

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Pesticide Board intends to adopt the rule cited as 02 NCAC 09L .1807 and amend the rules cited as 02 NCAC 09L .1002, .1402.

Proposed Effective Date: February 1, 2009

Public Hearing:

Date: November 12, 2008

Time: 1:00 p.m.

Location: Governor Martin Building, N.C. State Fairgrounds, 1025 Blue Ridge Road, Raleigh, N.C. 27607

Reason for Proposed Action: *These revisions are required to implement the recommendations of the 2008 Governor's Task Force on Preventing Agricultural Pesticide Exposure and the requirements of Senate Bill 847, "Prevent Agricultural Pesticide Exposure."*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed rules by submitting a written statement of objection(s) to James W. Burnette, Jr., Secretary, N.C. Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.*

Comments may be submitted to: *James W. Burnette, 1090 Mail Service Center, Raleigh, NC 27699-1090, phone 919-733-3556, fax 919-733-9796, email james.burnette@ncagr.gov*

Comment period ends: December 15, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 09 – FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

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 there under 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 be fulfilled sooner if requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. 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, day, date, and approximate time the pesticide was applied; 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 specify);
- (9) total gallons or pounds per acre of the final tank mix applied per acre;

- (10) name of pilot;
- (11) signature of person completing this record.

- (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

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

- ~~(d)~~(e) The pilot shall, prior to application, learn and confirm:
 - (1) the boundaries and exact location of the target area(s),
 - (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

~~(e)~~(f) Spray and spreading equipment shall be thoroughly 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.

~~(f)~~(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.

~~(g)~~(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.

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

~~(i)~~(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.

~~(j)~~(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.

~~(k)~~(l) The contractor or pilot shall immediately notify the Secretary of the Board, or designated alternate, 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,

Authority G.S. 143-458; 143-463; 143-466.

SECTION .1400 - GROUND APPLICATION OF PESTICIDES

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:

- (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 was treated with pesticide(s);
- (5) approximate number of acres or size or number of other object(s) treated;
- (6) ~~date(s) pesticide(s) was applied;~~ the year, month, 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).

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

SECTION .1800 - WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

02 NCAC 09L .1807 SPECIFIC INFORMATION ABOUT APPLICATIONS

(a) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required:

- (1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.
- (2) After the application information referenced in 1807(a)(1) and the other information in Sections 170.122(c)(3) and 170.222(c)(3) has been displayed for the required period of time in Section 170.122(b) and 170.222(b), the

agricultural employer shall maintain the information for a period of two years from the specific time of day when each pesticide application was completed. Such information shall be available for inspection and copying by the Board or its agents upon their request.

(b) In addition to information contained in Section 170.224(b), the handler employer must make the agricultural owner aware of the specific time of day when each pesticide application was completed. The agricultural employer shall display the information immediately and shall make it part of the record required to be maintained in Subparagraph (a)(1) and (2) of this Rule.

Authority G.S. 143-466(a).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Home Inspector Licensure Board/North Carolina Department of Insurance intends to amend the rule cited as 11 NCAC 08 .1103.

Proposed Effective Date: February 1, 2009

Public Hearing:

Date: November 14, 2008

Time: 9:00 a.m.

Location: Office of State Fire Marshal, 322 Chapanoke Road Raleigh, N.C.

Reason for Proposed Action: The amendment emphasizes to the client the need to read the entire report.

Procedure by which a person can object to the agency on a proposed rule: The Home Inspector Licensure Board/Department of Insurance will accept written objections to this rule until the expiration of the comment period on December 15, 2008.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919) 733-6495, email esprenkel@ncdoi.net

Comment period ends: December 15, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive

those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .1100 - N.C. HOME INSPECTOR STANDARDS OF PRACTICE AND CODE OF ETHICS

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
(A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
(B) Describe what services shall be provided and their cost; and
(C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
(2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
(3) Submit a written report to the client that shall:
(A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
(B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
(C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
(D) State whether the condition reported requires repair or subsequent