

**Proposed Adoptions and Amendments: NC Pesticide Board
To be published in the NC Register 2/16/2015**

TEXT OF PROPOSED RULES:

02 NCAC 09L .0504 DEFINITIONS

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

- (1) "Agricultural pest control":
 - (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands;
 - (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators or engaged in large-scale use of pesticides are included in this category.
- (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.
- (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
- (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
- (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Category (7) of this Rule.
- (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.
- (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
- (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
- (9) "Demonstration and research pest control" includes the following:
 - (a) individuals who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration; and

- (b) persons who, on conducting field research with pesticides, use or supervise the use of pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes state, federal, commercial and other persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.
- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
 - (a) boxcars;
 - (b) warehouses;
 - (c) tractor trailers; and
 - (d) grain bins.
- (12) "Growing media" means a substance or substances through which roots grow, extract water and nutrients.

*History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);
 Eff. February 1, 1976;
 Amended Eff. November 1, 1984; August 1, 1982; October 27, 1979.*

02 NCAC 09L .0505 CLASSIFICATIONS

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

- (1) pesticide applicators and public operators utilizing ground equipment:
 - (a) agricultural pest control:
 - (i) plant,
 - (ii) animal;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control;
 - (h) demonstration and research pest control:
 - (i) agricultural pest control:
 - (A) plant,

- (B) animal;
- (ii) forest pest control;
- (iii) ornamental and turf pest control;
- (iv) aquatic pest control;
- (v) right-of-way pest control;
- (vi) public health pest control;
- (vii) regulatory pest control;
- (viii) seed treatment;
- (ix) wood treatment;
- (x) soil and growing media fumigation pest control;
- (i) seed treatment;
- (j) wood treatment;
- (k) soil and growing media fumigation pest control.
- (2) pesticide applicators and public operators utilizing aerial equipment:
 - (a) agricultural pest control: plant;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control;
 - (h) demonstration and research pest control:
 - (i) agricultural pest control: plant;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control;
 - (vii) regulatory pest control.

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

02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS

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

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

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

Eff. February 1, 1976;

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

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) soil and growing media fumigation

3 credits per 5-year period

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);
Eff. September 10, 1980;
Amended Eff. November 1, 1984.*

02 NCAC 09L .1102 DEFINITIONS

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

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

- (1) for the purpose of producing any agricultural commodity on property owned or rented by him or his employer, or
- (2) if applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

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

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

- (1) aquatic;
- (2) agricultural pest - animal;
- (3) agricultural pest - plant;
- (4) ornamentals and turf;
- (5) forest; ~~and~~
- (6) ~~seed treatment,~~ treatment; and
- (7) soil and growing media fumigation.

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

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

Eff. December 1, 1976;

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

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

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

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

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

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

Eff. December 1, 1976;

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

02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT

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

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification, and
- (2) discuss with the applicant proper use of the restricted use pesticide.

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

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

- (1) name and address of the applicant,
- (2) name and amount of restricted use pesticide,
- (3) crop or site to be treated, and
- (4) date the permit was issued.

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

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

*History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. August 26, 1977.*

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

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

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

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

*History Note: Authority G.S. 143-440;
Eff. July 1, 1987;
Amended Eff. October 1, 2002.*

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

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

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

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

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

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

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

EXPLANATION/REASON FOR PROPOSED RULE:

The US EPA determined that all of the soil fumigants meet the criteria for restricted use. Therefore, EPA has reclassified metam sodium, metam potassium and dazomet, which had not been restricted, as restricted use pesticides. As required by updated soil fumigant product labels, certified commercial and private applicators must successfully complete an EPA-approved training program covering the new soil fumigant provisions This training must be completed every three years, and requires that the applicator pass a comprehensive examination on each of the soil fumigants,.

EPA requirements contain the provision that applicators who are certified in a soil fumigation category or subcategory in a state, and the state’s program has been approved by EPA, do not have to complete the EPA soil fumigant training/examination program .

By adopting these soil and media fumigation rules , applicators in North Carolina will continue to have access to necessary soil fumigants without having to periodically undergo a national “ one size fits all” training program and examination, which contain much information which is not relevant to our state’s climate, cropping practices and pesticide application practices. These rules will enable the N C Pesticide Board to ensure that North Carolina fumigators are trained and qualified under information relevant to our state and actual production needs and practices. As long as the applicator maintains continuing

certification training requirements established by the Pesticide Board, such applicators will not be required to retest every three years.

HOW TO DEMAND A PUBLIC HEARING:

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than March 3, 2015 to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.

INSTRUCTIONS ON HOW AND WHERE TO SUBMIT COMMENTS ON THE PROPOSED RULE:

Written comments may be submitted to Jim Burnette, Secretary of the NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090. Written comments may also be received via email (james.burnette@ncagr.gov).