

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: All rules

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form for each rule, please insert the date of adoption by the agency in Box 6.

Please note, Rule 26 NCAC 02C .0108(1)(h) requires all rules that span more than one page to have page numbers on the bottom. Please follow this for all rewritten rules submitted.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0504

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, why not just state, "The following definitions apply to Rules .0505, .0506, and .0507 of this Section:"?

Why are these terms not alphabetized? Unless this will create issues for cross-references in other Rules, please alphabetize these terms.

Generally, the use of the phrase "without limiting the foregoing" is not considered necessary in Rules, as "including" is not a limiting term. Do you need the phrase on lines 8 and 12? Could you state instead, "including tobacco..."?

Why are "tobacco, peanuts, cotton, feed grains, soybeans and forage" together, separated only by commas?

On line 9, I take it your regulated public knows what the term "forage" means?

In Sub-Item (1)(a), on line 8, you refer to "agricultural corps" but on line 10, you refer to "non-crop agricultural lands." Do these terms belong in the same Sub-Item? What does the term "non-crop agricultural lands" mean? Fallow fields? What is intended by the use of the phrase "as well as on grasslands and non-crop agricultural lands"?

In Sub-Item (1)(b), line 13, I take it your regulated public knows what "livestock" means?

Also on line 13, replace "on or in which" with "where"

On line 15, insert a comma after "applicators"

In Item (5), line 22, I take it you mean "purposefully" as defined in the dictionary – not unintentional, purposely applied?

On line 23, replace "Category" with "Item"

In Item (6), line 25, insert a comma after "rights-of-way"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

On line 25, I take it your regulated public knows what "other similar areas" are based upon the list preceding it?

In Item (7), line 26, I suggest removing "primarily, but is not limited to," so the sentence reads, "includes state, federal, or other..."

In Item (7), who makes this determination? Or are you relying upon G.S. 143-452(d)?

§ 143-452. Licensing of pesticide applicators; fees.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

If so, you may wish to add this citation to the History Note.

So that I understand, what is the difference between Items (7) and (8)?

In Sub-Item (9)(a), line 32, delete or define "proper"

Sub-Item (9)(b) is very cluttered. Have you considered "persons who use or supervise the use of pesticides while conducting field research with those pesticides. This includes extension specialists..." to make it clearer?

In Sub-Item (9)(b), line 36, you refer to "those individuals demonstrating methods used in public programs." Are they not already governed by Sub-Item (9)(a)?

On Page 2, line 1, insert a comma after "commercial"

Also on Page 2, line 1-2, you refer to "state, federal, commercial and other persons..." Do you mean "state, federal, commercial employees and other..." Or, are you relying upon the definition of "person" in G.S. 143-460(26) here?

§ 143-460. Definitions.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

In Item (11), line 6, do you mean "soils or growing media"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

In Sub-Item (11)(a), I take it your regulated public knows what you mean by “boxcars”?

In Item (12), I think you mean to state “a substance or substances through which roots grow and extract water and nutrients.”

In the History Note, why are you citing to G.S. 143-460(33)? This is an older rule; did the reference change since the time the Rule was last touched?

§ 143-460. Definitions.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .0504 is proposed for amendment as published in 29:16 NCR 1930-1931 as follows:

2
3 **02 NCAC 09L .0504 DEFINITIONS**

4 The following definitions apply to 2 NCAC 9L .0505 -- Classifications, 2 NCAC 9L .0506 -- Governmental Workers, and 2
5 NCAC 9L .0507 -- Categories of Consultants:

- 6 (1) "Agricultural pest control":
- 7 (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of
8 agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains,
9 soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and
10 non-crop agricultural lands;
- 11 (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals,
12 including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats,
13 poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary
14 medicine engaged in the business of applying pesticides for hire, publicly holding themselves out
15 as pesticide applicators or engaged in large-scale use of pesticides are included in this category.
- 16 (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests,
17 forest nurseries, and forest seed-producing areas.
- 18 (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides
19 to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
- 20 (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
- 21 (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide
22 purposefully applied to standing or running water, excluding applicators engaged in public health related
23 activities included in Category (7) of this Rule.
- 24 (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the
25 maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.
- 26 (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental
27 employees using or supervising the use of pesticides in public health programs for the management and
28 control of pests having medical and public health importance.
- 29 (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise
30 the use of pesticides in the control of regulated pests.
- 31 (9) "Demonstration and research pest control" includes the following:
- 32 (a) individuals who demonstrate to the public the proper use and techniques of application of
33 pesticides or supervise such demonstration; and
- 34 (b) persons who, on conducting field research with pesticides, use or supervise the use of pesticides.
35 Included in the first group are such persons as extension specialists and county agents,
36 commercial representatives demonstrating pesticide products, and those individuals demonstrating

1 methods used in public programs. The second group includes state, federal, commercial and other
2 persons conducting field research on or utilizing pesticides.

3 (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in
4 wood preservation and wood products treatment.

5 (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any
6 fumigant pesticide injected or applied to soils or media. This category excludes fumigation of raw
7 agricultural commodities and all structural fumigation such as:

8 (a) boxcars;

9 (b) warehouses;

10 (c) tractor trailers; and

11 (d) grain bins.

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

13

14 *History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);*

15 *Eff. February 1, 1976;*

16 *Amended Eff. July 1, 2015; November 1, 1984; August 1, 1982; October 27, 1979.*

17

18

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0505

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), I take it "ground equipment" on line 5 is understood by your regulated public? Is it governed by G.S. 143-460(11)?

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

Please end Sub-Item (10)(a)(i) with a semicolon and "and" Note the same change for (1)(h)(i)(A).

So that I understand – are the definitions in Sub-Items (1)(i)(A) and (B) as defined by Rule .0504(1)(a) and (b)? I ask because that definition seems restricted to "agricultural pest control" so does your regulated public understand that this is not limited? Please note similar concerns for all other references that use defined terms for specific types of pest control.

Please insert an "and" at the end of Sub-Item (1)(h)(ix) on line 26.

Please insert an "and" at the end of Sub-Item(a)(j) on line 29.

On Page 2, at the end of Sub-Item (2)(g), line 1, please insert an "and"

Please insert an "and" at the end of Sub-Item (2)(h)(vi).

In the History Note, please state "143-460(29); 14-460(33)" This is consistent with the History Note in Rule .0504.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .0505 is proposed for amendment as published in 29:16 NCR 1931-1932 as follows:

2

3 **02 NCAC 09L .0505 CLASSIFICATIONS**

4 The following classifications and subclassifications are hereby established for the licensing of pesticide applicators:

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

6 (a) agricultural pest control:

7 (i) plant,

8 (ii) animal;

9 (b) forest pest control;

10 (c) ornamental and turf pest control;

11 (d) aquatic pest control;

12 (e) right-of-way pest control;

13 (f) public health pest control;

14 (g) regulatory pest control;

15 (h) demonstration and research pest control:

16 (i) agricultural pest control:

17 (A) plant,

18 (B) animal;

19 (ii) forest pest control;

20 (iii) ornamental and turf pest control;

21 (iv) aquatic pest control;

22 (v) right-of-way pest control;

23 (vi) public health pest control;

24 (vii) regulatory pest control;

25 (viii) seed treatment;

26 (ix) wood treatment;

27 (x) soil and growing media fumigation pest control;

28 (i) seed treatment;

29 (j) wood treatment;

30 (k) soil and growing media fumigation pest control.

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

32 (a) agricultural pest control: plant;

33 (b) forest pest control;

34 (c) ornamental and turf pest control;

35 (d) aquatic pest control;

36 (e) right-of-way pest control;

37 (f) public health pest control;

- 1 (g) regulatory pest control;
- 2 (h) demonstration and research pest control:
 - 3 (i) agricultural pest control: plant;
 - 4 (ii) forest pest control;
 - 5 (iii) ornamental and turf pest control;
 - 6 (iv) aquatic pest control;
 - 7 (v) right-of-way pest control;
 - 8 (vi) public health pest control;
 - 9 (vii) regulatory pest control.

10

11 *History Note:* Authority G.S. 143-452(d); 143-460(29),(33);
12 Eff. February 1, 1976;
13 Amended Eff. July 1, 2015; November 1, 1984; August 26, 1976.

14
15
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0507

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, do you need to retain "but are not limited to"? Could you just state "may include the following:"

Please end Sub-Item (1)(a) with a semicolon and "and"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .0507 is proposed for amendment as published in 29:16 NCR 1932 as follows:

2

3 **02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS**

4 Each person acting as a pest control consultant as defined in the North Carolina Pesticide Law of 1971 is required to be
5 licensed. The categories requiring a license may include but are not limited to the following:

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

18

19 *History Note:* Authority G.S. 143-455; 143-460(27);
20 Eff. February 1, 1976;
21 Amended Eff. July 1, 2015; November 1, 1984; October 28, 1978; January 27, 1978.

22

23

24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0522

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of the first sentence in (a)? It does not even read as a complete sentence. If you are trying to state that licensees can complete approved continuing certification credit to retain their license, please just state that.

What is your authority for Paragraph (a)? It appears you are allowing recertification of licensees if they take training. However, the statutes you cite to in the History note requires that individuals seeking renewal take exams:

§ 143-453. Qualifications for pesticide applicator's license; examinations.

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the examination required by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (b) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral,

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the core examination, and an additional twenty dollars (\$20.00) shall be charged for each additional specific classification licensure. Such examination fees shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) **Provide for license renewal examinations** at intervals not more frequent than four years, or more frequently if found by the Board to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125; 1985, c. 163; 2010-31, s. 11.1(e).)

§ 143-455. Pest control consultant license.

(d) Pest control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, **periodic reexamination**, and examinations for corporate applicants. (1971, c. 832, s. 1; 1975, c. 425, s. 10; 1987, c. 559, s. 16; 1989, c. 544, s. 12; 2003-284, s. 35.4(d); 2010-31, s. 11.1(f).)

What is your authority to allow renewal without examination? Is there a federal law that you are relying upon?

On line 5, put "continuing certification credit" in quotation marks, since you are defining it. And why is it in capital letters?

On line 6, how does the Board approve this? Is the approval process in another Rule or law?

On line 7, delete or define "short"

On line 8, how does the Board approve this? Is the approval process in another Rule or law?

In (a)(6) and (9), where you state "ag-pest" do you mean "agricultural pest" as defined in Rule .0504? If so, why not state that? Or is this how your regulated public refers to the term?

What are you saying in the sentence on lines 20-21? Since each category of licensure is separate, how can one have training on various disciplines and keep the licensure? I am confused since "demonstration and research pest control" is its own subclassification of licensure, but any licensee can use this for their license?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

On line 21, what are “primary categories”? Do you mean the categories in Items (1) through (9)?

Assuming you have the statutory authority for Paragraph (a), why not break most of it into three Paragraphs? The first would be lines 8-21. The second would be lines 22-23, and the third lines 24-28.

Please fix the spacing on lines 22 and 23 and 25-28.

On line 24, replace “must” with “shall”

On line 29, replace “must” with “shall”

Also on line 29, do you need to retain “at least”?

Paragraphs (b) and (c) are not complete sentences. I believe you are using the rule name to try to introduce the concepts; however, rule names are not part of the rule. Please write this using complete sentences so that you are stating what you are doing and expecting of your licensees.

On line 31, how are these organizations approved? By whom?

Is the recertification period the same as the periods set forth in (a)(2) through (10)?

On line 32, define “satisfactory” (and note the same for Paragraph (c), line 34).

On line 35, replace “which” with “that”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

02 NCAC 09L .0522 is proposed for amendment as published in 29:16 NCR 1932 as follows:

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) 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 must be approved by the Board and 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 Credit Requirements for each pest control category are as follows:

- | | | |
|------|----------------------------|------------------------------|
| (1) | aquatic | 6 credits per 5-year period |
| (2) | public health | 6 credits per 5-year period |
| (3) | forest | 6 credits per 5-year period |
| (4) | right-of-way | 4 credits per 5-year period |
| (5) | regulatory | 6 credits per 5-year period |
| (6) | ag pest-animal | 6 credits per 5-year period |
| (7) | ornamental and turf | 10 credits per 5-year period |
| (8) | seed treatment | 3 credits per 5-year period |
| (9) | ag pest-plant | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The Continuing Certification Credits required may consist of any combination of credits divided between training in the primary categories (1) through (9) of this Rule and training in demonstration and research.

- | | | |
|------|--------|-----------------------------|
| (11) | aerial | 4 credits per 2-year period |
|------|--------|-----------------------------|

The Continuing Certification Credits required must include one credit obtained through training in aerial methods.

- | | | |
|------|--|------------------------------------|
| (12) | wood treatment | 4 credits per 5-year period |
| (13) | <u>soil and growing media fumigation</u> | <u>3 credits per 5-year period</u> |

The Continuing Certification Credits established for each ground application pest control category must be obtained in at least two years of the five-year period.

(b) Participation in one training session conducted by extension pesticide personnel, or other approved organizations, during the recertification period, and satisfactory passing of a written comprehensive examination administered by the North Carolina Department of Agriculture personnel at the conclusion of training.

(c) Satisfactory passing of a written comprehensive examination administered by North Carolina Department of Agriculture personnel and based on training materials which have been approved by the Board.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);

1
2
3
4
5

Eff. September 10, 1980;
Amended Eff. July 1, 2015; November 1, 1984.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .0529

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Form and in the Rule Name "Waiver" is misspelled. Assuming that is the intended term, please correct it.

On line 4, I believe "pest" is misspelled.

What is your authority to waive this examination? G.S. 143-455 states:

§ 143-453. Qualifications for pesticide applicator's license; examinations.

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the examination required by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (b) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied

Amanda J. Reeder
Commission Counsel

Date submitted to agency: May 28, 2015

for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the core examination, and an additional twenty dollars (\$20.00) shall be charged for each additional specific classification licensure. Such examination fees shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) Provide for license renewal examinations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125; 1985, c. 163; 2010-31, s. 11.1(e).)

Does this licensure and waiver apply only to corporations or governmental units or agencies, such that the waiver is designated by 143-453(c)(1)? Or are you relying upon a federal law?

I also take it this Rule applies to individuals licensed to use aerial and ground equipment?

On lines 6 and 7, where are these trainings conducted? How does one find out about them? Are they in Rule somewhere?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .0529 is proposed for adoption as published in 29:16 NCR 1932-1933 follows:

2

3 **02 NCAC 09L .0529 SOIL AND GROWING MEDIA FUMIGATION EXAMINATION WAIVER**

4 Prior to January 1, 2017, any pesticide applicator licensed in the classifications agricultural pest control: plant, forest pest
5 control, or ornamental and turf pest control who applies for the soil fumigation classification, and has completed the EPA-
6 sponsored soil fumigation training or the North Carolina In-State Soil Fumigation Training Option, shall be eligible to receive
7 the soil fumigation classification without having to pass the written examination.

8

9 History Note: Authority G.S. 143-453(b).

10 Eff. July 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1102

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please insert spaces between the terms and the hyphens and the definitions on lines 4, 5, 11, and 21.

Please end (b)(1) on line 8 with a semicolon, not a comma.

On line 9, should it read "if the pesticide is applied...?"

In Paragraph (c) on line 11, define "comprehensive"

Who creates these sessions? The Board or the instructor? How long do they last? How does one register for these? Is there a cost?

On line 12, you may wish to break this language down into a list. If not, insert a colon after "such as"

On line 14, you may wish to state "situations to consider during application..."

On line 16, delete or define "appropriate" both places.

On line 18, what are "sources of advice and guidance necessary for the safe and proper use"? What is "proper" use?

Also on line 18, state "his or her"

On line 19, replace "will" with "shall"

On line 20, how is this approved by the Board? Is this in Rule or law?

In (d), line 21, how is the training approved? How does one seek approval? Is this in Rule or law?

On line 22, define "short" and what other "Board-approved presentations" are you referring to?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

In (d)(4), line 29, should the term be “ornamental” to be consistent with Rule .0505?

On line 33, these terms aren’t defined in that Rule. I suggest stating “set forth in” or “established by”

In addition, on line 33, why not state “Rule .0505(1) of this Section.”?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .1102 is proposed for amendment as published in 29:16 NCR 1933 as follows:

2
3 **02 NCAC 09L .1102 DEFINITIONS**

4 (a) Certified applicator-any individual who is certified to use or supervise the use of any restricted use pesticide.

5 (b) Private pesticide applicator-a person who uses or supervises the use of any restricted use pesticide under the
6 following conditions:

7 (1) for the purpose of producing any agricultural commodity on property owned or rented by him or his
8 employer, or

9 (2) if applied without compensation other than the trading of personal services between producers of
10 agricultural commodities on the property of another person.

11 (c) Private pesticide applicator certification standards review-a comprehensive training session designed to advance a
12 private pesticide applicator's practical knowledge in areas such as the pest problems and pest control practices associated
13 with agricultural operations; proper storage, use, handling, and disposal of pesticides and their containers; labels and
14 labeling information; local environmental situations that must be considered during application to avoid contamination;
15 recognition of poisoning symptoms and procedures to follow in case of a pesticide accident; protective clothing,
16 equipment, and other appropriate worker protection standards; appropriate federal and state pesticide laws and
17 regulations and the applicator's related legal responsibility; current agricultural production-related pesticide technology;
18 and sources of advice and guidance necessary for the safe and proper use of each pesticide related to his/her certification.
19 These training sessions will be taught by Cooperative Extension Service pesticide training agents or other individuals
20 approved by the Board.

21 (d) Continuing certification credit-one hour of continuing certification training. Continuing certification training must be
22 approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other Board-
23 approved presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly
24 sponsored training organizations. Private applicators may also earn continuing certification credits by attending
25 approved training sessions for which credit has been assigned in the following commercial categories:

26 (1) aquatic;

27 (2) agricultural pest - animal;

28 (3) agricultural pest - plant;

29 (4) ornamentals and turf;

30 (5) forest; ~~and~~

31 (6) seed ~~treatment, treatment; and~~

32 (7) soil and growing media fumigation.

33 as defined in 02 NCAC 09L .0505(1)(a) through (1)~~(h)~~-(k).

34
35 *History Note: Authority G.S. 143-440;*

36 *Eff. December 1, 1976;*

37 *Amended Eff. July 1, 2015; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1103

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), do you need to retain "Beginning on October 1, 2002"? It seems that this is vestigial language, as the requirements have now been in this Rule for 13 years. Can't you start the sentence, "An applicant for an initial...?"

On line 4, replace "must" with "shall"

Replace "his/her" with "his or her" on lines 5 (both places) and 6.

On line 5, I suggest stating, "his or her knowledge of pesticides and their usefulness and hazards; his or her competence..."

And how does one register for the exams in this Rule?

In (b), lines 9 and 11, should it read "soil and growing media certification"? (This is consistent with line 13)

So that I understand the requirements for examination, G.S. 143-440 is the authority for this Rule. G.S. 143-440 states:

§ 143-440. Restricted use pesticides regulated.

(b) The Board may include in any such restricted use regulation the time and conditions of sale, distribution, or use of such restricted use pesticides, may prohibit the use of any restricted use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted use pesticides will be used only as labeled or as further restricted by regulation; **may require the certification and recertification of private applicators**, and charge a fee of up to ten dollars (\$10.00), with the fee set at a level to make the certification/recertification program self-supporting, and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; **may adopt rules to classify private applicators**; and may, if it deems it necessary to carry out

Amanda J. Reeder
Commission Counsel

Date submitted to agency: May 28, 2015

the provisions of this Part, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted use pesticides. The Board may authorize the use of restricted use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. A nonrefundable fee of ten dollars (\$10.00) shall be charged for each examination required by this section. This examination fee is in addition to the certification or recertification fee, and any other fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

However, that part of the General Statutes only refers to examination of samples, rather than individuals. I take it you all are requiring an examination, even though that is not explicitly spelled out in the law? And since that requirement is not required by statute, you are granting an exemption to the requirement through this Rule. Is this correct?

In (b), how does one register for these classes? Are the contents in another Rule or law?

In (c), what is the "agricultural commodity fumigation examination"?

On line 14, "70" should be in numbers, not spelled out.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .1103 is proposed for amendment as published in 29:16 NCR 1933 as follows:

2

3 **02 NCAC 09L .1103 CERTIFICATION EXAMINATION**

4 (a) Beginning on October 1, 2002, an applicant for an initial private pesticide applicator's certification must demonstrate
5 by written examination his/her knowledge of pesticides, their usefulness and their hazards; his/her competence to act as a
6 private pesticide applicator; and his/her knowledge of the laws and rules governing the use and application of pesticides
7 by private pesticide applicators. Passing grade shall be 70 percent or more.

8 (b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a
9 private pesticide applicator. Prior to January 1, 2017, any certified private applicator who applies for the soil fumigation
10 subclass certification and has completed the EPA-sponsored soil fumigation training or the North Carolina In-State Soil
11 Fumigation Training Option, shall be eligible to receive the soil fumigation subclass certification without having to pass
12 written soil and growing media fumigation examination.

13 (c) Beginning on January 1, 2017, the passing grade on the soil and growing media fumigation examination, and the
14 agricultural commodity fumigation examination shall be seventy percent or more.

15

16 *History Note: Authority G.S. 143-440;*

17 *Eff. December 1, 1976;*

18 *Amended Eff. July 1, 2015; October 1, 2002; July 1, 1987; February 5, 1978.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1104

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

When you resubmit the rewritten rule, please correct the introductory statement to state "29:16" (and since this was not published, you only need to change it; you don't have to show the change.)

In Paragraph (a) on line 4, is the "did not anticipate a need" necessary?

On line 5, replace "can" with "may." However, under what circumstances will the permit not be granted? I am especially concerned about the lack of guidelines, since this is being delegated to the county coordinator, rather than being issued by the Board.

Also on line 5, state "his or her"

On line 7, insert a comma after "permit"

Please replace the comma at the end of (a)(1), line 9, with a semicolon.

In Paragraph (b), line 11, state "he or she" and replace "must" with "shall"

On line 12, replace "explained" with "set forth" so it reads "set forth in"

In Paragraph (c), line 14, replace "which" with "that"

I like beginning lists with articles; as such, I suggest changing (c)(1) through (4) so each begins with "the"

End (c)(1) through (3) with semicolons, not commas.

On line 19, replace "will" with "shall"

On line 19, as needed by whom? The Board? The Department? What are you trying to say here? And who has to provide copies of the permit – the extension service or the permittee?

In (d), what are "fumigants"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .1104 is proposed for amendment as published in 29L16 NCR 1933 as follows:

2

3 **02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT**

4 (a) For emergency certification of any applicant who has not previously been certified and did not anticipate need for a
5 restricted use pesticide, a 10-day permit can be issued by his resident county agricultural extension service pesticide
6 coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Prior to
7 issuance of the permit the resident county agricultural extension service pesticide coordinator shall:

8 (1) provide the applicant with a training manual and information relative to obtaining full private pesticide
9 applicator certification, and

10 (2) discuss with the applicant proper use of the restricted use pesticide.

11 (b) If the individual requires further use of restricted use pesticides, he must complete one of the certification options
12 explained in Rule .1103 of this Section.

13 (c) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina
14 Department of Agriculture which contains the following information:

15 (1) name and address of the applicant,

16 (2) name and amount of restricted use pesticide,

17 (3) crop or site to be treated, and

18 (4) date the permit was issued.

19 Copies of the permits will be available for review on an as-needed basis by the North Carolina Department of Agriculture.

20 (d) A single purchase emergency certification permit shall not be issued for fumigants.

21

22 *History Note: Authority G.S. 143-440;*

23 *Eff. December 1, 1976;*

24 *Amended Eff. July 1, 2015; August 26, 1977.*

25

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1108

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please note my question regarding use of examination for private pesticide applicator in Rule .1103. I take it that you believe you have the authority to require (and waive that requirement for) the exam?

In (b), I recommend saying on line 7, "as defined in Rule .1102(d) of this Section."

In (c), lines 8-9, what is "agricultural commodity fumigation"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .1108 is proposed for amendment as published in 29:16 NCR 1934 as follows:

2

3 **02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION**

4 (a) The term of certification shall be for a period of three years.

5 (b) In order to be recertified as a private pesticide applicator without a written examination, a person must complete two
6 hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as
7 defined in 02 NCAC 09L .1102(d).

8 (c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural
9 commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain
10 the subclass certification.

11

12 *History Note: Authority G.S. 143-440;*

13 *Eff. July 1, 1987;*

14 *Amended Eff. July 1, 2015; October 1, 2002.*

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Pesticide Board

RULE CITATION: 02 NCAC 09L .1109

DEADLINE FOR RECEIPT: Thursday, June 11, 2015

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? The definitions in (1) and (2) mostly just recite the definition of "private pesticide applicator" in Rule .1102(b)(1) and (2).

In Item (1), line 7, there is a typographical error. Please state "commodities on the property"

In Item (2), what is an "agricultural commodity"? Does your regulated public know?

In the History Note, you are citing to G.S. 143-453. This statute governs pesticide applicators. That term is defined in G.S. 143-460(29) and specifically excludes the individuals you are referring to here:

(29) "Pesticide applicator" means any person who owns or operates a pesticide application business or who provides, for compensation, a service that includes the application of pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who applies pesticides for compensation and is not exempt from this definition. **It does not include:**

a. **Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.**

Please insert the proper authority in the History Note; I am assuming you intended to refer to 143-440, as with the other Rules in this Section.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2015

1 02 NCAC 09L .1109 is proposed for adoption as published in 29:16 NCR 1934 follows:

2

3 **02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS**

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

5 (1) Soil and growing media fumigation – private pesticide applicators utilizing ground equipment applying
6 restricted use fumigants to property they own or lease, their employer’s property, or applied without
7 compensation other than the trading of personal services between producers of agricultural commodities on the
8 property of another person.

9 (2) Agricultural commodity fumigation – private pesticide applicators applying restricted use fumigants to
10 agricultural commodities on property they own or lease, their employer’s property, or applied without
11 compensation other than the trading of personal services between producers of agricultural commodities on the
12 property of another person.

13

14 *History Note: Authority G.S. 143-453(b);*

15 *Eff. July 1, 2015.*