

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 48A .0401

DEADLINE FOR RECEIPT: Friday, December 11, 2020

NOTE: This request when viewed on computer extends 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), line 7, why do you need “consequently”?

On line 7, G.S. 106-421 states that the destruction is required by the individual and if that doesn't occur, then the Commissioner and agents can act.

§ 106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement.

No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

So, should this state “subject to destruction upon notice by the Commissioner” or “subject to destruction pursuant to G.S. 106-421”?

In (b), lines 8 and 9, please state “his or her”

In the History Note, why are you citing to G.S. 106-284.18?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: November 25, 2020

02 NCAC 48A .0401 is readopted as published in 35:05 NCR 560 as follows:

SECTION .0400 - WHITE PINE BLISTER RUST

02 NCAC 48A .0401 CURRANT AND GOOSEBERRY PLANTS

(a) All wild and cultivated currant and gooseberry plants in North Carolina are hereby declared to be dangerous plants and are consequently subject to destruction by the Commissioner of Agriculture or authorized agents wherever found.

(b) No person shall knowingly and willfully keep upon his premises any currant or gooseberry plant, or permit such plants to mature seed or otherwise multiply upon his land.

History Note: Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420;

Eff. January 1, ~~1985~~. 1985;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 48A .0402

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

In (a), line 5, why do you need "consequently"?

On line 5, G.S. 106-421 states that the destruction is required by the individual and if that doesn't occur, then the Commissioner and agents can act. So, should this state "subject to destruction upon notice by the Commissioner" or "subject to destruction pursuant to G.S. 106-421"?

In (b), lines 6 and 7, please state "his or her"

In the History Note, why are you citing to G.S. 106-284.18? That is in the Article "Vegetable Plant Law" How would that relate to pine trees?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 25, 2020

02 NCAC 48A .0402 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 48A .0402 INFECTED PINES

(a) All five-leafed pines infected with white pine blister rust in North Carolina are hereby declared to be dangerous plants and are consequently subject to destruction by the Commissioner of Agriculture or authorized agents wherever found.

(b) No person shall knowingly and willfully keep upon his premises any five-leafed pines infected with white pine blister rust, or permit such plants to mature seed or otherwise multiply upon his land.

History Note: Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420;

Eff. January 1, ~~1985~~, 1985;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 48A .0612

DEADLINE FOR RECEIPT: Friday, December 11, 2020

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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 the Submission for Permanent Rule Form:

- *In Box 2, please insert the correct citation*
- *In Box 5, please check "No"*

The statutes cited in the History Note to establish authority for this Rule establish that the Commissioner is the sole rulemaking authority. Please either provide additional authority to establish that the Board is the rulemaking authority or provide proof that the Commissioner adopted this Rule as part of his service on the Board. If the Commissioner is the authority, please update Box 1 of the Submission for Permanent Rule form to reflect that.

In (a), what else will the notice be if not a notice to destroy? Is it a notice of quarantine? Or should "may" on line 4 be "shall"?

On line 5, state "his or her"

On line 5, who will "deem" the "potential" here?

On lines 5 and 6, replace "such" with "the"

On line 6, who determines what is necessary? The form operator?

On line 7, replace "Such" with "The"

On line 9, delete "which is" so it reads "Any field adjacent to..."

And upon what grounds will the Commissioner make the determination for these adjacent fields? I understand that the Commissioner has authority to do this, but what factors will be used to make this decision? Is it on a case-by-case basis?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 25, 2020

In (b), line 11, and (c), line 16, state “provisions of Paragraph (a)”

In (b), line 13, replace “such” with “the” (both places)

On line 14, state “provisions of Paragraph (c)”

What is your specific statutory authority to impose the fine on line 13-15? Is it G.S. 106-65.74?

In (c), who is the Plant Pest Administrator? What is this person’s contact information?

On line 17, what do you mean by “application”? Is this just applying or is there a form that is used? If it’s a form, then the contents must be within Rule or law [see G.S. 150B-2(8a)(d)]

On line 18, state “his or her”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 25, 2020

02 NCAC 48A .0612 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 48A .0612 COTTON STALK DESTRUCTION

(a) Upon notification in writing by the Commissioner of Agriculture, any farm operator may be ordered to destroy standing cotton stalks in his fields when it is deemed that such cotton stalks constitute a potential for harboring overwintering population of boll weevils. Such cotton stalk destruction shall consist of shredding or disking as necessary to eliminate standing stalks. Such notification will designate which fields are subject to stalk destruction. Designation of fields subject to stalk destruction will be based on the capturing of at least two adult boll weevils between September 15 and December 15 of a calendar year. Any field which is adjacent to a designated field may also be subject to stalk destruction upon notification by the Commissioner.

(b) Any farm operator subject to the provisions of (a) shall destroy the cotton stalks before February 1 of the following calendar year. Any cotton stalks not destroyed before February 1 shall be treated as regulated articles for the purposes of G.S. 106-65.73. Any field containing such stalks on February 1 shall be quarantined until such stalks are destroyed. Any farm operator who fails to comply with this Rule, absent a waiver as provided in (c), shall be assessed a penalty fee of five dollars (\$5.00) per acre.

(c) Any farm operator subject to the provisions of (a) who cannot destroy cotton stalks before February 1 due to emergency or hardship may apply for a waiver. The application shall be made in writing before January 1 to the Plant Pest Administrator stating the conditions justifying the waiver. The Plant Pest Administrator shall notify the farm operator of his decision within two weeks after receipt of such application. Waivers shall be approved only if justified by emergency or hardship due to meteorological conditions, economic conditions, or other causes beyond the control of the farm operator.

History Note: Authority G.S. 106-65.73; 106-65.74; 106-65.77;

Eff. December 1, 1985;

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

Readopted Eff. January 1, 2021.