

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Pesticide Board

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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:

All of these rules were published in N.C. Register on June 3, 2024. The "Instructions on How to Demand a Public Hearing" (Volume 38-Issue 23-pg. 1483) say "Any person may request a public hearing on the proposed rules by submitting a request in writing no later than May 15th, 2024". How is this not a violation of G.S. 150B-21.9 (a)(4)?

How will the RRC know if a hearing would've been requested if the deadline wasn't incorrect in the N.C. Register?

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0503

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following 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 (b), what are the “activities” you are referring to?

In (c), what is “Adoption by Reference” and why is it in all caps? Did you mean incorporation by reference pursuant to 150B-21.6? If so, in line 8, replace “adopts” with “incorporates”. You don’t need to add the title “Incorporation by Reference”, just implement the requirements of 150B-21.6 into the rule.

In line 8, add a comma after “reference”.

In line 11, add “and editions” after “amendments”.

In line 12, I’ve been unable to access the materials on the website, www.gpoaccess.gov/cfr/index.html, with three different computers/devices. How do you ensure that the materials are accessible to the regulated public?

In (d), does “noncertified” mean the same as non-licensed? Consider adding “licensed” before “pesticide”.

In (d), please consider restructuring this section to be clear and unambiguous. Here are some suggestions:

In (1), line 14, delete “requirements for the” and add “shall:” at the end.

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

In (A), line 15, delete "the supervising pesticide applicator must". What is the meaning of "practical"?

In line 16, add a comma after "state". In line 17 and elsewhere, why is "and labeling" necessary? Is this in addition to the actual "label"?

In (B), delete "the supervising pesticide applicator must". Add a comma after "category" and after ".0505". Add "Rule" before "02".

Delete everything in line 20. Begin line 21 by adding "(C)". Add a colon after "pesticide" on line 22.

On line 23, replace "(A)" with "(1)" and indent "(1)" inside of "(C)".

The new "(1)" will say "the non-certified applicator has satisfied the qualification requirements under Paragraph (e) of this Rule;" Also, Paragraph (e) only requires that "one of the following qualifications" are met. This seems to be conflicting and it's unclear as to what is required under (e).

In line 24, delete "including the following:". Add "(2)" before "the noncertified" and move "(2)" under the new "(1)".

In line 26, delete "and" and add "(3)" before "the noncertified" and move "(3)" under the new "(2)". Punctuate "(3)" with a semicolon.

In (3), lines 29-31, delete all of the text.

In line 32, replace "(A)" with "(4)". Delete "The supervising pesticide applicator must" and start "(4)" with "ensure..." and punctuate it with a semicolon.

In line 34, replace "(B)" with "(5)". Start "(5)" with "where..." and punctuate it with a semicolon.

On pg. 2, line 3, replace "(C)" with "(6)". Delete "The supervising pesticide applicator must" and start "(6)" with "provide..." and punctuate it with a semicolon. In lines 8-9, replace "as well as that" with "and".

In line 11, replace "(D)" with "(7)". Delete "The supervising pesticide applicator must" and start "(7)" with "ensure..." and punctuate it with a semicolon.

In line 16, replace "(E)" with "(8)". Delete "The supervising pesticide applicator must" and start "(8)" with "ensure..." and punctuate it with a semicolon.

In line 19, replace "(F)" with "(9)". Delete "The supervising pesticide applicator must" and start "(9)" with "be physically..." and punctuate it with a semicolon.

In line 21, replace “(G)” with “(10)”. Delete “The supervising pesticide applicator must” and start “(10)” with “create and...” and punctuate it with a semicolon. In line 23, is “completed” necessary since only “verified” is used later in the Rule?

In (f), line 35, delete “and their subsections” and delete “detailed” if they are not necessary.

On pg. 3, line 1, and elsewhere, how will the Board determine what “noncertified applicators can understand”?

In (2), line 3, consider adding “at least” after “meet”.

In (3), lines 10-11, add a comma after “environment” and delete “making”.

In (E), line 20, replace the comma after “techniques” with a semicolon and delete “including that noncertified applicators must be instructed”. In line 22, add a semicolon after “water”. Delete “and that noncertified applicators must also be” to replace it with “and”.

On pg. 4, in (O), add “the” at the beginning and add a comma after “pesticide” (line 6).

In (P), line 8, add “the” at the beginning.

In (Q), replace “illness” with “illnesses;”.

In (V), line 20, add a semicolon after “site”. In lines 22-23, delete “and these instructions”.

In (X), line 30, add a comma after “condition”.

In (Y), line 35, add a comma after “persons”.

On pg. 5, line 4, replace “as outlined in the following section and subsection” with “as follows:”

In line 10, consider replacing “appropriate” with “corresponding”.

In (A), line 11, the Register says “Subparagraph” but “Paragraph” is used here. Which is intended?

In (B), lines 17-18, add a comma after “.501” and replace “at” with “in” (line 18).

In line 23, add a comma after “conducted”.

In the History Note, how does G.S. 143-460(30) provide authority for this Rule? Also, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

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Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0503 is amended as published in 38:23 NCR 1483-1486 as follows:

02 NCAC 09L .0503 PESTICIDE APPLICATORS

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

(b) The person licensed as the pesticide applicator shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

(c) ADOPTION BY REFERENCE: The North Carolina Pesticide Board hereby adopts by reference for all Pesticide Applicators, Part 171.201 "Supervision of Noncertified Applicators", of Title 40: Protection of Environment of the Code of Federal Regulations, titled "Certification of Pesticide Applicators Subpart B –Certification Requirements for Applicators of Restricted Use Pesticides.", including subsequent amendments. Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

(d) The requirements for direct supervision of noncertified applicators by pesticide applicators are as follows:

(1) The requirements for the supervising pesticide applicator:

(A) the supervising pesticide applicator must have a practical knowledge of applicable federal, state and tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of said pesticide by noncertified applicators; and

(B) the supervising pesticide applicator must be certified in each category as set forth in 02 NCAC 09L .0505 applicable to the supervised pesticide use.

(2) Requirements for the noncertified applicator include that the supervising pesticide applicator must ensure that each noncertified applicator using any pesticide under his or her direct supervision meets all of the following requirements before using any pesticide.

(A) The non-certified applicator has satisfied the qualification requirements under Paragraph (e) of this Rule, including the following: the noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides; and the noncertified applicator has met the minimum age required to use pesticides under the supervision of a pesticide applicator, as well as that a noncertified applicator must be at least 18 years old.

(3) Use-specific conditions that must be met for a noncertified applicator to use any pesticide. The supervising pesticide applicator must ensure that all the following requirements are met before allowing a noncertified applicator to use any pesticide under his or her direct supervision.

(A) The supervising pesticide applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.

(B) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the supervising pesticide applicator must ensure that any noncertified applicator has clean, labeling-required

1 personal protective equipment in proper operating condition and that the personal
2 protective equipment is worn and used correctly for its intended purpose.

3 (C) The supervising pesticide applicator must provide to each noncertified applicator
4 instructions specific to the site and pesticide used, and these instructions must include
5 labeling directions, precautions, and requirements applicable to the specific use and site,
6 and how the characteristics of the use site (e.g., surface and ground water, endangered
7 species, local population) and the conditions of application (e.g., equipment, method of
8 application, formulation) might increase or decrease the risk of adverse effects, as well as
9 that the supervising pesticide applicator must provide this information in a manner that the
10 noncertified applicator can understand.

11 (D) The supervising pesticide applicator must ensure that before each day of use, equipment
12 used for mixing, loading, transferring, or applying pesticides is in proper operating
13 condition as intended by the manufacturer and can be used without risk of reasonably
14 foreseeable adverse effects to the noncertified applicator, other persons, or the
15 environment.

16 (E) The supervising pesticide applicator must ensure that a means to immediately communicate
17 with the supervising pesticide applicator is available to each noncertified applicator using
18 any pesticide under his or her direct supervision.

19 (F) The supervising pesticide applicator must be physically present at the site of the use being
20 supervised when required by the product labeling.

21 (G) The supervising pesticide applicator must create and verify the existence of the records
22 required by Paragraph (g) of this Rule of the qualification method being
23 completed/verified.

24 (e) Before any noncertified applicator uses any pesticide under the direct supervision of a pesticide applicator, the
25 supervising pesticide applicator must ensure that the noncertified applicator has met at least one of the following
26 qualifications:

27 (1) the noncertified applicator has been trained in accordance with Paragraph (f) of this Rule within the
28 last 12 months;

29 (2) the noncertified applicator has met training requirements for an agricultural handler under 40 CFR
30 170.501 within the last 12 months;

31 (3) the noncertified applicator has met the requirements established by a certifying authority that meet
32 or exceed the standards in Subparagraph (f)(3) of this Rule; or

33 (4) the noncertified applicator is currently a certified applicator but is not certified to perform the type
34 of application being conducted or is not certified in North Carolina.

35 (f) Guidelines for the noncertified applicator training program and their subsections shall be detailed as follows.

36 (1) General noncertified applicator training must be presented to noncertified applicators orally from
37 written materials or audio visually. The information must be presented in a manner that the

1 noncertified applicators can understand. The person conducting the training must be present during
2 the entire training program and must respond to the noncertified applicators' questions.

3 (2) The person who conducts the training must meet one of the following criteria:

4 (A) be currently certified as a pesticide applicator;

5 (B) be currently designated as a trainer of certified applicators or pesticide handlers by EPA,
6 the certifying authority, or a state, tribal, or federal agency having jurisdiction; or

7 (C) have completed an EPA-approved pesticide safety train-the-trainer program for trainers of
8 handlers under 40 CFR part 170.

9 (3) The noncertified applicator training materials must include information on how the noncertified
10 applicators can protect themselves, other people, and the environment before, during and after
11 making a pesticide application. The noncertified applicator training materials must include, at a
12 minimum, the following:

13 (A) potential hazards from toxicity and exposure that pesticides present to noncertified
14 applicators and their families, including acute and chronic effects, delayed effects, and
15 sensitization;

16 (B) routes through which pesticides can enter the body;

17 (C) signs and symptoms of common types of pesticide poisonings;

18 (D) emergency first aid for pesticide injuries or poisonings;

19 (E) routine and emergency decontamination procedures, including emergency eye flushing
20 techniques, including that noncertified applicators must be instructed that if pesticides are
21 spilled or sprayed on the body, to immediately wash or to rinse off in the nearest
22 appropriate location with clean water, and that noncertified applicators must also be
23 instructed to wash or shower with soap and water, shampoo hair, and change into clean
24 clothes as soon as possible;

25 (F) how and when to obtain emergency medical care;

26 (G) after working with pesticides, to wash hands before eating, drinking, using chewing gum
27 or tobacco, or using the toilet;

28 (H) wash or shower with soap and water, shampoo hair and change into clean clothes as soon
29 as possible after working with pesticides;

30 (I) potential hazards from pesticide residues on clothing;

31 (J) wash clothes worn while working with pesticides before wearing them again and wash
32 them separately from other clothes;

33 (K) do not take pesticides or pesticide containers used at work to your home;

34 (L) potential hazards to children and pregnant women from pesticide exposure;

35 (M) remove work boots or shoes worn during a pesticide application before entering your home,
36 and remove work clothes worn during a pesticide application and wash or shower before
37 physical contact with children or family members;

- 1 (N) how to report suspected pesticide use violations to the appropriate state or tribal agency
2 responsible for pesticide enforcement;
- 3 (O) format and meaning of information contained on pesticide labels and in labeling applicable
4 to the safe use of the pesticide, including the location and meaning of the restricted use
5 product statement, how to identify when the labeling requires the licensed applicator to be
6 physically present during the use of the pesticide and information on personal protective
7 equipment;
- 8 (P) need for, and appropriate use and removal of, personal protective equipment;
- 9 (Q) how to recognize, prevent, and provide first aid treatment for heat-related illness;
- 10 (R) safety requirements for handling, transporting, storing, and disposing of pesticides,
11 including general procedures for spill cleanup;
- 12 (S) environmental concerns such as drift, runoff, and wildlife hazards;
- 13 (T) restricted use pesticides may be used only by a pesticide applicator or by a noncertified
14 applicator working under the direct supervision of a pesticide applicator;
- 15 (U) the supervising pesticide applicator must be present at the site only when required by the
16 product labeling;
- 17 (V) the supervising pesticide applicator's responsibility to provide to each noncertified
18 applicator instructions specific to the site and pesticide used, and that these instructions
19 must include labeling directions, precautions, and requirements applicable to the specific
20 use and site and how the characteristics of the use site (e.g., surface and ground water,
21 endangered species, local population, and risks) and the conditions of application (e.g.,
22 equipment, method of application, formulation, and risk of adverse effects), and these
23 instructions must be provided by the supervising pesticide applicator in a manner the
24 noncertified applicator can understand;
- 25 (W) the supervising pesticide applicator's responsibility to ensure that each noncertified
26 applicator has access to the applicable product labeling at all times during its use;
- 27 (X) the supervising pesticide applicator's responsibility to ensure that where the labeling of a
28 pesticide product requires that personal protective equipment be worn for mixing, loading,
29 application, or any other use activities, each noncertified applicator has clean, labeling
30 required personal protective equipment in proper operating condition and that the personal
31 protective equipment is worn and used correctly for its intended purpose;
- 32 (Y) the supervising pesticide applicator's responsibility to ensure that before each day of use,
33 equipment used for mixing, loading, transferring, or applying pesticides is in proper
34 operating condition as intended by the manufacturer, and can be used without risk of
35 reasonably foreseeable adverse effects to the noncertified applicator, other persons or the
36 environment; and

(Z) the supervising pesticide applicator's responsibility to ensure that a means to immediately communicate with the supervising pesticide applicator is available to each noncertified applicator using any pesticide under his or her direct supervision.

(g) All applicators must adhere to the provisions of recordkeeping as outlined in the following section and subsection.

(1) Before allowing a noncertified applicator to make any pesticide application under their direct supervision, the supervising pesticide applicator must create or verify the existence of records documenting that each noncertified applicator has the qualifications required in paragraph (e) of this section. For each noncertified applicator, the records must contain the information appropriate to the method of qualification.

(A) If the noncertified applicator was trained in accordance with Paragraph (e) (1) of this Rule, the record must contain all of the following information: the noncertified applicator's printed name and signature; the date the training requirement in Paragraph (d) of this Rule was met; the name of the person who provided the training; and the title or a description of the training provided.

(B) If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501 in accordance with Subparagraph (e)(2) of this Rule, the record must contain all of the information required at 40 CFR 170.501 (d)(1).

(C) If the noncertified applicator qualified by satisfying the requirements established by the certifying authority, as described in Subparagraph (e)(3) of this Rule, the record must contain the information required by the certifying authority.

(D) If the noncertified applicator is an otherwise certified applicator who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in Subparagraph (e)(4) of this Rule, the record must include all of the following information: the noncertified applicator's name; the noncertified applicator's certification number; the expiration date of the noncertified applicator's certification; and the certifying authority that issued the certification.

(2) The supervising pesticide applicator must create or verify the existence of the record containing the information in Subparagraph (g)(1) of this Rule before allowing the noncertified applicator to use any pesticides under his or her direct supervision.

(h) The pesticide applicator supervising any noncertified applicator must have access to records documenting the information required in Subparagraph (g)(1) of this Rule at the supervising pesticide applicator's principal place of business for three years from the date the noncertified applicator uses the pesticide.

*History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30);
Eff. February 1, 1976;*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0504

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (1)(a) and (b), capitalize “crop” and “livestock” at the beginning of each section.

In (a), replace “is the category applied to” with “means” (line 7) and delete “as well as on” (line 10). In line 8, add “the” before “production”.

In (b), replace “is the category applied to” with “means”.

In line 14, where is your statutory authority to regulate veterinarians?

In (i), line 18, replace “this subcategory applies to the application of pesticides to” with “means”.

In (ii), line 21, replace “this subcategory applies to the application of pesticides to” with “means”. The Administrative Rule Style Guide prohibits defining a term using that term. You can’t use the word “poultry” to define “poultry”.

In (iii), line 23, replace “this subcategory applies to the application of pesticides to” with “means”.

In (2), line 25, delete “category of pesticide applicators”.

In (3), line 27, delete “the category of pesticide applicators”.

In (4), line 31, delete “the category of pesticide applicators”.

In line 32, please delete or define “purposefully.”

In (5), lines 36- 37, delete “the category of pesticide applicators.”

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

In (6), line 41, delete "the category of".

In (7), line 48, delete "the category of persons".

In (8), line 50, delete "the category of".

In (9), line 53, delete "the category of".

In line 54, add a comma after "pesticides".

In line 56, add a semicolon after "products". Delete "and those".

In (10), lines 62-63, delete "the category of pesticide applicators".

In (11), line 71, delete "the category of individuals". In line 73, add a comma after "treated".

In (12), line 77, delete "individuals". In line 78, what is "growing media"?

In (15), add "Rule" before citing each of the rules.

In the History Note, how does G.S. 143-437 not provide authority for this Rule? Also, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

02 NCAC 09L .0504 is amended as published in 38:23 NCR 1486-1488 as follows:

02 NCAC 09L .0504 DEFINITIONS

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

- (1) ~~"Agricultural pest control";~~"Agricultural pest control" and its subcategories shall apply to the following:
 - (a) ~~Plant. Includes~~crop pest control is the category applied to pesticide applicators using or supervising the use of pesticides in production of agricultural crops, 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-livestock pest control is the category applied to~~ Includes pesticide applicators using or supervising the use of pesticides on animals, ~~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. The following subcategories are defined as follows:
 - (i) livestock: this subcategory applies to the application of pesticides to domesticated animals being raised as an agricultural commodity or for the purpose of producing an ag commodity;
 - (ii) poultry: this subcategory applies to the application of pesticides to poultry or poultry operations; and
 - (iii) small animal: this subcategory applies to the application of pesticides to pets or the areas where they are confined.
- (2) "Forest pest control" ~~includes~~means the category of pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest ~~seed-producing areas~~seed production.
- (3) "Ornamental and turf pest control" ~~includes~~means the category of pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental ~~trees, shrubs, flowers, and turf.~~plants and turf.
- (4) ~~"Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.~~
"Aquatic pest control" means the category of 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 Items (6) and (7) of this Rule.
- (5) ~~"Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide intended to be applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.~~ "Right-of-way pest control" means the category of 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.
- (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.~~ "Public health pest control" means the category of state, tribal, federal, or other

- governmental employees and contractors using or supervising the use of pesticides in government sponsored public health programs for the management and control of pests having medical and public health importance.
- (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.~~ "Commercial Public Health pest control" means the category of persons using or supervising the use of pesticides commercially for the management and control of pests having medical and public health importance.
- (8) ~~"Regulatory pest control" includes~~ means the category of state, tribal, federal, or other governmental employees who use or supervise the use of pesticides in government-sponsored programs for the control of regulated pests.
- (9) ~~"Demonstration and research pest control" includes~~ means the category of the following:
- (a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration, including 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.~~ "Seed treatment" means the category of pesticide applicators using or supervising the use of pesticides on seeds in seed treatment facilities.
- (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.~~
- "Wood treatment" means the category of individuals applying pesticides to wood products such as crossties, poles, logs, shingles, posts or other wood products that are not part of a structure when treated and are or will be exposed to insects, fungi, marine pests, or weather. This category does not include treatment for the control of termites and other wood destroying organisms in houses or in an area as pretreatment prior to the construction of a structure.
- (12) ~~"Growing media" includes a substance or substances through which roots grow and extract water and nutrients.~~ "Soil and growing media fumigation pest control" means 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.

(13) "Aerial pest control" means the category of commercial applicators who use or supervise the use of pesticides applied by fixed or rotary wing aircraft.

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

(15) "Noncertified applicator" means any person who does not meet the requirements set forth in 02 NCAC 9L .0503 to be a pesticide applicator, but who has met the requirements set forth in 02 NCAC 09L .0503(d)(2) , and who is using a pesticide under the direct supervision of a pesticide applicator in accordance with 02 NCAC 9L .0503(c).

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

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In line 4, add a comma after “reference”.

In line 7, add “and editions” after “amendments”.

In line 7, I’ve been unable to access the materials on the website, www.gpoaccess.gov/cfr/index.html, with three different computers/devices. How do you ensure that the materials are accessible to the regulated public?

In line 9 and elsewhere, what is the definition of “classifications” as it’s used in this context?

In line 11 and elsewhere, what is meant by “shall be created” as it’s used in this context? Does this mean that these categories can’t be used in North Carolina?

In (2), lines 12-13, add a comma after “subclassifications”, after “Rule”, and after “Carolina”.

In line 22 and elsewhere, is “further” necessary? If not, please delete it.

In the History Note, how does G.S. 143-437 not provide authority for this Rule? G.S. 143-460(33) is the definition of “Public Operator”. How does this statute provide authority for this Rule?

Also, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0505 is amended as published in 38:23 NCR 1488-1489 as follows:

02 NCAC 09L .0505 CLASSIFICATIONS

(a) ADOPTION BY REFERENCE: The North Carolina Pesticide Board hereby adopts by reference for all Pesticide Applicators, Part 171.101 "Commercial applicator certification categories" of Title 40: Protection of Environment of the Code of Federal Regulations, titled "Certification of Pesticide Applicators Subpart B—Certification Requirements for Applicators of Restricted Use Pesticides," including subsequent amendments. Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html. The following classifications shall apply in North Carolina:

(1) neither the sodium cyanide predator control nor the sodium fluoroacetate predator control categories shall be created in North Carolina;

(2) additional classifications and their respective subclassifications not established by the federal guidelines referenced in Paragraph (a) of this Rule that shall be created in North Carolina are as follows:

(A) commercial public health pest control;

(B) wood treatment;

(C) livestock pest control, which shall include the subsections of livestock; poultry; and small animals.

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

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

~~(A)(a) agricultural pest control;~~ agricultural pest control, including the subsections of crop pest control and livestock pest control (including further subcategories of livestock, poultry, and small animals);

~~(B)(b) forest pest control;~~

~~(C)(c) ornamental and turf pest control;~~

~~(D)(d) aquatic pest control;~~

~~(E)(e) right-of-way pest control;~~

~~(F)(f) public health pest control;~~

~~(g) regulatory pest control;~~

(G) commercial public health 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;~~

(H) ~~regulatory pest control;~~

(i) ~~seed treatment;~~

(I) ~~demonstration and research pest control, with the subsections of agricultural crop pest control; agricultural livestock pest control (including further subcategories of livestock, poultry, and small animals); forest pest control; ornamental and turf pest control; aquatic pest control; right-of-way pest control; commercial public health pest control; public health pest control; regulatory pest control; wood treatment; spoil and growing media fumigation pest control; aerial pest control;~~

(j) ~~wood treatment; and~~

(J) ~~seed treatment;~~

(k) ~~soil and growing media fumigation pest control;~~

(K) ~~wood treatment;~~

(L) ~~soil and growing media fumigation pest control;~~

(M) ~~aerial pest control;~~

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

(A)(a) ~~agricultural pest control: plant;~~ crop pest control;

(B)(b) ~~forest pest control;~~

(C)(c) ~~ornamental and turf pest control;~~

(D)(d) ~~aquatic pest control;~~

(E)(e) ~~right-of-way pest control;~~

(F)(f) ~~public health pest control;~~

(g) ~~regulatory pest control; and~~

(G) ~~commercial public health pest control;~~

(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.~~

1 (H) regulatory pest control;

2 (I) demonstration and research pest control, which shall include the subsections of agricultural
3 pest control; crop pest control; forest pest control; ornamental and turf pest control; aquatic
4 pest control; right-of-way pest control; regulatory pest control; public health pest control;
5 and aerial pest control;

6 (J) aerial pest control.

7
8 *History Note:* *Authority G.S. 143-452(d); 143-460(29); 143-460(33);*
9 *Eff. February 1, 1976;*
10 *Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976;*
11 *Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0506

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (4), line 24, capitalize "service".

In line 27, add a semicolon to the end of the line.

On pg. 2, (a), consider moving "at least one county environmental health specialist must be licensed" to the beginning of (a) for a more active voice and for consistency.

In (c), lines 7-8, add a comma after "district" on both lines.

In the History Note, how does G.S. 143-437 not provide authority for this Rule? G.S. 143-455 and 143-460(27) are listed in the Register, but not here. Is that what was intended? How do these statutes provide authority for this Rule?

Also, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0506 is amended as published in 38:23 NCR 1489-1490 as follows:

02 NCAC 09L .0506 GOVERNMENTAL WORKERS

Persons in job classifications in the government unit or agencies listed below are required to be licensed as public operators:

- (1) North Carolina Department of Transportation, division of highway (14 divisions);
- (2) United States Department of Agriculture, Animal and Plant Health Inspection Service:
 - (a) staff specialist for witchweed control,
 - (b) assistant district director,
 - (c) work unit supervisors,
 - (d) designated inspectors who supervise pesticide applications,
 - (e) witchweed methods development laboratory supervisor,
 - (f) witchweed methods development assistant laboratory supervisor;
- (3) North Carolina Department of Agriculture and Consumer Services plant industry division:
 - (a) plant pest administrator,
 - (b) entomological program specialist,
 - (c) plant pathologist,
 - (d) greenhouse manager,
 - (e) area supervisors,
 - (f) pest control specialists,
 - (g) all plant pest inspectors who have supervision of pesticide applications as part of their job assignments;
- (4) North Carolina Department of ~~Environment, Health, and Natural Resources, Forest Resources Division,~~ Agriculture and Consumer Services, North Carolina Forest service staff, as outlined in their job descriptions: pest control unit:
 - (a) ~~pest control foresters,~~ foresters and forest technicians tasked with forest management duties such as writing, reviewing and approving herbicide application recommendations,
 - (b) ~~pest control staff forester,~~ forest health program head and staff;
 - (c) ~~nursery unit superintendents,~~ nursery program managers, technicians, and equipment operators; and
 - (d) ~~tree improvement unit technicians,~~ tree improvement program supervisors, technicians, and equipment operators.
 - (e) ~~forestation unit rangers;~~
- (5) ~~North Carolina Department of Environment, Health, and Natural Resources, Public Health Pest Management Section, Division of Environmental Health one medical entomologist;~~
- (5) Count boards of health and municipal governments:

- (a) in counties where the health department employees apply all the pesticides or supervise, on a weekly or more frequent basis, the activities of all municipal employees applying pesticides, at least one county environmental health specialist must be licensed;
- (b) one county environmental health specialist and one municipal employee for each municipality must be licensed in counties where the health department personnel apply pesticides but have no direct control over municipal employees who apply pesticides; and
- (c) one licensed supervisor for each municipality, sanitary district or mosquito control district must be licensed in counties where only municipal, sanitary district or mosquito control district personnel apply pesticides.

~~(6) County boards of health and municipal governments:~~

- ~~(a) In counties where the health department employees apply all the pesticides or supervise, on a weekly or more frequent basis, the activities of all municipal employees applying pesticides, at least one county sanitarian must be licensed.~~
- ~~(b) One county sanitarian and one municipal employee for each municipality must be licensed in counties where the health department personnel apply pesticides but have no direct control over municipal employees who apply pesticides.~~
- ~~(c) One licensed supervisor for each municipality, sanitary district or mosquito control district must be licensed in counties where only municipal, sanitary district or mosquito control district personnel apply pesticides.~~

*History Note: Authority G.S. 143-453(c)(1); 143-460(33);
Eff. February 1, 1976;
Amended Eff. May 1, 1991; August 1, 1982; January 27, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0507

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In line 5, why is “may” used and not “shall”?

In the History Note, how does G.S. 143-437 not provide authority for this Rule? Also, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0507 is amended as published in 38:23 NCR 1490 as follows:

02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS

Each person acting as a pest control consultant as defined in G.S. 143-460(27) shall be licensed. The categories requiring a license may include the following:

- (1) agricultural pest control:
 - (a) ~~plant; and~~ crop pest control;
 - (b) ~~animal;~~ livestock pest control;
- (2) forest pest control;
- (3) ornamental and turf pest control;
- (4) aquatic pest control;
- (5) right-of-way pest control;
- (6) public health pest control;
- (7) regulatory pest control;
- (8) seed treatment;
- (9) wood treatment; and
- (10) soil and growing media fumigation pest control.

History Note: Authority G.S. 143-455; 143-460(27);

Eff. February 1, 1976;

Amended Eff. June 1, 2016; November 1, 1984; October 28, 1978; January 27, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0512

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In the History Note, how does G.S. 143-437 not provide authority for this Rule? How does G.S. 143-452(f) and 143-455(c) provide authority for this Rule?

Also, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0512 is amended as published in 38:23 NCR 1490 as follows:

02 NCAC 09L .0512 AGE REQUIREMENT

~~Each applicant for a license must be 18 years old by January 1 of the calendar year for which he has submitted an application for a license provided, however, in hardship cases persons below the age of 18 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 to sell or apply pesticides. A pesticide applicator must be at least 18 years old.~~

History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);

Eff. February 1, 1976;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0522

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In line 4, do you mean “may” or “shall”?

In line 7, add a period after “U” and after “S”. Also, what is the process for Board approval? Is this set forth in another rule?

In line 9, there appears to be an extra space between “40 CFR”.

In lines 34-35, add a comma after “categories” and after “Rule”.

In line 11, what is the process for Board approval? Is this set forth in another Rule?

In line 33, do you mean “may” or “shall?”

On pg. 2, line 12, do you mean “may” or “shall?”

In line 14, what materials have been approved by the Board? Is this in another Rule?

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .0522 is amended as published in 38:23 NCR 1490-1491 as follows:

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) 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 171.103, and "Standards for recertification of certified applicators," as contained in 40 CFR 171.107. 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
(1) agricultural pest control – crop pest control	10 credits per 5-year period;
(2) public health	6 credits per 5 year period
(2) agricultural pest control – livestock pest control	6 credits per 5-year period;
(3) forest	6 credits per 5 year period
(3) forest pest control	6 credits per 5-year period;
(4) right of way	4 credits per 5 year period
(4) ornamental and turf pest control	10 credits per 5-year period;
(5) regulatory	6 credits per 5 year period
(5) aquatic pest control	6 credits per 5-year period;
(6) ag pest animal	6 credits per 5 year period
(6) right of way pest control	4 credits per 5-year period;
(7) ornamental and turf	10 credits per 5 year period
(7) public health pest control	6 credits per 5-year period;
(8) seed treatment	3 credits per 5 year period
(8) commercial public health pest control	6 credits per 5-year period;
(9) ag pest plant	10 credits per 5 year period
(9) regulatory pest control	6 credits per 5-year period;
(10) demonstration and research	10 credits per 5 year period
(10) demonstration and research pest control	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) and (a)(11) through (a)(14) 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.~~

~~(11) seed treatment 3 credits per 5-year period;~~

~~(12) wood treatment 4 credits per 5-year period~~

~~(12) wood treatment 4 credits per 5-year period;~~

~~(13) soil and growing media fumigation 3 credits per 5-year period~~

~~(13) soil and growing media fumigation 3 credits per 5-year period; and~~

~~(14) aerial 4 credits per 5-year period.~~

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

Amended Eff. June 1, 2016; November 1, 1984;

Readopted Eff. August 1, 2020.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .0531

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), what is “Adoption by Reference” and why is it in all caps? Did you mean incorporation by reference pursuant to 150B-21.6? If so, in line 4, replace “adopts” with “incorporates”.

In line 4, add a comma after “reference”.

In line 7, add “and editions” after “amendments”.

In line 7, I’ve been unable to access the materials on the website, www.gpoaccess.gov/cfr/index.html, with three different computers/devices. How do you ensure that the materials are accessible to the regulated public?

In (b), line 10, add a comma before “as” and before “must”.

In line 14, add a comma after “biology”. In line 15, add a semicolon after “control” and delete “as well as”.

In line 16, add a semicolon after “treated” and after “pets”.

In line 18, add a comma after “anatomy”, delete “and”, and add a comma after “physiology”.

In line 19, add a semicolon after “each” and delete “as well as”.

In line 20, add a semicolon after “treatment” and delete “and”.

In line 21, replace “as well as” with “and”. Add a semicolon after “each” and add “and” before “proper”.

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

In lines 25-26, add a comma after “housed” and add a semicolon after “pests”. Also, delete “as well as the required knowledge which shall include” and add a semicolon after “potential”.

In lines 30-31, add a semicolon after “pests”. Also, delete “as well as the required knowledge of” and add a semicolon after “potential”.

In lines 34-35, add a semicolon after “pests”. Also, delete “as well as the required knowledge of” and add a semicolon after “potential”.

In the History Note, how does G.S. 143-437 not provide authority for this Rule? How does G.S. 143-460 and 143-455 provide authority for this Rule?

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

02 NCAC 09L .0531 is adopted as published in 38:23 NCR 1491-1492 as follows:

02 NCAC 09L .0531 PESTICIDE LICENSE EXAMINATION REQUIREMENT

(a) ADOPTION BY REFERENCE: The North Carolina Pesticide Board, hereby adopts by reference for all Pesticide Applicators, Part 171.103 (a) through (e) “Standards for certification of commercial applicators” of Title 40: Protection of Environment of the Code of Federal Regulations, titled "Certification of Pesticide Applicators Subpart B–Certification Requirements for Applicators of Restricted Use Pesticides" including subsequent amendments. Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

(b) Core requirements as described in 40 CFR 171.103 must be met for all categories and subcategories.

(c) The competency standards for additional categories established in North Carolina are as follows:

- (1) commercial public health pest control: applicators must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of their presence, their habitats, their life cycles, biology and behavior as it may be relevant to problem identification and control, as well as the required knowledge on how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures;
- (2) wood treatment: applicators must demonstrate a practical knowledge of the different types of wood, tree anatomy and physiology and be able to identify what treatment factors are specific to each, as well as common disease and insect problems and factors, such as moisture, that must be considered prior to beginning a treatment, and knowledge of the different types of wood preservatives, as well as the specific PPE requirements and cautions associated with each, proper disposal of treated and unused wood;
- (3) livestock pest control and it’s subcategories are established as follows:
 - (A) livestock: applicators must demonstrate practical knowledge of the various types of livestock, the area where they’re housed and their associated pests, as well as the required knowledge which shall include specific pesticide toxicity and residue potential, and the hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment;
 - (B) poultry: applicators must demonstrate practical knowledge of poultry, typical poultry operations and their associated pests, as well as the required knowledge of specific pesticide toxicity and residue potential, and the hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment; and
 - (C) small animal: applicators must demonstrate practical knowledge of small companion animals and their associated pests, as well as the required knowledge of specific pesticide toxicity and residue potential, and the hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

1 *History Note:* *Authority G.S. 143-449(b); 143-4523(b); 143-452(f); 143-453(b); 143-455; 143-460.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1002

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In line 5, add a semicolon after "15".

In line 6, add "and" before "rules", delete "and regulations", and add a semicolon after "thereunder".

In line 6, please provide the full citation for the "Federal Aviation Regulations" you are referring to.

In line 7, delete "a provision of" and make "Rules" lowercase.

In (b), line 9, add a comma after "thereunder".

In line 10, what is the meaning of "designated to another person(s) this Section"? Please be specific and cross-reference the Rule or section you are referring to. What is the authority that allows this designation?

In line 13, consider replacing "show" with "contain".

In line 29, add a comma after "operation". In line 30, consider replacing "show" with "contain".

In lines 30-32, consider: ". . . using the same pesticide, or another pesticide compatible with the previous pesticide, according to the manufacturer's recommendations, was previously used in the equipment and will not result in any adverse effects, or created by the drainage or disposal of waste materials, and will not create an adverse effect as defined in this Section".

In line 33, what are you referring to that is "defined in this Section"? Please be more specific and cross-reference if necessary.

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

In line 37, delete the comma after “suited”.

On pg. 2, line 3, add a comma after “dripping” and “backflow”. Delete “and”.

In line 7, add a comma after “tank”, delete “or”, and add a comma after “spray”.

In (l), how soon after the emergency or accidental release shall the Secretary be notified?

In the History Note, how does G.S. 143-147 not provide authority for this Rule? How does G.S. 143-463 provide authority for this Rule?

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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 amended as published in 38:23 NCR 1492 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 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 rules promulgated thereunder except where the responsibility is designated to another person(s) this Section.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application, unless requested sooner 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, 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 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 the 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, 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 created by the drainage or disposal of waste materials and conducted with methods which will not create 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

1 aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking
2 and dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow
3 spillage, dripping and backflow or create a hazard from vapors or drift.

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

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

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

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

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

21
22 *History Note: Authority G.S. 143-458; 143-463; 143-466;*

23 *Eff. July 2, 1976;*

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

25 *Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1003

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In the History Note, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1003 is amended as published in 38:23 NCR 1492-1493 as follows:

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a ~~pesticide(s)~~pesticide or pesticides aerially under such conditions that drift from ~~pesticide(s)~~pesticide 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;*

- 1 *Amended Eff. January 1, 1985;*
- 2 *Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1102

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (5), add "02 NCAC 09L" after "Rule".

In the History Note, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1102 is amended as published in 38:23 NCR 1493-1494 as follows:

02 NCAC 09L .1102 DEFINITIONS

The following definitions apply in this Section.

- (1) "Certified applicator" means any individual who is certified to use or supervise the use of any restricted use pesticide.
- ~~(2) "Private pesticide applicator" means a person who uses or supervises the use of any restricted use pesticide under the following conditions:~~
- (2) "Noncertified applicator" means any person who is not certified in accordance with G.S. 143-440(b) to use or supervise the use of restricted use pesticides, but who has met the requirements set forth in 40 CFR 171.201(c), and who is using a restricted use pesticide under the direct supervision of a certified applicator in accordance with 40 CFR 171.201.
 - ~~(a) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or~~
 - ~~(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.~~
- ~~(3) "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:~~
 - ~~(a) the pest problems and pest control practices associated with agricultural operations;~~
 - ~~(b) storage, use, handling, and disposal of pesticides and their containers;~~
 - ~~(c) labels and labeling information;~~
 - ~~(d) local environmental situations to consider during application to avoid contamination;~~
 - ~~(e) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;~~
 - ~~(f) protective clothing, equipment, and other worker protection standards;~~
 - ~~(g) federal and State pesticide laws, rules, and regulations and the applicator's related legal responsibility;~~
 - ~~(h) current agricultural production related pesticide technology; and~~
 - ~~(i) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification including EPA guidance, extension publications and court decisions.~~
- (3) "Private pesticide applicator" means a person who uses or supervises the use of any restricted use pesticide under the following conditions:
 - (a) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or

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

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

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

- 13 (a) ~~—aquatic;~~
- 14 (b) ~~—agricultural pest animal;~~
- 15 (c) ~~—agricultural pest plant;~~
- 16 (d) ~~—ornamental and turf;~~
- 17 (e) ~~—forest;~~
- 18 (f) ~~—seed treatment; and~~
- 19 (g) ~~—soil and growing media fumigation.~~

20 (4) ~~"Private pesticide applicator certification standards review" means a training session designed by~~
21 ~~the North Carolina State University Pesticide Safety Extension Specialist to advance a private~~
22 ~~pesticide applicator's practical knowledge in areas such as:~~

- 23 (a) the pest problems and pest control practices associated with agricultural operations;
- 24 (b) storage, use, handling, and disposal of pesticides and their containers;
- 25 (c) labels and labeling information;
- 26 (d) local environmental situations to consider during application to avoid contamination;
- 27 (e) recognition of poisoning symptoms and procedures to follow in case of a pesticide
28 accident;
- 29 (f) protective clothing, equipment, and other worker protection standards;
- 30 (g) federal and state pesticide laws, rules, and regulations and the applicator's related legal
31 responsibility;
- 32 (h) current agricultural production-related pesticide technology; and
- 33 (i) sources of advice and guidance necessary for the safe and proper use of each pesticide
34 related to his or her certification including EPA guidance, extension publications and court
35 decisions.

36 ~~These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other~~
37 ~~individuals approved by the Pesticide Board on a case-by-case basis, based upon the individual's education,~~

1 experience, and knowledge of Sub-items (4)(a) through (i) of this Rule.

2 (5) "Continuing certification credit" means one hour of continuing certification training. Such training
3 may be offered during grower meetings, seminars, short courses, or other presentations taught by
4 Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored
5 training organizations. Private applicators may also earn continuing certification credits by
6 attending training sessions for which credit has been assigned in the following commercial
7 categories and subcategories as set forth in Rule .0505(b):

8 (a) agricultural pest control;

9 (i) crop pest control;

10 (ii) livestock pest control;

11 (b) forest pest control;

12 (c) ornamental and turf pest control;

13 (d) aquatic pest control;

14 (e) seed treatment;

15 (f) soil and growing media fumigation pest control; and

16 (g) aerial pest control.

17
18 *History Note: Authority G.S. 143-440; 143-453;*

19 *Eff. December 1, 1976;*

20 *Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978;*
21 *April 20, 1977;*

22 *Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1103

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), what is “Adoption by Reference” and why is it in all caps? Did you mean incorporation by reference pursuant to 150B-21.6? If so, in line 4, replace “adopts” with “incorporates”.

In line 8, add “and editions” after “amendments”.

In line 12, I’ve been unable to access the materials on the website, www.gpoaccess.gov/cfr/index.html, with three different computers/devices. How do you ensure that the materials are accessible to the regulated public?

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .01103 is amended as published in 38:23 NCR 1494 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.~~ ADOPTION BY REFERENCE. The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 171.105 (a) through (i) "Standards for certification of private applicators" of Title 40: Protection of Environment of the Code of Federal Regulations, titled "Certification of Pesticide Applicators Subpart B—Certification Requirements for Applicators of Restricted Use Pesticides." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

(b) ~~Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator. A passing grade shall be 70 percent.~~

(c) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator.

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;

Readopted Eff. August 1, 2020.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1105

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), what is “Adoption by Reference” and why is it in all caps? Did you mean incorporation by reference pursuant to 150B-21.6? If so, in line 4, replace “adopts” with “incorporates”.

In line 9, add “and editions” after “amendments”.

In line 12, I’ve been unable to access the materials on the website, www.gpoaccess.gov/cfr/index.html, with three different computers/devices. How do you ensure that the materials are accessible to the regulated public?

In (b), it’s unclear what “provisions of recordkeeping” you are referencing. Is it only the provisions contained in this Rule? Please be specific and cross reference any other applicable rules if necessary.

In (b), (1), is the sentence “For each...as follows” necessary? It appears to be repeated in the next sentence and is duplicative.

In (A), (B), (C), and (D), add “CFR” after “with” and “in”.

In (c), line 20, add “or she” after “he”.

In (c), line 19 says the certified applicator “shall be available to the non-certified applicator” but “direct supervision” is required elsewhere in the Rule. Please clarify.

In (d), line 24, add a comma after “site”.

In (d)(1) and (2), under what circumstances will the label suffice? How is this determination made? What factors are considered?

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1105 is amended as published in 38:23 NCR 1495 as follows:

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

~~(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 aware of all directions for use and cautions for safe use and application of any restricted use pesticide he or she may be directed to apply.~~

(a) ADOPTION BY REFERENCE: The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 171.201 (a) through (d) of Title 40: Protection of Environment of the Code of Federal Regulations, titled "Certification of Pesticide Applicators Subpart C–Supervision of Noncertified Applicators." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

~~(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) written or printed directions for applying the restricted use pesticide, which may include pesticide product labeling;~~
- ~~(2) written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons and unreasonable adverse effects on the environment which may include pesticide product labeling; and~~
- ~~(3) instructions for 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 be considered direct communication with the certified applicator.~~

(b) All certified applicators must adhere to the provisions of recordkeeping as outlined in the following chapter and subchapters of this section.

- (1) Before allowing a noncertified applicator to make a restricted use pesticide application under their direct supervision, the supervising certified applicator must create or verify the existence of records documenting that each noncertified applicator has the qualifications required in 40 CFR 171.201(c). For each noncertified applicator, the records must contain the information appropriate to the method of qualification as follows. For each noncertified applicator, the records must contain the information appropriate to the method of qualification as provided in Parts (b)(1)(A) through (b)(1)(D) of this Rule.

- (A) If the noncertified applicator was trained in accordance with 171.201(c)(1), the record must contain all of the following information: the noncertified applicator's printed name and signature; the date the training requirement in 171.201(c) was met; the name of the person who provided the training; and the title or a description of the training provided.

1 (B) If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501
2 in accordance with 171.201(c)(2), the record must contain all of the information required
3 in 40 CFR 170.501 (d)(1).

4 (C) If the noncertified applicator qualified by satisfying the requirements established by the
5 certifying authority, as described in 171.201(c)(3), the record must contain the information
6 required by the certifying authority.

7 (D) If the noncertified applicator is a certified applicator who is not certified to perform the
8 type of application being conducted, or not certified in the jurisdiction where the use will
9 take place, as described in 171.201(c)(4), the record must include all of the following
10 information: the noncertified applicator's name; the noncertified applicator's certification
11 number; the expiration date of the noncertified applicator's certification; and the certifying
12 authority that issued the certification.

13 (2) The certified applicator must create or verify the existence of the record containing the information
14 in Subparagraph (b)(1) of this Rule before allowing the noncertified applicator to use any restricted
15 use pesticides under his or her direct supervision.

16 (3) The certified applicator supervising any noncertified applicator must have access to records
17 documenting the information required in Subparagraph (b)(1) of this Rule for three years from the
18 date the noncertified applicator use the pesticide.

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

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

26 (1) detailed written or printed directions for applying the restricted use pesticide (pesticide product label
27 may suffice);

28 (2) detailed written or printed instructions describing procedures to be followed in order to prevent
29 injury to the applicator, other persons and/or unreasonable adverse effects on the environment
30 (pesticide product label may suffice); and

31 (3) detailed instructions for contacting the certified applicator under whose supervision the
32 non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.), and
33 such instructions, when followed, shall result in direct communication with the certified applicator.

34
35 *History Note: Authority G.S. 143-440;*
36 *Eff. December 1, 1976;*
37 *Amended Eff. February 5, 1978;*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1107

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

What is the “emergency certification procedure” and where is it documented? What is your agency’s authority to utilize this procedure?

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1107 is amended as published in 38:23 NCR 1496 as follows:

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators shall be ~~at least 16~~ at least 18 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 procedure.

*History Note: Authority G.S. 143-440;
 Eff. December 1, 1976;
 Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1108

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (c), add a comma after “fumigation” in line 8, delete “or”, and add a comma after “fumigation” in line 9.

In (c), line 10, consider adding “corresponding” before the second “subclass”.

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1108 is amended as published in 38:23 NCR 1496 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)~~ 1102(5) of this Section.

(c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation or aerial 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;
Readopted Eff. August 1, 2020.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1109

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In the History Note, how does G.S. 143-437 and 143-453 not provide authority for this Rule?

In the History Note, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1109 is amended as published in 38:23 NCR 1496 as follows:

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

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

- (1) "Soil and growing media 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 commodity 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.
- (3) "Aerial" means private pesticide applicators applying restricted use pesticides from an aircraft onto 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;
Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1303

DEADLINE FOR RECEIPT: Thursday, October 3, 2024.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In line 4, what is meant by “may be made available”? In line 4, what is meant by “under the supervision”? Is this the same as “under the direction and supervision” in line 6? Please clarify and be consistent.

In line 10, what is a “structural pest control licensee”? Also, add a comma after “licensee”.

In (b), what exemption applies? Please connect (b) to what’s described in (a) if that’s what is intended.

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1303 is amended as published in 38:23 NCR 1496 as follows:

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to ~~ana noncertified~~ employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the noncertified employee is acting under the direction and supervision of said applicators or licensees and provided further that said noncertified employee is ~~16 years of age or older~~ at least 18 years old.

(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 ~~ana noncertified~~ 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 noncertified employee to sign his or her name and list the certification number of employer under whose direction and supervision the noncertified 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;
Readopted Eff. August 1, 2020.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1305

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (3), please add commas as follows: “, as set out in Rule .1302 of this Section, or noncertified employees...”

In (4), in line 10, add a comma after “applicator”.

In the History Note, add “Amended Eff.” followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .01305 is amended as published in 38:23 NCR 1496-1497 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 Rule .1302 of this Section or noncertified employees as set out in Rule .1303 of this Section;
- (4) certification or license number of certified or licensed applicator as set out in 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;~~
- ~~(6) categories held by certified or licensed applicator;~~
- ~~(7) EPA registration number;~~
- ~~(7) product brand name;~~
- ~~(8) number of individual containers;~~
- ~~(8) EPA registration number;~~
- ~~(9) size of individual containers; and~~
- ~~(9) number of individual containers;~~
- ~~(10) total quantity sold.~~
- ~~(10) size of individual containers; and~~
- ~~(11) total quantity sold.~~

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Pesticide Board

RULE CITATION: 02 NCAC 09L .1402

DEADLINE FOR RECEIPT: Thursday, October 3, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In line 4, add a comma after "equipment" and after "years".

In line 5, consider replacing "show" with "contain".

In the History Note, add "Amended Eff." followed by the desired date. The Register says October 1, 2024, but the earliest potential date is November 1, 2024.

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

Travis Wiggs
Rules Review Commission Counsel
Sent September 19, 2024

02 NCAC 09L .1402 is amended as published in 38:23 NCR 1497 as follows:

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All pesticide applicators, as defined in G.S. 143-460 utilizing ground equipment shall keep for three years records created within 72 hours after each application of all applications of restricted use 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) that was treated with pesticide(s);
- (5) approximate acres, size, or number of other object(s) treated;
- (6) 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).

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