

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.1 that the Pesticide Board intends to amend the rule cited as 02 NCAC 09L .0502.

Codifier of Rules approved this rule as an emergency rule effective March 25, 2021 and received for publication the following notice and proposed temporary rule on March 15, 2021.

Public Hearing:

Date: March 30, 2021

Time: 10:00 a.m.

Location: (877) 402-9753 (access code 8868148)

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

Particularly, this emergency rule will allow for the timely distribution and introduction of newly approved pesticides into the state that mitigate COVID-19. Currently, existing requirements classify these pesticides as restricted use pesticides, requiring their sale only by licensed pesticide dealers and application only by licensed applicators. These additional requirements make the pesticides' timely introduction into the state and access to the general public unfeasible. Therefore, for the reasons stated above, this Board finds it necessary and in the best interest of the State to not classify pesticides approved by the EPA for use in preventing, destroying, or mitigating COVID-19 as restricted use pesticides under the Board's Rules in 02 NCAC 09L .0502(3). This Board further finds that timing is the of essence in responding to COVID-19 and that emergency rulemaking are necessary.

Comment Procedures: Comments from the public shall be directed to: James Burnette, NCDA&CS Structural Pest Control and Pesticides Division, 1090 Mail Service Center, Raleigh, NC 27699-1001. The comment period begins March 22, 2021 and ends April 13, 2021.

CHAPTER 09 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .0500 - PESTICIDE LICENSES

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

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

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

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

Authority G.S. 143-440(a),(b); 143-441; 143-458.