



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

March 19, 2020

Christina Waggett, Rulemaking Coordinator  
Structural Pest Control Committee  
**Sent via email only to: [christina.waggett@ncagr.gov](mailto:christina.waggett@ncagr.gov)**

Re: Extension of the Period of Review for Rules 02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206

Dear Ms. Waggett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rule in accordance with G.S. 150B-21.10. They did so in response to a request from the Structural Pest Control Committee to extend the period in order to allow the agency to address the requested technical changes and submit the revised rule at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rule or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

## Burgos, Alexander N

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**Subject:** FW: Request to Extend the Period of Review - Structural Pest Control Committee

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**From:** Waggett, Christina <[Christina.Waggett@ncagr.gov](mailto:Christina.Waggett@ncagr.gov)>

**Sent:** Friday, March 13, 2020 3:42 PM

**To:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Subject:** Request to Extend the Period of Review - Structural Pest Control Committee

Ashley,

We would like to request an extension of the period of review Structural Pest Control Committee rules 02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206. We need additional time to adequately address the technical changes for these rules.

Thank you,  
Chrissy

**Chrissy Waggett** | Federal Liaison | NC Dep't of Agriculture & Consumer Services | 919-707-3008 (direct) | 919-414-1350 (cell) | [www.ncagr.gov](http://www.ncagr.gov)

*E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.*

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0302

**DEADLINE FOR RECEIPT: March 13, 2020**

**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:

*In (a)(1), what is the "regular form?" Are its contents or substantive requirements in rule in accordance with G.S. 150B-2(8a)(d)?*

*In (a)(1), does the Division have statutory authority to prescribe the form?*

*At line 6, do you mean "may" or "shall?"*

*In (a)(1), do the second and third sentences concern only internal management of the agency? See G.S. 150B-2(8a)(a).*

*In (a)(2), under what circumstances is an application approved? Who makes this determination? What factors are considered?*

*At line 9, what are the "necessary forms?" Are the contents or substantive requirements of the forms in rule in accordance with G.S. 150B-2(8a)(d)?*

*In (a)(4), line 13, please delete or define "clear."*

*In (a)(5), line 17, what documents are you referring to?*

*At line 18, under what circumstances may documents be withdrawn? What factors are considered?*

*At lines 20 and 21, please use "his or her."*

*At line 21, do you mean "may" or "shall?" If you mean "may," under what circumstances is the applicant required to provide current information concerning his or her qualifications?*

*In (a)(7), please define "unauthorized assistance."*

*At line 24, please use "his or her."*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

*At line 29, did you intend to say “licensure” instead of “licenses?”*

*In (a)(9), how does an applicant make a “proper application” for a particular phase of structural pest control?*

*At line 32, what information does the Committee require?*

*At line 33, please us “he or she.”*

*At line 34, who are the Committee’s “authorized representatives?”*

*At line 34, do you mean “may” or “shall?”*

*At lines 34-35, what investigations does the Committee “deem necessary?” How does the Committee make this determination? What factors are considered?*

*At line 37, on what date are examinations “passed?” Does the Committee count six months from the date of the examination or the date the applicant received his or her results?*

*In (a)(11), line 37, how do applicants “make application for said licenses?”*

*On page 2, line 1, please delete or define “satisfactorily.”*

*At line 5, please delete or define “regularly.”*

*In (b)(1), what is the “regular form?” Are its contents or substantive requirements in rule in accordance with G.S. 150B-2(8a)(d)?*

*In (b)(1), does the Division have statutory authority to prescribe the form?*

*In (b)(2), what information does the Committee require?*

*At lines 11-12, are there different certified applicator identification cards?*

*At line 12, who are the Committee’s “authorized representatives?”*

*At lines 12-13, what investigations are “deemed necessary?” What factors are considered?*

*At line 15, which “documents” are you referring to?*

*At line 17, do you mean “may” or “shall?” If you mean “may” under what circumstances may the documents be withdrawn?*

*In (b)(4), how does an applicant make a “proper application?”*

*In (b)(5), on what date are examinations “passed?” Does the Committee count six months from the date of the examination or the date the applicant received his or her results?*

*At line 28, please change “must” to “shall.”*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

*In (b)(7), what are the “necessary forms?” Are their contents or substantive requirements in rule in accordance with G.S. 150B-2(8a)(d)?*

*At line 32, please delete or define “regularly.”*

*In (b)(9), (a)(5) is the same as (b)(3). Please review and delete one or the other to repetitiveness.*

*In (b)(10), is it still necessary to say “effective January 1, 1999?”*

*In (c)(1), please replace “and/or” with either “and” or “or.”*

*In (c)(3), please delete or define “properly.”*

*In (c)(3), are the contents or substantive requirements of the application form in rule in accordance with G.S. 150B-2(8a)(d)?*

*In (d)(1), please define “initially.” Do you mean “An applicant who fails to pass the license examination on his or her first attempt?”*

*In (d)(1), please delete or define “regularly.” In other words, which exams are considered “regularly scheduled” exams as opposed to non-regularly scheduled exams?*

*At line 10, what does it mean for an applicant to “intend to succeed” the deceased licensee? Who falls into this category?*

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

1 02 NCAC 34 .0302 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **02 NCAC 34 .0302 APPLICATION FOR LICENSES AND CARDS: EXAMINATION**

4 (a) Application for licenses under the provisions of G.S. 106-65.26(a) and (c):

- 5 (1) Application for examination shall be on a regular form prescribed by the Division. All examinations shall  
6 be maintained and administered by the Committee secretary. The Committee may review the examinations  
7 and make recommendations regarding changes in same.
- 8 (2) Upon approval of the application for examination, the Committee secretary shall notify the applicant of  
9 said approval and provide the necessary form(s) for the applicant to pre-register for the examination as  
10 required in Paragraph (c) of this Rule.
- 11 (3) Applications to take the examination shall be either typed or printed in ink and sworn to before a notary  
12 public or some other official authorized by law to administer oaths.
- 13 (4) A clear full-face, head, and shoulder photograph of the applicant, taken within the preceding 12 months of  
14 the date of application, and not less than two and one-half inches square, shall be attached to the  
15 application.
- 16 (5) All applications to take the examination shall be retained by the office of the Committee secretary. All  
17 documents filed in support of an application shall be kept by the office of the Committee secretary;  
18 provided, however, that the Committee may at its discretion permit such documents to be withdrawn upon  
19 substitution of a true copy. All examinations shall remain the property of the Committee.
- 20 (6) An applicant who fails to pass the license examination within 12 months of the approval of his application  
21 may be required to provide current information concerning his qualifications to take the examination to  
22 ensure that the applicant is still qualified to take the examination.
- 23 (7) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from  
24 the examination and his markings or results shall be voided and said applicant's examination fee shall be  
25 forfeited. Such applicant shall not be permitted to take a reexamination for a period of six months from the  
26 date of the examination.
- 27 (8) No person shall be admitted to the examination room except members of the Committee, the attorney for  
28 the Committee, the examining personnel, employees of the Structural Pest Control Division, and the  
29 applicants for licenses.
- 30 (9) Any applicant making a score of 70 percent or more on any license examination(s) shall be issued a license  
31 in that phase(s) of structural pest control after making proper application therefor.
- 32 (10) The applicant shall furnish such information as the Committee may require to establish that said applicant  
33 possesses qualifications as specified in G.S. 106-65.26 of the Act for the particular license(s) which he  
34 seeks. The Committee, or its authorized representatives, may make such investigations as it deems  
35 necessary with respect to the applicant's qualifications.
- 36 (11) All applicants passing the examination(s) for licenses shall apply for said licenses within six months from  
37 the date on which the examinations were passed. If such applicants fail to make application for said

1 licenses, within the specified period, such applicants shall be required to take and satisfactorily pass  
2 reexaminations covering phases of structural pest control work for which licenses were applied before said  
3 licenses are issued.

4 (12) If an applicant for a license fails an examination, he or she may review the examination at the next  
5 regularly scheduled review session.

6 (b) Application for certified applicator's identification card under the provisions of G.S. 106-65.26(a) and (b):

7 (1) Applications filed pursuant to G.S. 106-65.26(a) and (b) shall be on a regular form prescribed by the  
8 Division.

9 (2) An applicant for a certified applicator's identification card in any phase of structural pest control shall  
10 furnish such information as the Committee may require to establish that said applicant possesses  
11 qualifications as specified in G.S. 106-65.26 of the Act for the particular certified applicator's identification  
12 card which he seeks. The Committee or its authorized representatives may make such investigations as it  
13 deems necessary with respect to the applicant's qualifications.

14 (3) All applications for certified applicator's identification cards under the provisions of G.S. 106-65.26(a) and  
15 (b) shall be retained by the office of the Committee secretary. All documents filed in support of an  
16 application shall be kept by the office of the Committee secretary; provided, however, that the Committee  
17 may at its discretion permit such documents to be withdrawn upon substitution of a true copy. All  
18 examinations shall remain the property of the Committee.

19 (4) Any applicant making a score of 70 percent or more on the core certification examination and on any  
20 certified applicator's examination(s) shall be issued a certified applicator's identification card in that phase  
21 of structural pest control after making proper application therefor.

22 (5) All applicants passing the examination(s) for certified applicator's identification cards shall apply for said  
23 cards within six months from the date on which the examinations were passed. If such applicants fail to  
24 make application for said certified applicator's identification cards within the specified period, such  
25 applicants shall be required to take and satisfactorily pass reexaminations covering phases of structural pest  
26 control work for which certified applicator's identification cards were applied before said cards are issued.

27 (6) If an applicant fails to obtain a certified applicator's identification card within 12 months of passing the  
28 core examination the applicant must take and pass a reexamination before being eligible for the card.

29 (7) Upon receipt of the application for examination, the Committee secretary shall provide the necessary forms  
30 for the applicant to pre-register for the examination as required in Paragraph (c) of this Rule.

31 (8) If an applicant for a certified applicator's card fails an examination, he or she may review the examination  
32 at the next regularly scheduled review session.

33 (9) Subparagraphs (a)(2), (5), (7), and (8) of this Rule shall also apply to all applicants for certified applicator's  
34 identification cards.

35 (10) Effective January 1, 1999, completion of the Registered Technician School shall be a prerequisite for the  
36 certification examination.

37 (c) Pre-registration for license and certified applicator examination applicants:

1 (1) All applicants for the license and/or certified applicator's examination(s) shall pre-register with the  
2 Committee secretary for said examination(s) no less than 10 days prior to the date of the examination.

3 (2) Applicants who fail to pre-register shall not be permitted to take the examination.

4 (3) Pre-registration shall include a properly completed application for examination.

5 (d) Frequency of examination by license applicant limited:

6 (1) An applicant who initially fails to pass the license examination may retake the examination at any  
7 subsequent regularly scheduled examination.

8 (2) An applicant who fails to pass the second license examination shall wait a minimum of one examination  
9 between each subsequent examination: except that, in the event of a death of a licensee the applicant  
10 intending to succeed the deceased licensee may take the examination a third time prior to the first one  
11 examination waiting period.

12 (3) No applicant shall be permitted to take the examination more than six times per year nor more than two  
13 times in consecutive months, except as provided for in Subparagraph (d)(2) of this Rule.

14

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

16 *Eff. July 1, 1976;*

17 *Readopted Eff. November 22, 1977;*

18 *Amended Eff. July 1, 1998; August 3, 1992; January 1, 1991; January 1, ~~1989-1989~~;*

19 *Readopted Eff. April 1, 2020.*

20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0309

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*At line 5, please use "his or her."*

*In (a)(1), what if the five-year period ends March 1, 2020? Does reexamination have to occur between January 1 and June 30, 2019 or can reexamination occur between January 1 and February 29, 2020? Please clarify.*

*Is (a)(2) still necessary since it governs recertifications before 2002?*

*If you keep (a)(2), please change "must" to "shall" throughout (a)(2).*

*In (a)(3), what are the different certification phases? Are the phases set forth in rule?*

*Throughout (a)(3), please change "must" to "shall."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0309 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **02 NCAC 34 .0309            RECERTIFICATION**

4 (a) Certified applicators and licensees shall be certified for a five-year period. At the end of said five-year period, a certified  
5 applicator or licensee, at his discretion, may be recertified for another five-year period by choosing one of the following  
6 options:

- 7           (1)       reexamination taken between January 1, prior to the expiration of the five-year recertification period, and  
8                    June 30;
- 9           (2)       for recertification prior to July 1, 2002: earning Continuing Certification Units of formal training approved  
10                   by the Committee and received by the certified applicator during the five years immediately preceding the  
11                   expiration date of his certification. The number of CCUs required shall be as follows:
  - 12                   (A)       recertification in any one phase: five CCUs total, two of which must be solely applicable to the  
13                            phase in which recertification is desired;
  - 14                   (B)       recertification in any two phases: seven CCUs total, two of which must be solely applicable to  
15                            the first phase and two solely applicable to the second phase in which recertification is desired;
  - 16                   (C)       recertification in all three phases: nine CCUs total, two of which must be solely applicable to the  
17                            first phase, two solely applicable to the second phase, and two solely applicable to the third phase  
18                            in which recertification is desired;
  - 19                   (D)       licensees and noncommercial certified applicators must earn at least one of the required  
20                            continuing certification units established in Subparagraph (a)(2) of this Rule in each of three  
21                            years of the five-year recertification period;
  - 22                   (E)       commercial certified applicators must earn at least one of the required continuing certification  
23                            units established in Subparagraph (a)(2) of this Rule in at least two years of the five-year  
24                            recertification period;
  - 25                   (F)       continuing certification units shall not be carried forward beyond the five-year recertification  
26                            period.
- 27           (3)       for recertification after July 1, 2002: earning Continuing Certification Units during the five years  
28                   immediately preceding the expiration date of his certification. The number of CCUs required shall be as  
29                   follows:
  - 30                   (A)       recertification in any one phase: 10 CCUs total, five of which must be solely applicable to the  
31                            phase in which recertification is desired;
  - 32                   (B)       recertification in any two phases: 15 CCUs total, five of which must be solely applicable to the  
33                            first phase and five solely applicable to the second phase in which recertification is desired;
  - 34                   (C)       recertification in all three phases: 20 CCUs total, five of which must be solely applicable to the  
35                            first phase, five solely applicable to the second phase, and five solely applicable to the third phase  
36                            in which recertification is desired;

- 1 (D) licensees and noncommercial certified applicators must earn at least one of the required  
2 continuing certification units established in Subparagraph (a)(3) of this Rule in at least four years  
3 of the five- year recertification period;
- 4 (E) commercial certified applicators must earn at least one of the required continuing certification  
5 units established in Subparagraph (a)(3) of this Rule in at least three years of the five-year  
6 recertification period;
- 7 (F) continuing certification units shall not be carried forward beyond the five-year recertification  
8 period.
- 9 (b) Licensees holding an inactive license shall be subject to the requirements of this Rule.

10

11 *History Note: Authority G.S. 106-65.29;*  
12 *Eff. July 1, 1976;*  
13 *Readopted Eff. November 22, 1977;*  
14 *Amended Eff. July 1, 1998; January 1, 1989; August 1, ~~1980.~~ 1980;*  
15 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0328

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*In (a), line 4, what "required structural pest control records" are you referring to? Are you referring to the records required in Rules .0604, .0703, and .0803 of this Chapter?*

*At line 6, are you referring to inspections conducted pursuant to G.S. 106-65.30?*

*At line 6, please use "his or her."*

*In (b), line 8, by "annually" do you mean the licensee has to submit a new request annually in order to maintain records outside of the office location or do you mean a request may only be submitted annually in the event a previous request was denied?*

*At line 10, please consider deleting the word "such."*

*At line 11, please define "adversely."*

*At lines 10-11, how does the Division determine whether its ability to regulate will be adversely affected? What factors are considered?*

*In (c), line 12, please consider deleting the word "such."*

*At line 12, please define "regular business hours."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0328 is readopted as published in 34:11 NCR 907 as follows:

2

3 **02 NCAC 34 .0328 RECORDS: PESTICIDES AND APPLICATION EQUIPMENT USED**

4 (a) All required structural pest control records, pesticides, and application equipment used by the licensee or  
5 noncommercial certified applicator shall be maintained at the office location to which the license or certified  
6 applicator's card is issued. During inspections the licensee or his employee shall be present to provide access to all  
7 structural pest control records, pesticides, and application equipment, upon request by the Division.

8 (b) Notwithstanding the requirements of Paragraph (a) of this Rule, a licensee may request permission, annually,  
9 from the Division to maintain records, pesticides, and application equipment in a location other than the office  
10 location specified in Paragraph (a) of this Rule. The Division shall grant such permission if its ability to regulate the  
11 licensee will not be adversely affected by granting the request.

12 (c) All such records, pesticides, and equipment shall be made available for inspection during regular business hours  
13 upon request by the Division.

14

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

16 *Eff. August 1, 1980;*

17 *Amended Eff. January 1, 2017; July 1, 1998; January 1, ~~1989~~ 1989;*

18 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0331

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*In your history note, please consider adding S.L. 2014-100, Sec. 13.10.(b).*

*In (a), do you mean "may" or "shall?"*

*In (a), do you mean "independent contractor" instead of "individual contractor?" See S.L. 2014-100, Sec.10.10.(b)(2).*

*Throughout this rule, is direct supervision by a licensee required when performing the ancillary activities? See S.L. 2014-100, Sec. 13.10.(b).*

*In (b), to be more concise, please consider deleting "the handling of."*

*In (c), please add a period at the end of (2) and (3).*

*In (c)(4), which types of insulation are registered as pesticides? Just to be clear, are you referring to pesticides registered by the Pesticide Board pursuant to G.S. 143-442?*

*In (c)(6), please remove the parentheses and incorporate the information into the text into the rule.*

*In (c)(6), please delete or define "previously."*

*In (c)(7), does "only" modify "soil" or "for preparation of termiticide application?" Please review the commas before and after "only."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0331 is readopted as published in 34:11 NCR 907 as follows:

2

3 **02 NCAC 34. 0331            ANCILLARY ACTIVITIES**

4 (a) Persons engaged in ancillary activities may be an employee, individual contractor, or otherwise, for one or more  
5 structural pest control licensees.

6 (b) Persons conducting ancillary activities shall not engage in the handling of any duties involving pesticides.

7 (c) Ancillary activities are limited to the following duties:

8           (1)     Moving of furniture or bedding as defined in G.S. 106-65.95.

9           (2)     Cleaning, maintenance, or repair of property

10          (3)     Removing of wood debris and cellulose material

11          (4)     Removing and replacing of insulation with exclusion of removing and replacing insulation that is  
12                   registered as pesticide.

13          (5)     Moving of heaters and fans while they are powered off, before and after treatment.

14          (6)     Core drilling (soil or concrete, etc.) of locations previously marked for termite bait system  
15                   installation.

16          (7)     Trenching or excavation of soil, only, for preparation of termiticide application.

17

18 *History Note:     Authority G.S. 106-65.29;*

19 *Eff. May 19, ~~2015~~, 2015;*

20 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0501

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*At line 6, please say "his or her" instead of "his/her."*

*At lines 11-12, please consider removing the parentheses and incorporating this information into the text of the rule.*

*In (1)(A), please change "will" to "shall."*

*At line 24, under what circumstances does the Division request retreatment? How is this determination made?*

*In (1)(D), please add a comma after "warranty."*

*In (b), does the sentence "There are other species of wood destroying insects which occur in structures" meet the definition of a "rule" in G.S. 150B-2(8a) or is this purely informational?*

*In (c), do you mean in accordance with "the manufacturer's instructions on the label of the pesticide used?"*

*In (d), line 6, does the statement have to be in writing?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0501 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **SECTION .0500 - WOOD-DESTROYING ORGANISMS**  
4

5 **02 NCAC 34 .0501 WOOD-DESTROYING INSECTS: EXCLUDING SUBTERRANEAN TERMITES**

6 (a) Determining Active Infestations of Wood-Destroying Beetles. The licensee, certified applicator, or his/her  
7 representative(s) making the inspection for wood-destroying beetles shall each be responsible for determining the  
8 presence or absence of an active infestation(s). Before any work is performed for the treatment of wood-destroying  
9 insects under Paragraphs (a) and (b) of this Rule, the licensee or his or her employee shall provide the property owner or  
10 agent a written proposal including, in addition to that information in 02 NCAC 34 .0605, the name(s) of the  
11 wood-destroying insects(s) to be controlled, that part of the structure to be covered under the agreement (entire structure,  
12 understructure only, entire interior of the garage, etc.), and the basis on which the licensee, certified applicator, or his or  
13 her representative(s) determined the infestation to be active or inactive as set forth herein below:

- 14 (1) Powder Post Beetle(s) (Anobiidae, Bostrichidae and Lyctidae)
- 15 (A) The presence of frass, the color of fresh cut wood, will be acceptable as evidence of an active  
16 infestation of powder post beetles.
- 17 (B) The presence of holes alone or holes and dull colored frass shall not be acceptable evidence  
18 of an active infestation of powder post beetles except in cases where live larvae or pupae are  
19 found in wood members.
- 20 (C) If an active infestation of powder post beetles is found by the Division in any structure  
21 treated for said beetles, during or after the first complete adult beetle emergence period  
22 within 18 months of the treatment date, the licensee or certified applicator responsible for  
23 said treatment shall retreat the infested areas of the structure within 30 days of written notice  
24 from the Division. Retreatment shall be performed, upon request of the Division, in the  
25 presence of a structural pest control inspector.
- 26 (D) If a licensee provides a guarantee, warranty or service agreement in connection with a  
27 treatment for powder post beetles, the period of initial liability with regard to active  
28 infestation shall be 18 months from the original treatment date.
- 29 (2) Old House Borer (*Hylotrupes bajulus*). The presence of old house borer or oval exit holes with  
30 sawdust-like frass consisting of fine powder with tiny pellets in oval galleries in pine or other  
31 softwoods shall constitute evidence of an active infestation of the old house borer. The sound of  
32 feeding larvae of the old house borer without the presence of frass shall not constitute sufficient  
33 evidence of an active infestation.

34 (b) Identifying Other Wood-Destroying Insects. There are other species of wood-destroying insects which occur in  
35 structures. Before recommending treatment or selling a service for the prevention or control of wood-destroying insects,  
36 other than powder post beetles or old house borer, the licensee, certified applicator, or their representative(s) shall

1 identify the wood-destroying insect(s) in question and inform the property owner or his authorized representative of the  
2 identity and habits of the wood-destroying insect(s) in question.

3 (c) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.

4 (d) Pesticide applications for the prevention of wood-boring beetles shall be performed only after informing the property  
5 owner or their authorized agent in writing of the biology and conditions supporting an infestation and survival of said  
6 insects. Such notice shall include an evaluation of the condition of the structure(s) to be treated and a statement as to  
7 whether or not such condition will support an infestation by wood-boring beetles.

8

9 *History Note: Authority G.S. 106-65.29;*

10 *Eff. July 1, 1976;*

11 *Readopted Eff. November 22, 1977;*

12 *Amended Eff. August 1, 2002; July 1, 1998; January 1, 1989; August 1, ~~1980~~ 1980;*

13 *Readopted Eff. April 1, 2020.*

14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0502

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*At line 6, do you mean "may" or "shall?"*

*In (a), who is required to submit the information required by this rule? The pesticide manufacturer?*

*In (a)(1), are you requiring a written statement?*

*In (a)(1), please delete or define "primarily."*

*In (a)(2)(B), line 15, did you intend to capitalize "committee?"*

*At line 15, do you mean "may" or "shall?" If you mean "may," how does the Committee make this determination? What factors are considered?*

*At line 21, do you mean "may" or "shall?"*

*Is (d) still accurate or is the list now available online?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0502 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **02 NCAC 34 .0502 PESTICIDES FOR SUBTERRANEAN TERMITE PREVENTION AND/OR**  
4 **CONTROL**

5 (a) Only those products which bear an EPA-approved label for such use and for which the Committee has received  
6 the following information may be used for subterranean termite control:

7 (1) A statement from the pesticide registrant that the termiticide is primarily intended either for use:

8 (A) as a supplement to or in combination with other treatment(s); or

9 (B) by itself, as the sole source of termite control; and

10 (2) For termiticides under Part (a)(1)(B) of this Rule:

11 (A) data to support all efficacy claims made on the label, labeling, and any promotional  
12 materials distributed by the registrant or manufacturer; and

13 (B) if the Committee approves a termiticide under Part (a)(1)(B) and the Directions for Use  
14 differ from the requirements of Rules .0503, .0505, or .0506 of this Section, the  
15 committee may determine that treatments with those termiticides are exempt from all or  
16 part of the requirements of Rules .0503(a)(4) and (6) through (11), .0505, or .0506 of this  
17 Section, provided that the product is labeled for protection of the entire structure and the  
18 licensee provides a warranty for the control of subterranean termites on the entire  
19 structure.

20 (b) Only those products approved by the Committee based on the data submitted pursuant to Subparagraph (a)(2) of  
21 this Rule may be used for the prevention or control of subterranean termites as the sole source of termite control or  
22 prevention. The Committee shall approve the product if the data submitted supports the efficacy claims.

23 (c) Termiticides intended for use as a supplement to or in combination with other termiticides shall not be used  
24 alone without first disclosing the registrants' recommendations to the property owner or agent.

25 (d) A list of approved termiticides may be obtained by writing the North Carolina Department of Agriculture and  
26 Consumer Services, Structural Pest Control and Pesticides Division, 1090 Mail Service Center, Raleigh, NC 27699-  
27 1090, or by calling (919) 733-6100.

28  
29 *History Note: Authority G.S. 106-65.29;*

30 *Eff. July 1, 1976;*

31 *Readopted Eff. November 22, 1977;*

32 *Amended Eff. January 1, 2017; July 18, 2002; July 1, 1998; August 1, ~~1980~~, 1980;*

33 *Readopted Eff. April 1, 2020.*  
34

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0503

**DEADLINE FOR RECEIPT: March 13, 2020**

**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:

*To be clear, does this rule require licensees and certified applicators to meet these requirements during treatment or are these building requirements? For example, in (a)(1), does a licensee install access opening in crawl spaces if they do not exist or are you requiring buildings with crawl spaces to provide access openings? The same question applies for (a)(2)-(5).*

*If these are building requirements, where is your statutory authority to set these requirements? Are you restating requirements from the Building Code?*

*At line 12, what are "form boards?" Does your regulated public know?*

*In (a)(5)(B), please delete or define "reasonably."*

*In (a)(6)(A), please delete or define "immediately."*

*In (a)(9), line 13, please delete or define "immediately."*

*In (a)(10), does your regulated public know what is considered a "similar material?"*

*On page 3, line 18, do you mean "may" or "shall?"*

*In (a)(11), under what circumstances is Paragraph (b) applicable? How is this determination made? Who decides and what factors are considered?*

*In (b)(3), under what circumstances is Paragraph (a) applicable? How is this determination made? Who decides and what factors are considered?*

*In (d)(1), what if a different licensee or different termite company treated the building at the time of construction?*

*In (f), lines 22 and 24, is .0502(a)(2)(B) or .0502(a)(1)(B) the appropriate cross reference?*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

*In (f), line 22, please change “subsection” to “Part.”*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0503 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **02 NCAC 34 .0503 SUBTERRANEAN TERMITE CONTROL: BUILDINGS AFTER**  
4 **CONSTRUCTION**

5 (a) The following standards and requirements apply to the treatment of a building for subterranean termite control  
6 after construction if the building has a basement or crawl space:

- 7 (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a  
8 building and all open porches.
- 9 (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, and cloth,  
10 contacting soil in all crawl space areas. This excludes shavings or other cellulose material too  
11 small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all  
12 crawl space areas. Remove all visible form boards in contact with soil.
- 13 (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight  
14 inches of the bottom edges of subsills or supporting girders, but not below footings of foundation  
15 walls. If foundation footings are less than 12 inches below the bottom edges of joists, subsills, or  
16 supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for  
17 the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl  
18 space areas of a building.
- 19 (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step  
20 buttresses, sills, pipes, and other structures below the sill line shall be removed.
- 21 (5) Eliminate all wooden parts making contact with the building and soil, either outside or inside, as  
22 follows:
- 23 (A) No wood of any access opening shall be in contact with the soil.
- 24 (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other  
25 wood parts can be reasonably ascertained to be making direct soil contact through  
26 concrete or where there is evidence of termite activity or damage, such wood parts shall  
27 be cut off above the ground or floor level, the wood shall be removed from the concrete,  
28 and the resulting hole shall be filled with concrete or covered with a metal plate after the  
29 point of contact has been treated with a termiticide.
- 30 (C) Where wood parts such as vertical wood supports or other wood parts under a building or  
31 steps outside a building are not resting on solid masonry or concrete bases extending at  
32 least two inches above the soil surface or are in direct soil contact and such supports or  
33 steps are not removed, the supports and steps shall be cut off and set on a solid masonry  
34 or concrete footing extending at least two inches above the ground after the point of  
35 contact has been treated with a termiticide.
- 36 (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch  
37 clearance between the top of the soil and the bottom edges of the wood skirting or lattice

1 work. If the two-inch clearance is not acceptable to the property owner, it may be closed  
2 with solid masonry or concrete, but a minimum clearance of one-fourth of one inch shall  
3 be provided between the masonry or concrete and wood.

4 (E) Where houses or decks are built on pressure-treated wood pilings, pillars, or all-weather  
5 wood foundations, such pilings, pillars, and wood foundation members, including wood  
6 step supports, are not subject to Parts (a)(5)(A), (B), or (C) of this Rule.

7 (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all  
8 voids in multiple masonry foundation and bearing walls and all voids created by their placement at  
9 and a minimum distance of four feet in all directions from such evidence. Porch foundation walls  
10 shall be drilled and treated to a distance of three feet from the main foundation wall and the point  
11 of contact with any wooden members. Drill as follows:

12 (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no  
13 more than 16 inches above the footing or, for footings deeper than 16 inches,  
14 immediately above the lowest soil level.

15 (B) Test drill the main foundation wall behind any porch or slab area to determine if the  
16 porch or slab is supported by a wall whose placement creates a void between itself and  
17 the main foundation wall. If test reveals that a void exists, drill and treat all voids therein  
18 as specified in this Rule.

19 (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all  
20 voids in all multiple masonry pillars, pilasters, chimneys, and step buttresses associated or in  
21 contact with such evidence and any void created by their placement. Drill as follows:

22 (A) The distance between drill holes shall not exceed 16 lineal inches and shall be no more  
23 than 16 inches above the footing or, for footings deeper than 16 inches, immediately  
24 above the lowest soil level.

25 (B) Drilling is not required if solid concrete masonry footings of pillars, pilasters, chimneys,  
26 or step buttresses extend eight inches or more above the soil surface.

27 (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact with  
28 wood foundation members, treat dirt-filled areas with a termiticide as follows:

29 (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six  
30 inches from the building foundation at no more than 12-inch intervals, and treat soil  
31 below slab from the bottom of the slab to the top of the footing; or

32 (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the  
33 concrete slab, no more than six inches from the building foundation every 16 vertical  
34 inches starting immediately below the bottom of the slab, and rod treat all soil adjacent to  
35 building foundation from the bottom of the slab to the lowest outside grade.

36 (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent  
37 to, but not more than six inches from:

- 1 (A) all pillars, pilasters, chimneys, pressure-treated wood supports, and step buttresses;
- 2 (B) inside of foundation walls;
- 3 (C) outside of foundation walls; and
- 4 (D) the outside of foundation walls of concrete slabs over dirt-filled areas, and the entire
- 5 perimeter of a slab foundation wall from the top of the grade to the top of the footing or
- 6 to a minimum depth of 30 inches, whichever is less.

7 Where footings are exposed, treatment shall be performed adjacent to the footing but not below  
8 the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of  
9 the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent  
10 trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and  
11 within six inches of the foundation wall, through slabs or through adjoining foundation wall, and  
12 rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all  
13 known points of entry. The soil immediately around pipes and other utility conduits making  
14 contact with the structure shall be treated.

- 15 (10) Where stucco or similar materials, including extruded or expanded rigid foam insulation or similar
- 16 materials, are installed on wood and extend to or below grade, trench soil to a depth below and
- 17 under the edge of the stucco or similar materials and treat soil to establish a continuous termiticide
- 18 barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold
- 19 back the soil from making direct contact with the stucco or similar materials. Where outside slabs
- 20 on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger
- 21 holes through slabs within six inches of the foundation wall or through adjoining foundation wall,
- 22 not more than 12 inches apart, and rod treat soil below slabs. Where drain tile, french drains, or
- 23 other foundation drainage systems present a hazard of contamination outside the treatment zone,
- 24 treatment shall be performed in a manner that will not introduce termiticide into the drainage
- 25 system.

- 26 (11) The requirements set forth in Paragraph (b) of this Rule shall be followed if applicable to
- 27 basement or crawl space construction.

28 (b) The following standards and requirements shall apply to the treatment of a building for subterranean termite  
29 control after construction if the building has a slab-on-ground construction:

- 30 (1) Treat soil to establish a continuous termiticide barrier in, under, and around all traps and openings
- 31 in the slab.
- 32 (2) Drill vertically three-eighths inch or larger holes at all visible or known expansion and
- 33 construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no
- 34 more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide
- 35 barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is
- 36 less, at all known points of entry. Where wooden structural members are in contact with concrete
- 37 or masonry floors which have joints or cracks beneath the wooden structural members, including

1 wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall  
2 be drilled and treated in order to achieve treatment of the soil beneath them; however, expansion  
3 and construction joints at the perimeter of the exterior wall may be rod treated by drilling through  
4 the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.

5 (3) The requirements set forth in Paragraph (a) of this Rule shall also be followed, where applicable.

6 (c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:

7 (1) Termiticide shall be reapplied if soil test by the Division reveals that the soil is deficient in the  
8 termiticide which was applied to the soil.

9 (2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the  
10 pesticide used.

11 (d) A licensee may enter into a written agreement for the control or prevention of subterranean termites in a  
12 building after it has been constructed without having to comply with Paragraphs (a) and (b) of this Rule provided  
13 that:

14 (1) The licensee has written proof that he or she or his or her authorized agent treated the entire  
15 building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505  
16 or 02 NCAC 34 .0506 (or comparable rules in effect at the time of treatment); and

17 (2) A written agreement is issued in compliance with 02 NCAC 34 .0605.

18 (e) Paragraphs (a)(3), (a)(6) through (a)(11) and (b) of this Rule shall not apply to subterranean termite treatment  
19 performed using termite bait(s) labeled for protection of the entire structure if the licensee provides a warranty for  
20 the control of subterranean termites on the entire structure.

21 (f) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34  
22 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required  
23 to comply with 02 NCAC 34 .0503(a)(4) and (a)(6) through (11). For a list of termiticides the Committee has  
24 approved under 02 NCAC 34 .0502(a)(2)(B), see  
25 <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

26  
27 *History Note: Authority G.S. 106-65.29;*

28 *Eff. July 1, 1976;*

29 *Readopted Eff. November 22, 1977;*

30 *Amended Eff. August 1, 1980;*

31 *Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987;*

32 *Temporary Repeal Expired Eff. September 22, 1987;*

33 *Amended Eff. January 1, 1989;*

34 *Temporary Amendment Eff. January 10, 1997;*

35 *Temporary Amendment Expired Eff. October 31, 1997;*

36 *Amended Eff. January 1, 2017; July 1, 2010; August 1, 2002; July 1, ~~1998~~. 1998;*

37 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0504

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*At line 5, please delete or define "promptly."*

*At line 7, please change "he" to "he or she."*

*At line 11, please delete or define "promptly."*

*At line 13, please change "his" to "his or her."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0504 is readopted as published in 34:11 NCR 907 as follows:

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**02 NCAC 34 .0504 REPORTING DAMAGE: INFESTATION: UNINSPECTED AREAS**

(a) When inspecting for wood-destroying insects or wood-decay organisms or both, all wood members of a structure which can be ascertained by visual inspection to be damaged shall be promptly brought to the attention of the property owner or his authorized agent and shall also be indicated in writing, in the contract or agreement, by the licensee or his authorized agent.

(b) The licensee or his authorized agent shall indicate in writing, in the contract or agreement, whether or not he is responsible for the replacement, repair, or reenforcement of any or all of the wood members which were ascertained by visual inspection to be damaged.

(c) Any visible evidence of infestation of wood-destroying organisms in, on, under, or in contact with, a structure shall be promptly brought to the attention of the property owner or his authorized agent and shall be specified, in writing, in the contract or agreement, by the licensee or his authorized agent.

(d) The licensee or his authorized agent shall indicate and describe, in writing, on the contract or agreement, any area(s) of the building or crawl space of the building which have not been inspected and give the reasons for not making such inspection(s).

*History Note: Authority G.S. 106-65.29;*  
*Eff. July 1, 1976;*  
*Readopted Eff. November 22, 1977;*  
*Amended Eff. July 1, 1998; August 1, ~~1980.~~ 1980;*  
*Readopted Eff. April 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0505

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*In (a), is the "label recommended rate" the "rate recommended by the manufacturer on the pesticide's label?"*

*(b)(2) applies "after a building or structure has been completed" but (b) says the listed standards apply "during construction." Under what circumstances does (b)(2) apply? Please clarify.*

*(b)(6) applies "if concrete slabs are poured prior to treatment" but (b) says the listed standards apply "if the building has a basement or crawl space?" Are you referring to slab foundations? Do buildings with basements or crawl spaces have slab foundations? Please clarify.*

*On page 2, line 3, do you mean "may" or "shall?"*

*In (b)(6), lines 11-13, is this still accurate or can the form now be obtained online?*

*Please compare (d) – "within 60 days following the completion of the structure" and (b) – "during construction. Please clarify.*

*In (g), line 26, please replace "sticker/label" with "sticker and label" or "sticker or label."*

*On page 2, lines 35 and 37, did you intend to cross reference .0502(a)(2)(B) or .0502(a)(1)(B)?*

*At line 35, please change "subsection" to "Part."*

*At line 36, please refer to .0505 by saying "this Rule."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0505 is readopted as published in 34:11 NCR 907 as follows:

2  
3 **02 NCAC 34 .0505 SUBTERRANEAN TERMITE PREVENTION/RES BLDGS UNDER CONST**

4 (a) All treatments performed pursuant to this Rule shall only be performed at the label recommended rate and  
5 concentration.

6 (b) The following standards and requirements shall apply to the treatment of a building for subterranean termite  
7 control during construction if the building has a basement or crawl space:

8 (1) Establish a vertical termiticide barrier in the soil by trenching or trenching and rodding along the  
9 inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases,  
10 pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the  
11 top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less.  
12 Where footings are exposed, treatment shall be performed adjacent to the footing but not below  
13 the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of  
14 the footing, whichever is less. Where drain tile, french drains, or other foundation drainage  
15 systems present a hazard of contamination outside the treatment zone, treatment shall be  
16 performed in a manner that will not introduce termiticide into the drainage system.

17 (2) After a building or structure has been completed and the excavation filled and leveled so that the  
18 final grade has been reached along the outside of the main foundation wall, establish a vertical  
19 termiticide barrier in the soil by trenching or trenching and rodding adjacent to the outside of the  
20 main foundation wall with a termiticide from the top of the grade to the top of the footing or to a  
21 minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be  
22 performed adjacent to the footing and not below the bottom of the footing. The trench shall be no  
23 less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile,  
24 french drains, or other foundation drainage systems present a hazard of contamination outside the  
25 treatment zone, treatment shall be performed in a manner that will not introduce termiticide into  
26 the drainage system.

27 (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under  
28 slabs, such as patios, walkways, driveways, terraces, gutters, etc., attached to the building. The  
29 treatment shall be performed before slab is poured but after fill material or fill dirt has been  
30 spread.

31 (4) Establish a horizontal termiticide barrier in the soil under the entire surface of floor slabs, such as  
32 basements, porches, entrance platforms, garages, carports, breezeways, and sun rooms. The  
33 treatment shall be performed before slab is poured but after fill material or fill dirt has been  
34 spread.

35 (5) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and  
36 construction joints and plumbing and utility conduits, at their point of penetration of the slab or  
37 floor or, for crawl space construction, at the point of contact with the soil.

1 (6) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by  
2 02 NCAC 34 .0503(a) or (b) except that the buyer of the property or his or her authorized agent  
3 may release the licensee from further treatment of slab areas under this Rule provided such release  
4 is obtained in writing on the Subterranean Termite Sub-Slab Release Form provided by the  
5 Division. This form shall contain;

6 (A) the name of the builder;

7 (B) the address of the property;

8 (C) an identification of the slab areas not treated;

9 (D) the name and address of the structural pest control company; and

10 (E) shall be signed by the company representative and the home buyer.

11 This form may be obtained by writing the North Carolina Department of Agriculture and  
12 Consumer Services, Structural Pest Control and Pesticides Division, 1090 Mail Service Center,  
13 Raleigh, NC 27699-1090 or by calling (919) 733-6100.

14 (c) Slab-on-Ground Construction. The requirements set forth in Paragraph (a) of this Rule shall be followed, as  
15 applicable, in treating slab-on-ground construction.

16 (d) All treating requirements specified in this Rule shall be completed within 60 days following the completion of  
17 the structure, as described in Subparagraph (b)(2) of this Rule.

18 (e) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using termite  
19 bait(s) labeled for protection of the entire structure if the licensee provides a warranty for the control of subterranean  
20 termites on the entire structure.

21 (f) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using EPA  
22 registered topically applied wood treatment termiticides labeled for the protection of the entire structure if the  
23 licensee applies the material according to labeled directions and provides a warranty for the control of subterranean  
24 termites on the entire structure.

25 (g) No later than the date of the completion of any treatment performed under this Rule, the licensee or his or her  
26 employee shall place a durable sticker/label, no less than three inches square, on the meter base, circuit breaker box,  
27 inside surface of kitchen cabinet door, or other readily noticeable location providing the following information:

28 (1) The statement: "This structure was treated for the prevention of subterranean termites. A  
29 warranty has been issued to the builder. If you did not receive your copy of this warranty at  
30 closing, contact your builder or the company below for additional warranty information." in  
31 boldface type;

32 (2) The name, address, and telephone number of the company performing the treatment; and

33 (3) The date of final treatment.

34 (h) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34  
35 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required  
36 to comply with 02 NCAC 34 .0505. For a list of termiticides the Committee has approved under 02 NCAC  
37 34.0502(a)(2)(B), see

1 <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

2

3 *History Note: Authority G.S. 106-65.29;*

4 *Eff. July 1, 1976;*

5 *Readopted Eff. November 22, 1977;*

6 *Amended Eff. August 1, 1980;*

7 *Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987;*

8 *Temporary Repeal Expired Eff. September 22, 1987;*

9 *Amended Eff. January 1, 2017; July 1, 2004; August 1, 2002; April 1, 2001; July 1, 1998; January*

10 *1, 1991; January 1, ~~1989, 1998~~;*

11 *Readopted Eff. April 1, 2020.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0506

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*In (a), under what circumstances does this rule apply? As a reminder, rule titles are not used to interpret the meaning of a rule.*

*In (a), by "label recommended rate" do you mean "at the rate recommended on the manufacturer's label?"*

*At line 6, please consider deleting the word "only."*

*Who is required to meet the requirements listed in (b)? Licensees? If so, please make that clear by stating who shall do what.*

*Please compare (b)(3) and (5). Are you requiring treatment before a concrete slab is poured or not? Please clarify.*

*In (e), did you intend to refer to .0502(a)(2)(B) or .0502(a)(1)(B) at lines 8 and 10?*

*At line 9, instead of referring to "02 NCAC 34 .0506," please refer to "this Rule."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0506 is readopted as published in 34:11 NCR 908 as follows:

2  
3 **02 NCAC 34 .0506 MIN REQUIRE/SUBTERRANEAN TERMITE PREV/COMMERCIAL BLDGS**  
4 **UNDER CONST**

5 (a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and  
6 concentration only.

7 (b) Minimum Treatment Requirements:

8 (1) Establish a vertical termiticide barrier in the soil by trenching or trenching and rodding along the  
9 inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases,  
10 pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the  
11 top of the grade to the bottom of the footing or a minimum depth of 30 inches, whichever is less.  
12 Where footings are exposed, treatment shall be performed adjacent to the footing but not below  
13 the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of  
14 the footing, whichever is less. Where drain tile, french drains, or other foundation drainage  
15 systems present a hazard of contamination outside the treatment zone, treatment shall be  
16 performed in a manner that will not introduce termiticide into the drainage system.

17 (2) After a building or structure has been completed and the excavation filled and leveled so that the  
18 final grade has been reached along the outside of the main foundation wall, establish a vertical  
19 termiticide barrier in the soil adjacent to the outside of the main foundation wall by trenching or  
20 trenching and rodding with a termiticide from the top of the grade to the top of the footing or to a  
21 minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be  
22 performed adjacent to the footing and not below the bottom of the footing. The trench shall be no  
23 less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile,  
24 french drains, or other foundation drainage systems present a hazard of contamination outside the  
25 treatment zone, treatment shall be performed in a manner that will not introduce termiticide into  
26 the drainage system.

27 (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under  
28 slabs, such as patios, walkways, driveways, terraces, and gutters. The treatment shall be performed  
29 before slab is poured but after fill material or fill dirt has been spread.

30 (4) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and  
31 construction joints and plumbing and utility conduits, at their point of penetration of the slab of  
32 floor, or for crawl space construction, at the point of contact with the soil.

33 (5) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by  
34 02 NCAC 34 .0503(a) or (b).

35 (c) Paragraph (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s)  
36 labeled for protection of the entire structure if the licensee provides a warranty for the control of subterranean  
37 termites on the entire structure.

1 (d) Paragraph (b) of this Rule shall not apply to subterranean termite treatments using EPA registered topically  
2 applied wood treatment termiticides labeled for the protection of the entire structure and the licensee applies the  
3 material according to labeled directions and provides a warranty for the control of subterranean termites on the  
4 entire structure. When foundation areas contain no wood or cellulose components and the wood treatment  
5 termiticide cannot be applied according to label directions, then applications specified in Paragraph (b) or (c) of this  
6 Rule shall be required.

7 (e) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34  
8 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required  
9 to comply with 02 NCAC 34 .0506. For a list of termiticides the Committee has approved under 02 NCAC 34  
10 .0502(a)(2)(B), see  
11 <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

12

13 *History Note: Authority G.S. 106-65.29;*

14 *Eff. January 1, 1991;*

15 *Amended Eff. January 1, 2017; August 1, 2002; April 1, 2001; July 1, ~~1998~~; 1998;*

16 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0602

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*At line 5, what is the "WDIR 100?"*

*At line 5, under what circumstances is the report "incomplete" or "inaccurate?" What information are you requiring on the Report?*

*At line 5, are the contents or substantive requirements of the Report in rule in accordance with G.S. 150B-2(8a)(d)?*

*At line 10, please replace "his" with "his or her."*

*At lines 11-12, please remove the parentheses and incorporate this information into the text of the rule.*

*In (c), what is a "WDIR?" Is it the same as a "WDIR 100?"*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0602 is readopted as published in 34:11 NCR 908 as follows:

2

3 **02 NCAC 34 .0602 WOOD-DESTROYING INSECT AND OTHER ORGANISM REPORTS**

4 (a) Any written statement as to the presence or absence of wood-destroying insects or organisms or their damage in buildings  
5 or structures for sale shall be on the WDIR 100. An incomplete or inaccurate Wood-Destroying Insect Information Report  
6 shall not be acceptable and the issuance of such a report is grounds for disciplinary action by the Committee. No  
7 Wood-Destroying Insect Information Report or Wood-Destroying Organism Report shall be issued before an inspection of  
8 the building or structure is made. Each Wood-Destroying Insect Information Report issued by a licensee shall be kept in the  
9 files of said licensee and made available for inspection upon request of the Division.

10 (b) If during the inspection of a structure, a licensee or his authorized agent finds live subterranean termites or visible  
11 evidence of past or present infestation of subterranean termites (such as tubes, damage, cast wings, infested wood scraps, or  
12 other cellulose materials, etc.) in the structure and there is no visible evidence that said structure has been treated for  
13 subterranean termites, the licensee shall treat said structure for subterranean termites prior to the issuance of a  
14 Wood-Destroying Insect Information Report on the structure which states that the structure is free from subterranean termites  
15 or that a previous infestation is inactive.

16 (c) If a treatment is performed in conjunction with a WDIR, a copy of the written agreement and warranty, if any, shall be  
17 included with or attached to and become a part of the WDIR.

18 (d) A licensee, certified applicator, or registered technician shall not remove or destroy, or cause the removal or destruction  
19 of, any wood-destroying organism evidence discovered in, on, under, or in or on debris under a structure inspected pursuant  
20 to this Rule except as required by Paragraph (b) of this Rule.

21

22 *History Note: Authority G.S. 106-65.29;*

23 *Eff. July 1, 1976;*

24 *Readopted Eff. November 22, 1977;*

25 *Amended Eff. August 3, 1992; September 1, 1987; August 1, 1980;*

26 *Temporary Amendment Eff. January 10, 1997;*

27 *Temporary Expired Eff. October 31, 1997;*

28 *Amended Eff. July 1, ~~1998-1998~~;*

29 *Readopted Eff. April 1, 2020.*

30

REQUEST FOR TECHNICAL CHANGE

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0703

**DEADLINE FOR RECEIPT: March 13, 2020**

***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:

*In (a)(1), please change "his" to "his or her."*

*In (a)(8), please define "restricted use pesticide."*

*In (c), please change "must" to "shall."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: March 2, 2020

1 02 NCAC 34 .0703 is readopted as published in 34:11 NCR 908 as follows:

2  
3 **02 NCAC 34 .0703 WRITTEN RECORDS OF HOUSEHOLD PEST CONTROL**

4 (a) Written records on the treatment for the control of all household pests shall be maintained by the licensee and made  
5 available for inspection at any time during regular business hours upon request from the Division. Such records shall  
6 include the following information:

- 7 (1) Name(s) and address(es) of the property owner(s) or his authorized representative(s);
- 8 (2) Name and address of company represented by the certified applicator or licensee or their authorized  
9 representatives and the license number of licensee responsible for the treatment;
- 10 (3) Address(es) of property(ies) treated, type(s) of treatment(s), and date(s) treatment(s) performed;
- 11 (4) Common name(s) of pest(s) to be controlled or covered by the initial agreement or any subsequent  
12 treatments;
- 13 (5) EPA approved brand name of pesticide used;
- 14 (6) Information required by EPA;
- 15 (7) Name of licensee, certified applicator, or registered technician making the application; and
- 16 (8) For restricted use pesticides, the information required by Subparagraphs (a)(5), (a)(6), and (a)(7) of  
17 this Rule shall also be included on the customer's copy of the written agreement or service record.

18 (b) Noncommercial certified applicators shall maintain and make available for inspection the following records of  
19 pesticides applied:

- 20 (1) EPA approved brand name of all pesticides applied;
- 21 (2) Target pest(s);
- 22 (3) Site of application;
- 23 (4) Date of application;
- 24 (5) Name of certified applicator or registered technician making the application; and
- 25 (6) Information required by EPA.

26 (c) Records must be retained for two years beyond the last date of treatment.

27  
28 *History Note: Authority G.S. 106-65.29;*  
29 *Eff. July 1, 1976;*  
30 *Readopted Eff. November 22, 1977;*  
31 *Amended Eff. August 1, 2002; July 1, 1998; January 1, 1989; August 20, 1980; August 1, ~~1980~~, 1980;*  
32 *Readopted Eff. April 1, 2020.*  
33

1 02 NCAC 34 .1206 is readopted as published in 34:11 NCR 908 as follows:

2

3 **02 NCAC 34 .1206 DECISION OF COMMITTEE**

4 (a) The form and content of the Committee's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its  
5 decision shall be served upon the parties in a manner consistent with said statute.

6 (b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

7

8 *History Note: Authority G.S. 106-65.29; 150B-38;*

9 *Eff. May 1, 1992;*

10 *Amended Eff. August 3, ~~1992~~ 1992;*

11 *Readopted Eff. April 1, 2020.*

12