

02 NCAC 09L .0101 was published as a readoption in 34:11 NCR 903 but it now being repealed as follows: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 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.
Repealed Eff. September 1, 2020.*

02 NCAC 09L .0515 was published as a readoption in 34:11 NCR 904 but is now being repealed as follows: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.

Repealed Eff. September 1, 2020.

02 NCAC 09L .0529 was published as a readoption in 34:11 NCR 905 but is now being repealed as follows: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;

Repealed Eff. September 1, 2020.



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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July 16, 2020

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

Re: Objection to Rules 02 NCAC 09L .0101, .0515, and .0529

Dear Ms. Waggett:

At its meeting this morning, the Rules Review Commission objected to 02 NCAC 09L .0101, .0515, and .0529 in accordance with G.S. 150B-21.10.

The Commission objected to Rule 02 NCAC 09L .0101 for lack of necessity. The 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.

The Commission objected to Rule 02 NCAC 09L .0515 for ambiguity because the Rule does not specify which “applicants” or types of licensure it was 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.

The Commission also objected to Rule 02 NCAC 09L .0529 for lack of necessity. The Rule states it applies “prior to January 1, 2017.” Since the contents of the Rule are no longer in effect, the Commission objected due to lack of necessity.

Please respond to these objections in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Ashley Snyder
Commission Counsel

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An Equal Employment Opportunity Employer

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.

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.*

RRC STAFF OPINION

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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.

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.*

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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.

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>.

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