

## **Burgos, Alexander N**

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**Subject:** FW: Request for Changes 02 NCAC 34 .0904

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**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Sent:** Tuesday, November 22, 2022 4:21 PM

**To:** Hayworth, Anna <Anna.Hayworth@ncagr.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Subject:** RE: Request for Changes 02 NCAC 34 .0904

It is my intention to recommend that the RRC approve the attached rule.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## **Burgos, Alexander N**

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**Subject:** FW: Request for Changes 02 NCAC 34 .0904  
**Attachments:** 02 NCAC 34 .0904.docx; November 2022 Request for Changes 02 NCAC 34 .0904 11-22-22 final.docx

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**From:** Hayworth, Anna <Anna.Hayworth@ncagr.gov>  
**Sent:** Tuesday, November 22, 2022 2:23 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Subject:** RE: Request for Changes 02 NCAC 34 .0904

Good afternoon Mr. Peaslee,

Please find attached the requested technical changes, as well as further information requested in the original document. Please let me know if you need anything additional.

**Anna R. Hayworth | Agricultural Programs Specialist**  
*Office of the Assistant Commissioner of Consumer Protection*  
*NC Department of Agriculture and Consumer Services*  
1002 Mail Service Center | Raleigh, NC 27699  
**Office: (984) 236-4509 (new office)**  
Cell: (919) 745-9356  
[anna.hayworth@ncagr.gov](mailto:anna.hayworth@ncagr.gov)

**Request for Changes Pursuant to  
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

**Note the following general instructions:**

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day;; and”
  - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:  
[www.ncoah.com/rules/examples.html](http://www.ncoah.com/rules/examples.html)

**If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.**

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

AGENCY: Structural Pest Control Committee

RULE CITATION: 02 NCAC 34 .0904

**DEADLINE FOR RECEIPT: November 8, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

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

*In (a), what is the authority to regulate persons or entities other than certified applicators, licensees, and entities issued licenses? G.S. 106-65.25(b) covers unlawful conduct and G.S. 106-65.23 and 106-65.29 covers rules and regulations, but neither seems to permit regulating unaffiliated persons or entities. **This Rule is intended for “Structural Pest Control-related” businesses. Add “Structural Pest Control” before business establishment and business entities. Changes completed.***

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

*In (e), is this not already covered under other laws? Does G.S.106-65.28(a)(1) not cover this? **The section the Statute is referring to relates to the use of deceit or fraud, with respect to tricking someone into a particular treatment or structural pest control method not needed or inappropriate to the situation. This rule is prohibiting impersonating an official, perhaps for the purpose of disparaging a particular company or treatment over another. We have received complaints in past years of instances where someone has tried to impersonate a State Inspector. The ID cards issued to Pest Control Companies from our Division have our NCDA&CS Seal and the Commissioner’s name so if it is “flashed” or shown to a consumer then this person could be misconstrued as a State Inspector with our Division.***

*In (f), insert an Oxford comma in after “certified applicator”. **Changes completed.***

*Does G.S.106-65.28(a)(1) not cover this? **This rule language is prohibiting someone misrepresenting their educational and/or professional credentials— not necessarily with respect to defrauding someone concerning a particular treatment, but possibly to draw business away from another company.***

*Also, in line 22, include an “or” after “public health engineer,”. **Changes completed.***

William W. Peaslee  
Commission Counsel

Date submitted to agency: October 25, 2022

*In Line 23, to what “required professional and educational standards” is the Committee referring? For example, if holding oneself out as “horticulturalist” is not regulated, what standard would be applicable? What educational standard is applicable in any of these examples? Does the committee mean a particular educational degree from an accredited institution? Absent the identification of specific standards, this is vague and subjective. **Reword as: “unless such person shall be qualified in such field by required professional standards and certifications or a degree from an accredited college or university as appropriate for the title used.” Changes completed.***

*In (h), consider “...any material containing false statements or misrepresentations concerning...” **Changes completed.***

*In (i), what is a “[company] name style” found in lines 30 through 31 and 34? **Delete “style.” Changes completed.***

*In (j), does not a “certified applicator” already have a “pest control” license? What is the difference? **The Structural Pest Control Law establishes three classes of Structural Pest Control pesticide applicators: Registered Technicians, Certified Applicators, and Licensees.***

***A Registered structural pest control technician works under the direct supervision of a licensee or a non-commercial certified applicator. Technicians must comply with mandatory training requirements set forth in 2 NCAC 34.0312***

***Persons interested in becoming certified applicators must have attended the Registered Technician School (see Registered Technician section). The North Carolina Structural Pest Control Law requires the certification of all persons who use or supervise the use of restricted use pesticides in and around structures. In addition, a person who performs structural pest control work with restricted use pesticides on his/her own property or on the property of his/her employer manages must be certified (non-commercial certified applicator) or working under the direct supervision of a certified applicator.***

***Persons engaged in structural pest control for the general public must be licensed by the Structural Pest Control Division of the North Carolina Department of Agriculture & Consumer Services. Persons may be licensed in one or more of the following phases:***

***Phase P- Household pests (cockroaches, ants, fleas, rodents, etc.)***

***Phase W- Wood destroying organisms (termites, powder post beetles, fungi, etc.)***

***Phase F- Fumigation (to apply pesticides that kill as a gas; this phase is not required for aerosols, fogs or insecticide impregnated strips).***

William W. Peaslee  
Commission Counsel

Date submitted to agency: October 25, 2022

***License applicants must be certified (see Certified Applicator section) in the phase(s) in which licensing is desired and have two years' experience in the appropriate phase(s) of structural pest control.***

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

*In (k), explain the circumstance under which the committee would issue an “inactive license”? **For example– If a person fails to renew a license, or if a person gives up his/her business and goes to work for another licensee as a certified applicator or a registered technician. Or, in case an active license holder passes away, becomes disabled or leaves a company unexpectedly—it is a wise business practice for a Structural Pest Control business to have a least two licenses—with one of these being issued in an inactive status. An inactive license does not have the required insurance, but once proper insurance is issued, then it can be issued in an active status.***

***02.NCAC 34.1012 Definitions (31) “Inactive license” shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.***

*In (m), what do “drift”, “runoff”, and “target site” mean? Are these defined or commonly known terms? **These are commonly understood terms and are commonly used on pesticide product labels registered by the EPA and the States. “Target Site” is the intended site of a pesticide application or other structural pest control method; “Drift” is the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target site; “Runoff” is the draining away of water or other liquid (as well as substances carried in it, such a s pesticides) from the surface of an area of land, a building or structure, etc.***

*In (n), what does the term “final order” mean in this context? Is a specific definition used? **A “final order” is a commonly used and understood term under EPA regulations. It constitutes a final decision (meaning all appellate rights have been exhausted or expired) of the EPA under their regulatory authority in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). RRC recently approved identical language for the North Carolina Pesticide Board in 02 NCAC 09L .0503 (effective July 1, 2022).***

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

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

*Consider including G.S. 106-65.25 as authority. **Changes completed.***

William W. Peaslee  
Commission Counsel

Date submitted to agency: October 25, 2022

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

William W. Peaslee  
Commission Counsel  
Date submitted to agency: October 25, 2022

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

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

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

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

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

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

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

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

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

30 (h) No certified ~~applicator or licensee~~ **applicator, licensee,** or their employees shall authorize, direct, assist, or aid in  
31 the publication, advertisement, distribution, or circulation of any material **by containing** false **statements statements** or  
32 **representation misrepresentations** concerning the licensee's structural pest control business or business of the company  
33 with which he or she is employed.

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



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

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

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

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

13 (n) A final order imposing civil liability under Section 14(a) of [~~the Federal Insecticide, Fungicide, and Rodenticide~~  
14 Act (FIFRA) (7 USC 1361(a))] 7 USC 1361(a), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),  
15 against any licensee, certified applicator, or non-certified applicator, or a criminal conviction, entry of a plea of  
16 guilty, or of nolo contendere under Section 14(b) of [FIFRA (7 USC 1361(b)),] FIFRA by a licensee,  
17 certified applicator, or non-certified applicator shall constitute grounds for the denial, suspension, or revocation of  
18 any license or certification issued by the committee.

19  
20 *History Note:* Authority G.S. 106-65.23; 106-65.25; 106-65.29;

21 *Eff. July 1, 1976;*

22 *Readopted Eff. November 22, 1977;*

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

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

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

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November*  
28 *22, 2018.*

29 *Amended Eff. December 1, 2022.*

## **Burgos, Alexander N**

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**From:** Peaslee, William W  
**Sent:** Tuesday, November 15, 2022 2:33 PM  
**To:** Hayworth, Anna  
**Cc:** Burgos, Alexander N  
**Subject:** Re: Request for Changes 02 NCAC 34 .0904

Thank you. I will let the RRC know. I do not anticipate any problems with getting the extension.

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**From:** Hayworth, Anna <Anna.Hayworth@ncagr.gov>  
**Sent:** Tuesday, November 15, 2022 2:07 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Request for Changes 02 NCAC 34 .0904

Good afternoon Mr. Peaslee,

We would like to request an extension to reply to the technical corrections.

Thank you!

**Anna R. Hayworth | Agricultural Programs Specialist**

*Office of the Assistant Commissioner of Consumer Protection*  
*NC Department of Agriculture and Consumer Services*  
1002 Mail Service Center | Raleigh, NC 27699  
**Office: (984) 236-4509 (new office)**  
Cell: (919) 745-9356  
[anna.hayworth@ncagr.gov](mailto:anna.hayworth@ncagr.gov)

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**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Tuesday, November 15, 2022 12:55 PM  
**To:** Hayworth, Anna <Anna.Hayworth@ncagr.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** Fw: Request for Changes 02 NCAC 34 .0904

Good afternoon:

I do not recall receiving a reply to this email. Have I missed something?

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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**From:** Peaslee, William W  
**Sent:** Tuesday, October 25, 2022 3:47 PM  
**To:** Hayworth, Anna <[Anna.Hayworth@ncagr.gov](mailto:Anna.Hayworth@ncagr.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** Request for Changes 02 NCAC 34 .0904

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina Structural Pest Control Committee for the November 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 17, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on November 8, 2022.

In the meantime, please let me know if you have any questions or concerns.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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