

02 NCAC 09L .0102 is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0102 DUTIES (CONTINUED)

The North Carolina Pesticide Board has delegated the following statutory powers, duties, and authorities to the Commissioner of Agriculture:

- (1) the first sentence of G.S. 143-442(a);
- (2) G.S. 143-442(c);
- (3) the first two sentences of G.S. 143-442(d);
- (4) G.S. 143-443(a)(1);
- (5) G.S. ~~143-443(a)(2), (c);~~ 143-443(a)(2);
- (6) G.S. ~~143-445(a)(3), (b);~~ 143-445(a)(3) and (b);
- (7) the first sentence of G.S. 143-446(a);
- (8) the first sentence of G.S. 143-446(c);
- (9) G.S. 143-447(b);
- (10) G.S. 143-448(c);
- (11) G.S. 143-448(e);
- (12) G.S. 143-448(f);
- (13) G.S. 143-449(a);
- (14) the first sentence of G.S. 143-449(b);
- (15) the first phrase of G.S. 143-450(a);
- (16) G.S. 143-452(a);
- (17) G.S. 143-452(b), excluding the first sentence;
- (18) G.S. 143-452(e);
- (19) the first sentence and last two sentences of G.S. 143-452(f);
- (20) G.S. 143-453(a);
- (21) the first sentence of G.S. 143-453(b);
- (22) ~~the first phrase of~~ G.S. 143-454(a);
- (23) the first sentence of G.S. 143-455(a);
- (24) G.S. 143-455(b);
- (25) the first sentence of G.S. 143-455(c);
- (26) G.S. 143-461(7);
- (27) G.S. 143-461(8);
- (28) G.S. 143-465(b);
- (29) G.S. 143-466(b);
- (30) the first sentence of G.S. 143-466(c);
- (31) the first sentence of G.S. 143-466(d); and
- (32) G.S. 143-466(e).

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*History Note: Authority G.S. 143-461(5);
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1987.
Readopted Eff. August 1, 2020.*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Pesticide Board and the Commissioner of Agriculture	
2. Rule citation & name (name not required for repeal): 02 NCAC 09L .0103 Assignment of Duties	
3. Action: <input type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input checked="" type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 12/2/2019 Link to Agency notice: 12/2/2019, http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm Hearing on: N/A Adoption by Agency on: 3/10/2020 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: This rule has gone through the periodic review and expiration of existing rules process and was classified as necessary with substantive public interest. The rule has been readopted with technical changes to names.	
10. Rulemaking Coordinator: Christina L. Waggett Phone: 919-707-3008 E-Mail: christina.waggett@ncagr.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="text-align: center; font-family: cursive; font-size: 1.2em;">Christina L. Waggett</div> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> *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: Christina L. Waggett Title: Rulemaking Coordinator
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

02 NCAC 09L is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0103 ASSIGNMENT OF DUTIES

The Commissioner of Agriculture has assigned the administrative and enforcement duties and functions assigned to him in the North Carolina Pesticide Law of 1971 to the ~~food and drug protection division~~ Structural Pest Control and Pesticides Division of the North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services.

History Note: Authority G.S. ~~143-438~~; 143-438(4);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; January 27, 1978.
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0308 is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0308 REGISTRATION FOR THE FOLLOWING YEAR

Registration of a pesticide registered the previous year will be renewed provided its registration status with the Environmental Protection Agency remains unchanged at the time of review and its continued use in North Carolina is in the best interest of the ~~public.~~ public as stated in G.S. 143-442(d).

*History Note: Authority G.S. 143-442;
 Eff. February 1, 1976.
 Readopted Eff. August 1, 2020.*

02 NCAC 09L .0310 is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0310 REREGISTRATION

Reregistration of a pesticide registered the previous year with the label or labeling revised ~~and amended in the interim period~~
~~will shall~~ be accepted provided the following conditions are met:

- (1) The revision and amendment have been accepted by the Environmental Protection Agency or approved for special local needs; ~~and~~
- (2) The revision and amendment ~~will shall~~ cause no unreasonable adverse effects ~~on the environment or hazards to humans, domestic animals, and wildlife; and as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2 (bb).~~
- ~~(3) Its continued registration is desirable and will be in the best public interest.~~

History Note: Authority G.S. 143-442;
Eff. February 1, 1976.
Readopted Eff. August 1, 2020.

02 NCAC 09L .0317 is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0317 REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL NEEDS

~~The North Carolina Pesticide Board adopts [incorporates] by [reference, as set forth in G.S. 150B-21.6, including subsequent amendments and editions,] reference in accordance with G.S. 150B-14(e), "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D. D is incorporated by reference, including subsequent amendments and editions. This reference establishes procedures and criteria under which the state [State] may register pesticide products, or any uses thereof, formulated for distribution and use within the state to meet special local needs under Section 24(e) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Copies of "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs" are available for inspection in the Office of the Pesticide Administrator of the Food and Drug Protection Division [Director of the Structural Pest Control and Pesticides Division,] and This document may be obtained at a no cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162_main_02.tpl.~~

History Note: Authority G.S. 143-437; 143-440; 143-461; ~~150B-14;~~

Eff. November 1, 1988.

Readopted Eff. August 1, 2020.

02 NCAC 09L .0318 is readopted with changes as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0318 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES

~~The North Carolina Pesticide Board hereby adopts [incorporates] by reference in accordance with G.S. 150B-14(e) [reference, as set forth in G.S. 150B-21.6, including subsequent amendments and editions,] "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies," 40 C.F.R. Section 166. 166 is incorporated by reference including subsequent amendments and editions. This reference establishes criteria for determining the conditions under which an emergency exists, the procedures for obtaining an exemption, and sets forth requirements related thereto. Copies of "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies" are available for inspection in the Office of Pesticide Administrator of the Food and Drug Protection Division [the Director of the Structural Pest Control and Pesticides Division,] and This document may be obtained at a no cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl.~~

*History Note: Authority G.S. 143-437; 143-440; 143-461; 150B-14;
Eff. November 1, 1988.
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0402 is readopted with changes as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0402 TOLERANCES

In regards to establishing tolerances providing for ~~reasonable~~ deviations from the guaranteed analysis ~~statement, statement for official samples, the following guidelines are adopted; the following enforcement standards shall apply:~~

- (1) ~~that, in general, a~~ A "passed" judgment on a pesticide formulation shall be made if the analytical results are within the following guidelines: allowable deviations below guarantee:

Pesticide Active Ingredient	Allowable Deviation
Guarantee, Percent	Below Guarantee
<1.00	15 percent of Guarantee
1.00 - 19.99	0.1 plus 5 percent of Guarantee
20.00 - 49.99	0.5 plus 3 percent of Guarantee
50.00 - 100.00	1.0 plus 2 percent of Guarantee

Additional considerations:

- (a) ~~If a sufficient number of samples as determined by the food and drug protection division of a given product indicate that the manufacturer is not formulating the product to achieve the level of the guarantee, an administrative judgment may be made to warn the formulator against the practice of formulating products in a manner only to stay within the allowable deviation from the guarantee.~~
- (b)(2) A sample result falling outside of the guidelines allowable deviations below guarantee ~~may not necessarily shall not be~~ "deficient" if one of the following factors could ~~reasonably be expected to~~ have contributed ~~significantly~~ to the off-limits analysis:
- (i)(a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or
- (ii)(b) accuracy, specificity, ~~reproducibility, etc., and reproducibility~~ of the methods used when applied to the particular formulation;
- (2)(3) that, allowable Allowable deviations, similar to those for "deficiencies," ~~are not shall not be~~ applicable to "overages." pesticide formulations with active ingredients found to be in excess of the guarantee ("overages"). Each sample analysis ~~will~~ shall be judged individually as to whether or not the overage is excessive by using the following criteria:
- (a) no illegal residues resulting from use according to directions;
- (b) no significant additional hazard unreasonable adverse effects to applicator or user;
- (c) no significant damage unreasonable adverse effects to non-target organisms or the environment;
- (d) stability of ingredients and the need for "over-formulating"; or

(e) accuracy, specificity, reproducibility, etc., of the methods used when applied to the particular formulation.

History Note: Authority G.S. 143-437(1); 143-446;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1982; January 27, 1978.
Readopted Eff. August 1, 2020.

02 NCAC 09L .0502 is readopted with changes as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

For the purpose of this Regulation ~~[Rule]~~ Subchapter a restricted use pesticide is: “restricted use pesticide” shall be:

- (1) any pesticide required by the ~~environmental protection agency~~ Environmental Protection Agency to bear the designation on its labeling "Restricted Use ~~Pesticide~~"; Pesticide;"
- (2) ~~arsenic trioxide, all formulations of which must be sold and/or purchased in accordance with additional regulations (2 NCAC 9L .1200) adopted by the North Carolina Pesticide Board; trioxide; and~~
- (3) any pesticide approved under ~~2 NCAC 9L .0318.~~ Rule .0318 of this Subchapter.

History Note: Filed as an Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977;
Authority G.S. 143-440(a),(b); 143-441; 143-458;
Eff. February 1, 1976;
Amended Eff. April 21, 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.

02 NCAC 09L .0503 is readopted with changes as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0503 PESTICIDE APPLICATORS

(a) The Commissioner shall require the licensing of at least one person as a pesticide applicator at each [place of] business location who ~~must~~ shall be responsible for the application of pesticides for routine pest control situations.

(b) The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, applicator shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30);

Eff. February 1, 1976.

Readopted Eff. August 1, 2020.

02 NCAC 09L .0504 is readopted with changes as published in 34:11 NCR 504 as follows:

02 NCAC 09L .0504 DEFINITIONS

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

(1) "Agricultural pest control":

(a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, ~~including without limiting the foregoing,~~ including tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and

(b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, ~~including without limiting~~ including, but not limited to, the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.

(5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide ~~purposefully~~ intended to be applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.

(6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way, or other similar areas.

(7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

(8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.

(9) "Demonstration and research pest control" includes the following:

(a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such ~~demonstration;~~ demonstration, including extension specialists and ~~county agents;~~ county agents; ~~This includes extension specialists and county agents,~~ commercial

representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and

(b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other persons conducting field research on or utilizing pesticides.

(10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.

(11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:

(a) boxcars;

(b) warehouses;

(c) tractor trailers; and

(d) grain bins.

(12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3;

Eff. February 1, 1976;

Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979.

Readopted Eff. August 1, 2020.

02 NCAC 09L .0505 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0505 CLASSIFICATIONS

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

- (1) pesticide applicators and public operators utilizing ground equipment:
 - (a) agricultural pest control:
 - (i) plant; and
 - (ii) animal;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control;
 - (h) demonstration and research pest control:
 - (i) agricultural pest control:
 - (A) plant; and
 - (B) animal;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control;
 - (vii) regulatory pest control;
 - (viii) seed treatment;
 - (ix) wood treatment; and
 - (x) soil and growing media fumigation pest control;
 - (i) seed treatment;
 - (j) wood treatment; and
 - (k) soil and growing media fumigation pest control;
- (2) pesticide applicators and public operators utilizing aerial equipment:
 - (a) agricultural pest control: plant;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;

- (g) regulatory pest control; and
- (h) demonstration and research pest control:
 - (i) agricultural pest control: plant;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control; and
 - (vii) regulatory pest control.

*History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);
Eff. February 1, 1976;
Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976.
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0509 is readopted with changes as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS

(a) An applicant for a pest control consultant license ~~must~~ shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with ~~a minimum of~~ 30 semester hours or 45 quarter hours of credit in subject areas pertinent to the category in which the applicant seeks to obtain a license. Emphasis of study ~~must~~ shall include insect, plant, bacterial, and fungal pests, as applicable to the category, and integrated pest management. As used in this Rule, "accredited college or university" means an institution that is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation.

(b) The provisions of this Section shall not apply to anyone holding a valid North Carolina pest control consultant license on or before July 1, 1992.

*History Note: Authority G.S. 143-455; 143-460(27);
 Eff. February 1, 1976;
 Amended Eff. July 1, 1992; November 1, 1988.
 Readopted Eff. August 1, 2020.*

02 NCAC 09L .0516 is readopted with changes as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0516 CONTINUANCES

Any firm, corporation, or government unit ~~which that~~ is deprived of the services of the sole individual at an outlet business location who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, ~~provided that a request for an examination appointment is directed to the food and drug protection division of the North Carolina Department of Agriculture for a designated individual within two weeks of that date when the services of their licensed pesticide dealer was terminated, and an individual is available who has worked in pesticide sales under the supervision of a licensed pesticide dealer for at least three months and which person will supervise pesticide sales during the interim period.~~ provided:

- (1) ~~Its designated individual~~ It directs a request for an examination appointment for a designated individual to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services within two weeks of the date it terminates or loses the services of its licensed pesticide dealer;
- (2) It has available ~~an individual (the "qualified person")~~ a designated individual who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and
- (3) The ~~qualified person~~ designated individual ~~will~~ shall supervise pesticide sales during the interim period.

History Note: Authority G.S. 143-449(b); 143-461(a);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978.
Readopted Eff. August 1, 2020.

02 NCAC 09L .0519 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0519 CERTIFICATION

(a) ~~Commercial pesticide~~ **Pesticide** applicators, public operators, and pest control consultants, as defined by ~~the North Carolina Pesticide Law of 1971,~~ G.S. 143-460, who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-453 or 143-455, as applicable, are certified to use or supervise the use of any restricted use pesticide, as defined by Rule .0502(1) of this Section. Certification is valid only for those uses covered by the certified individual's ~~certification,~~ **certification category(ies)**, as defined by Rule .0504 of this Section.

(b) The term of certification shall be five years for individuals licensed to use ground equipment and two years for individuals (contractors and pilots) licensed to use aerial ~~equipment;~~ **equipment.** ~~however,~~ **However,** all individuals ~~must~~ shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. January 1, 1990.
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0520 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS

(a) In order to ~~insure~~ ensure that certified ~~commercial~~ pesticide applicators, public operators, and pest control consultants continue to meet the needs of changing technology necessary for the ~~safe and effective~~ use of pesticides, they shall be subject to recertification requirements as herein defined.

(b) ~~In no event will the~~ The license of a certified ~~commercial~~ pesticide applicator, public operator, or pest control consultant ~~continue to~~ shall not be renewed annually for more than five years for individuals licensed to use ground equipment or two years for individuals (contractors and pilots) licensed to use aerial equipment unless the individual has been recertified through one of the options in Rule .0522 of this Section.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);

Eff. September 10, 1980.

Readopted Eff. August 1, 2020.

02 NCAC 09L .0522 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) ~~Commercial pesticide~~ **Pesticide** applicators, public operators, and pest control consultants may be recertified by completion of approved continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.4, 171.103, and "Standards for recertification of certified applicators," as contained in 40CFR 171.107. ~~such~~ **Such** training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. Continuing certification requirements for each pest control category are as follows:

- | | | |
|------|----------------------------|------------------------------|
| (1) | aquatic | 6 credits per 5-year period |
| (2) | public health | 6 credits per 5-year period |
| (3) | forest | 6 credits per 5-year period |
| (4) | right-of-way | 4 credits per 5-year period |
| (5) | regulatory | 6 credits per 5-year period |
| (6) | ag pest-animal | 6 credits per 5-year period |
| (7) | ornamental and turf | 10 credits per 5-year period |
| (8) | seed treatment | 3 credits per 5-year period |
| (9) | ag pest-plant | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

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|------|--------|-----------------------------|
| (11) | aerial | 4 credits per 2-year period |
|------|--------|-----------------------------|

The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

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|------|-----------------------------------|-----------------------------|
| (12) | wood treatment | 4 credits per 5-year period |
| (13) | soil and growing media fumigation | 3 credits per 5-year period |

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) ~~Commercial pesticide~~ **Pesticide** applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);

1 *Eff. September 10, 1980;*
2 *Amended Eff. June 1, 2016; November 1, 1984.*
3 *Readopted Eff. August 1, 2020.*
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02 NCAC 09L .0523 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES

(a) Individuals desiring to retain certification in more than one pest control category ~~must~~ shall complete for each category any one of the recertification options described in Rule .0522 of this Section.

(b) Individuals desiring to retain certification through Continuing Certification Training in more than one ground pest control category may do so upon completion of total Continuing Certification Credit Requirements in the category carrying the highest credit requirements, by completing three Continuing Certification Credits in each additional category.

(c) Individuals desiring to retain certification through Continuing Certification Training in more than one aerial pest control category may do so upon completion of total Continuing Certification Credit Requirements in any one category, by completing one Continuing Certification Credit in each additional category.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. October 22, 1981.
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0524 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION

(a) The recertification period shall expire on June 30th.

(b) ~~At the direction of the Board, each~~ Each certified individual ~~will shall~~ be notified 6-9 months prior to the recertification expiration date of the individual's remaining requirements for recertification.

(c) A certified individual who has completed none of the recertification options in Rule .0522 of this Section prior to the recertification expiration date shall ~~be required to~~ retake and ~~satisfactorily~~ pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category. ~~This examination will be based on updated training materials approved by the Board.~~

(d) No individual ~~will shall~~ be allowed to carry over any Continuing Certification Credits from one recertification period to another.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. February 4, 1993; November 1, 1988.
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0525 readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS

(a) Pesticide dealers who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-449 are certified for a period of five ~~years; years. however, However.~~ all such individuals ~~must~~ shall renew their pesticide licenses annually, as required in the North Carolina Pesticide Law of 1971.

(b) In order to ~~insure~~ ensure that certified pesticide dealers continue to meet the needs of changing technology necessary for the ~~safe and effective~~ use of pesticides, they shall be subject to recertification requirements as ~~herein defined. as defined in~~ Rule .0526 of this Section.

(c) In no event ~~will~~ shall the license of a pesticide dealer continue to be renewed annually for more than five years unless the individual has been recertified through one of the options in Rule .0526 of this Section.

History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Amended Eff. November 1, ~~1988.~~ 1988.
Readopted Eff. August 1, 2020.

02 NCAC 09L .0526 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0526 PESTICIDE DEALER RECERTIFICATION OPTIONS

(a) A pesticide dealer may be recertified by completing five approved Pesticide Dealer Continuing Certification Credits. A ~~Pesticide Dealer Continuing Certification Credit~~ “Pesticide Dealer Continuing Certification Credit” is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Continuing certification training shall be approved by the Board based upon the U.S. Environmental Protection Agency “Standards for certification of commercial applicators,” as contained in 40 CFR 171.103. Such training ~~must~~ shall ~~be approved by the Board and~~ may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training ~~organizations approved by the Board.~~ organizations. The Continuing Certification Credits ~~must~~ shall be obtained in at least two years of the five-year period.

(b) Instead of completing five certification credits, a pesticide dealer may be recertified by passing a written comprehensive examination administered by ~~NCDA~~ North Carolina Department of Agriculture and Consumer Services personnel and based ~~on training materials which [that] have been approved by the Board.~~ upon the U.S. Environmental Protection Agency “Standards for certification of commercial applicators,” as contained in 40 CFR 171.103.

History Note: Authority G.S. 143-448; 143-449;

Eff. October 22, 1981; 1981;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0527 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0527 EXPIRATION OF PESTICIDE DEALER CERTIFICATION

Pesticide dealers ~~will~~ shall be subject to the same certification expiration requirements as set forth in Rule ~~.0524; Expiration of Certification.~~ .0524 of this Section.

History Note: Authority G.S. 143-448; 143-449;

Eff. October 22, ~~1981~~. 1981;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0602 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0602 DISPOSAL OF PESTICIDES

(a) ~~In considering disposal techniques,~~ Any person disposing of pesticides shall give first preference ~~shall be given~~ to ~~procedures designed to recover~~ recovering some useful value from excess pesticides. Whenever possible, excess pesticide shall be used according to its labeling for the purpose originally intended.

(b) Excess pesticides and pesticide-related wastes shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, disposal of excess pesticides and pesticide-related wastes is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste ~~Management, as applicable.~~ Management.

History Note: Authority G.S. 143-441;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; December 1, ~~1989.~~ 1989;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0603 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0603 DISPOSAL OF PESTICIDE CONTAINERS

(a) Prior to disposal, all pesticide containers shall be thoroughly emptied, using the practices commonly employed to remove materials from that type of container; e.g., including shaking, pumping, pouring, triple rinsing (or equivalent) triple rinsing, or equivalent. and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with these rules, this Section.

(b) Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, ~~as applicable,~~ and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 2D, Air Pollution Control Requirements.

History Note: Authority G.S. 143-441;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; December 1, ~~1989,~~ 1989;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0701 is readopted with changes as published in 34:11 NCR 905 as follows:

SECTION .0700 - DECLARATION OF PESTS AND RESTRICTIONS ON THEIR CONTROL

02 NCAC 09L .0701 ORCHARD RATS

The North Carolina Pesticide Board hereby declares as a pest pine voles *Pitymys (or Microtus) Pinetorum* (*Pitymys*, or *Microtus Pinetorum*) and meadow voles (*Microtus pennsylvanicus*), (commonly called orchard rats) on or immediately adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

History Note: Authority G.S. 143-444(1);

Eff. February 1, 1976;

Amended Eff. March 1, ~~1993~~. 1993;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0702 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0702 RESTRICTIONS CONCERNING CONTROL OF ORCHARD RATS

Pesticides used to control ~~these species~~ **Orchard Rats** must ~~shall~~ be applied ~~so as to~~ **according to label directions** to minimize the hazards to nontarget species and that the use of endrin be confined to the period after harvest and before apple trees break dormancy in spring- ~~species.~~

History Note: Authority G.S. 143-458;
Eff. February 1, 1976. 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0703 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0703 GULLS

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus Larus) on or ~~near~~ adjacent airport runways when they occur in such manner ~~as to~~ that may endanger air ~~traffic.~~ traffic by impacting landings and take-offs.

History Note: Authority G.S. 143-444(1);

Eff. February 1, ~~1976-1976.~~

Readopted Eff. August 1, 2020.

02 NCAC 09L .0705 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0705 RESTRICTIONS CONCERNING CONTROL OF PIGEONS

~~The North Carolina Pesticide Board hereby establishes the~~ The following restrictions apply concerning the use of pesticides in controlling the pigeon ~~(rock dove) Columba livia:~~ (Columba livia), also known as rock dove:

(1) ~~that~~ only materials registered for this purpose pigeons shall be used in accordance with directions on the label; used;

(2) the pesticides shall be used in accordance with the directions on the label;

~~(2)(3) that~~ the pesticides shall be distributed in such a manner as to minimize hazard to non-target species, and that all unconsumed bait ~~which~~ that is not in protected bait stations shall be picked up within one week; and

~~(3)(4) that~~ in municipalities dead birds shall be picked up and disposed of by incineration or buried at intervals not to exceed 24 hours.

*History Note: Authority G.S. 143-458;
Eff. February 1, ~~1976~~; 1976;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0707 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED MOLES

(a) The North Carolina Pesticide Board hereby declares the eastern mole, *Scalopus aquaticus*, and the hairy-tailed mole, *Parascalops breweri*, to be ~~pests as provided by law.~~ pests.

(b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:

- (1) residential;
- (2) commercial;
- (3) government property, excluding federal and state State parks;
- (4) golf courses, driving ranges, and golf instructional facilities;
- (5) sod farms;
- (6) athletic fields; or
- (7) visitor centers and cemeteries.

(c) For purposes of this Rule, managed turf shall not include pastures.

(d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including streams, rivers, ponds, swamps, lakes, and wetlands.

(e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

History Note: Authority G.S. 143-444(1); 143-458;

Eff. April 1, ~~2015.~~ 2015;

Readopted Eff. August 1, 2020.

02 NCAC 09L .0810 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0810 ADOPTION BY REFERENCE

~~The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticide Management and Disposal Subpart E—Standards for Pesticide Containment Structures."~~ Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticides Management and Disposal Subpart E—Standards for Pesticide Containment Structures" is incorporated by reference, including subsequent amendments and editions. ~~Copies of this material may be obtained~~ This document may be accessed at no cost ~~from the U.S. Government Printing Office website,~~ at www.gpoaccess.gov/cfr/index.html.

*History Note: Authority G.S. 143-441; 143-461;
 Eff. April 1, ~~2009~~; 2009;
 Readopted Eff. August 1, 2020.*

02 NCAC 09L .1001 is readopted with changes as published in 34:11 NCR 905 as follows:

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, ~~or unless the context otherwise requires, other definitions shall be:~~ requires.

- (1) ~~Agricultural Aircraft Operation.~~ "Agricultural Aircraft Operation" means ~~The the~~ operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control ~~operation;~~ operation.
- (2) ~~Adverse Effect. Personal~~ "Adverse Effect" means personal injury, damage to personal property, damage to real property, damage to the ~~environment~~ environment, or any combination of ~~these;~~ these.
- (3) ~~Aircraft. A~~ "Aircraft" means a weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its ~~surfaces;~~ surfaces. This shall include either fixed-wing or rotary-wing ~~aircraft;~~ aircraft.
- (4) ~~Congested Areas. The~~ "Congested Areas" means the same meaning as described in ~~case law opinions interpreting Federal Aviation Regulations (F.A.R.), Title 14 CFR [Subchapter G] Part 137;~~ 137, Subpart C.
- (5) ~~Contractor. Any~~ "Contractor" means any person who owns or manages an aerial application business ~~which that~~ is engaged in the custom application of ~~pesticides;~~ pesticides.
- (6) ~~Custom Application. Any~~ "Custom Application" means any application of pesticides by aircraft for which service a payment is ~~made;~~ made.
- (7) ~~Drift. The~~ "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target ~~area;~~ area.
- (8) ~~Emergency. An~~ "Emergency" means an occurrence ~~which that~~ can impair public ~~health;~~ health or safety or result in injury, damage, or loss of life ~~which that~~ calls for ~~immediate action;~~ action. An emergency may be minor or of such magnitude as to create a ~~disaster;~~ disaster.
- (9) ~~Environment. Water;~~ "Environment" means water, air, ~~land~~ land, ~~and all plants~~ plants, ~~and~~ man and other animals living therein and the interrelationships which exist among ~~these;~~ these.
- (10) ~~F.A.R. 137. Federal Aviation Regulations Volume VII;~~ "F.A.R.-137" means Title 14 CFR [Subchapter G] Part 137, incorporated by reference, including ~~[and]~~ subsequent amendments and editions, ~~as amended through September 10, 1980,~~ relating to agricultural aircraft ~~operations;~~ operations. This document may be accessed at <https://www.law.cornell.edu/cfr/text/14/part-137>.
- (11) ~~Pilot. The~~ "Pilot" means the person in control of the aircraft during the application of a ~~pesticide;~~ pesticide.
- (12) ~~Registered Apiary. an apiary~~ "Registered Apiary" means any place where one or more colonies of bees are ~~[kept,~~ kept and registered with the North Carolina Department of ~~Agriculture;~~ Agriculture and Consumer [Services;] Services.

- (13) ~~Respirator.~~ A “Respirator” means a respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being ~~used;~~ used.
- (14) ~~Spray Equipment.~~ The “Spray Equipment” means the equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft ~~operation;~~ operation.
- (15) ~~Target Area. Intended~~ “Target Area” means intended site of pesticide ~~application;~~ application.
- (16) ~~Toxicity Category I Pesticides. Any~~ “Toxicity Category I Pesticides” means any pesticide products ~~which~~ that are required to display the signal word "Danger" ~~prominently~~ on the label.

History Note: Authority G.S. 143-458; 143-463;
Eff. July 2, 1976;
Amended Eff. January 1, ~~1985;~~ 1985;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1002 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1002 GENERAL REQUIREMENTS

(a) All agricultural aircraft operations in North Carolina shall comply with the Federal Occupational Safety and Health Act of 1971 (OSHA), Title 29 U.S.C. Chapter 15, the North Carolina Occupational Safety and Health Law, G.S. Chapter 95 Article 16, all rules and regulations promulgated thereunder and the Federal Aviation Regulations ~~part~~ Part 137. In any case of conflict, a provision of the aforementioned authorities takes precedence over any of these Rules.

(b) Each aerial application business shall have a licensed contractor. The contractor shall be responsible for the compliance of the business with the North Carolina Pesticide Law of 1971 and all regulations rules promulgated thereunder except where the responsibility is specifically designated to another person(s) by these Rules, this Section.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application, application, unless requested sooner This requirement must [shall] be fulfilled as soon as requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. For pesticides covered under the Worker Protection Standards for Agricultural Pesticides, 02 NCAC 09L .1800, such records must [shall] be completed in accordance with 02 NCAC 09L .1807(b). The record shall show the following:

- (1) name of contractor;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or land sites treated with pesticide(s);
- (4) name of crop which was treated;
- (5) total number of acres treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed;
- (7) the brand name of the pesticide(s) and EPA registration number;
- (8) amount of formulated product or active material applied per acre ~~(must [shall] specify); shall be specified;~~
- (9) total gallons or pounds per acre of the final tank mix applied per acre;
- (10) name of pilot; and
- (11) signature of person completing this record.

(d) Each day of application shall be recorded as a separate record.

(e) The pilot shall, prior to application, learn and confirm:

- (1) the boundaries and exact location of the target area(s); and
- (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

(f) Spray and spreading equipment shall be rinsed after each agricultural aircraft operation except when the next agricultural aircraft operation will be made using the same pesticide, one which by its manufacturer's recommendations is compatible with that or if another pesticide, compatible with the previous pesticide according to the manufacturer's recommendations was previously in the equipment, and will not result in any adverse effects or illegal residues. Rinsing shall be conducted in an area where an environmental hazard will not be or created by the drainage or disposal of waste

materials and conducted with methods which will not create ~~an environmental or human hazard,~~ an adverse effect as defined in this Section.

(g) During application, the flow and mixture of the pesticide(s) shall be uniform. Pilots and contractors shall utilize equipment which will maintain a uniform mixture and flow during application.

(h) Pilots and contractors shall use and operate, in any agricultural aircraft operation, aircraft equipped with spray or spreading equipment suited, according to its manufacturer's recommendations for the pesticide(s) to be applied. All aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow spillage, dripping and backflow or create a hazard from vapors or drift.

(i) The loading area shall be kept reasonably free of pesticide contamination.

(j) No pesticide(s) shall be applied by an aerial applicator while any persons other than those assisting in the application are in the target area.

(k) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow complete drainage during flight and on ground.

(l) The contractor or pilot shall immediately notify the Secretary of the ~~Board, or designated alternate,~~ Board of any emergency or accidental release of pesticide(s) from the application or auxiliary equipment. They shall provide the following information:

- (1) the name of the pilot;
- (2) the contractor involved;
- (3) the name of the property owner or operator;
- (4) the location of the incident;
- (5) the name of the pesticide;
- (6) the estimated amount of pesticide involved;
- (7) the estimated size of the area that received the spill;
- (8) the description of what is located within 300 feet from the edge of the spill in all directions;
- (9) the number of humans or animals known to have been contaminated; and
- (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

History Note: Authority G.S. 143-458; 143-463; 143-466;

Eff. July 2, 1976;

Amended Eff. May 1, 2009; February 1, 1989; January 1, 1985; August 1, ~~1982,~~ 1982;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1003 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (4) All applications of the following liquid pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward:
 - (a) phenoxy herbicides,
 - (b) paraquat,
 - (c) picloram (Tordon), and
 - (d) dicamba.
- (5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:
 - (a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or
 - (b) a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or
 - (c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.

*History Note: Authority G.S. 143-458; 143-463;
Eff. July 2, 1976;
Amended Eff. January 1, ~~1985~~ 1985;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1005 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1005 RESTRICTED AREAS

(a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under F.A.R. 137. 14 CFR [Subchapter G] Part 137.

(b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or any ~~building (other than a residence)~~ building, other than a residence which is used for business or social activities ~~if either the premises or the building is occupied by people.~~ if any person is in the building or on the premises.

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

(d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or ~~near~~ adjacent to any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.

(e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that an adverse effect will occur.

History Note: Authority G.S. 143-458;

Eff. July 2, 1976;

Amended Eff. July 1, 1988; January 1, 1985; December 1, ~~1976.~~ 1976;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1006 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1006 EXEMPTIONS

~~No person or procedure or spraying and spreading system for aerial application of pesticides shall be exempt from any of the provisions of this Section except under these~~ There shall be no exemptions from this Section except under the following conditions:

- (1) During an emergency proclaimed by the ~~commissioner~~, Commissioner, under G.S. 143.461(2), specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the ~~commissioner~~. Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
 - (a) from specific regulations rules for specific aerial applications when deemed appropriate, appropriate for specific aerial applications upon consideration of public health, environmental, and economic impact; or
 - (b) from specific regulations rules for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any ~~state, federal~~ State, federal or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from 2 [02] NCAC 9L .1002(i); Rule [.1002(j); .1002(j) of this Section, General Requirements, and 2 [02] NCAC 9L Rule .1005(b) through (e); (e) Restricted Areas, of this Section provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation ~~which~~ that meets or exceeds the following standards:
 - (a) Project Description. The application shall include all of the following:
 - (i) explanation of why the project is needed;
 - (ii) identification of target pest or pests;
 - (iii) map showing treatment area;
 - (iv) total acreage to be treated; and
 - (v) proposed date or dates of application (range).
 - (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
 - (i) a statement that the pesticide product(s) proposed for use carries current state State and federal registration and are ~~currently~~ labeled for the proposed use. ~~Include The~~ EPA registration number for each ~~pesticide; pesticide shall be included in the statement;~~
 - (ii) ~~Material a~~ a Safety Data Sheet (~~MSDS~~). (SDS) ~~Include an~~ MSDS [SDS] for each pesticide proposed for use;

- (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
- (c) Aircraft Information. The description shall include the following:
- (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.); and
 - (ii) identification of equipment specifications.
- (d) Environmental Evaluation. The description shall include the following:
- (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive environmental areas in or near the proposed treatment area;
 - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures (if any) measures, if any, to lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
 - (iii) describe alternative methods of pest control (options). A no treatment alternative should shall be included. Describe probable environmental consequences of each alternative; and
 - (iv) describe measures (if any) measures, if any, to mitigate the adverse environmental impacts of the proposed project.
- (e) Notification and Public Input Plan. The application shall contain the following:
- (i) Preliminary Notification:
 - (A) For small projects (less less than 50 acres or fewer than 20 landowners landowners, individual notification (personal contact or mailings) by written, oral, digital communication, or mailings, may be used. This notification shall include the information in criteria (a) through (c);
 - (B) For larger projects, the print, broadcast, or internet news media (radio, TV, newspapers) may be used for preliminary notification. A public meeting may also be used as a preliminary notification tool. This notification shall include the information in criteria (a) through (c);
 - (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
 - (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project should shall be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media would shall be an appropriate avenue of notification;
 - (iv) A contact person and telephone number shall be listed in the public notice; and
 - (v) Evacuation Plan. For persons concerned about the project because of health reasons, there should shall be a notification procedure so they may leave the treatment area while the project is underway.

1 The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all
2 applications for exemption.

- 3 (4) Any local health director or aerial applicator licensed under the subcategory of public health pest control,
4 under supervision of such local health director when conducting a control operation for disease vectors or
5 other pest of public health significance shall be exempted from 2 NCAC 9L .1002(i), .1002(j) General
6 Requirements; .1003, Drift Control; and .1005(b) through (e), Restricted Areas, provided such local health
7 director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation
8 and submits the following information:

- 9 (a) name of aerial applicator or contractor,
10 (b) location and general description of operation area(s),
11 (c) identity of target pest(s),
12 (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
13 (e) scheduled date(s) of application(s), and
14 (f) outline of nature of operation.

15 **Approved All** pesticide(s) shall be applied in compliance with label requirements.

16
17 *History Note: Authority G.S. 143-458; 143-461(1),(2),(5); 143-463;*
18 *Eff. July 2, 1976;*
19 *Amended Eff. October 1, 1988; January 1, 1985; August 1, 1982; July 21, 1978; 1978;*
20 *Readopted Eff. August 1, 2020.*
21

02 NCAC 09L .1009 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1009 NOTIFICATION OF APIARIES

(a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to **bees, bees** shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.

(b) "Notification" for the purposes of this Paragraph is defined as follows:

(1) written communication by:

(a) U.S. mail,

(b) Notification left at residence, or

(c) Notification left at alternate address as designated on the honeybee registration list.

(2) oral communication by:

(a) telephone,

(b) personal communication, or

(c) verbal communication with an alternate person as designated on the honeybee registration list.

(3) digital communication by:

(a) electronic mail or

(b) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466;

Eff. January 1, 1985;

Amended Eff. January 1, ~~2016~~-2016;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1102 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1102 DEFINITIONS

The following definitions apply in this Section.

~~(a)~~ ~~(1) Certified applicator—~~“Certified applicator” means any individual who is certified to use or supervise the use of any restricted use pesticide.

~~(b)~~ ~~(2) Private pesticide applicator—~~“Private pesticide applicator” means a person who uses or supervises the use of any restricted use pesticide under the following conditions:

~~(1)~~ ~~(a)~~ for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or

~~(2)~~ ~~(b)~~ if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

~~(c)~~ ~~(3) Private pesticide applicator certification standards review—~~“Private pesticide applicator certification standards review” means a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:

~~(1)~~ ~~(a)~~ the pest problems and pest control practices associated with agricultural operations;

~~(2)~~ ~~(b)~~ storage, use, handling, and disposal of pesticides and their containers;

~~(3)~~ ~~(c)~~ labels and labeling information;

~~(4)~~ ~~(d)~~ local environmental situations to consider during application to avoid contamination;

~~(5)~~ ~~(e)~~ recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;

~~(6)~~ ~~(f)~~ protective clothing, equipment, and other worker protection standards;

~~(7)~~ ~~(g)~~ federal and ~~state~~ State pesticide ~~laws~~ laws, rules, and regulations and the applicator's related legal responsibility;

~~(8)~~ ~~(h)~~ current agricultural production-related pesticide technology; and

~~(9)~~ ~~(i)~~ sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her ~~certification,~~ certification including EPA guidance, extension publications and court decisions.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

~~(d)~~ ~~(4) Continuing certification credit—~~“Continuing certification credit” means one hour of continuing certification training. ~~Continuing certification training shall be approved by the Board.~~ Such training may be offered during grower meetings, seminars, short courses, or other ~~Board-approved~~ presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending ~~approved~~ training sessions for which credit has been assigned in the following commercial ~~categories:~~ categories as set forth in Rule .0505(1)(a) through (1)(k):

- 1 ~~(1)~~ (a) aquatic;
2 ~~(2)~~ (b) agricultural pest - animal;
3 ~~(3)~~ (c) agricultural pest - plant;
4 ~~(4)~~ (d) ornamental and turf;
5 ~~(5)~~ (e) forest;
6 ~~(6)~~ (f) seed treatment; and
7 ~~(7)~~ (g) soil and growing media fumigation fumigation.
8 ~~set forth in 02 NCAC 09L .0505(1)(a) through (1)(k).~~

9
10 *History Note:* *Authority G.S. 143-440; 143-453;*
11 *Eff. December 1, 1976;*
12 *Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978;*
13 *April 20, ~~1977-1977~~;*
14 *Readopted Eff. August 1, 2020.*

02 NCAC 09L .1103 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

(a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 ~~percent or more.~~ percent.

(b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator. ~~Prior to January 1, 2017, any certified private applicator who applies for the soil and growing media certification and has completed the EPA sponsored soil fumigation training and examination or the North Carolina In State Soil Fumigation Training option and examination shall be eligible to receive the soil and growing media certification without having to pass the State's written soil and growing media fumigation examination.~~

~~(c) Beginning on January 1, 2017, the passing grade on the soil and growing media fumigation examination, and the agricultural commodity fumigation examination shall be 70 percent or more.~~

~~(d) Applicants may register for an examination at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.~~

History Note: Authority G.S. 143-440;

Eff. December 1, 1976;

Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, ~~1978.~~ 1978;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1104 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate the need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general use pesticide ~~(one pesticide, one~~ available to the general public and not requiring certification to purchase and ~~apply)~~ apply may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.

(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;
- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. June 1, 2016; August 26, 1977.
Readopted Eff. May 1, 2020.

02 NCAC 09L .1105 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1105 APPLICATIONS UNDER SUPERVISION OF CERTIFIED APPLICATOR

~~(a) "Under the direct supervision of" shall include the receipt by the non-certified applicator of verifiable specific and individual job or work assignments and instructions from the certified applicator under whose direct supervision and control the non-certified applicator is functioning prior to the use and application of a restricted use pesticide. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.~~

~~(b) Application of restricted use pesticide may be made by non-certified applicators provided such applicator is a competent person(s) acting under the direct supervision of a certified applicator whose certification permits such application.~~

~~(c)(a)~~ The certified applicator acting in a supervisory role shall be available to the non-certified applicator in the event he is needed. It shall be the responsibility of the certified applicator to keep the non-certified applicator fully aware of all directions for use and cautions necessary for safe use and application of any restricted use pesticide he or she may be directed to apply.

~~(d)(b)~~ All non-certified applicators applying any restricted use pesticide under the direct supervision of a certified applicator shall have available at the application site or at the loading and mixing site, if different from the application site, the following:

- (1) ~~detailed~~ written or printed directions for applying the restricted use ~~pesticide (pesticide product label may suffice);~~ pesticide, which may include pesticide product labeling;
- (2) ~~detailed~~ written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons ~~and/or~~ and unreasonable adverse effects on the environment ~~(pesticide product label may suffice);~~ which may include pesticide product labeling; and
- (3) ~~detailed~~ instructions for ~~contacting~~ direct communication with the certified applicator under whose supervision the non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.); Such instructions, when followed, shall ~~result in~~ be considered direct communication with the certified applicator.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. February 5, 1978, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1107 is readopted with changes as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators ~~must~~ shall be 16 years old prior to participating in a certification option or being issued a single purchase permit under the emergency certification procedure; however, in hardship cases individuals below the age of 16 may be licensed by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

History Note: Authority G.S. 143-440;

Eff. December 1, ~~1976~~, 1976;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1108 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

(a) The term of certification shall be for a period of three years.

(b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.

(c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain the subclass certification.

History Note: Authority G.S. 143-440; 143-453;
Eff. July 1, 1987;
Amended Eff. June 1, 2016; October 1, ~~2002~~ 2002;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1109 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

The following subclassifications are hereby established for the certification of private pesticide applicators:

- (1) ~~Soil~~ "Soil" and growing media ~~fumigation—~~ **fumigation" means** private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) ~~Agricultural~~ **"Agricultural** commodity ~~fumigation—~~ **fumigation" means** private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

History Note: Authority G.S. 143-440;
Eff. August 1, 2015, 2015;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1111 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1111 CERTIFICATION/RECERTIFICATION FEE

A nonrefundable fee of ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

History Note: Authority G.S. 143-440(b);

*Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on
March 29, 1988;*

Eff. March 1, 1988;

Amended Eff. May 1, ~~2010~~; 2010;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1201 is readopted as published in 34:11 NCR 906 as follows:

SECTION .1200 - ARSENIC TRIOXIDE

02 NCAC 09L .1201 RESTRICTIONS ON USE AND STORAGE

All pesticide formulations containing the active ingredient arsenic trioxide shall not be used or stored inside or ~~in the~~
~~immediate vicinity of~~ adjacent to any building used as a human dwelling.

History Note: Authority G.S. 143-440(b); 143-441;

Eff. April 21, ~~1977~~. 1977;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1202 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY

The pesticide dealer shall secure the signature of the purchaser attesting to the fact that ~~such~~ the purchaser has knowledge of the use restrictions on arsenic trioxide contained ~~herein; provided, however,~~ in this Section. ~~that~~ However, any licensed pesticide applicator under the authority of G.S. 143-452 or G.S. 106-65.25 may use such formulations containing arsenic trioxide in or around human dwellings provided such use is performed in a manner consistent with the product label ~~and limits access to the pesticide by children;~~ keeps the pesticide product out of the reach of children.

History Note: Authority G.S. 143-440(b); 143-441; 143-466;

Eff. April 21, 1977;

Amended Eff. November 1, ~~1988.~~ 1988;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1302 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1302 GENERAL REQUIREMENTS

It shall be unlawful for any person to make any restricted use pesticide available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control ~~applicator or~~ applicator, structural pest control licensee, or any individual who holds an emergency certification permit pursuant to Rule .1104. ~~any restricted use pesticide.~~

History Note: Authority G.S. 143-440; 143-463;
Eff. August 26, 1977;
Amended Eff. February 5, ~~1978~~, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1303 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators or licensees and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his or her name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

History Note: Authority G.S. 143-437; 143-440; 143-466;

Eff. August 26, 1977;

Amended Eff. November 1, 1988; February 5, 1978;

Temporary Amendment Eff. November 1, 2001;

Amended Eff. August 1, ~~2002~~; 2002;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1305 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L Rule .1302 of this Section or employees as set out in 02 NCAC 09L .1303; Rule .1303 of this Section;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302; Rule .1302 of this Section;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, ~~2002~~; 2002;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1306 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L Rule .1302 of this Section or the employee as identified in 02 NCAC 09L .1303, Rule .1303 of this Section, the pesticide dealer or the designated representative of the pesticide dealer ~~must~~ shall verify the identity of the recipient.

History Note: Authority G.S. 143-437; 143-440; 143-466;

Temporary Adoption Eff. November 1, 2001;

Eff. August 1, ~~2002~~, 2002;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1401 is readopted with changes as published in 34:11 NCR 906 as follows:

SECTION .1400 - GROUND APPLICATION OF PESTICIDES

02 NCAC 09L .1401 DEFINITIONS

All specific words or terms used in this Section other than those defined below shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460:

- (1) ~~Adverse Effect. Personal~~ **"Adverse Effect" means personal** injury, damage to personal property, damage to real property, damage to the ~~environment~~ **environment**, or any combination of ~~these;~~ **these.**
- (2) ~~Drift. The~~ **"Drift" means the** airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target ~~area;~~ **area.**
- (3) ~~Environment. Water,~~ **"Environment" means water,** air, land, ~~and all plants, plants, and man man,~~ and other animals living therein and the interrelationships which exist among ~~these;~~ **these.**
- (4) ~~Identification of Farm. For~~ **"Identification of Farm" means for** record keeping purposes, licensed pesticide applicators shall use ~~ASCS~~ **the Farm Service Agency (FSA)** farm ~~number or~~ **number,** common name of ~~farm or~~ **farm,** address of ~~farm~~ **farm,** or other ~~practical~~ means of identification of ~~farm;~~ **farm.**
- (5) ~~Identification of Site. For~~ **"Identification of Site" means for** record keeping purposes, ~~federal, state or public agencies or~~ licensed pesticide applicators under ~~contractual~~ agreement with ~~or under supervision of a federal, State, or public~~ **such an** agency shall use ~~statewide or~~ name(s) of ~~county(s) county(s), or~~ name(s) of ~~city(s) city(s), or~~ name(s) of body(s) of ~~water~~ **water,** or other ~~practical~~ means of identification of site. All other licensed pesticide applicators shall use name of specific ~~right-of-way~~ **right-of-way,** or name and address of golf ~~course~~ **course,** or specific address of ~~site~~ **site,** or other ~~more definitive practical~~ means of identification of ~~site;~~ **site.**
- (6) ~~Object. A~~ **"Object" means a** physical or living thing occurring on a site; ~~e.g.,~~ **including** a structure, animal, tree, ornamental plant, or material.

History Note: Authority G.S. 143-458; 143-463; 143-466(a);

Eff. October 21, 1977;

Amended Eff. November 1, 1988; August 1, 1985; February 5, ~~1978.~~ 1978;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1042 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All ~~licensed~~ pesticide applicators, as defined in G.S. 143-460 ~~which includes public operators~~, utilizing ground equipment shall keep for three years ~~and make available to the commissioner for like period~~ records of all applications of restricted use ~~pesticides showing the following:~~ pesticides. The records shall show the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) ~~which~~ that was treated with pesticide(s);
- (5) approximate ~~number of acres or size~~ acres, size, or number of other object(s) treated;
- (6) the year, month, ~~date~~ date, and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

*History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. April 1, 2009. 2009;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1404 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1404 DRIFT CONTROL

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

History Note: Authority G.S. 143-458; 143-463;

Eff. August 1, ~~1985~~, 1985;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1805 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1805 ADOPTION BY REFERENCE

~~The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."~~ 40 CFR Part 170, "Worker Protection Standard" is incorporated by reference, including subsequent amendments and editions. Copies of this material may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at ~~a cost determined by that office.~~ no cost at <https://www.ecfr.gov/cgi-bin/text-idx?mc=true&node+pt40.24.170&rgn=div5>.

History Note: Authority G.S. 143-458(a);

Eff. July 1, ~~1993~~. 1993;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1806 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in Sections 170.104 and 170.204 40 CFR Part 170.601 of the Worker Protection Standard, the following definitions shall be in effect throughout 2 NCAC 09L .1800: this Section:

- (1) "Crop Advisor" means any currently certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed in the subcategory "Demonstration and Research Pest Control" as defined in 2 NCAC 09L .0504(9), Rule .0504(9) of this Subchapter, but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.
- (2) "Crop Advisor Tasks" means assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

*History Note: Authority G.S. 143-458(a);
Eff. April 1, 1996; 1996;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1901 is readopted with changes as published in 34:11 NCR 906 as follows:

SECTION .1900 - PESTICIDE STORAGE

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. ~~The rules contained in this Section shall be deemed to be minimum for storage.~~

- (1) ~~Storage.~~ The "Storage" means the act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and ~~triple rinsed (or equivalent); triple-rinsed, or equivalent;~~
 - (b) pesticides ~~which that~~ meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste ~~(40 CFR 264.11); (40 CFR 264.11).~~
- (2) ~~Commercial Storage.~~ Storage "Commercial Storage" means storage of a pesticide by any person from the time of manufacture, prior to possession by the end ~~user;~~ user.
- (3) ~~Storage Facility.~~ Any "Storage Facility" means any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage ~~facility;~~ facility.
- (4) ~~Large Storage Facility.~~ Any "Large Storage Facility" means any storage facility that stores 10,000 pounds or more of restricted use pesticides at any ~~time;~~ time.
- (5) ~~Storage Area.~~ That "Storage Area" means that portion of a storage facility actually used to store ~~pesticides;~~ pesticides.
- (6) ~~Contingency Plan.~~ "Contingency Plan" ~~shall be~~ means a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other ~~emergencies.~~ emergencies. ~~A contingency plan shall be deemed adequate by the North Carolina Pesticide Board if in the opinion of the Board such plan presents reasonable assurances that the facility will be able~~ to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) ~~Bulk Storage.~~ "Bulk Storage" means Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to ~~the regulations in~~ this Rule unless any of the following conditions exists:

- 1 (a) The container is empty, that is, all pesticide that can be removed by the methods such as
2 draining, pumping, or aspirating has been removed removed. (whether or not the container
3 has been rinsed or washed). whether or not the container has been rinsed or washed.
4 (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
5 (c) The container holds only pesticides which would be gaseous when released at atmospheric
6 temperature and pressure.
7 (d) The container is dedicated to non-pesticide use, and is labeled accordingly.
8

9 *History Note:* Authority G.S. 143-437; 143-441; 143-461; 143-466;
10 Eff. January 1, 1984;
11 Amended Eff. April 1, 2009; November 1, 1989; November 1, 1988. 1988;
12 Readopted Eff. May 1, 2020.
13
14

02 NCAC 09L .1902 is readopted **with changes** as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1902 STORAGE REQUIREMENTS FOR ALL PESTICIDES

(a) The requirements of this Rule shall apply to all pesticides.

(b) Pesticides shall be stored to prevent leaking and to facilitate inspection.

(c) Formulated pesticide products shall not be stored in unlabeled containers. The following minimum information shall be **shown clearly legible and obvious and prominently** on any containers of formulated pesticide:

- (1) Common chemical name;
- (2) Percentage of each active ingredient;
- (3) EPA registration number;
- (4) Signal word;
- (5) Use classification (restricted use or general use).

Pesticide products which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971, and **rules and** regulations promulgated thereunder shall be deemed to have met the requirements of Paragraph (c) of this Rule.

(d) Pesticides (formulated products or dilutions) shall not be stored in any food, feed, beverage, or medicine container that has previously been used for such purposes, or that is **specifically** designed to contain only those products.

(e) Pesticides shall not be stored in a manner that could cause the contamination of foods, feeds, beverages, eating utensils, tobacco, tobacco products, other pesticides, seeds, or fertilizers, or otherwise likely to result in accidental ingestion by humans or domestic animals.

(f) Pesticides shall be stored in accordance with the following:

- (1) storage recommendations, if any, on their labeling; and
- (2) labeling on all other products, including non-pesticide products, held in the same storage area.

(g) When unattended, pesticides shall be stored to prevent unauthorized access.

(h) Pesticides shall be stored in an area that is ~~dry (does not accumulate water)~~ **dry, does not accumulate water,** and ventilated.

(i) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes which may provide an ignition source, and shall be separated from other operations which present a fire hazard such as welding or burning. **Appropriate care** ~~Care~~ shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, ~~1989~~. 1989;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1905 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the Storage Requirements requirements for All Pesticides as set forth in Rule .1902 of this Subchapter, Section, the requirements of this Rule shall apply to any quantity of restricted use pesticides in commercial storage.

(b) Storage areas shall utilize security precautions that prevent unauthorized access to pesticides. As a minimum, non-display Non-display pesticide storage areas shall be locked when unattended. A warning sign shall be posted beside all entrances to non-display pesticide storage areas stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____."

(c) Pesticide spills shall be cleaned up immediately with regard to personnel safety, safety by wearing appropriate personal protective equipment (PPE) and handling the pesticide in accordance with the manufacturer's product labeling. Floor-sweeping compounds such as adsorptive clay, sand, sawdust, lime, or similar suitable materials shall be kept on hand to absorb spills or leaks. Safe disposal techniques in accordance with the labeling shall be employed when disposing of pesticide contaminated adsorptive materials.

(d) Pesticides shall be stored to prevent contact with water resulting from area cleanup, the intrusion of storm waters, leaks, or impounded or flowing waters, or any other source which represents a likely potential for flooding.

(e) Pesticides shall not be stored within 100 feet horizontally of a public water supply. Pesticides shall not be stored within 50 feet horizontally of a private water supply. An exemption from the requirements of this part Paragraph may be granted by the Board upon receipt of special written request for such exemption from the owner or operator of a storage facility. Each request must shall describe existing conditions requiring such exemption. When reviewing exemption requests, the Board shall consider the potential for groundwater or aquifer contamination, such as whether drainage from the facility is designed to protect the public water supply and ensure that runoff from the facility would be directed away from the water source, or if the source is no longer used as a public or private water supply, or whether a well has been properly closed and sealed according to 15A NCAC 02C .0113.

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (1) compliance with all appropriate state State and local fire codes and building codes and with all applicable state State environmental laws and regulations, rules applicable to the type of facility;
- (2) development of a prefire plan for the storage facility. Such The plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:
 - (A) one copy of the plan approved by the fire department and/or or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
 - (B) one copy of the plan shall be filed with the fire department and/or or emergency services office having jurisdiction;
 - (C) a request shall be made in writing to the local fire department and/or or emergency services office having jurisdiction for no less than an annual inspection of the facility.

1 (g) The person responsible for the storage facility shall upon discovery of any emergency such as a fire, spill, or unintended
2 release of pesticides into the environment from the facility, ~~immediately~~ notify the secretary of the Board ~~or designated~~
3 ~~alternate~~ if such emergency ~~poses a hazard or imminent danger to~~ threatens the health, safety or welfare of man, animals,
4 aquatic life, or ~~threat of substantial~~ damage to property. Such notification of the secretary does not preclude notification
5 being given to the appropriate local fire department, emergency services office, or other ~~state~~ State or federal agencies
6 requiring such notification.

7 (h) Any person operating a storage facility shall maintain a current inventory list of the kinds of stored pesticides by brand
8 name and formulation. An inventory list shall be considered current if it is updated every 30 days. A copy of this list shall be
9 maintained in a separate location from the storage facility. This list shall be made available to the Board or its agents upon
10 request.

11 (i) Pesticide applicators storing restricted use pesticides shall be subject to the same requirements as set forth in this Rule.
12

13 *History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;*
14 *Eff. January 1, 1984;*
15 *Amended Eff. November 1, ~~1989~~. 1989;*
16 *Readopted Eff. August 1, 2020.*
17

02 NCAC 09L .1906 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1906 LARGE STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to ~~the Storage Facility Requirements: RUP as set forth in~~ Rule .1905 of this ~~Subchapter, Section~~, the requirements of this Rule shall apply to large storage facilities.

(b) Pesticides shall not be stored within 200 feet of the property line of any schools, hospitals, nursing homes, or other institutional facilities.

(c) The person responsible for a large storage facility shall have a ~~board-approved~~ Board-approved contingency plan (~~FORM PC 417~~) for the facility. The contingency plan shall be submitted to the ~~Board in sufficient detail so that the Board can determine if the plan is adequate.~~ Board. The Board shall consider such factors as the size of the facility, location in relation to the sensitive environmental areas, proximity to industrial, institutional and residential areas, type of pesticides to be stored, and description of the facility's capabilities to deal with emergencies resulting from operational procedures, accidental release, fires, floods, or other emergencies, to minimize, contain and prevent adverse effects from any release of pesticide.

(d) Pesticide applicators storing 10,000 pounds or more of restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, ~~1989~~. 1989;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1907 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1907 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

~~(a) The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, spills, or any other unplanned sudden or non-sudden release of pesticides or pesticide contaminated materials to air, soil, or surface water.~~

~~(b)~~ The provisions of ~~this plan~~ the contingency plan shall be carried out immediately whenever there is a fire, explosion, spill, or other release of pesticides or pesticide contaminated materials which could threaten human health or the environment.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;

Eff. January 1, 1984;

Amended Eff. November 1, ~~1989~~. 1989;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1908 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1908 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to respond to fires, explosions, spills, or any other ~~sudden or non-sudden~~ release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.

(b) ~~Where appropriate, the~~ The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and ~~state~~ State and local emergency response teams to coordinate emergency services.

(c) The plan shall list names, addresses, and office and home phone numbers ~~(office and home)~~ of all persons ~~qualified~~ designated by the facility owner or operator to act as alternates who can be reached at any time of the day, seven days a week, and who are ~~thoroughly~~ knowledgeable of the ~~facility, including facility~~ operational and emergency procedures. Where more than one person is listed, one shall be named as primary alternate, and others shall be listed in the order in which they will assume responsibility as alternates.

~~(d) The plan shall include any additional information deemed necessary by the Board and specified on Contingency Plan for Pesticide Storage FORM PC 417.~~

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;

Eff. January 1, ~~1984~~. 1984;

Readopted Eff. August 1, 2020.

02 NCAC 09L .1909 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1909 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

- (1) maintained at the facility; and
- (2) submitted to the North Carolina Pesticide Board in care of the North Carolina Department of Agriculture, Agriculture and Consumer Services, Pesticide Section.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, ~~1984~~. 1984;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1913 was published as a readoption in 34:11 NCR 906 but is now being repealed as follows:

02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION

~~These Rules shall become effective January 1, 1984. These Rules shall be in force and binding on all existing or future pesticide storage facilities.~~

History Note: Authority G.S. 143-441; 143-461;

Eff. January 1, ~~1984-1984~~;

Repealed Eff. August 1, 2020.

02 NCAC 09L .1914 is readopted with changes as published in 34:11 NCR 906:

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

(a) Outlets, ~~filler~~ filler, and access ports shall be locked at all times when not in use. Keys to the outlet, ~~filler~~ filler, and access ports shall be in the possession of the purchaser and his or her authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility ~~utilizing security precautions that to~~ prevent unauthorized access to the bulk pesticide storage area.

(b) All bulk pesticide storage tanks ~~must~~ shall display the ~~appropriate~~ signal word as shown on the pesticide product label on all sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.

(c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"

(d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-441; 143-461;

Eff. April 1, 2009. 2009:

Readopted Eff. August 1, 2020.

02 NCAC 09L .2001 is readopted with changes as published in 34:11 NCR 906 as follows:

SECTION .2000 - CHEMIGATION

02 NCAC 09L .2001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) ~~Antisiphon Device.~~ “Antisiphon Device” means any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.
- (2) ~~Automatic Low Pressure Drain. A~~ “Automatic Low Pressure Drain” means a self-activating device to drain that portion of an irrigation pipeline whose contents could ~~potentially~~ enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) ~~Check Valve. A~~ “Check Valve” means a device to provide a positive closure of an irrigation pipeline or pesticide injection line that effectively prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.
- (4) ~~Chemigation. Any~~ “Chemigation” means any process whereby pesticides are applied to land, crops, ~~and/or~~ or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.
- (5) ~~Chemigation and/or Irrigation Water Supplies. Any~~ “Chemigation and/or Irrigation Water Supplies” means any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.
- (6) ~~Flow Interrupter. A~~ “Flow Interrupter” means a device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.
- (7) ~~Functional Systems Interlock. A~~ “Functional Systems Interlock” means a system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.
- (8) ~~Inspection Port. A~~ “Inspection Port” means a place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) ~~Irrigation. The~~ “Irrigation” means the act of mechanically supplying water to land, crops and/or plants.
- (10) ~~Irrigation System. Any~~ “Irrigation System” means any device or combination of devices having hose, ~~pipe~~ pipe, or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow automatically prevents any backflow to the water supply.
- (11) ~~Public Water System~~ “Public Water System” means

- 1 (a) a system for the provision to the public of piped water for human consumption if such system has
2 at least 15 service connections or **regularly** serves an average of at least 25 individuals daily at
3 least 60 days out of the year. Such term includes:
- 4 (i) any collection, treatment, storage, and distribution facility under control of the operator
5 of such system and used **primarily** in connection with such system; and
6 (ii) any collection or pre-treatment storage facility not under such control which is used
7 primarily in connection with such system.
- 8 (b) It is either a "community water system" or a "non-community water system":
9 (i) Community Water System. A public water system which serves at least 15 service
10 connections or regularly serves at least 25 year-round residents.
11 (ii) Non-Community Water System. A public water system which is not a community
12 water system.
- 13 (12) ~~Vacuum Relief Valve.~~ A **"Vacuum Relief Valve"** means a device to **automatically** relieve or break
14 vacuum in an irrigation pipeline.
15

16 *History Note:* Authority G.S. 143-463; 143-466;
17 Eff. January 1, ~~1987~~. 1987;
18 Readopted Eff. August 1, 2020.
19

02 NCAC 09L .2002 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS

(a) These Irrigation systems shall be fitted with effective antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide supplies during times of irrigation system failure or equipment shutdown. If a public water system is being utilized as the water source, the chemigation system shall not be connected directly to it. See requirements in Rule .2003 of this Section.

(b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.

(c) Such safety Safety devices or valves shall be installed between:

- (1) the irrigation system pump discharge and the point of pesticide injection into the irrigation system, and
- (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).

(d) Such systems shall effectively meet the following criteria:

- (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set. set:
- (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port. port:
- (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. diameter:
- (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to prevent the drainage from reentering the water supply. supply:
- (5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A normally closed solenoid-operated valve or other similar device is an acceptable method to positively prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown. shutdown:
- (6) a check valve shall be located on the pesticide injection line between the point of pesticide injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container. container; and

(7) a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide injection into the irrigation system, ~~could~~ may be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

History Note: Authority G.S. 143-463; 143-466;
Eff. January 1, ~~1987~~. 1987;
Readopted Eff. August 1, 2020.

02 NCAC 09L .2003 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM

(a) An irrigation system used for pesticide application shall not be connected directly to a public water system.

(b) The water from a public water system must shall be discharged into a reservoir tank.

(c) There shall be a complete physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

History Note: Authority G.S. 143-463; 143-466;

Eff. January 1, ~~1987~~. 1987;

Readopted Eff. August 1, 2020.

02 NCAC 09L .2004 is readopted with changes as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS

(a) Antisiphon devices and a functional systems interlock, used for chemigation purposes, shall be installed and maintained to ensure proper function in accordance with manufacturer's directions during chemigation.

(b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly, properly per the manufacturer's directions.

(c) If modifications or changes in design, technology, irrigation practices practices, or other similar reasons warrant the use or placement of equipment in lieu of that specified herein, in (a) and (b) of this Rule, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this regulation. Rule.

(d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs and/or or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

History Note: Authority G.S. 143-463; 143-466;

Eff. January 1, ~~1987~~. 1987;

Readopted Eff. August 1, 2020.

02 NCAC 09L .2201 is readopted as published in 34:11 NCR 907 as follows:

**SECTION .2200 - INTERIM PROTECTION MEASURES FOR THE CAROLINA HEELSPLITTER
MUSSEL**

02 NCAC 09L .2201 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, ~~2009~~, 2009;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .2202 is readopted as published in 34:11 NCR 907 as follows:

02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, ~~2009~~, 2009;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .2203 is readopted with changes as published in 34:11 NCR 907 as follows:

02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS

Effective March 1, 2010, the The application of any of the following pesticides in the vicinity of the areas identified in 02 NCAC 09L Rule .2202 of this Section must shall not occur within the areas identified by the codes in the following table:

Pesticide Active Ingredient	Code
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x
Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x
Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x
Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x

Trichlorfon

2x

Code/Limitations:

- (1) 1x - Within the area described in ~~02 NCAC 091L~~ Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in ~~02 NCAC 091L~~ Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in ~~02 NCAC 091L .2202~~, Rule .2202 of this Section, this pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, ~~2009~~, 2009;
Readopted Eff. August 1, 2020.*

May 27, 2020

Christina Waggett
Rulemaking Coordinator, Pesticide Board
Sent via email only: christina.waggett@ncagr.gov

Re: Objection to Rule 02 NCAC 09L .1913 and Extension of the Period of Review for Rules 02 NCAC 09L .0101-.0103; .0308, .0310, .0317, .0318; .0402; .0502-.0505, .0509, .0515, .0516, .0519, .0520, .0522-.0527, .0529; .0602, .0603; .0701-.0703, .0705, .0707; .0810; .1001-.1003, .1005, .1006, .1009; .1102-.1105, .1107-.1109, .1111; .1201, .1202; .1302, .1303, .1305, .1306; .1401, .1402, .1404; .1805, .1806; .1901, .1902, .1905-.1909; .1914; .2001-.2004; and .2201-.2203

Dear Ms. Waggett:

At its May meeting, the Rules Review Commission objected to 02 NCAC 09L .1913 in accordance with G.S. 150B-21.10.

The Commission objected to Rule 02 NCAC 09L .1913 for lack of clarity and lack of necessity. The Rule is repetitive of the effective date contained in the history note and is therefore unnecessary. The Rule also does not specify whether the term “these Rules” refers to the rules of this Section or the rules of this Subchapter, making it unclear.

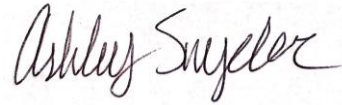
Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

At its meeting, the Rules Review Commission also extended the period of review for Rules 02 NCAC 09L .0101-.0103; .0308, .0310, .0317, .0318; .0402; .0502-.0505, .0509, .0515, .0516, .0519, .0520, .0522-.0527, .0529; .0602, .0603; .0701-.0703, .0705, .0707; .0810; .1001-.1003, .1005, .1006, .1009; .1102-.1105, .1107-.1109, .1111; .1201, .1202; .1302, .1303, .1305, .1306; .1401, .1402, .1404; .1805, .1806; .1901, .1902, .1905-.1909; .1914; .2001-.2004; and .2201-.2203. The Commission did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rule or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive, flowing style.

Ashley Snyder
Commission Counsel

Burgos, Alexander N

Subject: FW: Pesticide Board - Request to Extend the Period of Review

From: Waggett, Christina <Christina.Waggett@ncagr.gov>
Sent: Friday, May 8, 2020 5:19 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: Pesticide Board - Request to Extend the Period of Review

Ashley,

The Pesticide Board requests to extend the period of review for all of the Pesticide Board rules except 02 NCAC 09L .0913. With over 70 pages of technical changes, we need additional time to adequately respond to the requests.

Thank you for your consideration.

Chrissy

Chrissy Waggett | Federal Liaison | NC Dep't of Agriculture & Consumer Services | 919-707-3008 (direct) | 919-414-1350 (cell) | www.ncagr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: May 15, 2020

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:

The earliest effective date for rules approved at the May 2020 RRC meeting is June 1, 2020. Please review and revise the effective date in all history notes.

If a rule has more than one page, please insert page numbers in accordance with 26 NCAC 02C .0108(h).

Throughout these Rules, you refer to either the "North Carolina Department of Agriculture" or the "North Carolina Department of Agriculture and Consumer Services." Please use the agency's current name and be consistent.

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 1, 2020

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0101

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
- X Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for lack of necessity. The proposed language does not meet the definition of a "rule" because it does not set a standard of general applicability. Instead, it concerns internal agency management. Therefore, staff recommends objection for lack of necessity.

§ 150B-2. Definitions.

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
 - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0101

DEADLINE FOR RECEIPT: May 15, 2020

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:

Why is this Rule necessary? Are you delegating powers of the Board pursuant to 143-461(5)? If so, that is not clear.

Why is G.S. 106-65.23 listed in your history note?

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 1, 2020

02 NCAC 09L .0101 is readopted as published in 34:11 NCR 903 as follows:

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .0100 - ORGANIZATIONAL RULES

02 NCAC 09L .0101 DUTIES OF THE PESTICIDE SECTION

The primary duties of the pesticide section of the ~~food and drug protection division~~ Structural Pest Control and Pesticides Division are the administration and enforcement of the North Carolina Pesticide Law of 1971, G.S. Chapter 143.

*History Note: Authority G.S. 106-65.23; 143-461(5);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; January 27, 1978.
 Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0102

DEADLINE FOR RECEIPT: May 15, 2020

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 (5) and (6), please delete the commas between "(a)(2),(c)" and "(a)(3),(b) if that is your intent." As written, it is unclear if you are referring to (a)(3) and (b) or (a)(3)(b).

In (22), what is the "first phrase" in G.S. 143-454(a)? What authority is being delegated?

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 1, 2020

02 NCAC 09L .0102 is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0102 DUTIES (CONTINUED)

The North Carolina Pesticide Board has delegated the following statutory powers, duties, and authorities to the Commissioner of Agriculture:

- (1) the first sentence of G.S. 143-442(a);
- (2) G.S. 143-442(c);
- (3) the first two sentences of G.S. 143-442(d);
- (4) G.S. 143-443(a)(1);
- (5) G.S. 143-443(a)(2), (c);
- (6) G.S. 143-445(a)(3), (b);
- (7) the first sentence of G.S. 143-446(a);
- (8) the first sentence of G.S. 143-446(c);
- (9) G.S. 143-447(b);
- (10) G.S. 143-448(c);
- (11) G.S. 143-448(e);
- (12) G.S. 143-448(f);
- (13) G.S. 143-449(a);
- (14) the first sentence of G.S. 143-449(b);
- (15) the first phrase of G.S. 143-450(a);
- (16) G.S. 143-452(a);
- (17) G.S. 143-452(b), excluding the first sentence;
- (18) G.S. 143-452(e);
- (19) the first sentence and last two sentences of G.S. 143-452(f);
- (20) G.S. 143-453(a);
- (21) the first sentence of G.S. 143-453(b);
- (22) the first phrase of G.S. 143-454(a);
- (23) the first sentence of G.S. 143-455(a);
- (24) G.S. 143-455(b);
- (25) the first sentence of G.S. 143-455(c);
- (26) G.S. 143-461(7);
- (27) G.S. 143-461(8);
- (28) G.S. 143-465(b);
- (29) G.S. 143-466(b);
- (30) the first sentence of G.S. 143-466(c);
- (31) the first sentence of G.S. 143-466(d); and
- (32) G.S. 143-466(e).

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*History Note: Authority G.S. 143-461(5);
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1987.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0103

DEADLINE FOR RECEIPT: May 15, 2020

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:

Where is your statutory authority for this Rule? The statute in the history note grants authority to the Commissioner of Agriculture.

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 1, 2020

02 NCAC 09L is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0103 ASSIGNMENT OF DUTIES

The Commissioner of Agriculture has assigned the administrative and enforcement duties and functions assigned to him in the North Carolina Pesticide Law of 1971 to the ~~food and drug protection division~~ Structural Pest Control and Pesticides Division of the North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services.

History Note: Authority G.S. 143-438;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0308

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, what does it mean for a pesticide's status to remain "unchanged" with the EPA? Does the pesticide also have to keep the same label as the previous year?

At line 5, by "review," I take it you mean "review by the Board?"

At lines 5-6, how does the Board determine whether a pesticide's continued use is in the best interest of the public? What factors are considered?

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 1, 2020

02 NCAC 09L .0308 is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0308 REGISTRATION FOR THE FOLLOWING YEAR

Registration of a pesticide registered the previous year will be renewed provided its registration status with the Environmental Protection Agency remains unchanged at the time of review and its continued use in North Carolina is in the best interest of the public.

History Note: Authority G.S. 143-442;
Eff. February 1, 1976.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0310

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, consider deleting either "revised" or "amended" if they have the same meaning here.

At line 4, please define "interim period."

At line 5, please change "will" to "shall."

In 7, are you using the term "special local needs" as defined in 40 CFR 162.151?

In (2), please change "will" to "shall."

At line 8, please define "unreasonable adverse effects."

At lines 8-9, please define "hazards to humans, domestic animals, and wildlife." How does the board determine whether a pesticide poses a hazard? What factors are considered?

In (3), how does the Board determine whether continued registration is "desirable?" What factors are considered?

In (3), please change "will" to "shall."

In (3), define "best public interest." How is this determination made? What factors are considered?

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 1, 2020

02 NCAC 09L .0310 is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0310 REREGISTRATION

Reregistration of a pesticide registered the previous year with the label or labeling revised and amended in the interim period will be accepted provided the following conditions are met:

- (1) The revision and amendment have been accepted by the Environmental Protection Agency or approved for special local needs;
- (2) The revision and amendment will cause no unreasonable adverse effects on the environment or hazards to humans, domestic animals, and wildlife; and
- (3) Its continued registration is desirable and will be in the best public interest.

History Note: Authority G.S. 143-442;
Eff. February 1, 1976.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0317

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please use the standard incorporation language: "[Title] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [website link] at [cost]."

Is the sentence beginning at line 6 and ending at line 9 necessary?

If you keep this sentence, at line 7, do you mean "may" or "shall?"

At line 8, please capitalize "State" if you are only referring to North Carolina. If you are referring to any state, please do not capitalize "state."

In your history note, please remove 150B-14 because it has been repealed.

In your history note, why is 150B-21.6 listed? Does it provide authority for 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 1, 2020

02 NCAC 09L .0317 is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0317 REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL NEEDS

The North Carolina Pesticide Board ~~adopts~~ incorporates by reference, as set forth in G.S. 150B-21.6, including subsequent amendments and editions, ~~reference in accordance with G.S. 150B-14(e)~~, "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D. This reference establishes procedures and criteria under which the ~~state~~ State may register pesticide products, or any uses thereof, formulated for distribution and use within the state to meet special local needs under Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Copies of "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs" are available for inspection in the Office of the ~~Pesticide Administrator of the Food and Drug Protection Division~~ Director of the Structural Pest Control and Pesticides Division, and may be obtained at a no cost ~~as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. from the U.S. Government Printing Office at~~ http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162_main_02.tpl.

History Note: Authority G.S. 143-437; 143-440; 143-461; 150B-14; 150B-21.6;
Eff. November 1, 1988.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0318

DEADLINE FOR RECEIPT: May 15, 2020

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:

Overall, please consider using the standard incorporation language: "[Title] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [website link] at [cost.]"

Is the sentence beginning at line 6 and ending at line 8 necessary?

In your history note, please remove 150B-14 because it has been repealed.

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 1, 2020

02 NCAC 09L .0318 is readopted as published in 34:11 NCR 903 as follows:

02 NCAC 09L .0318 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES

The North Carolina Pesticide Board hereby ~~adopts~~ incorporates by reference in accordance with G.S. 150B-14(e) reference,
as set forth in G.S. 150B-21.6, including subsequent amendments and editions, "Exemption of Federal and State Agencies
for Use of Pesticides in Emergencies," 40 C.F.R. Section 166. This reference establishes criteria for determining the
conditions under which an emergency exists, the procedures for obtaining an exemption, and sets forth requirements related
thereto. Copies of "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies" are available for
inspection in the Office of ~~Pesticide Administrator of the Food and Drug Protection Division~~ the Director of the Structural
Pest Control and Pesticides Division, and may be obtained at a no cost ~~as determined by the publisher by contacting~~
~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, from the U.S. Government~~
Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl.

History Note: Authority G.S. 143-437; 143-440; 143-461; 150B-14;
Eff. November 1, 1988.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0402

DEADLINE FOR RECEIPT: May 15, 2020

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:

What is the purpose of this Rule? Are these the standards used by the Board to determine whether to approve a new pesticide? If so, please make that clear.

At lines 5 and 23, what do you mean by "guidelines?" Are these requirements?

In (1), please consider deleting "that" at the beginning of the sentence. Please compare (1)-(3) and either make sentences beginning with capitalized words or make them all part of a list without the first word being capitalized.

At line 6, the rule says "in general." Are there exceptions to (1)? If so, are the exceptions (2) and (3)? If yes, please make that clear. If no, what are the exceptions?

At line 17, what is the purpose of the language "additional considerations?"

At line 23, please format (2) so it is aligned with (1) and (3).

At line 24, consider deleting "be expected to."

In (3), please consider deleting "that."

At line 30, what are "overages?" The other words in this rule in quotations are "passed" and "deficient," which I took to be the decision on whether to allow or approve a pesticide. Why is "overage" in quotations?

In (3)(b) and (c), please delete or define "significant."

At line 36, do you mean "and" or "or?"

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 1, 2020

02 NCAC 09L .0402 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0402 TOLERANCES

In regards to establishing tolerances providing for ~~reasonable~~ deviations from the guaranteed analysis statement, the following guidelines are adopted:

- (1) that, in general, a "passed" judgment on a pesticide formulation be made if the analytical results are within the following guidelines:

Pesticide Active Ingredient Guarantee, Percent	Allowable Deviation Below Guarantee
<1.00	15 percent of Guarantee
1.00 - 19.99	0.1 plus 5 percent of Guarantee
20.00 - 49.99	0.5 plus 3 percent of Guarantee
50.00 - 100.00	1.0 plus 2 percent of Guarantee

Additional considerations:

~~(a) If a sufficient number of samples as determined by the food and drug protection division of a given product indicate that the manufacturer is not formulating the product to achieve the level of the guarantee, an administrative judgment may be made to warn the formulator against the practice of formulating products in a manner only to stay within the allowable deviation from the guarantee.~~

~~(b)~~(2) A sample result falling outside of the guidelines ~~may not necessarily~~ shall not be "deficient" if one of the following factors could ~~reasonably~~ be expected to have contributed ~~significantly~~ to the off-limits analysis:

~~(i)~~(a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or

~~(ii)~~(b) accuracy, specificity, ~~reproducibility, etc., and reproducibility~~ of the methods used when applied to the particular formulation;

~~(2)~~(3) that, allowable deviations, similar to those for "deficiencies," ~~are not~~ shall not be applicable to "overages." Each sample analysis ~~will~~ shall be judged individually as to whether or not the overage is excessive by using the following criteria:

- (a) no illegal residues resulting from use according to directions;
- (b) no significant additional hazard to applicator or user;
- (c) no significant damage to non-target organisms or the environment;
- (d) stability of ingredients and the need for "over-formulating"; or

(e) accuracy, specificity, reproducibility, etc., of the methods used when applied to the particular formulation.

History Note: Authority G.S. 143-437(1); 143-446;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1982; January 27, 1978.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0502

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, did you intend to refer to "this Section" or "this Subchapter" instead of "this Rule?"

At line 5, please capitalize "Environmental Protection Agency."

In (3), is the reference to .0318 correct? .0318 says it sets forth the "criteria for determining the conditions under which an emergency exists" and "the procedures for obtaining an exemption," not criteria for approval of pesticides.

In (3), if you keep the reference to .0318, please refer to "Rule .0318 of this Subchapter."

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 1, 2020

02 NCAC 09L .0502 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

For the purpose of this ~~Regulation~~ Rule a ~~restricted use pesticide~~ is: “restricted use pesticide” shall be:

- (1) any pesticide required by the environmental protection agency to bear the designation on its labeling
"Restricted Use ~~Pesticide~~"; Pesticide;"
- (2) ~~arsenic trioxide, all formulations of which must be sold and/or purchased in accordance with additional regulations (2 NCAC 9L .1200) adopted by the North Carolina Pesticide Board; trioxide; and~~
- (3) any pesticide approved under 2 NCAC 9L .0318.

History Note: Filed as an Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977;
Authority G.S. 143-440(a),(b); 143-441; 143-458;
Eff. February 1, 1976;
Amended Eff. April 21, 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. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0503

DEADLINE FOR RECEIPT: May 15, 2020

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:

What type of license are you requiring in (a)? Please remember rule titles are not used when interpreting a rule.

In (a), does the Commissioner or the Board set this requirement? Since you are using the language "the Commissioner shall require" is the Board delegating this authority?

In (a), please define "place of business." For example, if a business has multiple locations, does each location require at least one licensed person?

At line 6, please use "he or she."

At line 6, please define "personally" and "directly."

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 1, 2020

02 NCAC 09L .0503 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0503 PESTICIDE APPLICATORS

(a) The Commissioner shall require the licensing of at least one person at each place of business ~~location~~ who ~~must~~ shall be responsible for the application of pesticides for routine pest control situations.

(b) The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30);

Eff. February 1, 1976.

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0504

DEADLINE FOR RECEIPT: May 15, 2020

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:

At lines 7 and 11, are you using the language "without limiting the foregoing" to reflect the language in 40 CFR 171.3?

At lines 13-15, where is your statutory authority to regulate veterinarians?

In (2), what are "forest seed-producing areas?" Does your regulated public understand this term?

At line 23, please delete or define "purposefully."

At lines 28 and 31, please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line 35, why is there a semicolon followed by a capitalized word? Consider replacing this with "...demonstration, including extension specialists. . ."

On page 2, line 2, please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

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 1, 2020

02 NCAC 09L .0504 is readopted as published in 34:11 NCR 504 as follows:

02 NCAC 09L .0504 DEFINITIONS

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

(1) "Agricultural pest control":

(a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and

(b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.

(5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.

(6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way, or other similar areas.

(7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

(8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.

(9) "Demonstration and research pest control" includes the following:

(a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration; This includes extension specialists and county agents, commercial representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and

- (b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.
- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
- (a) boxcars;
 - (b) warehouses;
 - (c) tractor trailers; and
 - (d) grain bins.
- (12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3;
Eff. February 1, 1976;
Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979.
Readopted Eff. May 1, 2020.

02 NCAC 09L .0505 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0505 CLASSIFICATIONS

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

(1) pesticide applicators and public operators utilizing ground equipment:

(a) agricultural pest control:

(i) plant; and

(ii) animal;

(b) forest pest control;

(c) ornamental and turf pest control;

(d) aquatic pest control;

(e) right-of-way pest control;

(f) public health pest control;

(g) regulatory pest control;

(h) demonstration and research pest control:

(i) agricultural pest control:

(A) plant; and

(B) animal;

(ii) forest pest control;

(iii) ornamental and turf pest control;

(iv) aquatic pest control;

(v) right-of-way pest control;

(vi) public health pest control;

(vii) regulatory pest control;

(viii) seed treatment;

(ix) wood treatment; and

(x) soil and growing media fumigation pest control;

(i) seed treatment;

(j) wood treatment; and

(k) soil and growing media fumigation pest control;

(2) pesticide applicators and public operators utilizing aerial equipment:

(a) agricultural pest control: plant;

(b) forest pest control;

(c) ornamental and turf pest control;

(d) aquatic pest control;

(e) right-of-way pest control;

(f) public health pest control;

- (g) regulatory pest control; and
- (h) demonstration and research pest control:
 - (i) agricultural pest control: plant;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control; and
 - (vii) regulatory pest control.

*History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);
Eff. February 1, 1976;
Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0509

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 6, which subject areas are "pertinent to the category in which the applicant seeks to obtain a license?" Who makes this determination? What factors are considered?

At line 6, what are the categories of pest control consultant licenses? I do not see classifications for pest control consultants in .0505.

At line 7, who determines whether an emphasis of study is "applicable to the category?" How is this determination made?

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 1, 2020

02 NCAC 09L .0509 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS

(a) An applicant for a pest control consultant license ~~must~~ shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with ~~a minimum of~~ 30 semester hours or 45 quarter hours of credit in subject areas pertinent to the category in which the applicant seeks to obtain a license. Emphasis of study ~~must~~ shall include insect, plant, bacterial, and fungal pests, as applicable to the category, and integrated pest management. As used in this Rule, "accredited college or university" means an institution that is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation.

(b) The provisions of this Section shall not apply to anyone holding a valid North Carolina pest control consultant license on or before July 1, 1992.

*History Note: Authority G.S. 143-455; 143-460(27);
Eff. February 1, 1976;
Amended Eff. July 1, 1992; November 1, 1988.
Readopted Eff. May 1, 2020.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0515

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for ambiguity because the rule does not specify which "applicants" or types of licensure it is regulating. It is also unclear whether an applicant can take the exam a total of three times or whether an applicant can take up to three exams each year until passage of the exam. Therefore, staff recommends objection for ambiguity.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0515

DEADLINE FOR RECEIPT: May 15, 2020

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:

Does this Rule apply to applicants for any type of license?

At line 4, is the applicant limited to taking the test a total of three times, the initial test and the two following tests in that calendar year or can an applicant continue to take up to three tests every year until they pass? This is not clear in the Rule.

At line 4, please change "will" to "shall."

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 1, 2020

02 NCAC 09L .0515 is readopted as published in 34:11 NCR 904 as follows:

02 NCAC 09L .0515 RE-EXAMINATIONS

Any applicant not passing the initial examination will be allowed to retake the examination two times for that calendar year.

*History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);
Eff. February 1, 1976;
Amended Eff. October 27, 1979.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0516

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please define "outlet."

In (1), who is the "designated individual?"

In (1), is the "request for examination appointment" simply a request or is it a form? If the former, does it have to be in writing? If the latter, are the contents or substantive requirements of the form in rule in accordance with G.S. 150B-2(8a)(d)?

In (2), who is the "qualified person?" Is this a different person than the "designated individual" at line 10?

In (3), please change "will" to "shall."

How does this Rule comply with G.S. 143-448(a)?

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 1, 2020

02 NCAC 09L .0516 is proposed readopted as published in 34:11 NCR 904 as follows”

02 NCAC 09L .0516 CONTINUANCES

Any firm, corporation, or government unit ~~which~~ that is deprived of the services of the sole individual at an outlet who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, ~~provided that a request for an examination appointment is directed to the food and drug protection division of the North Carolina Department of Agriculture for a designated individual within two weeks of that date when the services of their licensed pesticide dealer was terminated, and an individual is available who has worked in pesticide sales under the supervision of a licensed pesticide dealer for at least three months and which person will supervise pesticide sales during the interim period.~~ provided:

(1) Its designated individual directs a request for an examination appointment to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services within two weeks of the date it terminates or loses the services of its licensed pesticide dealer;

(2) It has available an individual (the “qualified person”) who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and

(3) The qualified person will supervise pesticide sales during the interim period.

*History Note: Authority G.S. 143-449(b);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0519

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, what is a "commercial pesticide applicator?" Are you using this term to follow the language in 40 CFR 171.4? In the previous Rules, the term "pesticide applicators" is used. Is this a type of pesticide applicator? Please clarify and be consistent with terms.

At line 8, Rule .0504 of this Section is a definitions rule, it does not explain types of certifications. Please clarify.

In (b), please consider breaking this into two sentences where you have a semicolon at line 10.

Just to be clear, are you requiring pesticide applicators, public operators, and pest control consultants to be both licensed and certified?

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 1, 2020

02 NCAC 09L .0519 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0519 CERTIFICATION

(a) Commercial pesticide applicators, public operators, and pest control consultants, as defined by ~~the North Carolina Pesticide Law of 1971, G.S. 143-460,~~ who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-453 or 143-455, as applicable, are certified to use or supervise the use of any restricted use pesticide, as defined by Rule .0502(1) of this Section. Certification is valid only for those uses covered by the certified individual's certification, as defined by Rule .0504 of this Section.

(b) The term of certification shall be five years for individuals licensed to use ground equipment and two years for individuals (contractors and pilots) licensed to use aerial equipment; however, all individuals ~~must~~ shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. January 1, 1990.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0520

DEADLINE FOR RECEIPT: May 15, 2020

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:

At lines 4 and 7, what are "commercial pesticide applicators?" Are you using this term to follow the language in 40 CFR 171.4? In the previous Rules, the term "pesticide applicators" is used. Is this a type of pesticide applicator? Please clarify and be consistent with terms.

Why is (a) necessary? What are you requiring of your regulated public?

If you keep (a), please define "safe and effective."

In (b), to be clear, are you saying the renewal of a license is automatic for either five years or two years, depending on the type of equipment used?

In (b), please consider: "The license of a certified pesticide applicator, public applicator, or pest control consultant shall not be renewed annually for more than five years..."

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 1, 2020

02 NCAC 09L .0520 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS

(a) In order to insure that certified commercial pesticide applicators, public operators, and pest control consultants continue to meet the needs of changing technology necessary for the safe and effective use of pesticides, they shall be subject to recertification requirements as herein defined.

(b) In no event will the license of a certified commercial pesticide applicator, public operator, or pest control consultant continue to be renewed annually for more than five years for individuals licensed to use ground equipment or two years for individuals (contractors and pilots) licensed to use aerial equipment unless the individual has been recertified through one of the options in Rule .0522 of this Section.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);

Eff. September 10, 1980.

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0522

DEADLINE FOR RECEIPT: May 15, 2020

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:

At lines 4 and 32, what is a "commercial pesticide applicator?" Are you using this term to follow the language in 40 CFR 171.4? In the previous Rules, the term "pesticide applicators" is used. Is this a type of pesticide applicator? Please clarify and be consistent with terms.

At line 4, do you mean "may" or "shall?"

At line 5, what is the process for Board approval? Is this set forth in another Rule?

At line 10, what is the process for Board approval? Is this set forth in another Rule?

At line 22, do you mean "may" or "shall?"

At line 32, do you mean "may" or "shall?"

At line 34, what materials have been approved by the Board? Is this in another 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 1, 2020

02 NCAC 09L .0522 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by completion of approved continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.4, and such training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. Continuing certification requirements for each pest control category are as follows:

- | | | |
|------|----------------------------|------------------------------|
| (1) | aquatic | 6 credits per 5-year period |
| (2) | public health | 6 credits per 5-year period |
| (3) | forest | 6 credits per 5-year period |
| (4) | right-of-way | 4 credits per 5-year period |
| (5) | regulatory | 6 credits per 5-year period |
| (6) | ag pest-animal | 6 credits per 5-year period |
| (7) | ornamental and turf | 10 credits per 5-year period |
| (8) | seed treatment | 3 credits per 5-year period |
| (9) | ag pest-plant | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

- | | | |
|------|--------|-----------------------------|
| (11) | aerial | 4 credits per 2-year period |
|------|--------|-----------------------------|

The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

- | | | |
|------|-----------------------------------|-----------------------------|
| (12) | wood treatment | 4 credits per 5-year period |
| (13) | soil and growing media fumigation | 3 credits per 5-year period |

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;*

1 *Amended Eff. June 1, 2016; November 1, 1984.*
2 *Readopted Eff. May 1, 2020.*
3

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0523

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 7, do you mean "may" or "shall?"

At line 10, do you mean "may" or "shall?"

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 1, 2020

02 NCAC 09L .0523 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES

(a) Individuals desiring to retain certification in more than one pest control category ~~must~~ shall complete for each category any one of the recertification options described in Rule .0522 of this Section.

(b) Individuals desiring to retain certification through Continuing Certification Training in more than one ground pest control category may do so upon completion of total Continuing Certification Credit Requirements in the category carrying the highest credit requirements, by completing three Continuing Certification Credits in each additional category.

(c) Individuals desiring to retain certification through Continuing Certification Training in more than one aerial pest control category may do so upon completion of total Continuing Certification Credit Requirements in any one category, by completing one Continuing Certification Credit in each additional category.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. October 22, 1981.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0524

DEADLINE FOR RECEIPT: May 15, 2020

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 (b), what do you mean by "at the direction of the Board?" Under what circumstances does this occur?

At line 5, please change "will" to "shall."

At line 6, do you mean "and" instead of "of?"

At line 8, please consider deleting "be required to" since you already say "shall."

At line 8, please delete or define "satisfactorily."

At line 9, please delete or define "updated materials."

At line 10, what is the Board's approval process? Is this specified in another Rule?

In (d), please change "will" to "shall."

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 1, 2020

02 NCAC 09L .0524 is readopted a published in 34:11 NCR 905 as follows:

02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION

(a) The recertification period shall expire on June 30th.

(b) At the direction of the Board, each certified individual will be notified 6-9 months prior to the recertification expiration date of the individual's remaining requirements for recertification.

(c) A certified individual who has completed none of the recertification options in Rule .0522 of this Section prior to the recertification expiration date shall be required to retake and satisfactorily pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category. This examination will be based on updated training materials approved by the Board.

(d) No individual will be allowed to carry over any Continuing Certification Credits from one recertification period to another.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. February 4, 1993; November 1, 1988.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0525

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please consider breaking (a) into two sentences instead of using a semicolon.

Why is (b) necessary? What does it require of your regulated public?

In (b), if you keep this language, please change "insure" to "ensure."

At lines 7 and 8, please define "safe and effective."

At line 8, what are the "recertification requirements?"

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 1, 2020

02 NCAC 09L .0525 readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS

(a) Pesticide dealers who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-449 are certified for a period of five years; however, all such individuals ~~must~~ shall renew their pesticide licenses annually, as required in the North Carolina Pesticide Law of 1971.

(b) In order to insure that certified pesticide dealers continue to meet the needs of changing technology necessary for the safe and effective use of pesticides, they shall be subject to recertification requirements as herein defined.

(c) In no event ~~will~~ shall the license of a pesticide dealer continue to be renewed annually for more than five years unless the individual has been recertified through one of the options in Rule .0526 of this Section.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Amended Eff. November 1, ~~1988~~-1988;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0526

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 6, how is the training approved by the Board? Is this process set forth in another Rule?

At line 6, do you mean "may" or "shall?"

At line 12, how does the Board review and approve training materials? Is this explained in another 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 1, 2020

02 NCAC 09L .0526 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0526 PESTICIDE DEALER RECERTIFICATION OPTIONS

(a) A pesticide dealer may be recertified by completing five approved Pesticide Dealer Continuing Certification Credits. A ~~Pesticide Dealer Continuing Certification Credit~~ “Pesticide Dealer Continuing Certification Credit” is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Such training ~~must~~ shall be approved by the Board and may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. The Continuing Certification Credits ~~must~~ shall be obtained in at least two years of the five-year period.

(b) Instead of completing five certification credits, a pesticide dealer may be recertified by passing a written comprehensive examination administered by ~~NCDA~~ North Carolina Department of Agriculture and Consumer Services personnel and based on training materials ~~which~~ that have been approved by the Board.

*History Note: Authority G.S. 143-448; 143-449;
 Eff. October 22, ~~1981~~, 1981;
 Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0527

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please change "will" to "shall."

At line 4, please refer to "Rule .0524 of this Section" and delete "Expiration of Certification."

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 1, 2020

02 NCAC 09L .0527 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0527 EXPIRATION OF PESTICIDE DEALER CERTIFICATION

Pesticide dealers will be subject to the same certification expiration requirements as set forth in Rule .0524; Expiration of Certification.

History Note: Authority G.S. 143-448; 143-449;

Eff. October 22, ~~1981~~, 1981;

Readopted Eff. May 1, 2020.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0529

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
- X Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for lack of necessity. The Rule states it applies "prior to January 1, 2017." Since the contents of this Rule are no longer in effect, staff recommends objection for lack of necessity.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0529

DEADLINE FOR RECEIPT: May 15, 2020

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:

Is this Rule still necessary since it applies "prior to January 1, 2017?"

If you keep this Rule, consider the following at line 4 if it was your intent: ". . . any licensed pesticide applicator licensed in the agricultural pest control classifications of plant, forest, . . . "

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 1, 2020

02 NCAC 09L .0529 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0529 SOIL AND GROWING MEDIA FUMIGATION EXAMINATION WAIVER

Prior to January 1, 2017, any pesticide applicator licensed in the classifications agricultural pest control: plant, forest pest control, or ornamental and turf pest control who applies for the soil fumigation classification, and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil fumigation classification without having to pass the State's written examination. Training and examination dates may be found at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

History Note: Authority G.S. 143-453(b);

Eff. August 1, ~~2015~~, 2015;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0602

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please consider revising (a) to say who shall do what. Please use active voice.

In (a), what do you mean by "in considering disposal techniques?"

In (a), what "procedures" are you referring to?

At lines 4 and 5, how do you determine whether a procedure is "designed to recover some useful value from excess pesticides?"

For the "Note" at lines 7-10, is the Pesticide Board setting the requirement that pesticides be disposed of in accordance with the rules in 15A NCAC 13A and B or are you informing your regulated public that these other rules may apply? If it is the latter, does this meet the definition of a "rule" in 150B-2(8a)?

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 1, 2020

02 NCAC 09L .0602 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0602 DISPOSAL OF PESTICIDES

(a) In considering disposal techniques, first preference shall be given to procedures designed to recover some useful value from excess pesticides. Whenever possible, excess pesticide shall be used according to its labeling for the purpose originally intended.

(b) Excess pesticides and pesticide-related wastes shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, disposal of excess pesticides and pesticide-related wastes is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, as applicable. Management.

History Note: Authority G.S. 143-441;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; December 1, ~~1989~~. 1989;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0603

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please delete or define "thoroughly."

At line 4, please delete or define "commonly."

At line 5, please consider replacing "e.g." with "including."

At line 5, please consider removing the parentheses around "or equivalent" and using commas instead.

At line 5, please define "or equivalent" or consider deleting if you add "including" before the list.

At line 7, by "these rules" are you referring to "the Rules of this Section?"

For the "Note" at lines 8-12, is the Pesticide Board setting the requirement that pesticides be disposed of in accordance with the rules in 15A NCAC 13A, 13B, and 02D or are you informing your regulated public that these other rules may apply? If it is the latter, does this meet the definition of a "rule" in 150B-2(8a)?

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 1, 2020

02 NCAC 09L .0603 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0603 DISPOSAL OF PESTICIDE CONTAINERS

(a) Prior to disposal, all pesticide containers shall be thoroughly emptied, using the practices commonly employed to remove materials from that type of container; e.g., shaking, pumping, pouring, triple-rinsing (or equivalent) and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with these rules.

(b) Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, ~~as applicable,~~ and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 2D, Air Pollution Control Requirements.

History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, ~~1989~~, 1989;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0701

DEADLINE FOR RECEIPT: May 15, 2020

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:

Throughout this Rule, please consider removing the use of brackets and limiting the use of parenthesis to identifying the species of the animal. For example, please remove the parentheses around "commonly called orchard rats."

At line 7, please delete or define "commonly."

At line 7, please delete or define "immediately."

At lines 7-8, are all of the terms listed, including "cultivated land," "forest plantations," etc. defined?

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 1, 2020

02 NCAC 09L .0701 is readopted as published in 34:11 NCR 905 as follows:

SECTION .0700 - DECLARATION OF PESTS AND RESTRICTIONS ON THEIR CONTROL

02 NCAC 09L .0701 ORCHARD RATS

The North Carolina Pesticide Board hereby declares as a pest pine voles [*Pitymys* (or *Microtus*) *Pinetorum*] and meadow voles (*Microtus pennsylvanicus*), (commonly called orchard rats) on or immediately adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

History Note: Authority G.S. 143-444(1);

Eff. February 1, 1976;

Amended Eff. March 1, ~~1993~~ 1993;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0702

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, what species are you referring to? As a reminder, titles are not used when interpreting rules.

At line 4, does your regulated public understand what you are requiring when you require pesticides "be applied so as to minimize the hazards to nontarget species?"

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 1, 2020

02 NCAC 09L .0702 is proposed for readoption with substantive changes as follows:

02 NCAC 09L .0702 RESTRICTIONS CONCERNING CONTROL OF ORCHARD RATS

Pesticides used to control these species ~~must~~ shall be applied so as to minimize the hazards to nontarget species and that the use of endrin be confined to the period after harvest and before apple trees break dormancy in spring. species.

History Note: Authority G.S. 143-458;
Eff. February 1, ~~1976~~. 1976;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0703

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please define "near."

At line 5, how does the Board determine whether gulls may endanger air traffic? What factors are considered?

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 1, 2020

02 NCAC 09L .0703 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0703 GULLS

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus *Larus*) on or near airport runways when they occur in such manner as to endanger air traffic.

*History Note: Authority G.S. 143-444(1);
Eff. February 1, ~~1976~~-1976;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0705

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please consider using parentheses for the species name and removing them elsewhere.

Please consider removing "that" at the beginning of (1)-(3).

Please review (1). Because of the word "only," it could be read to mean "pesticides not registered for use on pigeons do not have to be used in accordance with label directions." Consider breaking this into "(1) only pesticides registered for use on pigeons shall be used" and "(2) the pesticides shall be used in accordance with the directions on the label."

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 1, 2020

02 NCAC 09L .0705 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0705 RESTRICTIONS CONCERNING CONTROL OF PIGEONS

~~The North Carolina Pesticide Board hereby establishes the~~ The following restrictions apply concerning the use of pesticides in controlling the pigeon (rock dove) *Columba livia*:

- (1) that only materials registered for this purpose shall be used in accordance with directions on the label;
- (2) that the pesticides be distributed in such a manner as to minimize hazard to non-target species, and that all unconsumed bait ~~which~~ that is not in protected bait stations shall be picked up within one week; and
- (3) that in municipalities dead birds be picked up and disposed of by incineration or buried at intervals not to exceed 24 hours.

History Note: Authority G.S. 143-458;
Eff. February 1, ~~1976~~ 1976;
Readopted Eff. May 1, 1976.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0707

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, is the language "as provided by law" necessary?

At line 6, do you mean "may" or "shall?"

At line 7, please define "managed turf."

At line 10, please capitalize "State" if you are only referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line 14, are visitor centers included in (b)(3)?

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 1, 2020

02 NCAC 09L .0707 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED MOLES

(a) The North Carolina Pesticide Board hereby declares the eastern mole, *Scalopus aquaticus*, and the hairy-tailed mole, *Parascalops breweri*, to be pests as provided by law.

(b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:

- (1) residential;
- (2) commercial;
- (3) government property, excluding federal and state parks;
- (4) golf courses, driving ranges, and golf instructional facilities;
- (5) sod farms;
- (6) athletic fields; or
- (7) visitor centers and cemeteries.

(c) For purposes of this Rule, managed turf shall not include pastures.

(d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including streams, rivers, ponds, swamps, lakes, and wetlands.

(e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

History Note: Authority G.S. 143-444(1); 143-458;

Eff. April 1, ~~2015~~; 2015;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0810

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please use the standard incorporation language: "[Title] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [website link] at [cost]."

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 1, 2020

02 NCAC 09L .0810 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .0810 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticide Management and Disposal Subpart E – Standards for Pesticide Containment Structures." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, ~~2009~~. 2009;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1001

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 7, please consider deleting "or" and ending the sentence with "requires."

Throughout this Rule, please consider setting off terms with quotation marks. For example, "Agricultural Aircraft Operation" means the operation of..." Also, please end each definition with a period instead of a semicolon.

At line 11, please add a comma after "environment."

At line 13, please consider separating this definition into two sentences instead of using a semicolon.

In (4), is saying both "case law" and "opinions" repetitive?

At lines 15-16, please refer to "~~Federal Aviation Regulations (F.A.R.)~~ 14 CFR Subchapter G Part 137"

At lines 15-16, are you just referring to 14 CFR Part 137, Subpart C?

At line 22, please consider replacing the comma after "health" with an "or."

At line 23, please define "immediate."

Please consider making (8) into two sentences.

In (9), consider revising the list to remove the extra use of the word "and" as follows: "Water, air, land, plants, man, and animals. . ."

In (10), are you incorporating this CFR by reference? If so, please use the standard incorporation language: "[Title] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [website link] at [cost]."

Ashley Snyder
Commission Counsel
Date submitted to agency: May 1, 2020

In (12), please replace the comma after “kept” with an “and” since there are only two items in the list.

In (16), please delete or define “prominently.”

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

02 NCAC 09L .1001 is readopted as published in 34:11 NCR 905 as follows:

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) Agricultural Aircraft Operation. The operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation;
- (2) Adverse Effect. Personal injury, damage to personal property, damage to real property, damage to the environment or any combination of these;
- (3) Aircraft. A weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces; This shall include either fixed-wing or rotary-wing aircraft;
- (4) Congested Areas. The same meaning as described in case law opinions interpreting Federal Aviation Regulations (F.A.R.), 14 CFR Subchapter G Part 137;
- (5) Contractor. Any person who owns or manages an aerial application business ~~which~~ that is engaged in the custom application of pesticides;
- (6) Custom Application. Any application of pesticides by aircraft for which service a payment is made;
- (7) Drift. The airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area;
- (8) Emergency. An occurrence ~~which~~ that can impair public health, safety or result in injury, damage, or loss of life ~~which~~ that calls for immediate action; An emergency may be minor or of such magnitude as to create a disaster;
- (9) Environment. Water, air, ~~land~~ land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (10) F.A.R.-137. ~~Federal Aviation Regulations Volume VII, 14 CFR Subchapter G Part 137, and subsequent amendments and editions, as amended through September 10, 1980,~~ relating to agricultural aircraft operations;
- (11) Pilot. The person in control of the aircraft during the application of a pesticide;
- (12) Registered Apiary--~~an apiary~~ any place where one or more colonies of bees are kept, registered with the North Carolina Department of Agriculture; Agriculture and Consumer Services;
- (13) Respirator. A respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being used;
- (14) Spray Equipment. The equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation;
- (15) Target Area. Intended site of pesticide application;

1 (16) Toxicity Category I Pesticides. Any pesticide products ~~which~~ that are required to display the signal word
2 "Danger" prominently on the label.
3

4 *History Note:* *Authority G.S. 143-458; 143-463;*
5 *Eff. July 2, 1976;*
6 *Amended Eff. January 1, ~~1985~~ 1985;*
7 *Readopted Eff. May 1, 2020.*
8

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1002

DEADLINE FOR RECEIPT: May 15, 2020

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 (a), please provide citations to the referenced laws.

At line 5, do you mean "rules and regulations?"

At line 6, please provide the full citation and capitalize "Part."

At line 9, do you mean "rules" instead of "regulations?"

At line 10, please delete or define "specifically."

At line 10, by "these Rules," which rules are you referring to? The Rules of this Section?

In (c), please consider removing parentheses and incorporating the language into the text of the Rule.

What requirement are you referring to at line 12?

Please review and clarify the language at lines 12-13. At line 11, the Rule says the record has to be completed within 72 hours.

Please review the citation at line 14. Many of the rules in 02 NCAC 09L .1800 have been repealed.

At line 15, the cited Rule expired. Please review and update.

In (c)(8), please consider removing parentheses and incorporating this language into the text of the Rule.

At lines 32-33, consider: ". . . using the same pesticide, or another pesticide compatible with the previous pesticide according to the manufacturer's recommendations . . ."

At lines 35-36, please define "environmental or human hazard."

Ashley Snyder
Commission Counsel
Date submitted to agency: May 1, 2020

In (i), please delete or define “reasonably.”

In (l), please delete or define “immediately.”

In (l), who is the “designated alternate?”

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

02 NCAC 09L .1002 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1002 GENERAL REQUIREMENTS

(a) All agricultural aircraft operations in North Carolina shall comply with the Federal Occupational Safety and Health Act of 1971 (OSHA), the North Carolina Occupational Safety and Health Law, all regulations promulgated thereunder and the Federal Aviation Regulations part 137. In any case of conflict, a provision of the aforementioned authorities takes precedence over any of these Rules.

(b) Each aerial application business shall have a licensed contractor. The contractor shall be responsible for the compliance of the business with the North Carolina Pesticide Law of 1971 and all regulations promulgated thereunder except where the responsibility is specifically designated to another person(s) by these Rules.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application. This requirement ~~must~~ shall be fulfilled as soon as requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. For pesticides covered under the Worker Protection Standards for Agricultural Pesticides, 02 NCAC 09L .1800, such records ~~must~~ shall be completed in accordance with 02 NCAC 09L .1807(b). The record shall show the following:

- (1) name of contractor;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or land sites treated with pesticide(s);
- (4) name of crop which was treated;
- (5) total number of acres treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed;
- (7) the brand name of the pesticide(s) and EPA registration number;
- (8) amount of formulated product or active material applied per acre (~~must~~ shall specify);
- (9) total gallons or pounds per acre of the final tank mix applied per acre;
- (10) name of pilot; and
- (11) signature of person completing this record.

(d) Each day of application shall be recorded as a separate record.

(e) The pilot shall, prior to application, learn and confirm:

- (1) the boundaries and exact location of the target area(s); and
- (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

(f) Spray and spreading equipment shall be rinsed after each agricultural aircraft operation except when the next agricultural aircraft operation will be made using the same pesticide, or if another pesticide, one which by its manufacturer's recommendations is compatible with that previously in the equipment, and will not result in any adverse effects or illegal residues. Rinsing shall be conducted in an area where an environmental hazard will not be created by the drainage or disposal of waste materials and conducted with methods which will not create an environmental or human hazard.

1 (g) During application, the flow and mixture of the pesticide(s) shall be uniform. Pilots and contractors shall utilize
2 equipment which will maintain a uniform mixture and flow during application.

3 (h) Pilots and contractors shall use and operate, in any agricultural aircraft operation, aircraft equipped with spray or
4 spreading equipment suited, according to its manufacturer's recommendations for the pesticide(s) to be applied. All
5 aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and
6 dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow
7 spillage, dripping and backflow or create a hazard from vapors or drift.

8 (i) The loading area shall be kept reasonably free of pesticide contamination.

9 (j) No pesticide(s) shall be applied by an aerial applicator while any persons other than those assisting in the application
10 are in the target area.

11 (k) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow complete drainage
12 during flight and on ground.

13 (l) The contractor or pilot shall immediately notify the Secretary of the Board, or designated alternate, of any emergency
14 or accidental release of pesticide(s) from the application or auxiliary equipment. They shall provide the following
15 information:

- 16 (1) the name of the pilot;
- 17 (2) the contractor involved;
- 18 (3) the name of the property owner or operator;
- 19 (4) the location of the incident;
- 20 (5) the name of the pesticide;
- 21 (6) the estimated amount of pesticide involved;
- 22 (7) the estimated size of the area that received the spill;
- 23 (8) the description of what is located within 300 feet from the edge of the spill in all directions;
- 24 (9) the number of humans or animals known to have been contaminated; and
- 25 (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

26
27 *History Note:* Authority G.S. 143-458; 143-463; 143-466;
28 Eff. July 2, 1976;
29 Amended Eff. May 1, 2009; February 1, 1989; January 1, 1985; August 1, ~~1982~~. 1982;
30 Readopted Eff. May 1, 2020.
31

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1003

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please consider deleting "as a minimum." Rules always set minimum requirements.

At lines 10 and 12, who determines whether the pilot's safety would be endangered? Is it the pilot?

At line 18, do you mean "may" or "shall?"

In (5), please refer to "Item (4) 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 1, 2020

02 NCAC 09L .1003 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (4) All applications of the following liquid pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward:
 - (a) phenoxy herbicides,
 - (b) paraquat,
 - (c) picloram (Tordon), and
 - (d) dicamba.
- (5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:
 - (a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or
 - (b) a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or
 - (c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.

*History Note: Authority G.S. 143-458; 143-463;
Eff. July 2, 1976;
Amended Eff. January 1, ~~1985~~ 1985;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1005

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please refer to "14 CFR Part 137."

In (b), please consider removing the parentheses and incorporating the language into the text of the Rule.

At line 7, define "social activities."

At line 8, define "occupied."

At line 11, please define "near."

At line 14, should there be an "an" before "adverse effect."

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 1, 2020

02 NCAC 09L .1005 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1005 RESTRICTED AREAS

(a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under ~~F.A.R. 137.~~ 14 CFR Subchapter G Part 137.

(b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or any building (other than a residence) which is used for business or social activities if either the premises or the building is occupied by people.

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

(d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or near any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.

(e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

History Note: Authority G.S. 143-458;

Eff. July 2, 1976;

Amended Eff. July 1, 1988; January 1, 1985; December 1, ~~1976.~~ 1976.

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1006

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, consider: "There shall be no exemptions from this Section except under the following conditions:"

In (1), please consider adding the statute under which the Commissioner would make the emergency proclamation.

In (2), do you mean "may" or "shall?" If you mean "may" under what circumstances would these exceptions be granted?

In (2)(a) and (b) do you mean "rules" instead of "regulation?"

In (2)(a), under what circumstances is this "deemed appropriate?" How is this determination made? What factors are considered?

In (3), when referring to a Rule in the same Section, please refer to "Rule .xxxx of this Section."

At line 11, define "public agency."

At lines 13 and 27, please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line 13, please add a comma after "federal."

At line 14, do you mean "may" or "shall?" If you mean "may," under what circumstances is this exception granted?

At line 17, define "complete." Is it complete if it meets the standards in (a)-(e)?

In (3)(a)(v), please consider "proposed date range of application."

Ashley Snyder
Commission Counsel
Date submitted to agency: May 1, 2020

In (d)(i), please define “sensitive areas.”

On page 2, lines 5 and 9, please consider replacing the parentheses with commas.

At line 7, please replace “should” with “shall.”

Throughout (e)(i), please remove the parentheses and incorporate the language in the text of the Rule.

At line 14, do you mean “may” or “shall?”

At line 16, do you mean “may” or “shall?”

At line 17, define “preliminary notification.”

At line 23, do you mean “shall” instead of “should?”

At line 24, do you mean “may” or “shall?”

At line 25, is news media an “appropriate” form or notification or the required type of notification?

At line 28, do you mean “shall” instead of “should?”

At line 34, define “pest of public health significance.”

At line 34, please refer to “Rule 1002(j) of this Section.”

On page 3, line 7, which “approved pesticides” are you referring to?

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

02 NCAC 09L .1006 is adopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1006 EXEMPTIONS

No person or procedure or spraying and spreading system for aerial application of pesticides shall be exempt from any of the provisions of this Section except under ~~these~~ the following conditions:

- (1) During an emergency proclaimed by the ~~commissioner~~, Commissioner, specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the ~~commissioner~~, Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
 - (a) from specific regulations for specific aerial applications when deemed appropriate,
 - (b) from specific regulations for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any state, federal or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from ~~2 02~~ 02 NCAC 9L ~~.1002(i), .1002(j)~~, General Requirements, and ~~2 02~~ 02 NCAC 9L .1005(b) through (e), Restricted Areas, provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation ~~which~~ that meets or exceeds the following standards:
 - (a) Project Description. The application shall include all of the following:
 - (i) explanation of why the project is needed;
 - (ii) identification of target pest or pests;
 - (iii) map showing treatment area;
 - (iv) total acreage to be treated; and
 - (v) proposed dates of application (range).
 - (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
 - (i) a statement that the pesticide product(s) proposed for use carries current state and federal registration and are ~~currently~~ labeled for the proposed use. Include The EPA registration number for each pesticide; pesticide shall be included in the statement;
 - (ii) ~~Material~~ Safety Data Sheet (~~MSDS~~). (SDS) Include an ~~MSDS~~ SDS for each pesticide proposed for use;
 - (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
 - (c) Aircraft Information. The description shall include the following:
 - (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.); and
 - (ii) identification of equipment specifications.

- (d) Environmental Evaluation. The description shall include the following:
- (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive areas in or near the proposed treatment area;
 - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures (if any) to lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
 - (iii) describe alternative methods of pest control (options). A no treatment alternative should be included. Describe probable environmental consequences of each alternative; and
 - (iv) describe measures (if any) to mitigate the adverse environmental impacts of the proposed project.
- (e) Notification and Public Input Plan. The application shall contain the following:
- (i) Preliminary Notification:
 - (A) For small projects (less than 50 acres or fewer than 20 landowners) individual notification (personal contact or mailings) may be used. This notification shall include the information in criteria (a) through (c);
 - (B) For larger projects, the news media (radio, TV, newspapers) may be used for preliminary notification. A public meeting may also be used as a preliminary notification tool. This notification shall include the information in criteria (a) through (c);
 - (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
 - (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project should be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media ~~would~~ shall be an appropriate avenue of notification;
 - (iv) A contact person and telephone number shall be listed in the public notice; and
 - (v) Evacuation Plan. For persons concerned about the project because of health reasons, there should be a notification procedure so they may leave the treatment area while the project is underway.

The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all applications for exemption.

- (4) Any local health director or aerial applicator licensed under the subcategory of public health pest control, under supervision of such local health director when conducting a control operation for disease vectors or other pest of public health significance shall be exempted from 2 NCAC 9L .1002(~~i~~), .1002(j) General Requirements; .1003, Drift Control; and .1005(b) through (e), Restricted Areas, provided such local health director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation and submits the following information:

- 1 (a) name of aerial applicator or contractor,
- 2 (b) location and general description of operation area(s),
- 3 (c) identity of target pest(s),
- 4 (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
- 5 (e) scheduled date(s) of application(s), and
- 6 (f) outline of nature of operation.

7 Approved pesticide(s) shall be applied in compliance with label requirements.

8

9 *History Note: Authority G.S. 143-458; 143-461(1),(2),(5); 143-463;*

10 *Eff. July 2, 1976;*

11 *Amended Eff. October 1, 1988; January 1, 1985; August 1, 1982; July 21, ~~1978~~. 1978;*

12 *Readopted Eff. May 1, 2020.*

13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1009

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please remove the comma after "bees."

At line 7, is notification required based upon establishment of the seasonal spray schedule or scheduled days where pesticide will be sprayed?

In (c), just to be sure, is the list of registrations still sent via U.S. mail instead of email?

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 1, 2020

02 NCAC 09L .1009 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1009 NOTIFICATION OF APIARIES

(a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to bees, shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.

(b) "Notification" for the purposes of this Paragraph is defined as follows:

(1) written communication by:

(a) U.S. mail,

(b) Notification left at residence, or

(c) Notification left at alternate address as designated on the honeybee registration list.

(2) oral communication by:

(a) telephone,

(b) personal communication, or

(c) verbal communication with an alternate person as designated on the honeybee registration list.

(3) digital communication by:

(a) electronic mail or

(b) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466;

Eff. January 1, 1985;

Amended Eff. January 1, ~~2016~~-2016;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1102

DEADLINE FOR RECEIPT: May 15, 2020

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:

When do the definitions in this Rule apply? In this Section? If so, please make that clear.

Throughout this Rule, please consider putting defined terms in quotation marks. For example: "Certified applicator" means any individual. . ."

At line 8, which "person" are you referring to? The applicator?

In (c)(7), please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

In (c)(7), do you mean "laws, rules, and regulations?"

In (c)(9), what sources of advice and guidance are "necessary?"

At line 28, what are the criteria for Board approval? Is this in another Rule?

At line 30, do you mean "may" or "shall?"

On page 2, what is the purpose of the language at line 3? Why is it on a separate line? If you need it, please consider incorporating it elsewhere in the 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 1, 2020

02 NCAC 09L .1102 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1102 DEFINITIONS

(a) Certified applicator - any individual who is certified to use or supervise the use of any restricted use pesticide.

(b) Private pesticide applicator - a person who uses or supervises the use of any restricted use pesticide under the following conditions:

(1) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or

(2) if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

(c) Private pesticide applicator certification standards review - a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:

(1) the pest problems and pest control practices associated with agricultural operations;

(2) storage, use, handling, and disposal of pesticides and their containers;

(3) labels and labeling information;

(4) local environmental situations to consider during application to avoid contamination;

(5) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;

(6) protective clothing, equipment, and other worker protection standards;

(7) federal and state pesticide laws and regulations and the applicator's related legal responsibility;

(8) current agricultural production-related pesticide technology; and

(9) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

(d) Continuing certification credit - one hour of continuing certification training. Continuing certification training shall be approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other Board-approved presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending approved training sessions for which credit has been assigned in the following commercial categories:

(1) aquatic;

(2) agricultural pest - animal;

(3) agricultural pest - plant;

(4) ornamental and turf;

(5) forest;

- 1 (6) seed treatment; and
2 (7) soil and growing media fumigation
3 set forth in 02 NCAC 09L .0505(1)(a) through (1)(k).
4

5 *History Note: Authority G.S. 143-440; 143-453;*

6 *Eff. December 1, 1976;*

7 *Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978;*

8 *April 20, ~~1977-1977~~;*

9 *Readopted Eff. May 1, 2020.*
10

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1103

DEADLINE FOR RECEIPT: May 15, 2020

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 (b), what are the subclasses for private pesticide operators? Consider cross-referencing Rule .1109 of this Section.

At line 9, do you still need the sentence beginning with "prior to January 1, 2017?"

In (c), please consider deleting "beginning January 1, 2017."

In (d), do you mean "may" or "shall?"

In (d), do applicants register by filling out a form? If so, are its contents or substantive requirements in rule in accordance with G.S. 150B-2(8a)(d)?

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 1, 2020

02 NCAC 09L .1103 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

(a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 percent or more.

(b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator. Prior to January 1, 2017, any certified private applicator who applies for the soil and growing media certification and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil and growing media certification without having to pass the State's written soil and growing media fumigation examination.

(c) Beginning on January 1, 2017, the passing grade on the soil and growing media fumigation examination, and the agricultural commodity fumigation examination shall be 70 percent or more.

(d) Applicants may register for an examination at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

History Note: Authority G.S. 143-440;

Eff. December 1, 1976;

Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, ~~1978~~; 1978;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1104

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, do you need to insert a "the" before "need?"

At line 8, please define "sufficient."

At line 11, please consider removing the parentheses and incorporating this language into the text of the Rule. Alternatively, you could define this term in your definitions rule.

At line 11, do you mean "may" or "shall?" If you mean "may," under what circumstances will a general use pesticide be used?

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 1, 2020

02 NCAC 09L .1104 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general use pesticide (one available to the general public and not requiring certification to purchase and apply) may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.

(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;
- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. June 1, 2016; August 26, 1977.
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1105

DEADLINE FOR RECEIPT: May 15, 2020

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 (a), if you are defining "direct supervision," consider moving this to your definitions rule.

In (b), please define "competent person."

In (c), line 11 says the certified applicator shall "be available to the non-certified applicator" but like 5 says the certified applicator provides "direct supervision." Please clarify.

At line 12, please delete or define "fully."

At line 13, which directions and cautions are "necessary?"

At line 13, please use "he or she."

At lines 18, 20, and 23, please delete or define "detailed."

Throughout (d), please consider removing the parentheses and incorporating the language into the text of the Rule.

In (d)(1) and (2), under what circumstances will the label suffice? How is this determination made? What factors are considered?

At line 21, please delete or define "unreasonable."

At line 25, please define "direct communication."

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 1, 2020

02 NCAC 09L .1105 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1105 APPLICATIONS UNDER SUPERVISION OF CERTIFIED APPLICATOR

(a) "Under the direct supervision of" shall include the receipt by the non-certified applicator of verifiable specific and individual job or work assignments and instructions from the certified applicator under whose direct supervision and control the non-certified applicator is functioning prior to the use and application of a restricted use pesticide. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

(b) Application of restricted use pesticide may be made by non-certified applicators provided such applicator is a competent person(s) acting under the direct supervision of a certified applicator whose certification permits such application.

(c) The certified applicator acting in a supervisory role shall be available to the non-certified applicator in the event he is needed. It shall be the responsibility of the certified applicator to keep the non-certified applicator fully aware of all directions for use and cautions necessary for safe use and application of any restricted use pesticide he may be directed to apply.

(d) All non-certified applicators applying any restricted use pesticide under the direct supervision of a certified applicator shall have available at the application site or at the loading and mixing site, if different from the application site, the following:

- (1) detailed written or printed directions for applying the restricted use pesticide (pesticide product label may suffice);
- (2) detailed written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons ~~and/or~~ and unreasonable adverse effects on the environment (pesticide product label may suffice); and
- (3) detailed instructions for contacting the certified applicator under whose supervision the non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.); Such instructions, when followed, shall result in direct communication with the certified applicator.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. February 5, ~~1978~~, 1978;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1107

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please consider breaking this Rule into two sentences.

At line 6, what is considered a "hardship case?" Do certain criteria have to be met?

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 1, 2020

02 NCAC 09L .1107 is readopted as published in 34:11 NCR 905 as follows:

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators ~~must~~ shall be 16 years old prior to participating in a certification option or being issued a single purchase permit under the emergency certification procedure; however, in hardship cases individuals below the age of 16 may be licensed by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

History Note: Authority G.S. 143-440;
Eff. December 1, ~~1976~~ 1976;
Readopted Eff. May 1, 2020.

02 NCAC 09L .1108 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

(a) The term of certification shall be for a period of three years.

(b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.

(c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain the subclass certification.

History Note: Authority G.S. 143-440; 143-453;

Eff. July 1, 1987;

Amended Eff. June 1, 2016; October 1, ~~2002~~ 2002;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1109

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, consider deleting "hereby."

Please consider making (1) and (2) into complete sentences instead of using dashes.

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 1, 2020

02 NCAC 09L .1109 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

The following subclassifications are hereby established for the certification of private pesticide applicators:

- (1) Soil and growing media fumigation – private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) Agricultural commodity fumigation – private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

History Note: Authority G.S. 143-440;
Eff. August 1, ~~2015~~, 2015;
Readopted Eff. May 1, 2020.

02 NCAC 09L .1111 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1111 CERTIFICATION/RECERTIFICATION FEE

A nonrefundable fee of ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

*History Note: Authority G.S. 143-440(b);
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on
March 29, 1988;
Eff. March 1, 1988;
Amended Eff. May 1, ~~2010~~; 2010;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1201

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 7, please define "immediate vicinity."

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 1, 2020

02 NCAC 09L .1201 is readopted as published in 34:11 NCR 906 as follows:

SECTION .1200 - ARSENIC TRIOXIDE

02 NCAC 09L .1201 RESTRICTIONS ON USE AND STORAGE

All pesticide formulations containing the active ingredient arsenic trioxide shall not be used or stored inside or in the immediate vicinity of any building used as a human dwelling.

History Note: Authority G.S. 143-440(b); 143-441;

Eff. April 21, ~~1977~~ 1977;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1202

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please consider replacing "such" with "the."

At line 5, what are the "use restrictions on arsenic trioxide contained herein?" Do you mean "the use restrictions on arsenic trioxide contained on the manufacturer's label?"

Please consider breaking this Rule into two sentences instead of using a semicolon.

At line 6, please consider deleting the word "such."

At lines 7-8, what does it mean to "limit access to the pesticide by children?" What exactly are you requiring?

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 1, 2020

02 NCAC 09L .1202 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY

The pesticide dealer shall secure the signature of the purchaser attesting to the fact that such purchaser has knowledge of the use restrictions on arsenic trioxide contained herein; provided, however, that any licensed pesticide applicator under the authority of G.S. 143-452 or G.S. 106-65.25 may use such formulations containing arsenic trioxide in or around human dwellings provided such use is performed in a manner consistent with the product label and limits access to the pesticide by children.

*History Note: Authority G.S. 143-440(b); 143-441; 143-466;
 Eff. April 21, 1977;
 Amended Eff. November 1, ~~1988~~. 1988;
 Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1302

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please add a comma after "structural pest control applicator."

Did you intend to include someone who holds an emergency certification permit pursuant to .1104?

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 1, 2020

02 NCAC 09L .1302 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1302 GENERAL REQUIREMENTS

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

History Note: Authority G.S. 143-440; 143-463;
Eff. August 26, 1977;
Amended Eff. February 5, ~~1978~~ 1978;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1303

DEADLINE FOR RECEIPT: May 15, 2020

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 (b), what exemption applies?

At line 11, please say "his or her."

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 1, 2020

02 NCAC 09L .1303 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators or licensees and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

History Note: Authority G.S. 143-437; 143-440; 143-466;
Eff. August 26, 1977;
Amended Eff. November 1, 1988; February 5, 1978;
Temporary Amendment Eff. November 1, 2001;
Amended Eff. August 1, 2002; 2002;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1305

DEADLINE FOR RECEIPT: May 15, 2020

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 (3), please refer to "Rule .1302 of this Section" and "Rule .1303 of this Section."

Please compare (8) and (10). Is "quantity" the correct word in (10)?

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 1, 2020

02 NCAC 09L .1305 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, ~~2002~~, 2002;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1306

DEADLINE FOR RECEIPT: May 15, 2020

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:

At lines 4 and 5, please refer to Rules in this Section by saying "Rule .xxxx of this Section."

At line 6, is there a required method of verifying the recipient's identity? For example, are you requiring them to show photo identification?

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 1, 2020

02 NCAC 09L .1306 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer ~~must~~ shall verify the identity of the recipient.

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, ~~2002~~, 2002;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1401

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please consider formatting definitions rules with the defined term in quotations. For example: "Adverse effect" means...

Since this is not a list, please consider ending each definition with a period instead of a semicolon.

At line 9, please add a comma after "environment."

In (3), consider revising the list to remove the extra use of the word "and" as follows: "Water, air, land, plants, man, and animals. . ."

At line 14, should there be a "the" before "ASCS?" Also, what does "ASCS" stand for?

In (4), please consider making this a list separated by commas instead of using "or" between each awesome.

At line 15, what other means of identification are "practical?"

At line 15, do you need an "a" before "farm?"

At line 16, please capitalize "State" if you are referring to North Carolina. If you are referring to any state, please do not capitalize "state."

At line 16, please add a comma after "state."

At line 16, define "public agencies."

At line 17, by "such an agency," what agencies are you referring to?

Please review the sentence at lines 16-19. Please use commas to separate lists. What are you referring to by the term "statewide?" The state's name?

Ashley Snyder
Commission Counsel
Date submitted to agency: May 1, 2020

In (6), please consider saying “. . . occurring on a site, including a structure, animal, tree . . . “

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

02 NCAC 09L .1401 is readopted as published in 34:11 NCR 906 as follows:

SECTION .1400 - GROUND APPLICATION OF PESTICIDES

02 NCAC 09L .1401 DEFINITIONS

All specific words or terms used in this Section other than those defined below shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460:

- (1) Adverse Effect. Personal injury, damage to personal property, damage to real property, damage to the environment or any combination of these;
- (2) Drift. The airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area;
- (3) Environment. Water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (4) Identification of Farm. For record keeping purposes, licensed pesticide applicators shall use ASCS farm number or common name of farm or address of farm or other practical means of identification of farm;
- (5) Identification of Site. For record keeping purposes, federal, state or public agencies or licensed pesticide applicators under ~~contractual~~ agreement with or under supervision of such an agency shall use statewide or name(s) of county(s) or name(s) of city(s) or name(s) of body(s) of water or other practical means of identification of site. All other licensed pesticide applicators shall use name of specific right-of-way or name and address of golf course or specific address of site or other more definitive practical means of identification of site;
- (6) Object. A physical or living thing occurring on a site; e.g., a structure, animal, tree, ornamental plant, or material.

History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. November 1, 1988; August 1, 1985; February 5, ~~1978~~; 1978;
Readopted Eff. May 1, 2020.

02 NCAC 09L .1042 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All ~~licensed~~ pesticide applicators, as defined in G.S. 143-460 ~~which includes public operators~~, utilizing ground equipment shall keep for three years ~~and make available to the commissioner for like period~~ records of all applications of restricted use ~~pesticides showing the following:~~ pesticides. The records shall show the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) ~~which that~~ was treated with pesticide(s);
- (5) approximate ~~number of acres or size~~ acres, size, or number of other object(s) treated;
- (6) the year, month, ~~date~~ date, and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

History Note: *Authority G.S. 143-458; 143-463; 143-466(a);*
Eff. October 21, 1977;
Amended Eff. April 1, ~~2009~~. 2009;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1404

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, what "conditions" are you referring to?

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 1, 2020

02 NCAC 09L .1404 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1404 DRIFT CONTROL

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

History Note: Authority G.S. 143-458; 143-463;

Eff. August 1, ~~1985~~, 1985;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1805

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please use the standard incorporation language: "[Title] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [website link] at [cost]."

Can this CFR now be accessed online?

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 1, 2020

02 NCAC 09L .1805 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1805 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard." Copies of this material may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at a cost determined by that office.

History Note: Authority G.S. 143-458(a);

Eff. July 1, ~~1993~~ 1993;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1806

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please consider using the full CFR citations instead of referring to the "Worker Protection Standard."

At line 5, instead of "2 NCAC 9L .1800" please refer to "this Section."

At line 8, please delete or define "currently."

At line 9, please refer to "Rule .0504(9) of this Subchapter."

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 1, 2020

02 NCAC 09L .1806 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in Sections 170.104 and 170.204 of the Worker Protection Standard, the following definitions shall be in effect throughout 2 NCAC 9L .1800:

- (1) "Crop Advisor" means any currently certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed in the subcategory "Demonstration and Research Pest Control" as defined in 2 NCAC 9L .0504(9), but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.
- (2) "Crop Advisor Tasks" means assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

*History Note: Authority G.S. 143-458(a);
Eff. April 1, ~~1996~~. 1996.
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1901

DEADLINE FOR RECEIPT: May 15, 2020

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:

For definitions rules, please consider using quotation marks around the defined term and ending each definition with a period.

At line 7, please capitalize "Rules."

At line 8, is it necessary to say these are the minimum requirements for storage? All rules set minimum requirements.

At line 11, what is considered "equivalent?" Does your regulated public know? Also, please consider removing the parentheses.

At line 12, please change "which" to "that."

At line 27, under what circumstances is a plan "deemed adequate?"

At line 28, define "reasonable assurances."

At lines 29-30, please define "adverse effects." Under what circumstances are adverse effects "unreasonable?"

At lines 33-34, please replace "subject to the regulations in this Rule" with "subject to this Rule."

In (7)(a), please consider removing the parentheses and incorporating the language into the text of the 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 1, 2020

02 NCAC 09L .1901 is readopted as published in 34:11 NCR 906 as follows:

SECTION .1900 - PESTICIDE STORAGE

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. The rules contained in this Section shall be deemed to be minimum for storage.

- (1) Storage. The act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and triple-rinsed (or equivalent);
 - (b) pesticides which meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11);
- (2) Commercial Storage. Storage of a pesticide by any person from the time of manufacture, prior to possession by the end user;
- (3) Storage Facility. Any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility;
- (4) Large Storage Facility. Any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time;
- (5) Storage Area. That portion of a storage facility actually used to store pesticides;
- (6) Contingency Plan. "Contingency Plan" shall be a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies. A contingency plan shall be deemed adequate by the North Carolina Pesticide Board if in the opinion of the Board such plan presents reasonable assurances that the facility will be able to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) Bulk Storage. Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this Rule unless any of the following conditions exists:
 - (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed (whether or not the container has been rinsed or washed).

- 1 (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
- 2 (c) The container holds only pesticides which would be gaseous when released at atmospheric
- 3 temperature and pressure.
- 4 (d) The container is dedicated to non-pesticide use, and is labeled accordingly.
- 5

6 *History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;*

7 *Eff. January 1, 1984;*

8 *Amended Eff. April 1, 2009; November 1, 1989; November 1, ~~1988~~, 1988;*

9 *Readopted Eff. May 1, 2020.*

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11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1902

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 6, is it necessary to say "minimum information?" All rules set minimum requirements.

At line 7, please define "clearly" and "prominently."

In (c)(4), what is a "signal word?" Does your regulated public know?

At line 14, do you mean "rules and regulations?"

At line 17, please delete or define "specifically."

At line 19, under what circumstances is storage "likely to result in accidental ingestion?" Specifically, what are you prohibiting?

In (g), define "unauthorized access?" Are you requiring anything specific to prevent unauthorized access such as locked containers?

In (h), please consider removing the parentheses.

At line 29, please define "appropriate care."

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 1, 2020

02 NCAC 09L .1902 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1902 STORAGE REQUIREMENTS FOR ALL PESTICIDES

(a) The requirements of this Rule shall apply to all pesticides.

(b) Pesticides shall be stored to prevent leaking and to facilitate inspection.

(c) Formulated pesticide products shall not be stored in unlabeled containers. The following minimum information shall be shown clearly and prominently on any containers of formulated pesticide:

- (1) Common chemical name;
- (2) Percentage of each active ingredient;
- (3) EPA registration number;
- (4) Signal word;
- (5) Use classification (restricted use or general use).

Pesticide products which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971, and regulations promulgated thereunder shall be deemed to have met the requirements of Paragraph (c) of this Rule.

(d) Pesticides (formulated products or dilutions) shall not be stored in any food, feed, beverage, or medicine container that has previously been used for such purposes, or that is specifically designed to contain only those products.

(e) Pesticides shall not be stored in a manner that could cause the contamination of foods, feeds, beverages, eating utensils, tobacco, tobacco products, other pesticides, seeds, or fertilizers, or otherwise likely to result in accidental ingestion by humans or domestic animals.

(f) Pesticides shall be stored in accordance with the following:

- (1) storage recommendations, if any, on their labeling; and
- (2) labeling on all other products, including non-pesticide products, held in the same storage area.

(g) When unattended, pesticides shall be stored to prevent unauthorized access.

(h) Pesticides shall be stored in an area that is dry (does not accumulate water) and ventilated.

(i) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes which may provide an ignition source, and shall be separated from other operations which present a fire hazard such as welding or burning. Appropriate care shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989, 1989;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1905

DEADLINE FOR RECEIPT: May 15, 2020

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 (a), why are "Storage Requirements" and "All Pesticides" capitalized?

At line 6, is it necessary to say "as a minimum?" All rules set minimum requirements.

At line 10, please define "immediately."

At line 10, what do you mean by "with regard to personnel safety?" What are you requiring?

At lines 11-12, what are "safe disposal techniques?"

At line 16, please refer to "this Paragraph" instead of "this part" if that was your intent.

At line 16, do you mean "may" or "shall?" If you mean "may," under what circumstances will an exemption be granted?

At line 17, what is considered a "special written request?"

At line 17, please replace "must" with "shall."

In (f)(1), please delete or define "appropriate."

In (f)(1), please capitalize "State" if you are only referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line 21, do you mean "rules" instead of "regulations."

At line 22, please consider replacing "Such" with "The."

At lines 23-25, is this a suggestion or a requirement? Please review the definition of a "rule" in G.S. 150B-2(8a).

Ashley Snyder
Commission Counsel
Date submitted to agency: May 1, 2020

At lines 26, 28, and 30, please replace “and/or” with either “and” or “or.”

At line 33, define “immediately.”

At lines 33-34, who is the “designated alternate?”

At line 34, please define “hazard” and “imminent danger.”

At line 34, please define “substantial damage.”

At line 36, please capitalize “State” if you are only referring to North Carolina. Please do not capitalize “state” if you are referring to any state.

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 1, 2020

02 NCAC 09L .1905 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the Storage Requirements for All Pesticides as set forth in Rule .1902 of this Subchapter, the requirements of this Rule shall apply to any quantity of restricted use pesticides in commercial storage.

(b) Storage areas shall utilize security precautions that prevent unauthorized access to pesticides. As a minimum, non-display pesticide storage areas shall be locked when unattended. A warning sign shall be posted beside all entrances to non-display pesticide storage areas stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL_____."

(c) Pesticide spills shall be cleaned up immediately with regard to personnel safety. Floor-sweeping compounds such as adsorptive clay, sand, sawdust, lime, or similar suitable materials shall be kept on hand to absorb spills or leaks. Safe disposal techniques shall be employed when disposing of pesticide contaminated adsorptive materials.

(d) Pesticides shall be stored to prevent contact with water resulting from area cleanup, the intrusion of storm waters, leaks, or impounded or flowing waters, or any other source which represents a likely potential for flooding.

(e) Pesticides shall not be stored within 100 feet horizontally of a public water supply. Pesticides shall not be stored within 50 feet horizontally of a private water supply. An exemption from the requirements of this part may be granted by the Board upon receipt of special written request for such exemption from the owner or operator of a storage facility. Each request must describe existing conditions requiring such exemption.

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

(1) compliance with all appropriate state and local fire codes and building codes and with all applicable state environmental laws and regulations;

(2) development of a prefire plan for the storage facility. Such plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:

(A) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;

(B) one copy of the plan shall be filed with the fire department and/or emergency services office having jurisdiction;

(C) a request shall be made in writing to the local fire department and/or emergency services office having jurisdiction for no less than an annual inspection of the facility.

(g) The person responsible for the storage facility shall upon discovery of any emergency such as a fire, spill, or unintended release of pesticides into the environment from the facility, immediately notify the secretary of the Board or designated alternate if such emergency poses a hazard or imminent danger to man, animals, aquatic life, or threat of substantial damage to property. Such notification of the secretary does not preclude notification being given to the appropriate local fire department, emergency services office, or other state or federal agencies requiring such notification.

1 (h) Any person operating a storage facility shall maintain a current inventory list of the kinds of stored pesticides by brand
2 name and formulation. An inventory list shall be considered current if it is updated every 30 days. A copy of this list shall be
3 maintained in a separate location from the storage facility. This list shall be made available to the Board or its agents upon
4 request.

5 (i) Pesticide applicators storing restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

6
7 *History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;*

8 *Eff. January 1, 1984;*

9 *Amended Eff. November 1, ~~1989~~ 1989;*

10 *Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1906

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, when referring to another rule, do not repeat the rule's title. Here, please refer to "Rule .1905 of this Section."

At line 7, please define "institutional facilities."

At line 8, should "Board" be capitalized?

In (c), how does the Board approve a contingency plan? What factors are considered?

In (c), what is FORM PC-417? Are the contents or substantive requirements of this form in rule in accordance with G.S. 150B-2(8a)(d)?

At line 9, please define "sufficient detail."

At line 10, define "adequate."

Why is (d) necessary? See .1901(4).

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 1, 2020

02 NCAC 09L .1906 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1906 LARGE STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the Storage Facility Requirements: RUP as set forth in Rule .1905 of this Subchapter, the requirements of this Rule shall apply to large storage facilities.

(b) Pesticides shall not be stored within 200 feet of the property line of any schools, hospitals, nursing homes, or other institutional facilities.

(c) The person responsible for a large storage facility shall have a board-approved contingency plan (FORM PC-417) for the facility. The contingency plan shall be submitted to the Board in sufficient detail so that the Board can determine if the plan is adequate.

(d) Pesticide applicators storing 10,000 pounds or more of restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, ~~1989~~. 1989;
Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1907

DEADLINE FOR RECEIPT: May 15, 2020

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 (a), what do you mean by "shall be designed to minimize hazards?" Are you requiring anything specific?

At line 5, is it necessary to say "sudden or non-sudden?"

At line 7, please define "immediately."

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 1, 2020

02 NCAC 09L .1907 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1907 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, spills, or any other unplanned sudden or non-sudden release of pesticides or pesticide contaminated materials to air, soil, or surface water.

(b) The provisions of this plan shall be carried out immediately whenever there is a fire, explosion, spill, or other release of pesticides or pesticide contaminated materials which could threaten human health or the environment.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;

Eff. January 1, 1984;

Amended Eff. November 1, ~~1989~~. 1989;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1908

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, is it necessary to say "sudden or non-sudden?"

In (b), please delete or define "Where appropriate."

At line 8, please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line, please consider removing the parentheses and incorporating this language into the text of the Rule.

At line 9, who is "qualified?"

At line 10, please define "thoroughly knowledgeable."

In (d), what information may be "deemed necessary" by the Board? How is this determination made? What factors are considered?

At line 14, is this form in rule in accordance with 150B-2(8a)(d)?

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 1, 2020

02 NCAC 09L .1908 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1908 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to respond to fires, explosions, spills, or any other sudden or non-sudden release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.

(b) Where appropriate, the plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(c) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as alternates who can be reached at any time of the day, seven days a week, and who are thoroughly knowledgeable of the facility, including operational and emergency procedures. Where more than one person is listed, one shall be named as primary alternate, and others shall be listed in the order in which they will assume responsibility as alternates.

(d) The plan shall include any additional information deemed necessary by the Board and specified on Contingency Plan for Pesticide Storage FORM PC-417.

*History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, ~~1984~~. 1984;
Readopted Eff. May 1, 2020.*

02 NCAC 09L .1909 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1909 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

- (1) maintained at the facility; and
- (2) submitted to the North Carolina Pesticide Board in care of the North Carolina Department of Agriculture,
Pesticide Section.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, ~~1984~~. 1984;
Readopted Eff. May 1, 2020.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1913

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of necessity and clarity. This Rule states "These Rules shall be effective January 1, 1984." This is repetitive of the effective date contained in the history note and is therefore unnecessary. The Rule also does not specify whether "these Rules" refers to the Rules of this Section or the Rules of this Subchapter, making it unclear.

Ashley Snyder
Commission Counsel

02 NCAC 09L .1913 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION

These Rules shall become effective January 1, 1984. These Rules shall be in force and binding on all existing or future pesticide storage facilities.

History Note: Authority G.S. 143-441; 143-461;

Eff. January 1, ~~1984-1984~~;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1914

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 4, please add a comma after "filler" in both places.

At line 5, who are the "authorized employees?" Is this determined by their employer?

At line 6, what "security precautions" are you requiring?

At line 8, please change "must" to "shall."

At line 8, what is the "appropriate signal word?" How is the appropriate word determined?

At line 9, please define "directly."

At line 10, please delete or define "firmly."

At line 12, please delete or define "readily."

In (d), who does this Rule apply to otherwise? Please remember rule titles are not considered when interpreting rules.

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 1, 2020

02 NCAC 09L .1914 is readopted as published in 34:11 NCR 906:

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

(a) Outlets, filler and access ports shall be locked at all times when not in use. Keys to the outlet, filler and access ports shall be in the possession of the purchaser and authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility utilizing security precautions that prevent unauthorized access to the bulk pesticide storage area.

(b) All bulk pesticide storage tanks must display the appropriate signal word as shown on the label on all sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.

(c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"

(d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-441; 143-461;

Eff. April 1, 2009. 2009;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .2001

DEADLINE FOR RECEIPT: May 15, 2020

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:

Please consider using quotations to set off defined terms in definitions rules.

At line 12, please delete or define "potentially."

At line 15, please delete or define "effectively."

At line 17, please replace "and/or" with either "and" or "or."

At line 29, please add a comma after "pipe."

At line 31, define "automatically."

At line 34, define "regularly."

On page 2, line 2, please define "primarily."

At line 5, please define "regularly."

At line 8, define "automatically."

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 1, 2020

02 NCAC 09L .2001 is readopted as published in 34:11 NCR 906 as follows:

SECTION .2000 - CHEMIGATION

02 NCAC 09L .2001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) Antisiphon Device. Any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.
- (2) Automatic Low Pressure Drain. A self-activating device to drain that portion of an irrigation pipeline whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) Check Valve. A device to provide a positive closure of an irrigation pipeline or pesticide injection line that effectively prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.
- (4) Chemigation. Any process whereby pesticides are applied to land, crops, and/or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.
- (5) Chemigation and/or Irrigation Water Supplies. Any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.
- (6) Flow Interrupter. A device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.
- (7) Functional Systems Interlock. A system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.
- (8) Inspection Port. A place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) Irrigation. The act of mechanically supplying water to land, crops and/or plants.
- (10) Irrigation System. Any device or combination of devices having hose, pipe or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow automatically prevents any backflow to the water supply.
- (11) Public Water System
 - (a) a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:
 - (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.

(b) It is either a "community water system" or a "non-community water system":

(i) Community Water System. A public water system which serves at least 15 service connections or regularly serves at least 25 year-round residents.

(ii) Non-Community Water System. A public water system which is not a community water system.

(12) Vacuum Relief Valve. A device to automatically relieve or break vacuum in an irrigation pipeline.

History Note: Authority G.S. 143-463; 143-466;

Eff. January 1, ~~1987~~. 1987;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .2002

DEADLINE FOR RECEIPT: May 15, 2020

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 (a) what "systems" are you referring to? Please remember titles are not used when interpreting rules.

At line 4, please define "effective."

At line 7, define "directly."

Why is the language at lines 6-8 necessary? It repeats .2003(a).

In (c), please either delete "such" or define which safety devices you are referring to here if you are referring to specific types of safety devices.

In (d), please delete or define "effectively."

In (d), please either make each item in the list a complete sentence beginning with a capital letter or end each sentence with a semicolon and add an "and" at the end of (6).

At line 32, please define "normally."

At line 33, please define "positively."

On page 2, line 4, consider replacing "could" with "may."

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 1, 2020

02 NCAC 09L .2002 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS

(a) These systems shall be fitted with effective antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide supplies during times of irrigation system failure or equipment shutdown. If a public water system is being utilized as the water source, the chemigation system shall not be connected directly to it. See requirements in Rule .2003 of this Section.

(b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.

(c) Such safety devices or valves shall be installed between:

- (1) the irrigation system pump discharge and the point of pesticide injection into the irrigation system, and
- (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).

(d) Such systems shall effectively meet the following criteria:

- (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set.
- (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port.
- (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter.
- (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to prevent the drainage from reentering the water supply.
- (5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A normally closed solenoid-operated valve or other similar device is an acceptable method to positively prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown.
- (6) a check valve shall be located on the pesticide injection line between the point of pesticide injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container.

1 (7) a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the
2 interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump
3 and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide
4 injection into the irrigation system, could be electrically connected to the pesticide injection unit to provide
5 for its shutdown in the event of low water pressure.

6
7 *History Note:* *Authority G.S. 143-463; 143-466;*
8 *Eff. January 1, ~~1987~~. 1987;*
9 *Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .2003

DEADLINE FOR RECEIPT: May 15, 2020

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 (a), please define "directly."

In (b), please change "must" to "shall."

In (c), please delete or define "complete."

In (c), please consider removing the parentheses and incorporating the language into the text of the 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 1, 2020

02 NCAC 09L .2003 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM

(a) An irrigation system used for pesticide application shall not be connected directly to a public water system.

(b) The water from a public water system must be discharged into a reservoir tank.

(c) There shall be a complete physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

History Note: Authority G.S. 143-463; 143-466;

Eff. January 1, ~~1987~~. 1987;

Readopted Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .2004

DEADLINE FOR RECEIPT: May 15, 2020

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:

At line 5, please define "proper function." Do you mean "shall be installed and maintained in accordance with manufacturer's instructions during chemigation?"

At line 7, please delete or define "properly."

In (c), line 8, please add a comma after "practices."

At line 8, what other "similar reasons" are you referring to?

Under what circumstances does a modification or change in design warrant "the use or placement of equipment in lieu of that specified herein?" How does the Board make this determination? What factors are considered?

At line 9, by "in lieu of that specified herein" what equipment are you referring to? Is it the equipment in Paragraphs (a) and (b)? If so, please make that clear.

At line 9, do you mean "may" or "shall?" If you mean "may," under what circumstances does the Board allow these changes? What factors are considered?

At line 11, please refer to "this Rule."

At line 12, do you mean "may" or "shall?"

At line 15, please change "and/or" to either "and" or "or."

At lines 14-16, I take it the stop use order will specify the types of repairs required?

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 1, 2020

02 NCAC 09L .2004 is readopted as published in 34:11 NCR 906 as follows:

02 NCAC 09L .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS

(a) Antisiphon devices and a functional systems interlock, used for chemigation purposes, shall be installed and maintained to ensure proper function during chemigation.

(b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly.

(c) If modifications or changes in design, technology, irrigation practices or other similar reasons warrant the use or placement of equipment in lieu of that specified herein, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this regulation.

(d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs and/or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

History Note: Authority G.S. 143-463; 143-466;

Eff. January 1, ~~1987~~. 1987;

Readopted Eff. May 1, 2020.

02 NCAC 09L .2201 is readopted as published in 34:11 NCR 907 as follows:

**SECTION .2200 - INTERIM PROTECTION MEASURES FOR THE CAROLINA HEELSPLITTER
MUSSEL**

02 NCAC 09L .2201 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

History Note: Authority G.S. 143-458; 143-466(a);

Eff. July 1, ~~2009~~, 2009;

Readopted Eff. May 1, 2020.

02 NCAC 09L .2202 is readopted as published in 34:11 NCR 907 as follows:

02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, ~~2009~~, 2009;
Readopted Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .2203

DEADLINE FOR RECEIPT: May 15, 2020

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:

Throughout this Rule, please refer to "Rule .2202 of this Section" instead of "02 NCAC 09L .2202."

At line 4, is it still necessary to say "Effective March 1, 2010?"

At line 5, please change "must" to "shall."

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 1, 2020

02 NCAC 09L .2203 is readopted as published in 34:11 NCR 907 as follows:

02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS

Effective March 1, 2010, the application of any of the following pesticides in the vicinity of the areas identified in 02 NCAC 09L .2202 must not occur within the areas identified by the codes in the following table:

Pesticide Active Ingredient	Code
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x
Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x
Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x
Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x
Trichlorfon	2x

Code/Limitations:

- (1) 1x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in 02 NCAC 09L .2202, this pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, ~~2009~~ 2009;
Readopted Eff. May 1, 2020.*