

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

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0904

DEADLINE FOR RECEIPT: November 8, 2022

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 the authority to regulate persons or entities other than certified applicators, licensees, and entities issued licenses? G.S. 106-65.25(b) covers unlawful conduct and G.S. 106-65.23 and 106-65.29 covers rules and regulations, but neither seems to permit regulating unaffiliated persons or entities.

Remove all "(s)" at the end of words to avoid ambiguity on whether the word is singular or plural. See lines 8, 9, 14, 16, and 22.

In (e), is this not already covered under other laws? Does G.S.106-65.28(a)(1) not cover this?

In (f), insert an Oxford comma in after "certified applicator".

Does G.S.106-65.28(a)(1) not cover this?

Also, in line 22, include an "or" after "public health engineer,".

In Line 23, to what "required professional and educational standards" is the Committee referring? For example, if holding oneself out as "horticulturalist" is not regulated, what standard would be applicable? What educational standard is applicable in any of these examples? Does the committee mean a particular educational degree from an accredited institution? Absent the identification of specific standards, this is vague and subjective.

In (h), consider "...any material containing false statements or misrepresentations concerning..."

In (i), what is a "[company] name style" found in lines 30 through 31 and 34?

In (j), does not a "certified applicator" already have a "pest control" license? What is the difference?

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2022

Place commas outside of quotes, especially when defining terms, in order to avoid ambiguity later when the term is used without a comma. See line 35.

In (k), explain the circumstance under which the committee would issue an “inactive license”?

In (m), what do “drift”, “runoff”, and “target site” mean? Are these defined or commonly known terms?

In (n), what does the term “final order” mean in this context? Is a specific definition used?

Also, in line 10, remove the parentheses around “7 USC 136l(a)” and change the sentence to “Section 14(a) of 7 USC 136l(a), the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), against...”

Additionally, remove the second “7 USC 136l” reference.

Consider including G.S. 106-65.25 as authority.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2022

1 02 NCAC 34 .0904 is amended as published in 36:21 NCR 1684-1685 as follows:

2
3 **02 NCAC 34 .0904 PROHIBITED ACTS**
4

5 (a) No reference shall be made by any certified applicator, licensee, business establishment, or business entity in any
6 form of advertising that would indicate approval, endorsement, or recommendation by the Committee or by any
7 agency of the federal government or North Carolina State, county, or city government.

8 (b) The use of a structural pest control license(s), certified applicator's identification card(s), registered technician's
9 identification card(s), or licensee identification card(s) for any purpose other than identification is prohibited.

10 (c) In solicitation of structural pest control business, no licensee or his or her employees shall claim that inspections
11 or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State,
12 county, or city government unless said agency states that an inspection or treatment is required for a specific structure.

13 (d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any
14 phase(s) of work for which he or she does not hold a valid license(s) as provided for under G.S. 106-65.25(a), unless
15 said licensee shall hold a valid certified applicator's identification card or registered technician's identification card,
16 as provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license(s) covering
17 phases of structural pest control work advertised.

18 (e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is
19 prohibited.

20 (f) No licensee, certified applicator or registered technician's identification card holder shall advertise or hold himself
21 or herself out in any manner in connection with the practice of structural pest control as an entomologist, plant
22 pathologist, horticulturist, public health engineer, sanitarian, unless such person shall be qualified in such field(s) by
23 required professional and educational standards for the title used.

24 (g) No certified applicator, licensee, or his or her employees shall represent to any property owner or his or her
25 authorized agent or occupant of any structure that any specific pest is infesting ~~said any~~ property, structure, or
26 surrounding areas ~~thereof, unless strongly supporting~~ visible evidence of such infestation exists.

27 (h) No certified ~~applicator or licensee~~ applicator, licensee, or their employees shall authorize, direct, assist, or aid in
28 the publication, advertisement, distribution, or circulation of any material by false statement or representation
29 concerning the licensee's structural pest control business or business of the company with which he or she is employed.

30 (i) No certified ~~applicator or licensee~~ applicator, licensee, or their employees shall advertise or contract in a company
31 name style contradictory to that shown on the certified applicator's identification card or license certificate; provided,
32 however, when there is a sale of a business or other name change the company may use both names together for a
33 period not to exceed three years from the date of the name change or sale of business.

34 (j) No certified applicator shall use any name style on his or her certified applicator's identification card which contains
35 the words "~~exterminating~~", "exterminating," "pest control," or any other words which imply that he or she provides
36 pest control services for a valuable consideration unless he or she is a licensee or a duly authorized agent or employee
37 of a licensee.

1 (k) No licensee issued an inactive license shall engage in any phase of structural pest control under ~~such an inactive~~
2 ~~license~~ license issued by the committee.

3 (l) No licensee, certified applicator, or registered technician shall indicate on any foundation diagram prepared
4 pursuant to 02 NCAC 34 .0601 or 02 NCAC 34 .0605 that hidden damage or possible hidden damage due to any
5 wood-destroying organism exists in a structure unless there is visible evidence of infestation or damage present in the
6 immediate area of the alleged hidden damage.

7 (m) No pesticide shall be applied for the purpose of performing structural pest control when the conditions at the site
8 of application favor drift or runoff from the target site.

9 (n) A final order imposing civil liability under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide
10 Act (FIFRA) (7 USC 136l(a)) against any licensee, certified applicator, or non-certified applicator, or a criminal
11 conviction, entry of a plea of guilty, or of nolo contendere under Section 14(b) of FIFRA (7 USC
12 136l(b)), by a licensee, certified applicator, or non-certified applicator shall constitute grounds for the denial,
13 suspension, or revocation of any license or certification issued by the committee.

14
15 *History Note: Authority G.S. 106-65.23; 106-65.29;*

16 *Eff. July 1, 1976;*

17 *Readopted Eff. November 22, 1977;*

18 *Amended Eff. January 1, 1991 January 1, 1989; August 20, 1980;*

19 *Temporary Amendment Eff. July 10, 1995 for a period of 120 days or until the permanent rule*
20 *becomes effective, whichever is sooner;*

21 *Amended Eff. August 1, 2002; July 1, 1998; November 1, 1995;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*
23 *22, 2018.*

24 *Amended Eff. December 1, 2022.*