97(H.B. 1105), Section 3.20, and to respond to the COVID-19 emergency, The North Carolina Pesticide Board finds it critical to exempt pesticides approved by the United States Environmental Protection Agency (EPA) on an emergency basis in accordance with 02 NCAC 09L .0318 for use in preventing, destroying, or mitigating COVID-19 from being restricted use pesticides as currently required by 02 NCAC 09L .0502(3). This exemption will bring North Carolina standards in line with other states and ensure North Carolina does not fall behind in its efforts to respond to COVID-19 by allowing for normal distribution of these pesticides.

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

Particularly, this temporary rule will allow for the timely distribution and introduction of newly approved pesticides into the state that mitigate COVID-19. Currently, existing requirements classify these pesticides as restricted use pesticides, requiring their sale only by licensed pesticide dealers and application only by licensed applicators. These additional requirements make the pesticides' timely introduction into the state and access to the general public unfeasible. 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

Phone: 919-707-3008

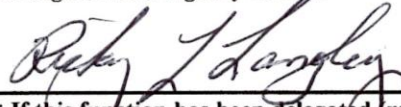
E-Mail: christina.waggett@ncagr.gov

Agency contact, if any:

Phone:

E-Mail:

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:

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0502

DEADLINE FOR RECEIPT: Tuesday, May 18 by 12:00 p.m.

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your Findings of Need form, Box 6, is this temporary rule being filed under Session Law 2020-97 or is it in response to a serious and unforeseen threat? Please review the Session Law, specifically Section 3.20(e), and clarify.

SECTION 3.20.(e) State agencies may adopt emergency rules for the implementation of this section in accordance with G.S. 150B-21.1A. Notwithstanding G.S. 150B-21.1A(a), an agency shall not commence the adoption of temporary rules pursuant to this section. Notwithstanding G.S. 150B-21.1A(d)(4), an emergency rule adopted pursuant to this section shall expire 30 days after Executive Order No. 116 is rescinded or March 31, 2021, whichever is earlier.

In Box 6, if this temporary rule is being proposed in response to COVID, please address why this is still an "unforeseen threat." Did something new prompt this Rule? Was there a change in federal regulation?

In Box 7, you mention the pesticides are "newly approved" and that they have been "approved by the EPA? Please elaborate on what prompted this temporary rule, including citations to these changes, if applicable. This may belong in Box 6.

In Box 7, please specifically address why permanent rulemaking was contrary to the public interest? Was there not enough time to engage in permanent rulemaking?

In the Rule, line 11, please use all caps for "COVID-19."

At line 11, please refer to "Subparagraph (a)(3) of this Rule."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: May 14, 2021

02 NCAC 09L .0502 is adopted under temporary procedures 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 shall be exempt from the provisions of 02 NCAC 09L .0502 (a)(3) 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.*