

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-01-16
 Rule ID(s): 6166-6174
 File Date: 4/1/16
 Effective Date: 6/30/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0080-06-14	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-15	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-16	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-27	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-09-01	Classification of Pesticides
Rule Number	Rule Title
0080-09-01-.01	Reserved

Chapter Number	Chapter Title
0080-09-02	Restricted Use Pesticides
Rule Number	Rule Title
0080-09-02-.01	Scope
0080-09-02-.02	Definitions
0080-09-02-.03	Certification Requirements
0080-09-02-.04	License Requirements
0080-09-02-.05	Certification Categories
0080-09-02-.06	Recertification Requirements
0080-09-02-.07	Recordkeeping Requirements of Private Applicators
0080-09-02-.08	Use of Restricted Use Pesticides
0080-09-02-.09	Exemptions
0080-09-02-.10	Violations
0080-09-02-.11	Pesticide Management and Disposal
0080-09-02-.12	Pesticide Product Registration Fee

Chapter Number	Chapter Title
0080-09-03	Commercial Aerial Application of Pesticides
Rule Number	Rule Title
0080-09-03-.01	General
0080-09-03-.02	Denial of License

Chapter Number	Chapter Title
0080-09-04	Pest Control Operators
Rule Number	Rule Title
0080-09-04-.01	Qualifications of Applicants
0080-09-04-.02	Certification of Qualifications
0080-09-04-.03	Examination of License Applicants
0080-09-04-.04	License Categories
0080-09-04-.05	License Requirement for Active Practice and Certification
0080-09-04-.06	Requirements for Licensees in Fumigation
0080-09-04-.07	Requirements for Licensees in Wood Destroying Organisms
0080-09-04-.08	Certification of Commercial Pesticide Applicators
0080-09-04-.09	Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators
0080-09-04-.10	Requirements for Licensees in Aquatic Weed Control
0080-09-04-.11	Requirements for Spot Treatment Only in Lawn Maintenance
0080-09-04-.12	Fees

Chapter Number	Chapter Title
0080-09-05	Worker Protection
Rule Number	Rule Title
0080-09-05-.01	Definitions
0080-09-05-.02	Worker Protection Standards
0080-09-05-.03	WPS Trainer Requirements
0080-09-05-.04	Notice to Farm Labor Contractors

New

Division 0080-09 Pesticides is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-09-01
Classification of Pesticides

0080-09-01-.01 Reserved

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-09-02
Restricted Use Pesticides

0080-09-02-.01 Scope

- (1) This chapter applies to any person who buys, sells, or uses a restricted use pesticide.
- (2) Any person who buys, sells, or uses a restricted use pesticide must be licensed by the department as a commercial pest control operator, certified by the department as a certified applicator, or acting under the direct supervision of a license or certificate holder.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.02 Definitions

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2 of the Tennessee Code, and the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21 of the Tennessee Code.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act and the Tennessee Application of Pesticides Act of 1978, collectively or individually;
 - (b) Commercial applicator means a person who uses, supervises the use of, sells, or buys restricted use or general use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking its license examination;
 - (c) External training means:
 1. Training that is conducted outside of a commercial pest control operator's place of business;
 2. Training that is open to the public; or,
 3. Training that is conducted by a presenter who is not employed by the pest control operator requesting continuing education credit for the training.
 - (d) General use pesticide means a pesticide that may be purchased and used by individuals without obtaining prior certification or licensing;

- (e) In-house training means training that is conducted within the employer's place of business and attendance is limited to those persons employed by that employer. In-house training may include but is not limited to satellite attendance through the use of internet, computer software, or video presentations;
- (f) Reciprocity or words of similar import refer to an agreement or recognition of an agreement between the department and another state for the purpose of mutually accepting each state's certification of a certified applicator;
- (g) Restricted use pesticide dealer means an individual who is certified in the category of Pesticide Dealer and who sells or offers for sale restricted use pesticides.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.03 Certification Requirements

- (1) Applicants for certification as a private applicator or commercial applicator must be 16 years of age or older and be a United States citizen or possess current proof of qualified alien status prior to receiving certification.
- (2) All certifications issued under this rule shall expire on June 30 of the third year of the certification period in which the certification was issued.
- (3) Private Applicator Certification.
 - (a) Applicants for private applicator certification from the department must successfully complete a specialized training course provided by the University of Tennessee Extension Service on the proper use of restricted use pesticides. Applicants must submit to the department a copy of the three-part form signed by the extension agent verifying completion of the training course and payment of a Tier 1 certification fee under T.C.A. §43-1-703(f).
 - (b) Applicants for private applicator certification under reciprocity with another state must hold valid certification in the reciprocating state and must submit application to the department for a reciprocal Private Applicator card.
- (4) Commercial Applicator Certification.
 - (a) Applicants for commercial applicator certification from the department must submit a completed application to sit for a commercial certification exam in the certification category(ies) of service in which the applicator desires to engage.
 1. Applicants must remit with their application payment of a Tier 1 examination fee under T.C.A. §43-1-703(f) for each exam to be taken by the applicant.
 2. Applicants must score 70% or higher on the commercial certification exam. Individuals who score below 70% are ineligible to retake the exam for two weeks.
 3. Applicants who exhibit unethical behavior during the commercial certification exam shall immediately fail the exam and are ineligible to retake the exam for one year.
 4. An applicant who cannot take a scheduled exam due to circumstances beyond his control may reschedule the exam without payment of an additional examination fee, provided that the applicant contact the department more than 48 hours prior to the previously scheduled exam. Applicants who reschedule an exam with less than 48 hours' notice shall forfeit the examination fee for the previously scheduled exam.

- (b) Applicants for commercial applicator certification under reciprocity with another state must hold valid certification in the reciprocating state. Applicants must also submit to the department an application for reciprocity and a copy of the front and back of the commercial applicator card issued by the reciprocating state.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 43-8-113; 62-21-118.

0080-09-02-.04 License Requirements

- (1) Any person who offers or performs custom applications of pesticide as a commercial pest control operator must hold a valid pest control operator's license.
- (2) Applicants for licensure as a commercial pest control operator must, prior to sitting for the license exam, be certified as a commercial applicator in the category of service to be offered.
- (3) Applicants for licensure as a commercial pest control operator must meet all applicable requirements of the Act.
- (4) Applicants for licensure as a commercial pest control operator must remit to the department payment of a Tier 2 biennial license fee under T.C.A. §43-1-703(f) for each category license held by the applicant. Applicants for any pesticide dealer license must remit to the department payment of a Tier 2 annual license fee under T.C.A. §43-1-703(f) for each location where restricted use pesticides are sold or offered for sale at wholesale or retail.
- (5) Commercial pest control operator licenses shall expire on June 30 of the second year following their issuance. Pesticide dealer licenses shall expire on June 30 following their issuance.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 62-21-111; 62-21-118.

0080-09-02-.05 Certification Categories

- (1) Agricultural Pest Control (C01).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and non-crop agricultural land.
 - (b) Standards of competency. Applicators must demonstrate a practical knowledge of: the crops on which the applicator may be using restricted use pesticides and the pests incident to those crops; soil and water problems; pre-harvest intervals; re-entry intervals; phytotoxicity; potential for environmental contamination; non-target injury; and community problems resulting from the use of restricted use pesticides in agricultural areas.
- (2) Forest Pest Control (C02).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in forests, forest nurseries, and forest seed producing areas.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: the types of forests, forest nurseries, and seed production in the state and the pests incident to those areas; the cyclic occurrence of certain pests and specific population dynamics that are basic to programming pesticide applications; relative biotic agents and their vulnerability to specific pesticides; control methods to minimize unintended effects of pesticide application; and proper

use of specialized equipment, particularly as it may relate to meteorological factors and adjacent land use.

- (3) Ornamental and Turf Pest Control (C03).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, plants, and grasses, including but not limited to fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf courses, and athletic fields.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf; awareness of potential phytotoxicity due to a wide variety of plant material, drift, and persistence of pesticide chemicals beyond the intended period of pest control; and application methods that minimize or prevent potential hazards to humans, pets, and other animals.
- (4) Seed Treatment (C04).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides on seeds.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: types of seeds that require chemical protection against pests; seed coloration; carriers; surface active agents that influence pesticide binding; factors that may affect germination; hazards associated with handling, sorting, and mixing of treated seed; misuse of treated seed into food and feed channels; and proper disposal of unused treated seeds.
- (5) Aquatic Pest Control (C05).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in aquatic environments.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: secondary effects of restricted use pesticides, including but not limited to those effects caused by improper application rates, incorrect formulations, and faulty application; various water-use situations; potential for downstream effects; effects on plants, fish, birds, beneficial insects, and other organisms present in aquatic environments; and principles of limited-area application.
- (6) Right-of-Way Pest Control (C06).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, highways, transmission lines, drainage ditches, and the like. This category includes the control of plants, whether woody or herbaceous.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: a wide variety of environments where rights-of-way may be treated; problems with runoff, drift, and excessive foliage destruction; ability to recognize target organisms; the nature of herbicides; the need for herbicide containment within the right-of-way; and the impact of herbicide application to adjacent areas and communities.
- (7) Industrial, Institutional, Structural and Health Related Pest Control (C07).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in, on, or around food-handling establishments, human dwellings, schools, hospitals, industrial establishments, warehouses, grain elevators, and any other similar institutions, facilities, structures or adjacent areas, public or private. Schools refer to child-serving facilities, for children through 12th grade, public or private. Children are

physiologically more vulnerable to pesticides. Children can spend long hours at school and therefore have an increased risk of pesticide exposure if pesticides have been applied in a manner incompatible with integrated pest management (IPM). This category also includes pesticide application for the protection of stored, processed, or manufactured products, and the control of birds, imported fire ants, or rodents.

- (b) Standards of competency. Applicators must demonstrate a practical knowledge of: a wide variety of pests and their life cycles; types of formulations appropriate for their pest control; methods of application to avoid contamination of food, damage or contamination of habitat, and exposure of people and pets; specific factors that may lead to a hazardous condition, including continuous exposure; and environmental conditions related to the activity of this category. In addition, applicators should be knowledgeable about the components in an Integrated Pest Management (IPM) program in child-serving facilities. Integrated Pest Management is a process for achieving long-term, environmentally sound, pest suppression by using a variety of technologies and management practices including preventing pest populations using sanitation, exclusion and habitat modification and applying pesticides in the least hazardous manner only when needed to correct verified problems to manage targeted pests effectively and economically.
- (8) Public Health Pest Control (C08).
- (a) Description. This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described under this rule.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: vector-disease transmission as it relates to and influences application programs; pests incident to this field; understanding of the pests' life cycles and habitats necessary to develop a control strategy; a great variety of environments ranging from streams to conditions found in buildings; and nonchemical control methods such as sanitation, waste disposal, and drainage.
- (9) Limited Herbicide Applicator.
- (a) Description. This category includes persons who incidentally apply herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders, and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: safety in handling, mixing, and applying pesticides; environmental hazards in using pesticides; calculations; calibrations; and label comprehension.
- (10) Demonstration, Research, and Regulatory Pest Control (C10).
- (a) Description. This category includes state, federal, and other governmental employees, including but not limited to extension specialists and county agents, who recommend, use, or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals, including but not limited to commercial representatives demonstrating pesticide products and application methods, who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides. This category also includes persons, including but not limited to state, federal, commercial, and other agents, who use or supervise the use of general or restricted use pesticides in the conduct of field research.
 - (b) Standards of competency. Persons demonstrating the safe and effective use of pesticides to other applicators and the public must meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge is required regarding problems, pests, and population levels occurring in each demonstration situation. Persons in this category

must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment by restricted use pesticides used in suppression and eradication programs. Persons in this category shall also demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Required knowledge shall extend beyond that required by the persons' immediate duties because their services are frequently used in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(11) Wood Preservatives (C11).

- (a) Description. Applicators in this category must demonstrate practical knowledge of, and shall meet, the specific standards required for categories (C01) through (C07) that are applicable to the applicator's particular activity, including the use or supervision of use of general or restricted use pesticides.
- (b) Standards of competency. Applicators must demonstrate practical and technical knowledge of: wood preservatives; the type of pests controlled by the preservatives; methods of applying preservatives to wood; safety equipment necessary to protect persons involved in application of the preservatives; and the after effects of applications as they pertain to plants, humans, pets, and other domestic animals.

(12) Pesticide Dealers (C12).

- (a) Description. For each location where restricted use pesticides are sold at wholesale or retail, a person licensed as a pesticide dealer must be employed at the location. The licensed pesticide dealer shall bear responsibility for the actions of every person at the location who sells restricted use pesticides. Persons holding a Pesticide Dealer certification are permitted to purchase and use restricted use pesticides. However, a Pesticide Dealer certification does not permit custom applications of pesticides.
- (b) Standards of competency. Pesticide dealers must demonstrate practical knowledge necessary to advise applicators and the public on the safe and effective use of pesticides. Pesticide dealers must meet comprehensive standards reflecting a broad knowledge of pesticide uses. Pesticide dealers must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.

(13) Antifouling Marine Paint (C13).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use antifouling marine paints.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: tributyltin product labels and understanding of why the products are classified as restricted use pesticides; health and environmental hazards associated with the use of antifouling paints; application, testing equipment, and personal protective equipment associated with antifouling paints; and proper storage, handling, transport, and disposal of antifouling paints, including disposal of excess material, waste, and containers.

(14) Microbial Pest Control (C14).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities.

- (b) Standards of competency. Applicators must demonstrate practical knowledge of: antimicrobial agents in the control of bacteria, fungi, algae, and viruses; health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus; application, testing equipment, and personal protective equipment associated with the use of antimicrobial agents; and proper storage, handling, transport, and disposal of antimicrobial agents, including disposal of excess material, waste, and containers.
- (15) Reserved.
- (16) Sewer Line Treatment (C16).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: metam-sodium products for root control; health and environmental hazards associated with metam-sodium in sewer lines and wastewater treatment facilities; personal protective equipment associated with use of metam-sodium products; and proper storage, handling, transport, spills cleanup, and waste disposal of metam-sodium products.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.06 Recertification Requirements

- (1) Recertification of any private applicator or commercial applicator shall expire on June 30 of every third year.
- (2) Certified applicators must notify the department in writing of any change to their name or address within 30 days after the change takes place.
- (3) Private Applicator. To obtain recertification, a private applicator must successfully complete an instructional course offered by the University of Tennessee Extension Service in the last calendar year during which the applicator's certification is valid.
- (4) Commercial Applicator.
 - (a) To obtain recertification, a commercial applicator must obtain every three years the required number of continuing education units in his certification category. In case of extenuating circumstances, such as a medical condition or military service, applicators may receive in the department's discretion an extension in which to accrue required continued education units.
 - (b) Continuing Education Units (CEU).
 - 1. The following number of CEUs are required for recertification in each respective certification category:
 - (i) Agricultural Pest Control (C01): 18 CEUs;
 - (ii) Forest Pest Control (C02): 12 CEUs;
 - (iii) Ornamental and Turf Pest Control (C03): 18 CEUs;
 - (iv) Seed Treatment (C04): 12 CEUs;
 - (v) Aquatic Pest Control (C05): 12 CEUs;

- (vi) Right-of-Way Pest Control (C06): 18 CEUs;
 - (vii) Industrial, Institutional, Structural and Health Related Pest Control (C07): 30 CEUs;
 - (viii) Public Health Pest Control (C08): 18 CEUs;
 - (ix) Limited Herbicide Applicator: requirements equivalent to certification under Ornamental and Turf Pest Control (C03), 18 CEUs;
 - (x) Demonstration, Research, and Regulatory Pest Control (C10): 18 CEUs;
 - (xi) Wood Preservatives (C11): 9 CEUs;
 - (xii) Pesticide Dealers (C12): 18 CEUs;
 - (xiii) Antifouling Marine Paint (C13): 9 CEUs;
 - (xiv) Microbial Pest Control (C14): 9 CEUs;
 - (xv) Reserved;
 - (xvi) Sewer Line Treatment (C16): 9 CEUs.
2. The number of CEUs required for recertification shall be prorated for persons obtaining original certification during a recertification period.
 3. An applicator shall accrue one CEU for each hour of attendance at CEU approved training on certification related topics.
 4. No more than 50% of the required number of CEUs may be accrued at in-house training.
 5. No more than 75% of the required number of CEUs may be accrued at any one external training.
 6. CEUs may be awarded for electronic media used in conjunction with a presentation as part of in-house training.
 7. Applications for approval of CEU training must be filed with the department at least 30 days prior to the date of the training. Applications submitted by educational institutions must be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).
 8. All attendance rosters for CEU approved training must be submitted to the department no later than 30 days after the training. A violation of this requirement is grounds for denial of any future application for approval of CEU training by the sponsor or facilitator.
 9. Representatives of the department and PSEP employees may attend any CEU approved training without incurring registration fees.
- (c) An applicator who does not accrue the required number of CEUs prior to expiration of his certification may be subject to regulatory enforcement measures by the Department and must, in order to maintain valid certification, successfully retake the exam in his certification category.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

As state standards for pesticide recordkeeping requirements of private applicators using restricted use pesticides, the department adopts by reference, as if fully stated herein, those federal standards for recordkeeping on restricted use pesticides by certified applicators, compiled at 7 C.F.R. 110, as last amended and codified January 1, 2006.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.08 Use of Restricted Use Pesticides

- (1) No person shall use or buy a restricted use pesticide unless certified as a private applicator or a commercial applicator or unless licensed as a commercial pest control operator.
- (2) No person shall act as a private applicator unless he is certified by the department as a private applicator.
- (3) No person shall act as a commercial applicator unless he is certified by the department as a commercial applicator. A commercial applicator may only act within the certification category for which he is certified.
- (4) No person shall act as a commercial pest control operator unless he is licensed by the department as a commercial pest control operator. A commercial pest control operator may only act within the category for which he is licensed.
- (5) Pesticide dealers.
 - (a) No one shall sell restricted use pesticides at wholesale or retail unless he is certified in the category of Pesticide Dealers (C12) and has obtained a Restricted Use Pesticide Dealer license.
 - (b) A licensed pesticide dealer shall not sell or allow the sale of a restricted use pesticide to any person who is not certified or licensed by the department for the purchase of restricted use pesticides.
 - (c) Pesticide dealers shall submit with their applications for license renewal all yearly sales records of restricted use pesticides sold, including for each sale: the date of the sale, the name and quantity of the pesticide purchased, the name of the purchaser, the purchaser's certification or license number, and the expiration date of the purchaser's license, certificate, or private applicator card.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.09 Exemptions

Persons licensed pursuant to T.C.A. §43-8-301 et. seq. are exempt from the requirements of this chapter for aerial applications of pesticides.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.10 Violations

- (1) Violations of the Act or this chapter are actionable against any person when committed by either the person or his agent.
- (2) Each violation of the Act or this chapter is grounds for issuance of a stop sale, stop use, or removal order against the violator, in addition to or in lieu of any other lawful disciplinary action.

- (3) In addition to all other requirements of the Act and this chapter, each occurrence of the following shall constitute a separate violation of this chapter:
- (a) Label violations. Any violation of federal standards for labeling requirements for pesticides, compiled at 40 C.F.R. Part 156, which the department adopts by reference as if fully stated herein.
 - (b) Formulation violations.
 - 1. Chemical deficiencies;
 - 2. Net weight inaccuracies;
 - 3. Chemical contamination;
 - 4. Over-formulated.
 - (c) Use violations.
 - 1. Use or disposal of a pesticide in a manner inconsistent with its labeling;
 - 2. Violation of stop sale, use or removal order.
 - (d) Records, books, documentation violations.
 - 1. Failure to maintain as required by the Act;
 - 2. Failure to produce for inspection.
 - (e) Product registration violations. Failure to have products registered.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.11 Pesticide Management and Disposal

The department adopts by reference, as if fully stated herein, those federal standards for pesticide management and disposal and standards for pesticide containment structures, compiled at 40 C.F.R. 165, Subparts A and E, as either subpart may be amended from time to time.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.12 Pesticide Product Registration Fee

The fee for each pesticide product registration shall be a Tier 5 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-104; 43-8-106; 62-21-118.

Chapter 0080-09-03
Commercial Aerial Application of Pesticides

0080-09-03-.01 General

- (1) Insurance required by T.C.A. §43-8-304 must cover any liability arising out of the commercial aerial applicator's application of pesticides.
- (2) Any pesticide applied by a commercial aerial applicator must be applied in a manner consistent with its label and label restrictions. Upon request of the department, a commercial aerial applicator must submit evidence that pesticide label restrictions have been fully met.
- (3) Applicants for licensure as a commercial aerial applicator must remit to the department payment of a Tier 5 annual license fee under T.C.A. §43-1-703(f) for each category license held by the applicant.
- (4) The fee for each aerial decal shall be a Tier 4 fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-302; 43-8-304.

0080-09-03-.02 Denial of License

In addition to or in lieu of any other lawful disciplinary action, violation of any statute or regulation regarding the use, purchase, or sale of pesticides shall be grounds for denial or revocation of any license issued under authority of T.C.A. §43-8-301, et seq.

Authority: T.C.A. §§ 4-3-203; 43-8-302.

Chapter 0080-09-04
Pest Control Operators

0080-09-04-.01 Qualifications of Applicants

- (1) Applicants are required to have a commercial applicator certificate in the certification category before taking a license examination in that category, as provided in Tenn. Comp. R. & Regs. 0080-09-02-.04.
- (2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued visa prior to taking the license examination.
- (3) Qualification for examination based on education.
 - (a) Applicants are qualified to take any license examination, except the Wood Destroying Organisms license examination, if they have been awarded a baccalaureate degree with a major or minor in one or more of the following curricula: agriculture, biology, chemistry, forestry, horticulture, entomology, plant pathology and plant science, or other similar course of study. Satisfaction of these qualifications must be demonstrated by evidence of an official transcript from the institution of higher education that awarded the applicant's degree.
 - (b) Applicants are qualified to take the Pest Control Consultant license examination if they have graduated from an accredited institution with a baccalaureate degree in the field of pest control in which the applicant intends to offer consultation. A Pest Control Consultant license does not qualify the licensee to conduct pest control operations.
- (4) Qualification for examination based on combination of education and experience.
 - (a) Applicants are qualified to take the Wood Destroying Organisms license examination if:

1. They have been awarded a baccalaureate degree as set forth in subparagraph (3)(a) of this rule and have completed one year of full-time work experience in the field of wood destroying organisms; or,
 2. They have been awarded a masters or doctoral graduate degree in entomology and have graduated from the Tennessee Apprentice Termite Technician School.
- (b) Applicants who hold a current Horticulture – Lawn, and Turf (HLT); Horticulture Interior (HRI); Weed Control Right-of-Way and Industrial (WEC); or Agricultural – Ground Equipment (AGE) license are qualified to take the license examination in another of those four categories, provided the applicant is certified in the license category for which he has applied; has at least two years work experience in the license category for which he has applied; or has at least 12 college level semester hours or 24 continuing education units related to the license category for which he has applied.
- (c) Applicants are qualified to take the Agricultural – Ground Equipment (AGE) or Horticulture – Lawn and Turf (HLT) license examination if they have: completed two years of full-time work experience in the license category for which they have applied; been awarded a baccalaureate degree; and completed at least 12 college level semester hours or 24 continuing education units related to the categories of AGE or HLT.
- (5) Qualification for examination based on experience.
- (a) Applicants are qualified to take the Horticulture – Lawn and Turf (HLT) or Agricultural – Ground Equipment (AGE) license examination if they:
1. Hold a valid Certified Crop Advisors (CCA) certificate;
 2. Have one year of full-time work experience applying pesticide in the category of license for which they have applied;
 3. Are certified in the category of license for which they have applied; or,
 4. Are registered with the department as a pest control technician or salesperson, as provided in Tenn. Code Ann. §62-21-109, for a period of 24 months of full-time work experience. If the applicant was not registered with the department through no fault of his own or if the applicant's work experience was obtained out of state, the applicant may satisfy this requirement through provision of documentary evidence of his employment.
- (b) Applicants are qualified to take the Public Health Mosquito Control license examination if they hold a valid Public Health Mosquito Control certificate or a General Pest and Rodent Control certificate.
- (6) Applicants who misrepresent their work experience shall be ineligible to take any license examination for two years after the applicant meets the required qualifications.
- (7) If after an applicant is issued a license the department determines that the applicant's application contained inaccurate information, the license shall be revoked in accordance with the Uniform Administrative Procedures Act, and the applicant shall be prohibited from resubmitting an application for any license examination for two years.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.02 Certification of Qualifications

- (1) Upon application to take a license examination, or at such other time as the Pest Control Board may require, the applicant shall present a certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience.
- (2) Upon application to take a license examination, or at such other time as the Pest Control Board may require, the applicant shall present a copy of a transcript or certificate properly evidencing a qualifying degree, professional standing, course hours, or continuing education units.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.03 Examination of License Applicants

- (1) Applications to take a license examination shall be submitted by the tenth day of the month preceding the month of the scheduled examination.
- (2) License examinations will be given the first month of each quarter at Ellington Agricultural Center in Nashville, Tennessee or at a place and date determined by the Pest Control Board.
- (3) Qualified applicants who have submitted an application will be notified of the date, place, and time of the examination(s). Applicants who are determined by the department to be unqualified will be notified in writing that their application was denied and the department's reason(s) for the denial.
- (4) License examinations shall be given in two parts, as follows:
 - (a) The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure: state and federal laws and regulations; insects; weeds and disease; plant management decision making; herbicide technology; pesticide safety; adjuvants; fumigation and soil fumigation; integrated pest management; environmental considerations; principles of vegetation management; plant growth regulators; calibration of application equipment; common problems encountered during application; professionalism and public relations in vegetation management; pest, bird, plant, tree, and disease identifications; pesticides and human health; drift management; navigation (aerial, using GPS, DGPS, OmniSTAR); calculating area of target site; pesticide measurement systems; operations (aerial, pilot and ground crews and aircraft crash response); mosquitoes and human diseases; life cycle of mosquitoes; wood destroying organisms; vertebrates and invertebrates; pests on or near food; urban IPM programs; and implementing urban pest management programs.
 - (b) The second part of the examination will test applicants on specimen identification as it relates to the particular license category.
- (5) To pass the license examination, applicants must score 70% or higher on both parts, individually.
- (6) Applicants will be allowed two hours to complete the first part of the examination and three hours to complete the second part.
- (7) While there is no limitation on the number of categories for which a license applicant may be examined during any examination period; the above-stated time limits shall apply.
- (8) Applicants approved to take the license examination(s) are required to present a photo ID on the day of testing.
- (9) Applicants must pass the first part of the examination before they can take the second part. Applicants that fail the second part shall only be required to retake that part of the examination.
- (10) Applicants exhibiting unethical behavior during an examination shall be ineligible to take another license

examination for two years.

- (11) Applicants who cannot take a scheduled examination due to circumstances beyond their control must contact the department more than 48 hours prior to the scheduled examination to reschedule the exam or their examination fee will be forfeited.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.04 License Categories

- (1) Agricultural – Ground Equipment (AGE). This category includes the control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (2) Aquatic Pest Control (APC). This category includes the control of aquatic plants and algae through the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.
- (3) Bird Control (BDC). This category includes the control of bird pests through the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (4) Forest Pest Control (FPC). This category includes the control of tree pests and diseases in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.
- (5) Fumigation – Soil (FUS). This category includes the control of agricultural pests through the soil application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (6) Fumigation – Structural (FUM). This category includes the control of pests by application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (7) General Pest and Rodent Control (GRC). This category includes the control of vertebrate and invertebrate pests, including fire ants, that are generally known to invade a structure, and that are not specifically included under other categories of licenses in this rule. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (8) Horticultural – Interior (HRI). This category includes the control of plants pests and diseases. The category applies to residential and commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (9) Horticulture – Lawn and Turf (HLT). This category includes the control of pests and diseases generally known to invade turf, lawns, and landscape in non-agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fire ants, fleas, and ticks, and other pests not specifically included under other categories of licenses in this rule, but not other pests generally known to invade the inside of a structure. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (10) Microbial Pest Control – (MPC). This category includes the control of microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities. Applicants for this license must be certified in Microbial Pest Control.
- (11) Mold Remediation – (MRC) – This category includes the control of mold and fungus in structures due to water damage. Applicants for this license must be certified in Industrial, Institutional, Structural and

Health Related Pest Control or Microbial Pest Control.

- (12) Pest Control Consultant (PCC). This category of license is available to a graduate of an accredited college or university with a baccalaureate degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to conduct pest control operations.
- (13) Public Health Mosquito Control (PHMC). This category includes management of mosquitoes in all stages of their development on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.
- (14) Weed Control – Right-of-Way Industrial (WEC). This category includes the control of plants, whether wood or herbaceous, by the application of chemicals generally classified as herbicides to industrial sites and rights-of-way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right-of-Way Pest Control.
- (15) Wood Destroying Organisms (WDO). This category includes the control of termites, wood borers, carpenter bees, carpenter ants, and decay, without regard to the type or use of the structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (16) Wood Preservatives (WPC). This category includes the control of insects, fungi, marine borers, and the effects of weather on wood products that may damage or degrade the wood, whether controlled at the manufacturing or distributing stage. Applicants for this license must be certified in Wood Preservation Pest Control.
- (17) Special (SPC). This category includes the control of pests in special situations by methods not included in other license categories listed in this rule. This license category may or may not require an examination in the discretion of the Pest Control Board and licenses issued under this category may be limited to specific pesticide uses and circumstances as determined by the Pest Control Board.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.05 License Requirement for Active Practice and Certification

- (1) Applicants who have passed a license examination must pay all licensure fees within one year of the license examination in order to obtain the license. The fee for each category of licenses is established at Tenn. Comp. R. & Regs. 0080-09-02-.04. Applicants who do not pay all licensure fees within one year of the license examination will be required to retake the license examination prior to receiving a license. Applicants with extenuating circumstances, such as a medical condition or military service, may receive in the department's discretion an extension in which to pay the license fee.
- (2) Individuals under expired licenses or certifications must retake the license and certification examinations before they will be eligible to renew the license(s) or certification(s).
- (3) All licenses issued under this chapter shall expire upon expiration of the license holder's certification. Licenses may be reinstated where the license holder recertifies for the certification, provided that the certification has not been expired for more than one year.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.06 Requirements for Licensees in Fumigation

- (1) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, FUS or FUM, must be present at the application site and actively in charge of work.
- (2) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, FUS or FUM, must ensure that:
 - (a) At least one gas mask, capable of protecting its wearer from the gas being applied, is readily available at the application site for each person present during the application.
 - (b) Warning signs are conspicuous and prominently displayed at all entrances to the building, structure, or other area at the fumigation site, declaring that the property is being fumigated with poisonous gas and that no one should enter.
 - (c) A guard is present at any publicly available entrance to the site to prevent entry by unauthorized persons and that all entry doors where a guard is not posted are locked, posted with a warning sign, and regularly patrolled by a guard. Any guard shall at all times have ready access to a gas mask, capable of protecting its wearer from the gas being applied.
 - (d) The building, structure, or area at the fumigation site is properly cleared of fumigants in accordance with the pesticide label before unrestricted re-entry of the site is authorized.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.07 Requirements for Licensees in Wood Destroying Organisms

- (1) Persons operating under licenses for wood destroying organisms shall conform to the following regulations:
 - (a) On every control job for wood destroying organisms, a written contract shall be fully defined and executed in duplicate by all parties prior to any pesticide being applied in performance of the contract. On control jobs for termites, the contract shall contain a warranty for the service provided. The contract and any applicable warranty shall be transferable so as to remain with the treated property for the remainder of the contract term, which may be renewed or extended upon written agreement of the parties. One copy of the contract shall be retained by the commercial pest control operator and one copy of the contract shall be provided to the non-operator party contracting for the service. The contract shall be uniquely numbered in a manner necessary to distinguish it from other contract numbers issued by the pest control operator and different from any purchase order number, contact number, or other information related to the operator's provision of pesticide services.
 - (b) For each contract described in subparagraph (1)(a), a graph shall be attached to the contract prior to the contract being fully executed. The graph shall be drawn to show the condition of the property as it relates to termite infestation and damage at the time of the contract being executed by the commercial pest control operator.
- (2) Unless exempted by paragraph (6) of this rule or unless prohibited by the pesticide label, the operator shall give the following minimum services on each control job for wood destroying organisms:
 - (a) All applications of pesticides for the purpose of controlling wood destroying organisms shall be done in accordance with label directions. Allowances under 7 U.S.C.A. §136(ee) shall not apply when mixing or applying termiticides.
 - (b) All pretreatments shall be completed according to label directions within one year of the date of the initial treatment or to coincide with the completion of the backfill.

- (3) Each property under contract with a termite control operator shall be examined by the operator at least once per year, provided that the owner or agent of the property makes the property available for examination. A report of the annual examination and all subsequent inspections showing the condition of the property with respect to the presence or absence of wood destroying organisms shall be left with the property owner at the time of the examination or inspection and a copy of the report retained by the operator, subject to inspection by the Department.
- (4) The department may examine records and properties treated by any operator licensed in the category of wood destroying organisms for the purpose of determining the efficacy of the treatment given. Whenever unsatisfactory or substandard treatments are found, the operator or charter holder will be notified and will be given a reasonable length of time in which to correct the condition. If the operator fails to correct the condition within that time, his license and the corresponding charter may be suspended as provided by law unless the operator can show good cause why suspension should not be taken. During suspension of any license or charter under this paragraph, the operator and charter holder may retreat all properties on which they hold current contracts for pesticide services, provided that they notify the department of all dates of reexaminations and retreatments provided to properties previously deemed unsatisfactory by the department. However, in no event shall the operator or charter holder solicit new business during suspension of their license or charter. When all properties previously noticed to the operator as unsatisfactory have been re-examined and retreated, the department shall make re-inspection of the properties within a reasonable period. The department may lift the suspension of any license or charter under this paragraph if the department finds upon re-inspection that the condition of the properties has been corrected. If the department finds upon re-inspection that the condition of the properties has not been corrected, the license or charter suspended under this paragraph may be revoked. Any license or charter may be suspended or revoked for gross neglect of contracts, falsifying the presence of an insect pest, or general failure to give satisfactory service.
- (5) All contracts for termite control shall carry a one year warranty for retreatments of termites only. The issuance of a damage guarantee is optional.
- (6) Less than complete treatments may be given when physical reasons or conditions prevent a full treatment; when the label prohibits; or when the owner of the property requests that a less than complete treatment be provided.
- (7) Warranties and guarantees are not required for less than complete treatment of non-commercial buildings. However, the contract covering such work shall contain express and unambiguous language that no guarantee is provided for the treatment. Additionally, "No Guarantee" shall be printed in letters at least one-half inch in height on both sides of the invoice and agreement form regarding the less than complete treatment.
- (8) Wood Destroying Beetles.
 - (a) When it is determined that an active infestation of wood destroying beetles exists, treatment may be permitted for the control or prevention of re-infestation of the families of beetles that are known to reinfest seasoned wood, e.g. Anobiidae, Lyctidae, Bostrichidae, Cerambycidae, and Curculionidae.
 - (b) Treatment procedures.
 1. Active infestations may be treated only with a federal and state registered pesticide that is labeled for the remedial treatment of wood destroying beetles. All applications and safety procedures must be strictly followed according to label instructions. Persons who provide treatments for active wood destroying beetle infestations must have a valid Wood Destroying Organism or Fumigation license appropriate for the registered pesticides that are applied. Persons who provide treatments for active wood destroying beetle infestations must, prior to providing the treatment, inform property owners of alternative means of control such as removal and replacement of infested wood where the infestation is localized.

2. Preventative treatments may be performed only with a federal and state registered pesticide that is labeled for application as a preventative treatment of wood destroying beetles.
 - (i) New construction. Preventative treatments of new framing or new log construction shall be performed with a federal and state registered pesticide that is labeled for the prevention of wood destroying beetles.
 - (ii) Existing structures. Preventative treatments of existing frame structures may be performed if:
 - (I) Prior to treatment, wood moisture content in the intended treatment area is tested using a moisture inspection instrument designed to read moisture content in wood;
 - (II) At least five locations where the wood moisture content is tested show moisture content of at least 18%;
 - (III) The commercial pest control operator provides a written report to the property owner listing and diagramming the conditions that warrant a preventative treatment; and,
 - (IV) The treatment is performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in existing frame structures.
 - (iii) Existing log structures. Preventative treatments of existing log structures shall be performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in log construction.
- (9) Carpenter Ants and Bees.
 - (a) Carpenter Ants (*Camponotus*, Sp.) damage can be recognized by the presence of hollow, irregular, clean chambers cut across the grain, and by the presence of fine to coarse wood fibers, which are removed from the chamber by the ant as the nest is constructed. Treatment of carpenter ants may be localized treatments by an approved pesticide. The nest should be found and treated if possible. Carpenter ants are generally present due to excess moisture somewhere in the wooden structures. To help control a carpenter ant infestation, the moisture problem should also be corrected.
 - (b) Carpenter Bees (*Xyocopa* spp.) often burrow into exposed, dry wood of buildings, posts, wooden fences, etc. Damage to the wood can be extensive because the bees often colonize the same piece of wood. Treatment of carpenter bees may be performed by applying any approved pesticide into the entrance holes.
- (10) Formosan Termites. All infestations of *Coptotermes*, *Formosanus*, *Shiaki*, or any other members of the genus *Coptotermes*, known as the Formosan termite, shall be treated with appropriately labeled pesticides and reported to the department.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.08 Certification of Commercial Pesticide Applicators

- (1) No charter holder or licensed pest control operator shall allow an uncertified person to apply pesticides except in accordance with this rule.
- (2) Custom applications of pesticide must be applied by a pest control operator or certified applicator, licensed or certified in the category of services being provided, or by a person in the presence of a properly licensed pest control operator or certified applicator.
- (3) Commercial applicators who apply pesticides under the direct supervision of a licensed pest control operator must be certified in the category of services being provided.
- (4) Commercial applicators will be issued an individual commercial certification card and are responsible for maintaining their certification as provided in Tenn. Comp. R. & Regs. 0080-09-02.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.09 Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators

- (1) All commercial pest control operators and commercial applicators shall maintain true and accurate records of both restricted and general use pesticides. Such records shall be kept legibly or electronically and shall be readily available for departmental inspection for two years following the pesticides' use. Upon request by the department, such records shall be made available within 48 hours.
- (2) The records must document each of the following:
 - (a) Applicator's first and last name(s) and departmental assigned identification number;
 - (b) Pesticide used;
 - (c) Target pest(s);
 - (d) Crop, plant, house, business, or building onto or around which the pesticide is applied;
 - (e) Location where the pesticide is applied, including physical address or Farm Services number;
 - (f) Application rate;
 - (g) Percentage of mixed-use dilution and quantity of pesticide used;
 - (h) Landowner or other person who requested the custom application of pesticide; and,
 - (i) Date of service.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.10 Requirements for Licensees in Aquatic Weed Control

Any person applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of pest control operator licensed and certified in Aquatic Pest Control.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.11 Requirements for Spot Treatment Only in Lawn Maintenance

- (1) Any person who incidentally applies herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices, e.g. spot treatments adjacent to fencing, driveways, parking lots, cemetery markers, and landscape borders and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging, shall not be considered to be applying a custom application of pesticide, provided that the person meets the following criteria:
 - (a) The applicator has obtained and maintained certification in the category of Limited Herbicide Applicator;
 - (b) The application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of 25 gallons; an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no longer than 15 feet long;
 - (c) The applicator or his employer has provided to the department proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products and completed operations, and the policy has been endorsed to cover herbicide applications;
 - (d) The name of the business and certificate number is displayed on the right and left sides of all company vehicles or trailers, in lettering no shorter than two inches tall; and,
 - (e) Application records shall contain the date of application and the property address.
- (2) A person operating under this rule shall not advertise the application of herbicides or any other pesticide application. A person operating under this rule shall not supervise the application of any pesticide by an uncertified person.
- (3) Persons certified in the category of Limited Herbicide Applicator are not required to obtain a business charter, bond, or license.
- (4) This rule shall not apply to any person who applies a herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided, and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.12 Fees

- (1) The fee for a special local need (24-C) shall be a Tier 6 fee under T.C.A. §43-1-703(f).
- (2) The fee for a commercial pest control operator charter shall be a Tier 9 biennial fee under T.C.A. §43-1-703(f).
- (3) The fee for registration of nonclerical employees and issuance of solicitor and technician cards shall be a Tier 2 biennial fee under T.C.A. §43-1-703(f) for each employee, solicitor, or technician registered with the department.
- (4) The fee for each consultant or custom applicator license examination shall be a Tier 4 fee under T.C.A. §43-1-703(f).
- (5) The fee for a pest control consultant license shall be a Tier 10 biennial fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-113; 62-21-111; 62-21-112; 62-21-118.

Chapter 0080-09-05
Worker Protection

0080-09-05-.01 Definitions

Farm labor contractor means any person who does not own and is not responsible for the management or condition of an agricultural establishment; and who hires or contracts workers to perform activities related to the production of agricultural plants, in exchange for compensation of any kind.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-05-.02 Worker Protection Standards (WPS)

The department adopts by reference, as if fully stated herein, the federal standards for labeling requirements for pesticides and devices and worker protection standards, compiled at 40 C.F.R. Part 156, Subpart K, and Part 170.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-06-.03 WPS Trainer Requirements

- (1) Persons currently certified as a private applicator of restricted use pesticides or as a commercial applicator in categories C01, C03, or C10 are exempt from the pesticide safety trainer requirements and may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(c)(1).
- (2) A trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(c)(1). The roster shall include the following:
 - (a) The name, address, telephone number, and signature of the applicant; and,
 - (b) The date of the training.
- (3) The commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this rule.
- (4) Any of the following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
 - (a) Failure to follow worker or handler training requirements detailed under 40 C.F.R. §§ 170.130(d)(1), (4); 170.230(c)(1), (4);
 - (b) Failure to maintain training information or to fulfill verification requirements detailed under paragraph (2) of this rule;
 - (c) Acting as a trainer without authorization; or,
 - (d) Revocation, suspension, or denial of trainer authorization in any jurisdiction within the previous three years.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-05-.04 Notice to Farm Labor Contractors

- (1) The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
 - (a) The location of the agricultural establishment's central posting site; and,
 - (b) Any restrictions on entering a treated area, as specified under 40 C.F.R. §170.120(d), if a treated area is within 1/4 mile of a location where workers work and the treated area is not posted as required under 40 C.F.R. §170.120(a)-(c).
- (2) The farm labor contractor shall:
 - (a) Post or provide workers in writing with the information required under 40 C.F.R. §170.122 or the specific location of the central posting site for each agricultural establishment on which the worker will be working; and,
 - (b) Provide workers with restrictions on entering a treated area, as specified in 40 C.F.R. §170.120(d), if the treated area is within 1/4 mile of a location where the worker will be working and the treated area is not posted as allowed or required under 40 C.F.R. §170.120(a)-(c).

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Repeal

Chapter 0080-06-14
Pest Control Operators

Chapter 0080-06-14 Pest Control Operators is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

Chapter 0080-06-15
Rules and Regulations Governing Commercial Aerial Application of Pesticides

Chapter 0080-06-15 Rules and Regulations Governing Commercial Aerial Application of Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-06-16
Regulations Governing Use of Restricted Use Pesticides

Chapter 0080-06-16 Regulations Governing Use of Restricted Use Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-06-27
Worker Protection

Chapter 0080-06-27 Worker Protection is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/23/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/27/16

Rulemaking Hearing(s) Conducted on: (add more dates). 03/21/16

Date: 03/23/2016

Signature: Jai Templeton

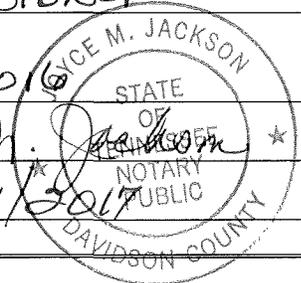
Name of Officer: Jai Templeton

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: 03/23/2016

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/11/2017



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

4/1/2016
Date

Department of State Use Only

RECEIVED
2016 APR -1 PM 3:11
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 4/1/16

Effective on: 6/30/16

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

The Department of Agriculture held a public hearing on March 21, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-01-03 Civil Penalties; 0080-06-14 Pest Control Operators; 0080-06-15 Rules and Regulations Governing Commercial Aerial Applications of Pesticides; 0080-06-16 Regulations Governing Use of Restricted Use Pesticides; 0080-06-27 Worker Protection; 0080-09-01 Classification of Pesticides; 0080-09-02 Restricted Use Pesticides; 0080-09-03; Commercial Aerial Application of Pesticides; 0080-09-04 Pest Control Operator Regulations; and 0080-09-05 Worker Protection.

Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Kenny Crenshaw of Herbi-Systems in Millington, Tennessee made comment both on behalf of the state Pest Control Board and on behalf of himself as a pesticide applicator. On behalf of the Board, Mr. Crenshaw maintained that while notice of these rules was made with the Tennessee Secretary of State's Office, the rules had not been received or discussed by the Board or with industry generally. He requested that the Department attempt other means in the future to put industry and the Board on notice regarding rule changes. More generally, Mr. Crenshaw objected to the proposed change to increase the minimum age for certified applicators from 16 to 18 because the change would unduly burden farms and farmers where 16 year olds are already eligible for certification as applicators. Mr. Crenshaw also objected to both the proposed increase in certification examination fees, from \$15 to \$50, and the rule's re-certification examination fees of \$250. Mr. Crenshaw indicated that the re-certification examination fee operates as a penalty the Department is not specifically authorized by the Agricultural Regulatory Fund law to levy and that the fee is unwarranted where the Department provides no greater service or privilege for re-certification than is provided by taking the original certification exam. Mr. Crenshaw maintains that open adoption of federal rules for record keeping requirements of private applicators is too sweeping a requirement and that the language of the rule should be amended to limit adoption of federal rules to a date certain in case future federal rules on this subject are at odds with Tennessee governance. Finally, Mr. Crenshaw requested an indication from the Department regarding future changes to these rules and future pesticide rules of the Department.

Response:

The Department appreciates Mr. Crenshaw's comments; generally finds them well-taken, and has amended the rules accordingly.

With regard to notice, the Department submits that these rules were noticed in accordance with all applicable requirements of the Uniform Administrative Procedures Act and state law. Further, the Department offers that these rules underwent review with the Tennessee Pest Control Association and various members of industry prior to being noticed, and the Department received general consensus from those members for advancement of the rules. Nonetheless, the Department also acknowledges its continual aim to invite and to maintain open dialogue with all of its constituents affected by the Department's work. Consequently, the Department will take stock of its notice procedures in a manner aimed at their continual improvement.

With regard to certification and recertification exam fees, the Department is specifically authorized under T.C.A. §62-21-118 to establish certification and re-certification requirements, which need not be identical in application. On this topic, pesticides program fees have not been increased since 1994. Since that time, the Department has been called upon for consecutive and significant budget cuts; yet, the current cost recovery of pesticide program costs from fees is only 69%. The Department believes that further cuts to the pesticides section programs may unduly increase risks associated with sales and applications of pesticides in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time. While no fee increase is ever desired, the Department believes that a middle-ground increase may be had both to better facilitate the proper administration of pesticide laws in this state, pursuant to T.C.A. §43-1-703, and not create an undue burden on pesticide applicators and licensees. For this reason, the Department has amended the rule to set certification and recertification exam fees at Tier 1 (\$25) each.

The Department expects to proceed with Attorney General review of these rules as necessary for their promulgation. The Department always strives for improvement of its rules and practices to increase

governmental efficiency and to improve clarity of regulatory requirements, while not unduly burdening the Tennessee public. These and all rules of the Department will be subject to the Department's perpetual review.

Comment:

Jeff Fedorchak of TruGreen in Memphis, Tennessee requested consideration of the certification exam fee increase being lowered from \$50 to \$25 and offered his support for a rule that set the fee at \$25. Mr. Fedorchak also offered appreciation for both the Department's efforts at an open dialogue with affected industry and accounting of program requirements where increased fees are needed.

Response:

The Department appreciates Mr. Fedorchak's comments; finds them well-taken and has amended the rule accordingly. The Department appreciates Mr. Fedorchak's support for its programs.

Comment:

Ronnie Griffis of Memphis, Tennessee echoed many of the comments made by Mr. Crenshaw. Mr. Griffis further requested consideration of a medical and military leave exemption for accumulation of continuing education units necessary for recertification as a certified applicator.

Response:

The Department appreciates Mr. Griffis' comments, and would offer its same response as noted above for Mr. Crenshaw's comments. With respect to Mr. Griffis' request for medical and military leave exemption from continuing education requirements for certified applicators, the Department notes that the exemption already exists under 0080-09-04-.05(1) for active practice and certification. In an abundance of caution, the Department has amended this rule to insert similar language in 0080-09-02-.06(4) for recertification requirements of commercial applicators.

Comment:

Scott Burnett of Alpha Pest Management Association offered his support for a \$250 re-certification examination fee as previously noticed in this rule. In support, Mr. Burnett noted he and other members of industry participated with the Department in development of the rules and that various members of industry similarly supported requirements that applicators obtain required continuing education units. He maintained that continuing education offers vital updates to industry practices that are not otherwise made known to persons who retest in lieu of obtaining continuing education, e.g. label changes. Consequently, he and other members of industry, including the Tennessee Pest Control Association, supported a higher \$250 re-examination fee for applicators that retest in lieu of obtaining continuing education.

Response:

The Department appreciates Mr. Burnett's comments and agrees that continuing education units serve an important role in knowledgeable practice of applying pesticides. To that end, continuing education units are required by this rule, and those applicators who do not obtain them are required to retest and may be subject to assessment of civil penalties or other regulatory enforcement measures.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include those businesses engaged in sale of pesticides or performance or advertising of pest control services in the state.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 1,462 firms, 10,634 certified commercial applicators, and 8,172 private applicators are licensed, certified, or registered with the department for pest control services.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the pesticides program.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Most states maintain similar requirements for licensing or registering persons in the manufacture, distribution, or application of pesticide products.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risks associated with sale and application of pesticides and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule adjusts fee schedules for licenses and inspection services conducted by the department of agriculture's pesticides program, pursuant to amendment of the Agricultural Regulatory Fund law. The rule also clarifies requirements of licensees in the wood destroying organisms category.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Insecticide, Fungicide, and Rodenticide Act; title 43, chapter 8, part 3, relative to the aerial application of pesticides; and the Tennessee Application of Pesticides Act, and the costs of the Department. See also Tenn. Code Ann. §§ 43-8-113; 43-8-302; and 62-21-111.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Businesses most affected by this rule include those that are engaged in the sale of pesticides or performance/advertising of pest control services in the state. TruGreen, Corporate Affairs, supports adoption of this rule. Herbi-Systems objects to fee increases for certification and re-certification examinations of pesticide applicators. Alpha Pest Management Association and the Tennessee Pest Control Association both supported an increase in re-certification examination fees, to \$250, which has been amended in this rule to \$25.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Estrin v. Moss, 430 S.W.2d 345 (Tenn. 1968).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to generate approximately \$974,889 of additional revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing pesticides inspection and examination services by the department, up from 69% cost recovery provided by the current fee structure.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Waddell, Administrative Director, and Kathy Booker, Pesticides Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: _____
 Rule ID(s): _____
 File Date: _____
 Effective Date: _____

Redline Copy of Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0080-06-14	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-15	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-16	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-27	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-09-01	Classification of Pesticides
Rule Number	Rule Title
0080-09-01-.01	Reserved

Chapter Number	Chapter Title
0080-09-02	Restricted Use Pesticides
Rule Number	Rule Title
0080-09-02-.01	Scope
0080-09-02-.02	Definitions
0080-09-02-.03	Certification Requirements
0080-09-02-.04	License Requirements
0080-09-02-.05	Certification Categories
0080-09-02-.06	Recertification Requirements
0080-09-02-.07	Recordkeeping Requirements of Private Applicators
0080-09-02-.08	Use of Restricted Use Pesticides
0080-09-02-.09	Exemptions
0080-09-02-.10	Violations
0080-09-02-.11	Pesticide Management and Disposal
0080-09-02-.12	Pesticide Product Registration Fee

Chapter Number	Chapter Title
0080-09-03	Commercial Aerial Application of Pesticides
Rule Number	Rule Title
0080-09-03-.01	General
0080-09-03-.02	Denial of License

Chapter Number	Chapter Title
0080-09-04	Pest Control Operators
Rule Number	Rule Title
0080-09-04-.01	Qualifications of Applicants
0080-09-04-.02	Certification of Qualifications
0080-09-04-.03	Examination of License Applicants
0080-09-04-.04	License Categories
0080-09-04-.05	License Requirement for Active Practice and Certification
0080-09-04-.06	Requirements for Licensees in Fumigation
0080-09-04-.07	Requirements for Licensees in Wood Destroying Organisms
0080-09-04-.08	Certification of Commercial Pesticide Applicators
0080-09-04-.09	Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators
0080-09-04-.10	Requirements for Licensees in Aquatic Weed Control
0080-09-04-.11	Requirements for Spot Treatment Only in Lawn Maintenance
0080-09-04-.12	Fees

Chapter Number	Chapter Title
0080-09-05	Worker Protection
Rule Number	Rule Title
0080-09-05-.01	Definitions
0080-09-05-.02	Worker Protection Standards
0080-09-05-.03	WPS Trainer Requirements
0080-09-05-.04	Notice to Farm Labor Contractors

New

Division 0080-09 Pesticides is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-09-01
Classification of Pesticides

0080-09-01-.01 Reserved

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~Chapter 0080-06-16~~ 0080-09-02
Regulations Governing Use of Restricted Use Pesticides

~~0080-06-16-.01~~ 0080-09-02-.01 General Scope

- (1) ~~The Commissioner of Agriculture determines that the use and application of restricted use pesticides may affect public health and environment. This chapter applies to any person who buys, sells, or uses a restricted use pesticide.~~
- (2) ~~To use, buy or sell~~ Any person who buys, sells, or uses a restricted use pesticides, an individual must be certified/licensed by the Commissioner or hold a valid pest control operator's license department as a commercial pest control operator, certified by the department as a certified applicator, or acting under the direct supervision of a licensee or certificate holder.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-16-.02~~ 0080-09-02-.02 Definitions.

- (1) ~~Category~~ — means an area of licensing or certification for which commercial pest control operators of general or restricted use applicators are qualified. Terms in this chapter share those meanings of terms set forth in the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2 of the Tennessee Code, and the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21 of the Tennessee Code.
- (2) ~~Certified Applicator~~ — means any individual who is certified by the Commissioner of Agriculture as authorized to use, buy, sell, or supervise the use of general or restricted use pesticides. When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act and the Tennessee Application of Pesticides Act of 1978, collectively or individually;
- (3) ~~(b)~~ Commercial Applicator — means a person who uses, supervises the use of, sells, or buys restricted use or general use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking the its license examinations.;
- (4) ~~Commercial Pest Control Operator~~ — means a person or business entity who engages in the custom application of pesticides or inspection of real property for the purpose of issuing a wood destroying insect inspection report and who has demonstrated to the satisfaction of the pest control licensing and advisory board such person's qualifications to design and direct pest control and inspection operations:
- (5) ~~Custom Application~~ — means the application of pesticides for a fee.

- (6) ~~_____ (c) _____ External Training~~ – means:
1. ~~_____ Training that is conducted outside of a commercial pest control operator's place of business and;~~
 2. ~~_____ Training that is open to anyone to attend the public; or,~~
 3. ~~_____ Training that is conducted by an outside a presenter who is not employed by the pest control company making the training request operator requesting continuing education credit for the training.~~
- (7) ~~_____ (d) _____ General Use Pesticides~~ – means a pesticide that may be purchased and used by individuals without obtaining any prior certification or licensing;
- (8) ~~_____ (e) _____ In-House Training~~ – means training that is conducted within the employer's place of business and attendance is limited to those persons employed by that specified company only employer. In-house training may include but is not limited to internet training, computer-based CD-ROM training, or DVD training, satellite attendance through the use of internet, computer software, or video presentations;
- (9) ~~_____ Private Applicator~~ – means an individual who uses, supervises the use of, or buys any restricted use pesticide for the purposes of producing an agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- (10) ~~_____ Recertification~~ – means the authorization every three (3) years by the commissioner to use, supervise the use of, sell, or buy general or restricted use pesticides.
- (11) ~~_____ (f) _____ Reciprocity~~ – means or words of similar import refer to an agreement or recognition of an agreement between the Tennessee Department of Agriculture and another state(s) that have similar laws and regulations for the purpose of obtaining certification only. All associated fees are the responsibility of the applicator. mutually accepting each state's certification of a certified applicator;
- (12) ~~_____ Restricted Use Pesticide~~ – means any pesticide classified for restricted use by the Commissioner of Agriculture.
- (13) ~~_____ (g) _____ Restricted Use Pesticide Dealer~~ – means an individual who is certified in the category of Pesticide Dealer and who wholesales or retails sells or offers for sale restricted use pesticides.
- (14) ~~_____ Under the Direct Supervision~~ – means any application or sale of a pesticide by a certified applicator acting under the instructions and control of private applicator, commercial applicator, or commercial pest control operator who is available if needed. An application or sale is under the direct supervision of an applicator or operator if the applicator or operator is physically present or in direct communication by conventional means of communication.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-16-.03 0080-09-02-.03 Certification Requirements.~~

- (1) Applicants for certification as a private applicator or commercial applicator must be 16 years of age or older and be a United States citizen or possess current proof of qualified alien status prior to receiving certification.
- (2) All certifications issued under this rule shall expire on June 30 of the third year of the certification period in which the certification was issued.
- (3) Private Applicator Certification Requirements.

- (a) ~~Applicants for private applicator certification from the department must §successfully complete a specialized training session course provided by the University of Tennessee Extension Service teaching on the proper use of restricted use pesticides. Send Applicants must submit to the department a copy of the three-part form signed by the extension agent verifying the completion of the training to the Tennessee Department of Agriculture with appropriate fees as outlined in T.C.A. § 43-1-703 course and payment of a Tier 1 certification fee under T.C.A. §43-1-703(f).~~
- (b) ~~Be certified to use restricted use pesticides in any other state having comparable certification requirements. Individuals who hold a current certification from another state must apply for and receive a reciprocal Private Applicator card with the Tennessee Department of Agriculture. Applicants for private applicator certification under reciprocity with another state must hold valid certification in the reciprocating state and must submit application to the department for a reciprocal Private Applicator card.~~
- (c) ~~Private applicator certification expires on October 21 of the 3rd year of the certification period.~~
- (d) ~~All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming privately certified.~~
- (2)(4) ~~Commercial Pesticide Applicator Certification Requirements.~~
- (a) ~~All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming a commercial pesticide applicator.~~
- (b) ~~Complete a commercial certification exam application form and submit the form to the commissioner with appropriate fees as outlined in T.C.A. § 43-1-703. Applicants for commercial applicator certification from the department must submit a completed application to sit for a commercial certification exam in the certification category(ies) of service in which the applicator desires to engage.~~
1. ~~Applicants must remit with their application payment of a Tier 1 examination fee under T.C.A. §43-1-703(f) for each exam to be taken by the applicant.~~
- (c) ~~2. Individuals Applicants must score seventy (70) percent % or higher to pass on the commercial certification exam. Individuals who score below 70% are ineligible to retake the exam for two weeks.~~
3. ~~Applicants who exhibit unethical behavior during the commercial certification exam shall immediately fail the exam and are ineligible to retake the exam for one year.~~
- (d) ~~4. Individuals An applicant who cannot take a scheduled examination due to circumstances beyond their his control must contact the Department within forty-eight (48) hours of the scheduled examination to reschedule or their examination fee shall be forfeited may reschedule the exam without payment of an additional examination fee, provided that the applicant contact the department more than 48 hours prior to the previously scheduled exam. Applicants who reschedule an exam with less than 48 hours' notice shall forfeit the examination fee for the previously scheduled exam.~~
- (e) ~~Individuals who fail the certification exam will have a two (2) week waiting period before being rescheduled.~~
- (f) ~~Individuals exhibiting unethical behavior during an examination shall fail the test and be ineligible to take the certification exam for one (1) year.~~
- (g)(b) ~~Individuals who possess a certification from another state that has a reciprocal agreement with the Tennessee Department of Agriculture will be issued a commercial pesticide applicator certification card. Applicants for commercial applicator certification under reciprocity with another state must hold valid certification in the reciprocating state. The applicant shall Applicants must also submit to the department an application for reciprocity and a copy of the front and back of the current commercial applicator card issued by the reciprocating state along with the reciprocity~~

application form furnished by the Tennessee Department of Agriculture.

- (h) ~~Commercial applicator certification expires on December 31st of the 3rd year of the certification period.~~

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 43-8-113; 62-21-118.

0080-09-02-.04(3) Requirements for Certification as a Commercial Pest Control Operator License Requirements

- (1) (a) ~~Anyone person who charges a fee for offers or performs custom applications of pesticide as a Commercial Ppest control Operator must hold a valid pest control operator's license.~~
- (2) Applicants for licensure as a commercial pest control operator must, prior to sitting for the license exam, be certified as a commercial applicator in the category of service to be offered.
- (3) (b) ~~Any person desiring to be licensed Applicants for licensure as a commercial Ppest Ccontrol Operator must meet the all applicable requirements of T.C.A. §§ 62-21-101 et seq the Act.~~
- (c) ~~Original certification expires at the end of five (5) years.~~
- (4) ~~Applicants for licensure as a commercial pest control operator must remit to the department payment of a Tier 2 biennial license fee under T.C.A. §43-1-703(f) for each category license held by the applicant. Applicants for any pesticide dealer license must remit to the department payment of a Tier 2 annual license fee under T.C.A. §43-1-703(f) for each location where restricted use pesticides are sold or offered for sale at wholesale or retail.~~
- (5) ~~Commercial pest control operator licenses shall expire on June 30 of the second year following their issuance. Pesticide dealer licenses shall expire on June 30 following their issuance.~~

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 62-21-111; 62-21-118.

0080-09-02-.05 (4) Categories of Commercial Applicators and Commercial Pest Control Operators. Certification Categories

- (1) (a) ~~Agricultural Pest Control (C01).~~
- (a) 1. ~~Description - This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and non-crop agricultural land.~~
- (b) 2. ~~Standards of Ccompetency- Applicants must demonstrate a practical knowledge of the crops grown on which the applicator may be using restricted use pesticides and the specific pests of incident to those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extension areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems; pre-harvest intervals; re-entry intervals; phytotoxicity; and potential for environmental contamination; non-target injury; and community problems resulting from the use of restricted use pesticides in agricultural areas.~~
- (2) (b) ~~Forest Pest Control (C02).~~
- (a) 1. ~~Description- This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use pesticides to control pests in the forests, forest nurseries, and forest seed producing areas.~~

- (b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of: the types of forests, forest nurseries, and seed production in this State ~~the state~~ and the pests involved. ~~They should possess practical knowledge of incident to those areas;~~ the cyclic occurrence of certain pests and specific population dynamics ~~as a that are basic for to~~ programming pesticide applications. ~~A practical knowledge is required of the;~~ relative biotic agents and their vulnerability to the pesticides to be applied. ~~Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must demonstrate practical knowledge of specific pesticides;~~ control methods that will ~~to~~ minimize the possibility of secondary problems such as unintended effects on wildlife. ~~Knowledge of of pesticide application; and proper use of specialized equipment must be demonstrated, especially, particularly~~ as it may relate to meteorological factors and adjacent land use.
- (3) (c)——Ornamental and Turf Pest Control (C03).
- (a) 4.——Description—. This category includes commercial applicators ~~using or supervising who~~ use or supervise the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, plants, and grasses, including but not limited to fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf greens courses, and athletic fields, ~~and the like.~~
- (b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, ~~including cognizance; awareness of potential phytotoxicity due to a wide variety of plant material, drift, and persistence of pesticide chemicals~~ beyond the intended period of pest control. ~~Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of; and application methods which will that~~ minimize or prevent potential hazards to humans, pets, and other animals.
- (4) (d)——Seed Treatment (C04).
- (a) 4.——Description—. This category includes commercial applicators ~~using or supervising who~~ use or supervise the use of general or restricted use pesticides on seeds.
- (b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of: types of seeds that require chemical protection against pests ~~and factors such as;~~ seed coloration; ~~carriers; and;~~ surface active agents that influence pesticide binding ~~and;~~ factors that may affect germination. ~~They must demonstrate practical knowledge of; hazards associated with handling, sorting, and mixing, and misuse of treated seed; misuse of treated seed~~ into food and feed channels, ~~as well as; and~~ proper disposal of unused treated seeds.
- (5) (e)——Aquatic Pest Control (C05).
- (a) 4.——Description—. This category includes commercial applicators ~~using or supervising who~~ use or supervise the use of general or restricted use pesticides in aquatic environments.
- (b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of the; ~~secondary effects, which can be caused by improper application rates, incorrect formulations, and faulty application, of restricted use pesticides used in this category. They shall demonstrate practical knowledge of, including but not limited to those effects caused by improper application rates, incorrect formulations, and faulty application;~~ various water-use situations ~~and the;~~ potential of for downstream effects. ~~Further, they must have practical knowledge concerning potential pesticide; effects on plants, fish, birds, beneficial insects, and other organisms, which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the; and principles of limited-area application.~~
- (6) (f)——Right-of-Way Pest Control (C06).
- (a) 4.——Description—. This category includes commercial applicators ~~using or supervising who~~ use or supervise the use of general or restricted use pesticides to control pests in the

~~maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas. This category includes the control of plants, whether woody or herbaceous, to industrial sites and rights-of-way including but not limited to highways, transmission lines, and drainage ditches, and the like. This category includes the control of plants, whether woody or herbaceous.~~

~~(b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of where rights-of-way may be treated; problems of with runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides; the need for herbicide containment of these pesticides within the right-of-way; and the impact of their herbicide application activities in the to adjacent areas and communities.~~

~~(7) (g)——Industrial, Institutional, Structural and Health Related Pest Control (C07).~~

~~(a) 4.——Description—. This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use pesticides in, on, and or around food-handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other similar institutions, facilities, structures and or adjacent areas, public or private. Schools refer to child-serving facilities, for children through 12th grade, public or private. Children are physiologically more vulnerable to pesticides. Children can spend long hours at school and therefore have an increased risk of pesticide exposure if pesticides have been applied in a manner incompatible with integrated pest management (IPM). This category also includes pesticide application for the protection of stored, processed, or manufactured products. This category further includes, and the control of birds and, imported fire ants, or rodents.~~

~~(b) 2.——Standards of Competency—. Applicators must demonstrate a practical knowledge of a wide variety of pests, including and their life cycles; types of formulations appropriate for their pest control, and; methods of application that to avoid contamination of food, damage and or contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which that may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of, and environmental conditions particularly related to this the activity of this category. In addition, applicators should be knowledgeable about the components in an Integrated Pest Management (IPM) program in child-serving facilities. Integrated Pest Management is a process for achieving long-term, environmentally sound, pest suppression by using a variety of technologies and management practices including preventing pest populations using sanitation, exclusion and habitat modification and applying pesticides in the least hazardous manner only when needed to correct verified problems to manage targeted pests effectively and economically.~~

~~(8) (h)——Public Health Pest Control (C08).~~

~~(a) 4.——Description—. This category includes all governmental employees and commercial applicators that who use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described herein under this rule.~~

~~(b) 2.——Standards of Competency—. Applicators shall must demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. It is essential to know and recognize the wide variety of pests involved in incident to this field. It is also essential to understanding of the pests' life cycles and habitats necessary to develop a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to these conditions found in buildings. They should also have practical knowledge of the importance and employment of such, and nonchemical control methods such as sanitation, waste disposal, and drainage.~~

(9) Limited Herbicide Applicator.

- (a) Description. This category includes persons who incidentally apply herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders, and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: safety in handling, mixing, and applying pesticides; environmental hazards in using pesticides; calculations; calibrations; and label comprehension.

(10) (i) Demonstration and Research, and Regulatory Pest Control (C10).

- (a) 1. Description. This category includes state, federal, or and other governmental employees, including but not limited to extension specialists and county agents, who recommend, use, or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals, including but not limited to commercial representatives demonstrating pesticide products and application methods, who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides and persons conducting field research with pesticides that, in doing so, use or supervise the use of general or restricted use pesticides. Included in the first group are persons such 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 restricted use pesticides. This category also includes persons, including but not limited to state, federal, commercial, and other agents, who use or supervise the use of general or restricted use pesticides in the conduct of field research.
- (b) 2. Standards of Competency. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to must meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of is required regarding problems, pests, and population levels occurring in each demonstration situation is required. Further, they should Persons in this category must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environments of by restricted use pesticides used in suppression and eradication programs. They Persons in this category shall also demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their Required knowledge shall extend beyond that required by their the persons' immediate duties since because their services are frequently used in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(11) (i) Wood Preservatives (C11).

- (a) 1. Description. In general, it is expected that a Applicators of in this category possess a must demonstrate practical knowledge of, and shall meet, the specific standards required for categories (C01) through (C07) that are applicable to their the applicator's particular activity. In addition, they shall meet the specific standards required for categories (C01) through (C07) of this section as may be applicable to that particular activity. I, including the use or supervising the supervision of use of general or restricted use pesticides.
- (b) 2. Standards of Competency. Producers and a Applicators shall must demonstrate practical and technical knowledge of: wood preservatives. They should demonstrate knowledge in: the type of pests being controlled by the preservatives. They must also demonstrate practical knowledge in the methods of applying the preservatives to wood. Applicators should have knowledge of types of safety equipment necessary to protect these persons involved in the

application as well as of the preservatives; and the after effects of applications as they pertain to plants, humans, pets, and other domestic animals.

(12) (k) — Pesticide Dealers (C12).

- (a) 1. — Description— This category is for persons who are engaged in wholesale or retail sales of restricted use pesticides. Each dealer location selling restricted use pesticides must have a certified dealer at that location. For each location where restricted use pesticides are sold at wholesale or retail, a person licensed as a pesticide dealer must be employed at the location. Each certified The licensed pesticide dealer shall be responsible bear responsibility for the actions of every person who acts as the dealer's employee or agent in the sale of restricted use pesticides at the location who sells restricted use pesticides. Persons holding a current Pesticide Dealer certification are allowed permitted to purchase and use restricted use pesticides. This category However, a Pesticide Dealer certification does not allow for permit custom applications of pesticides.
- (b) 2. — Standards of Competency— Pesticide Dealers shall must demonstrate the practical knowledge necessary to advise applicators and the public on the safe and effective use of pesticides. They shall also be expected to Pesticide dealers must meet comprehensive standards reflecting a broad knowledge of pesticide uses. They shall Pesticide dealers must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.

(13) (l) — Antifouling Marine Paint (C13).

- (a) 1. — Description— This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use antifouling marine paints.
- (b) 2. — Standards of Competency— Applicators shall must demonstrate practical knowledge of tributyltin product labels and understanding of why they the products are classified as restricted use pesticides. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antifouling paints. They shall demonstrate practical knowledge of the application and testing equipment, and have knowledge of the need and use of personal protective equipment. In addition, applicators will demonstrate knowledge of associated with antifouling paints; and proper storage, handling, transport, and disposal of antifouling paints, including disposal of excess material, waste, and containers.

(14) (m) — Microbial Pest Control (C14).

- (a) 1. — Description— This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use pesticides to control microorganisms (e.g. bacteria, fungi, algae, and viruses), in industrial cooling towers and water treatment plants. This category also includes application in restoration treatments targeting mold and fungus, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities.
- (b) 2. — Standards of Competency— Applicators shall must demonstrate practical knowledge of antimicrobial agents in the control of bacteria, fungi, algae, and viruses. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus. They shall demonstrate practical knowledge of the application and testing equipment, and have knowledge of the need and use of personal protective equipment. They shall also demonstrate knowledge of associated with the use of antimicrobial agents; and proper storage, handling, transport, and disposal of antimicrobial agents, including disposal of excess material, waste, and containers.

(15) Reserved.

(16) (n) — Sewer Line Treatment (C16).

- (a) 1. ~~_____ Description—~~ This category includes commercial applicators using or supervising who use or supervise the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
- (b) 2. ~~_____ Standards of Competency—~~ Applicators shall must demonstrate the practical knowledge of: metam-sodium products for root control. Applicators shall demonstrate knowledge of: health and environmental hazards associated with metam-sodium in sewer lines and wastewater treatment facilities. They shall demonstrate practical knowledge of the need to use; personal protective equipment. In addition, applicators will demonstrate the knowledge of associated with use of metam-sodium products; and proper storage, handling, transport, spills, cleanup, and waste disposal of metam-sodium products.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-16-04 0080-09-02-06~~ Recertification Requirements.

- (1) ~~After original certification expires, one must be recertified to use, apply, supervise, sell, or buy restricted use pesticides. Recertification of any private applicator or commercial applicator shall expire on June 30 of every third year.~~
- (2) ~~Certified applicators must notify the department in writing of any change to their name or address within 30 days after the change takes place.~~
- (3) ~~Private Applicator Recertification Requirements Private Applicator—~~ To obtain recertification, a private applicator must successfully complete an instructional course offered by the University of Tennessee Extension Service beginning in January of in the last calendar year in the current certification period. Private Applicator certification shall expire on October 21st every third year during which the applicator's certification is valid.

~~(3)(4)~~ Commercial Pesticide Applicator Certification Recertification Requirements.

- (a) ~~All To obtain recertification, a commercial pesticide applicators shall must obtain every three years the required number of continuing education credits (CEU's) units in the category of his certification or retest in the same category to maintain certification category. In case of extenuating circumstances, such as a medical condition or military service, applicators may receive in the department's discretion an extension in which to accrue required continued education units.~~
- (b) ~~Individuals becoming certified on or after July 1st of the third (3rd) year of the certification period will be rolled over to the next three-year recertification period.~~
- (c) ~~Each certification category shall require the following continuing education credits: Continuing Education Units (CEU).~~
 - 1. ~~The following number of CEUs are required for recertification in each respective certification category:~~
 - 1. ~~(i) Thirty (30) CEU's for certification category: C07—Industrial, Institutional, Structural and Health Related Pest Control. Agricultural Pest Control (C01): 18 CEUs;~~
 - 2. ~~(ii) Eighteen (18) CEU's for certification categories: C01—Agricultural Plant and Animal, C03—Ornamental Turf, C06 Right of Way, C08-Public Health, C10—Demonstration, Research and Regulatory Pest Control and C12—Pesticide Dealer and LHA (Limited Herbicide Applicator) Forest Pest Control (C02): 12 CEUs;~~
 - 3. ~~(iii) Twelve (12) CEU's for certification categories: C02—Forest Pest Control, C04—Seed Treatment, and C05—Aquatic Pest Control. Ornamental and Turf Pest Control (C03): 18 CEUs;~~

4. ~~(iv) Nine (9) CEU's for certification categories: C11—Wood Preservatives, C13—Antifouling Marine Paint, C14—Microbials, and C16—Sewer Line Treatment. Seed Treatment (C04): 12 CEUs;~~
- ~~(v) Aquatic Pest Control (C05): 12 CEUs;~~
- ~~(vi) Right-of-Way Pest Control (C06): 18 CEUs;~~
- ~~(vii) Industrial, Institutional, Structural and Health Related Pest Control (C07): 30 CEUs;~~
- ~~(viii) Public Health Pest Control (C08): 18 CEUs;~~
- ~~(ix) Limited Herbicide Applicator: requirements equivalent to certification under Ornamental and Turf Pest Control (C03), 18 CEUs;~~
- ~~(x) Demonstration, Research, and Regulatory Pest Control (C10): 18 CEUs;~~
- ~~(xi) Wood Preservatives (C11): 9 CEUs;~~
- ~~(xii) Pesticide Dealers (C12): 18 CEUs;~~
- ~~(xiii) Antifouling Marine Paint (C13): 9 CEUs;~~
- ~~(xiv) Microbial Pest Control (C14): 9 CEUs;~~
- ~~(xv) Reserved;~~
- ~~(xvi) Sewer Line Treatment (C16): 9 CEUs.~~
- (d) ~~2. Continuing Education Units—The number of CEUs required for recertification shall be prorated for those becoming certified persons obtaining original certification during the a recertification period.~~
- (e) ~~3. An applicator shall accrue one CEU for each hour of attendance at CEU approved training on certification related topics.~~
- ~~4. No more than 50% of the required number of CEUs may be accrued at in-house training.~~
- ~~5. No more than 75% of the required number of CEUs may be accrued at any one external training.~~
- ~~6. Continuing Education Units shall only CEUs may be awarded for electronic media used in conjunction with a presentation as part of in-house training.~~
- (f) ~~7. Applications submitted by industry for approval of CEU training are required to must be in filed with the Tennessee Department of Agriculture office no later than at least 30 days prior to the date of the training session. Applications submitted by educational institutions shall must be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).~~
- (g) ~~8. All attendance rosters from industry and educational institutions are required to for CEU approved training must be submitted to the Department no later than 30 days after the training. If training rosters are not received, sponsors and/or facilitators may not be approved for future training. A violation of this requirement is grounds for denial of any future application for approval of CEU training by the sponsor or facilitator.~~
- (h) ~~9. The sponsor shall permit rRepresentatives from of the Department or and PSEP employees to may attend any CEU approved training sessions without being assessed incurring registration fees.~~

- (i) ~~One (1) continuing education unit shall be warranted per hour for certification related topics.~~
- (j) ~~In-house points will be limited to 50% of the total CEU requirement. Individuals may accrue half of their CEU's internally and the remaining half externally or accrue all of their CEU's by attending external meetings.~~
- (k) ~~No more than 75% of the required continuing education units shall be accrued at any one external meeting.~~
- (l)(c) ~~Applicators shall be required to retest the third year if the required number of continuing education units is not obtained prior to the expiration date. An applicator who does not accrue the required number of CEUs prior to expiration of his certification may be subject to regulatory enforcement measures by the Department and must, in order to maintain valid certification, successfully retake the exam in his certification category.~~
- (m) ~~Applicators shall notify the Department in writing if there is a change in name or address.~~
- (n) ~~Commercial Pesticide Applicator recertification shall expire every third year on December 31.~~

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-16-.05~~ 0080-09-02-.07 Record Keepings-Recordkeeping Requirements of Private Applicators

~~C.F.R. Title 7, Subtitle B, Chapter 1, Subchapter E, Part 110 – As state standards for pesticide recordkeeping requirements of private applicators using restricted use pesticides, the department adopts by reference, as if fully stated herein, those federal standards for Recordkeeping on Restricted Use Pesticides By Certified Applicators; Surveys and Reports is adopted by reference by the Department of Agriculture as the state standards for pesticide recordkeeping for private applicators using restricted use pesticides, compiled at 7 C.F.R. 110, as last amended and codified January 1, 2006.~~

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-16-.06 Denial, Suspension or Revocation of Certification. The Commissioner of Agriculture may revoke, suspend, or deny certification or licenses after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. 4-514), for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides.~~

~~0080-06-16-.07~~ 0080-09-02-.08 Use of Restricted Use Pesticides.

- (1) ~~No one may person shall use or buy a restricted use pesticide unless certified as a Pprivate Applicator or a Ccommercial Applicator, or unless licensed as a Ccommercial Ppest Ccontrol Ooperator by the Commissioner of Agriculture.~~
- (2) ~~No person shall use a pesticide in a manner inconsistent with its labeling.~~
- (3) ~~No person shall act as a private applicator unless he is certified as such by the Commissioner of Agriculture department as a private applicator.~~
- (4)(3) ~~No person shall act as a commercial applicator unless he is certified by the Commissioner of Agriculture as such department as a commercial applicator. and he A commercial applicator may only act within the certification category in for which he is certified.~~
- (5)(4) ~~No person shall act as a Ccommercial Ppest Ccontrol Ooperator unless he holds a valid Pest Control Operators license is licensed by the department as a commercial pest control operator. and A commercial pest control operator may only act within the subcategory for which he is licensed.~~

(6)(5) Pesticide dealers.

(a) No one shall sell restricted use pesticides at wholesale or retail unless he is certified in the category of Pesticide Dealers (C12) and has obtained a Restricted Use Pesticide Dealer license.

(b) No one holding a Pesticide Dealer certification shall A licensed pesticide dealer shall not sell, or allow the sale of, a restricted use pesticide to a noncertified person any person who is not certified or licensed by the department for the purchase of restricted use pesticides.

(7) No one shall sell restricted use pesticides until that person is certified in the category of Pesticide Dealer and has obtained a Restricted Use Pesticide Dealer's license.

(8) (c) Restricted use pesticide sales records shall be submitted yearly with the renewal for Pesticide Dealer license. Pesticide dealers shall submit with their applications for license renewal all yearly sales records of restricted use pesticides sold, including for each sale: the date of the sale, the name and quantity of the pesticide purchased, the name of the purchaser, the purchaser's certification or license number, and the expiration date of the purchaser's license, certificate, or private applicator card.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-06-16-08-0080-09-02-09 Exemptions.

Individuals Persons licensed under pursuant to T.C.A. 43-2901 §43-8-301 et. seq. are exempt from the provisions of these regulations while engaged in the commercial requirements of this chapter for aerial applications of pesticides.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-06-16-09-0080-09-02-10 Civil-Fine-Schedule-Violations

Pursuant to the provisions of T.C.A. § 4-3-204(b), the following shall be the minimum and maximum amounts to be imposed as civil penalties for violations of the "Tennessee Insecticide, Fungicide and Rodenticide Act."

(1) Violations of the Act or this chapter are actionable against any person when committed by either the person or his agent.

(2) Each violation of the Act or this chapter is grounds for issuance of a stop sale, stop use, or removal order against the violator, in addition to or in lieu of any other lawful disciplinary action.

(3) In addition to all other requirements of the Act and this chapter, each occurrence of the following shall constitute a separate violation of this chapter:

(a) Label Violations Minimum-Maximum. Any violation of federal standards for labeling requirements for pesticides, compiled at 40 C.F.R. Part 156, which the department adopts by reference as if fully stated herein.

(a) Lacks Signal Word or Caution: Keep out of Reach of Children \$100.00 \$500.00

(b) Lacks Required Precautionary Labeling \$100.00 \$500.00

(c) Deficient Precautionary Statements: Lacks Symbols or Statements \$100.00 \$500.00

(d) Directions for Use \$100.00 \$500.00

(e)	Defective Ingredient Statement	\$100.00	\$500.00
(f)	Failure to Bear Required Statement of Net Weight or Content	\$50.00	\$500.00
(g)	Failure to Bear Name and Address of Producer, Registrant or Person for Whom Manufactured	\$50.00	\$500.00
(h)	Labeling is Detached, Altered, Defaced or Destroyed	\$100.00	\$500.00
(i)	Ingredient Statement Absent on Immediate Container	\$100.00	\$500.00
(j)	Ingredient Statement Does Not Appear on Front Panel of Immediate Container	\$50.00	\$500.00
(k)	Label Does Not Bear a Registration Number or Established Number	\$50.00	\$500.00
(l)	Net Weight Not Stated on Label	\$50.00	\$500.00
(m)	Label Does Not Bear Name, Brand, or Trademark under Which Product Was Sold	\$50.00	\$500.00
(2)	(b) Formulation Violations		
	(a) 1. Chemical Deficiencies	\$100.00	\$500.00
	(b) 2. Net Weight Inaccuracies	\$100.00	\$500.00
	(c) 3. Chemical Contamination	\$100.00	\$500.00
	(d) 4. Over Formulated	\$250.00	\$500.00
(3)	(c) Use Violations		
	(a) 1. Use or Disposal of a Pesticide in a Manner Inconsistent with its Labeling	\$250.00	\$500.00
	(b) 2. Violation of Stop Sale, Use or Removal Order	\$250.00	\$500.00
(4)	(d) Records, Books, Documentation Violations		
	(a) 1. Failure to Maintain as Required by TIFRA AND FIFRA the Act	\$100.00	\$500.00
	(b) 2. Failure to Produce for Inspection	\$250.00	\$500.00
(5)	Registration of Products		
	(e) Product registration violations. Failure to Have Products Registered	\$100.00	\$500.00

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-06-16-10 0080-09-02-.11 Pesticide Management and Disposal

(1) The Department of Agriculture adopts herein by reference the current versions of, as if fully stated

SS-7039 (December 2015)

RDA 1693

herein, those federal standards for pesticide management and disposal and standards for pesticide containment structures, compiled at 40 C.F.R. Part-165, Subparts A and E, as either subpart may be amended from time to time.

~~(2) — The Department of Agriculture adopts herein by reference the current version of 40 C.F.R. Part 165, Subpart E, as the State standards for pesticide containment structures.~~

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.12 Pesticide Product Registration Fee

The fee for each pesticide product registration shall be a Tier 5 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-104; 43-8-106; 62-21-118.

Chapter ~~0080-06-15~~ 0080-09-03 Rules and Regulations ~~Governing Commercial Aerial Application of Pesticides~~

~~0080-06-15-.01~~ 0080-09-03-.01 General Rules

- (1) ~~Any persons applying for a license as a Commercial Aerial Applicator shall be examined by the Commissioner to determine if the person has the necessary technical qualifications for the issuance of such license.~~
- (2) ~~A log record must be maintained for a period of 18 months and will be made available on demand to the Commissioner. The log record must show:~~
 - (a) ~~Pesticide used,~~
 - (b) ~~To what crop or plant applied,~~
 - (c) ~~The dosage rate,~~
 - (d) ~~The approximate acreage involved,~~
 - (e) ~~The location of the area where the pesticide is applied,~~
 - (f) ~~The landowner, producer, or other person employing such Aerial Applicator's services.~~
- (3) ~~The insurance required by T.C.A. §43-9-104 §43-8-304 shall must cover any liability arising from out of the commercial aerial applicator's application of pesticides chemicals.~~
- (4)(2) ~~All pesticide chemicals Any pesticide applied by Aerial Applicator shall be accomplished a commercial aerial applicator must be applied in a manner that is consistent with the labeling its label and label restrictions of the chemical being used. Each Aerial Applicator Upon request of the department, a commercial aerial applicator must submit evidence that such pesticide label restrictions have been fully met when requested by the Commissioner.~~
- (5)(3) ~~Any Aerial Applicator now holding a similar license under existing Tennessee law may renew such license without examination, but such renewed license will be subject to whatever restrictions are indicated by the license previously held. Applicants for licensure as a commercial aerial applicator must remit to the department payment of a Tier 5 annual license fee under T.C.A. §43-1-703(f) for each category license held by the applicant.~~
- (6)(4) ~~T.C.A. §43-9-105, provides that license may be suspended or revoked for violation of a promulgation rule and regulation. The fee for each aerial decal shall be a Tier 4 fee under T.C.A. §43-1-703(f).~~

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-302; 43-8-304.

~~0080-06-15-.02~~ 0080-09-03-.02 Denial of License.

~~The Commissioner of Agriculture may deny licensing after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. §4-514) for~~ In addition to or in lieu of any other lawful disciplinary action, violation of any statute, rule or regulation concerning regarding the use, purchase, or sale of pesticides or for any violation of the commercial aerial application of "Pesticides Act" shall be grounds for denial or revocation of any license issued under authority of T.C.A. §43-8-301, et seq.

Authority: T.C.A. §§ 4-3-203; 43-8-302.

Chapter ~~0080-06-14~~ 0080-09-04
Pest Control Operators

~~0080-06-14-.01~~ 0080-09-04-.01 Qualifications of Applicants.

- (1) Applicants are required to have a ~~Commercial Pesticide Applicator Certificate~~ in the particular license certification category before taking a license examination in that category, as provided in Rule 0080-06-16-03-Tenn. Comp. R. & Regs. 0080-09-02-.04.
- (2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued visa prior to taking the license examination.
- (3) Education — ~~Except for the license examination for Wood Destroying Organisms, applicants are qualified to take any license examination(s) based on their education, as follows: Qualification for examination based on education.~~
 - (a) Applicants are qualified to take ~~a any~~ license examination based on their education, except the Wood Destroying Organisms license examination, if they have a Bachelor's been awarded a baccalaureate degree with a major or minor, as evidenced by an official transcript, in at least one or more of the following curricula: Agriculture, Biology, Chemistry, Forestry, Horticulture, Entomology, Plant Pathology and Plant Science, or other similar degree course of study. Satisfaction of these qualifications must be demonstrated by evidence of an official transcript from the institution of higher education that awarded the applicant's degree.
 - (b) Applicants are qualified to take the Pest Control Consultant license examination if they are a ~~graduate of~~ have graduated from an accredited college or university institution with a Bachelor's baccalaureate degree in the field of pest control in which the applicant intends to offer consultation is being offered. A Pest Control Consultant license in this category does not qualify the holder licensee to conduct pest control operations.
- (4) ~~Education and Experience: Applicants are qualified to take any license examination(s) Qualification for examination based on a combination of their education and experience as follows:~~
 - (a) Applicants ~~with a~~ are qualified to take the Wood Destroying Organisms license examination if:
 1. They have been awarded a baccalaureate degree as set forth in subparagraph (3)(a) above of this rule and have completed one (1)-year of full-time work experience in the field of Wood Destroying Organisms are qualified to take the license examination in that category; or,
 - (b) 2. Applicants with They have been awarded a Masters or PhD doctoral graduate degree in entomology that and have graduated from the Tennessee Apprentice Termite Technician School are qualified to take the license examination in the category of Wood Destroying

Organisms.

- (e)(b) Applicants who hold a current Horticulture, – Lawn, and Turf (HLT); Horticulture Interior (HRI); Weed Control Right-of-Way and Industrial (WEC); or Agricultural – Ground Equipment (AGE) license are qualified to take the license examination in another of those four categories, provided they are the applicant is certified in the license category applied for which he has applied, have two or more; has at least two years work experience in the license category applied for which he has applied, or have; or has at least twelve (12) college-level semester hours or twenty-four (24) Continuing Education Units (CEU) related to the license category applied for which he has applied.
- (d)(c) Applicants are qualified to take the Agricultural – Ground Equipment (AGE) or Horticulture – Lawn and Turf (HLT) license examination if they have twenty-four (24) months; completed two years of full-time work experience, a BA in the license category for which they have applied; been awarded a baccalaureate degree, a minimum of twelve (12) college-level semester hours or twenty-four (24) continuing education units (CEU) related to the categories of Agricultural – Ground Equipment or Horticulture – Lawn and Turf AGE or HLT.
- (5) Experience – Applicants who wish to take a license Qualification for examination based only on experience must have been registered with the department as a pest control technician or salesperson as provided in Tenn. Code Ann. § 62-21-109, for twenty-four (24) months of full-time work experience, or provide documentary evidence of such employment if the registration failed to occur at no fault of the applicant, or if the experience was obtained out-of-state.
- Applicants are qualified to take the license examinations below as follows:
- (a) Applicants with a valid Certified Crop Advisors (CCA) Certificate are qualified to take the Horticulture – Lawn and Turf (HLT) or Agricultural – Ground Equipment (AGE) license examinations, provided if they have satisfied the requirements above, have;
1. Hold a valid Certified Crop Advisors (CCA) certificate;
 2. Have one (1) year of full-time work experience applying pesticide in the category of license applied for which they have applied and are;
 3. Are certified in the category of same license for which they have applied; or,
 4. Are registered with the department as a pest control technician or salesperson, as provided in Tenn. Code Ann. §62-21-109, for a period of 24 months of full-time work experience. If the applicant was not registered with the department through no fault of his own or if the applicant's work experience was obtained out of state, the applicant may satisfy this requirement through provision of documentary evidence of his employment.
- (b) Applicants with a current General Pest and Rodent Control license and a Public Health Mosquito Control certificate are qualified to take the Public Health Mosquito Control license examination in the latter category if they hold a valid Public Health Mosquito Control certificate or a General Pest and Rodent Control certificate.
- (6) Applicants who misrepresent their work experience shall be ineligible to take the any license examination for two (2) years after the applicant meets the required qualifications.
- (7) If after an applicant is issued a license the Department determines that the applicant's application contained inaccurate information after a person passes the examination and is issued a license, the license shall be revoked in accordance with the Uniform Administrative Procedures Act, and the person applicant shall not be allowed to be prohibited from resubmitting an application for the any license examination for two (2) years.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-06-14-.02-0080-09-04-.02 Certification of Qualifications.

- (1) Upon application to take a license examination, or at such other time as the Pest Control Board (hereinafter referred to as Board) may require, the applicant shall present
- (1) A certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience; and/or
- (2) A Upon application to take a license examination, or at such other time as the Pest Control Board may require, the applicant shall present a copy of a transcript or certificate properly evidencing a qualifying degree, professional standing, course hours, or continuing education units (CEU).

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-06-14-.03-0080-09-04-.03 Examination of License Applicants.

- (1) Applications to take a license examination shall be submitted by the tenth day of the month preceding the month of the scheduled examination.
- (2) License examinations will be given the first month of each quarter at Ellington Agricultural Center in Nashville, Tennessee or when and where the Board decides at a place and date determined by the Pest Control Board.
- (3) Qualified applicants who have submitted an application will be notified of the date, place, and time of the examination(s). Applicants who are not qualified determined by the department to be unqualified will be notified in writing that the their application was not approved with the reason(s) stated denied and the department's reason(s) for the denial.
- (4) License examinations shall be given in two (2) parts, as follows:
 - (a) The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure:
 1. State and Federal Laws & Regulations;
 2. Insects;
 3. Weeds & Disease;
 4. Plant Management Decision Making;
 5. Herbicide Technology;
 6. Pesticide Safety;
 7. Adjuvants;
 8. Fumigation and Soil Fumigation;
 9. Integrated Pest Management;
 10. Environmental Considerations;
 11. Principles of Vegetation Management;
 12. Plant Growth Regulators;
 13. Calibration of Application Equipment;
 14. Common Problems Encountered During Application;
 15. Professionalism and Public Relations in Vegetation Management;
 16. Pest, Bird, Plant, Tree, and Disease Identifications;
 17. Pesticides and Human Health;
 18. Drift Management;
 19. Navigation (Aerial, using GPS, DGPS, OmniSTAR);
 20. Calculating Area of Target Site;
 21. Pesticide measurement systems;
 22. Operations (Aerial, pilot & ground crews, and aircraft crash response);
 23. Mosquitoes & Human Diseases;
 24. Life Cycle of Mosquitoes;

- 25. ~~W~~ood ~~D~~estroying ~~O~~rganisms;
- 26. ~~V~~ertebrates and ~~I~~nvertebrates;
- 27. ~~P~~ests on or ~~N~~ear ~~F~~ood;
- 28. ~~U~~rban IPM ~~P~~rograms; and
- 29. ~~I~~mplementing ~~U~~rban ~~P~~est ~~M~~anagement ~~P~~rograms.

- (b) The second part of the examination will test applicants on specimen identification as it relates to the particular license category.
- (5) To pass the license examination, applicants must score ~~seventy (70) percent-%~~ 70 or higher on both parts, individually.
- (6) Applicants will be allowed ~~two (2)-hours~~ to complete the first part of the examination and ~~three (3)-hours~~ to complete the second part.
- (7) While there is no limitation on the number of categories for which a license applicant may be examined during any examination period; the above-stated time limits shall apply.
- (8) Applicants approved to take the license examination(s) are required to present a photo ID on the day of testing.
- (9) Applicants must pass the first part of the examination before they can take the second part. Applicants that fail the second part shall only be required to retake that part of the examination.
- (10) Applicants exhibiting unethical behavior during an examination shall be ineligible to take another license examination for ~~two (2)-years~~.
- (11) Applicants who cannot take a scheduled examination due to circumstances beyond their control must contact the ~~D~~epartment ~~within forty-eight (more than 48) hours of-prior to~~ the scheduled examination to reschedule the exam or their examination fee will be forfeited.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-04 0080-09-04-04 License Categories. The substance of the license examinations will be taken from study material developed by the University of Tennessee. Such material can be purchased by contacting the University of Tennessee at (865)-974-7138 or at the University's website at <http://eppsserver.ag.utk.edu/psep/psep.htm>. The license categories are as follows:~~

- (1) ~~Agricultural – Ground Equipment (AGE)—is. This category includes~~ the control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (2) ~~Aquatic Pest Control (APC)—is. This category includes~~ the control of aquatic plants and algae through the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.
- (3) ~~Bird Control (BDC)—is. This category includes~~ the control of bird pests through the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (4) ~~Forest Pest Control (FPC)—is. This category includes~~ the control of tree pests and diseases in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.
- (5) ~~Fumigation – Soil (FUS)—is. This category includes~~ the control of agricultural pests ~~found in-through~~ the soil application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Agricultural Plant Pest Control.

- (6) Fumigation – Structural (FUM)—~~is.~~ This category includes the control of pests by application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (7) General Pest and Rodent Control (GRC)—~~is.~~ This category includes the control of vertebrate and invertebrate pests, including fire ants, that are generally known to invade or are normally known to invade a structure, and which are not specifically covered by included under other categories of licenses described herein in this rule. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (8) Horticultural – Interior (HRI)—~~is.~~ This category includes the control of plants pests and diseases. The category applies to residential and commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (9) Horticulture – Lawn and Turf (HLT)—~~C.~~ This category includes the control of pests and diseases that normally generally known to invade turf, lawns, and landscape in non-agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fire ants, fleas, and ticks, and other pests not specifically included under other categories of licenses in this rule, but not other pests that normally generally known to invade the inside of a structure and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (10) Microbial Pest Control – (MPC). This category includes the control of microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities. Applicants for this license must be certified in Microbial Pest Control.
- (11) Mold Remediation – (MRC) – This category includes the control of mold and fungus in structures due to water damage. Applicants for this license must be certified in Industrial, Institutional, Structural and Health Related Pest Control or Microbial Pest Control.
- (12) Pest Control Consultant (PCC)—is. This category of license is available to a graduate of an accredited college or university with a Bachelor's baccalaureate degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to conduct pest control operations.
- (14)(13) Public Health Mosquito Control (PHMC)—is the. This category includes management of mosquitoes, in all stages of their development, on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.
- (12)(14) Weed Control – Right-of-Way and Industrial (WEC)—is. This category includes the control of plants, whether woody or herbaceous, by the application of chemicals generally classified as herbicides, to industrial sites and rights-of-way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right-of-Way Pest Control.
- (13)(15) Wood Destroying Organisms (WDO)—is. This category includes the control of termites, various wood borers, carpenter bees, carpenter ants, and decay, without regard to the type or use of the structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (14)(16) Wood Preservatives (WPC)—is. This category includes the control of insects, fungi, marine borers, and the effects of weather on wood products at the manufacturing or distribution stage that may damage or degrade the wood, whether controlled at the manufacturing or distributing stage. Applicants for this license must be certified in Wood Preservation Pest Control.
- (15)(17) Special (SPC)—is. This category includes the control of pests in special situations by methods not included in the other license categories listed above in this rule. These licenses—This license category may or may not require an examination in the discretion of the Pest Control Board and are licenses issued under this category may be limited to specific pesticide uses and situations circumstances as

determined by the Pest Control Board.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-.05 Repealed.~~

~~0080-06-14-.06 0080-09-04-.05 Licenses-- Requirement of for Active Practice and Certification.~~

- ~~(1) Applicants who have passed the a license examination(s) must pay all licensure fees within one year of the license examination date in order to obtain the license(s) or be. The fee for each category of licenses is established at Tenn. Comp. R. & Regs. 0080-09-02-.04. Applicants who do not pay all licensure fees within one year of the license examination will be required to re-take the license examination(s) prior to receiving a license. Individuals-Applicants with extenuating circumstances, such as a medical condition or military service, are required to provide documented proof of such circumstances and will be evaluated on a per case basis may receive in the department's discretion an extension in which to pay the license fee.~~
- ~~(2) License holders with-Individuals under expired licenses and or certifications must re-take the license and certification examinations before they can will be eligible to renew their the license(s) or certification(s). Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per case basis.~~
- ~~(3) Licenses will be suspended-All licenses issued under this chapter shall expire upon the expiration of the license holder's certification and. Licenses may be reinstated when where the license holder recertifies for the certification is obtained again, provided that the certification has not been expired for more than one year. Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per case basis.~~

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-.07 0080-09-04-.06 Requirements for Licensees in Fumigation.~~

- ~~(1) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, as provided in Rule 0080-06-14-.04 (5) and (6), shall FUS or FUM, must be present, at the application site and actively in charge of work and shall.~~
- ~~(2) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, FUS or FUM, must ensure that the following requirements are adhered to:~~
 - ~~(1) (a) A At least one gas mask that protects against the gas being used shall be kept at the location where the fumigation is being done, capable of protecting its wearer from the gas being applied, is readily available at the application site for each person present during the application.~~
 - ~~(2) (b) Warning S signs shall be are conspicuous and prominently displayed at all entrances to the building, structure, or other area at the fumigation site, declaring that the property is being fumigated with poisonous gas and that no one should enter.~~
 - ~~(3) (c) A guard shall be maintained is present at any building or structure that is entered by the public. publicly available entrance to the site to prevent entry by unauthorized persons and that A all entry doors shall be where a guard is not posted are locked, posted with a warning sign, and regularly patrolled by the a guard, who. Any guard shall at all times have ready access to a gas mask at all times, capable of protecting its wearer from the gas being applied.~~
 - ~~(4) (d) The certified and licensed applicator shall be responsible for clearing the The building, structure,~~

or area at the fumigation site is properly cleared of fumigants by following all label directions prior to in accordance with the pesticide label before unrestricted re-entry of the site is authorized.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-06-14-08-0080-09-04-.07 Requirements for Licensees in Wood Destroying Organisms-

- (1) Persons operating under licenses for wood destroying organisms shall conform to the following regulations ~~or shall use other department approved methods.~~
 - (a) ~~A~~ On every control job for wood destroying organisms, a written contract (warranty optional) with all blanks completed shall be fully defined and executed in duplicate on every control job for wood destroying organisms, other than termites by all parties prior to any pesticide being applied in performance of the contract. A written contract with a warranty shall be issued on every job for control of termites. On control jobs for termites, the contract shall contain a warranty for the service provided. The contract and any applicable warranty shall be transferable so as to remain with the treated property for the remainder of the contract term, which may be renewed or extended upon written agreement of the parties. In each case one copy is to be left with the property owner or his agent, and a copy retained by the operator. One copy of the contract shall be retained by the commercial pest control operator and one copy of the contract shall be provided to the non-operator party contracting for the service. These contracts. The contract shall be uniquely numbered to assure that both parties hold identical documents. All such contracts and warranties, shall be transferable so as to remain with the treated property for the remainder of the current year's contract term in a manner necessary to distinguish it from other contract numbers issued by the pest control operator and different from any purchase order number, contact number, or other information related to the operator's provision of pesticide services.
 - (b) ~~When a contract with a warranty is issued on any structure for control of termites that does not meet state specifications, those areas or portions thereof not meeting state specifications must be treated and brought up to state specifications.~~
 - (c) ~~A~~ For each contract described in subparagraph (1)(a), a graph shall be drawn and attached to each the contract as described in (1)(a) and said prior to the contract being fully executed. The graph shall be drawn to show the condition of the property as it relates to termite infestation and damage at the time of the initial contract being executed by the commercial pest control operator.
- (2) ~~Unless authorized exempted~~ by paragraph (6) of this rule or unless prohibited by the pesticide label, the operator shall give the following minimum services on each control job for control of termites wood destroying organisms:
 - (a) All applications of pesticides for the purpose of controlling wood destroying organisms shall be done in accordance with label directions. ~~40 C.F.R. (2)(ee)~~ Allowances under 7 U.S.C.A. §136(ee) shall not apply when mixing or applying termiticides.
 - (b) All pretreatments shall be completed according to label directions within one ~~(1)~~-year of the date of the initial treatment or to coincide with the completion of the backfill.
- (3) Each property under contract ~~by~~ with a termite control operator shall be examined by the operator at least once per year ~~if, provided that the owner or agent of the property makes the property available for examination.~~ A report of the ~~re-annual~~ examination and all subsequent inspections showing the condition of the property with respect to the ~~absence or presence~~ or absence of termites ~~and/or other wood destroying organisms shall be filed left with the property owner at the time of the examination or inspection and a copy kept in the operator's file of the report retained by the operator,~~ subject to inspection by the Department.
- (4) ~~At such time as he may deem desirable, the Commissioner or his authorized representative, shall~~ The department may examine records and properties treated by any operator licensed in the category of wood destroying organisms for the purpose of determining the efficiency-efficacy of the treatment given.

Whenever unsatisfactory or substandard treatments are found, the operator and/or charter holder will be notified and will be given a reasonable length of time in which to correct such ~~the~~ conditions. If the operator shall neglect or refuse to make such corrections ~~fails to correct the condition within that time~~, his license and/or the corresponding charter or both may be suspended as provided for by law, unless ~~he~~ the operator can show to the satisfaction of the Department of Agriculture good cause why such action suspension should not be taken. ~~While his license is suspended for this cause~~ During suspension of any license or charter under this paragraph, the operator ~~or and~~ charter holder shall have the privilege of ~~retreating~~ may retreat all properties on which he has ~~they hold~~ current contracts for pesticide services, but shall not ~~provided that they notify the department of all dates of reexaminations and retreatments provided to properties previously deemed unsatisfactory by the department~~. However, in no event shall the operator or charter holder solicit any new business during suspension of their license or charter. He shall notify the Department of Agriculture of the dates of any such reexaminations and retreatments. When all properties previously reported to be in an ~~noticed to the operator as unsatisfactory condition~~ have been re-examined and retreated, the ~~Department of Agriculture shall then make the re-inspections at its earliest convenience of the properties within a reasonable period~~. If the Department of Agriculture, upon reinspection shall find all of the properties in satisfactory condition, then the suspension may be removed. ~~The department may lift the suspension of any license or charter under this paragraph if the department finds upon re-inspection that the condition of the properties has been corrected~~. Otherwise, if the department finds upon re-inspection that the condition of the properties has not been corrected, the license and/or charter ~~or both~~ suspended under this paragraph may be permanently revoked. ~~A~~ Any license or charter may be suspended or revoked for gross neglect of contracts, falsifying the presence of an insect pest, or general failure to give satisfactory service.

- (5) All contracts for termite control shall carry a one year warranty for retreatments of termites only. The issuance of a damage guarantee is optional.
- (6) Less than complete treatments may be given when:
 - (a) ~~Physical reasons or conditions prevent a full treatment, such as, well beneath building, heat/air duct pipe embedded in slab, plenum air space, crawl space too low or;~~
 - (b) ~~When the label prohibits and; or when~~
 - (c) ~~The owner of the treated property is fully informed requests that a less than complete treatment be provided.~~
- (7) ~~No warranty or guarantee need be given~~ Warranties and guarantees are not required for less than complete treatment of non-commercial buildings. However, the contract covering such work shall have the stipulation contain express and unambiguous language that no guarantee is given provided for the treatment. ~~In addition~~ Additionally, the words "No guarantee" shall be stamped or printed in letters at least one-half inch high in height on both sides of the invoice and guarantee/agreement form referring to this treatment regarding the less than complete treatment.
- (8) Wood Destroying Beetles,
 - (a) ~~When treatment will be permitted~~ When it is determined that an active infestation of wood destroying beetles exists, treatment will may be permitted for the control or prevention of re-infestation of the families of beetles which that are known to reinfest seasoned wood, i.e., e.g. Anobiidae, Lyctidae, Bostrichidae, Cerambycidae, (old house borer and flat oak borer only) and Curculionidae. Preventive treatment in the absence of an infestation is prohibited. Treatment for the control or prevention of other beetles, such as bark beetles, that do not cause structural damage to seasoned wood is prohibited.
 - (b) Determining Active Infestations:
 1. ~~Anobiidae (Anobiid Powder Post) Beetles:~~
 - (i) ~~The presence of fresh frass will be acceptable as evidence of an active infestation of the Anobiidae.~~

- (ii) ~~The presence of holes alone or holes and dull colored frass will not be acceptable evidence of an active infestation of the Anobiidae except in such cases when live larvae and pupae are found in wood members.~~
- (iii) ~~Anobiidae Beetles usually infest products older than 10 years and most infestations are confined to softwoods, whereas the Lyctidae only actively infest recently processed hardwoods.~~

2. ~~Powder Post Beetles(Lyctidae):~~

- (i) ~~If hardwoods are less than 10 years old, they are much more likely to be infested with Lyctidae Beetles, but fresh frass should still be present to warrant treatment.~~
- (ii) ~~If wood is over 10 years old, only fresh frass and/or live larvae or pupae in wood will be acceptable evidence of activity.~~

3. ~~Old House Borer (Hylotrupes bajulus-L.):~~

- (i) ~~The presence of adult beetles and oval exit holes with fresh sawdust-like frass in softwoods will be evidence of an active infestation.~~
- (ii) ~~The presence of live larvae or pupae in softwoods will be evidence of an active old house borer infestation, if the frass is sawdust-like.~~

(e) ~~Treatment procedures:~~

1. ~~When wood destroying beetles are present at or below the subfloor level, then control measures should be applied from underneath the structure using any approved pesticide labeled for that use. Active infestations may be treated only with a federal and state registered pesticide that is labeled for the remedial treatment of wood destroying beetles. All applications and safety procedures must be strictly followed according to label instructions. Persons who provide treatments for active wood destroying beetle infestations must have a valid Wood Destroying Organism or Fumigation license appropriate for the registered pesticides that are applied. Persons who provide treatments for active wood destroying beetle infestations must, prior to providing the treatment, inform property owners of alternative means of control such as removal and replacement of infested wood where the infestation is localized.~~
2. ~~If there is evidence to indicate or reasonable cause to suspect that a substantial active infestation of wood destroying beetles exists above the subfloor level, then fumigation with an approved fumigant is permitted, provided the property owner has been informed of other alternative treatments such as removal and replacement of infested wood members or treatment of the substructure only if it is actively infested. Preventative treatments may be performed only with a federal and state registered pesticide that is labeled for application as a preventative treatment of wood destroying beetles.~~
 - (i) ~~New construction. Preventative treatments of new framing or new log construction shall be performed with a federal and state registered pesticide that is labeled for the prevention of wood destroying beetles.~~
 - (ii) ~~Existing structures. Preventative treatments of existing frame structures may be performed if:~~
 - (I) ~~Prior to treatment, wood moisture content in the intended treatment area is tested using a moisture inspection instrument designed to read moisture content in wood;~~
 - (II) ~~At least five locations where the wood moisture content is tested show moisture content of at least 18%;~~

~~(III) The commercial pest control operator provides a written report to the property owner listing and diagramming the conditions that warrant a preventative treatment; and,~~

~~(IV) The treatment is performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in existing frame structures.~~

~~(iii) Existing log structures. Preventative treatments of existing log structures shall be performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in log construction.~~

(9) Carpenter Ants and Bees:

(a) Carpenter Ants (*Camponotus*, Sp.) damage can be recognized by the presence of hollow, irregular, clean chambers cut across the grain, and by the presence of fine to coarse wood fibers, which are removed from the chamber by the ant as the nest is constructed. Treatment of carpenter ants may be localized treatments by an approved pesticide. The nest should be found and treated if possible. Carpenter ants are generally present due to excess moisture somewhere in the wooden structures. To help in controlling the control a carpenter ant infestation, the moisture problem should also be corrected.

~~(b) Carpenter Bees (*Xyocopa* spp.)—These bees often burrow into the exposed, dry wood of buildings, posts, wooden fences, etc. Since the bees often colonize the same piece of wood, the damage to timber the wood can be quite extensive because the bees often colonize the same piece of wood. Control can be had Treatment of carpenter bees may be performed by applying any approved chemical pesticide into the entrance holes. Holes should not be filled until fall as the bees entering the holes will come in contact with the dust.~~

(10) (a) ~~Formosan Termites.~~ All infestations of *Coptotermes*, *Formosanus*, *Shiaki*, or any other members of the genus *Coptotermes*, known as the Formosan termite, shall be treated with appropriately labeled pesticides and reported to the Tennessee Department of Agriculture, Plant Industries, or to any employee or agent thereof.

(b) All known infestations of *Coptotermes* termites are to be treated. This treatment is to be carried out utilizing accepted industry methods, with appropriately labeled pesticides.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-.09 Repealed.~~

~~0080-06-14-.10 Notification to Beekeepers.~~

~~(1) Notification shall be given as far in advance as possible to all beekeepers in the area where agricultural ground application of pesticides is to be done. Notification to the Department of Agriculture as far in advance as possible of the time the pesticide application shall be sufficient notice to comply with this regulation. The materials having the least toxic qualities to honeybees shall be used whenever possible.~~

~~0080-06-14-.11~~ 0080-09-04-.08 Certification of Commercial Pesticide Applicators

(1) No charter holder or licensed applicator pest control operator shall allow an uncertified person to apply pesticides except in accordance with this rule.

(2) Pesticides Custom applications of pesticide must be applied by a pest control operator or certified applicator, licensed or certified in the category of services being provided, or by a person in the presence of an applicator certified in accordance with Rule 0080-06-16-.03 in the category in which services are

~~being provided a properly licensed pest control operator or certified applicator.~~

- (3) ~~Commercial Pesticide Applicators who apply pesticides under the direct supervision of a licensed pest control operator must be certified in accordance with Rule 0080-06-16-.03 in the category in which of services are being provided.~~
- (4) ~~Commercial Pesticide Applicators will be issued an individual commercial certification card and are responsible for maintaining their certification as provided in Rule 0080-06-16-.04 Tenn. Comp. R. & Regs. 0080-09-02.~~

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-.12 0080-09-04-.09~~ Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators.

- (1) ~~All commercial pest control operators and commercial applicators and pest control operators shall keep maintain true and accurate records of both restricted and non-restricted general use pesticides use, retain such record. Such records shall be kept legibly or electronically and shall be readily available for departmental inspection for two (2) years, and make the original records and copies thereof available to the Commissioner of Agriculture or his designee following the pesticides' use. Upon request by the department, such records shall be made available within 48 hours.~~
- (2) ~~The records must show document each of the following:~~
 - (a) ~~The aApplicator's first and last name(s) and TDA-departmental assigned ID-identification number;~~
 - (b) ~~The pPesticide used;~~
 - (c) ~~The tTarget pest(s);~~
 - (d) ~~The eCrop, plant, house, business, or building onto or around which the pesticide is applied on or to and the;~~
 - (e) ~~Location thereof; where the pesticide is applied, including the physical address or Farm Services Agency number;~~
 - (e)(f) ~~The aApplication rate;~~
 - (f)(g) ~~The pPercentage of mixed-use dilution and quantity of pesticide used;~~
 - (g)(h) ~~The landowner, agent or other person employing such applicator who requested the custom application of pesticide; and,~~
 - (h)(i) ~~The dDate of service, and~~
 - (i) ~~—The amount of pesticide used.~~

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-.14 0080-09-04-.10~~ Requirements for Licensees in Aquatic Weed Control.

~~Any person or government entity applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of one pest control operator licensed and certified in Aquatic Pest Control under the provisions of this chapter.~~

Authority: T.C.A. §§ 4-3-203; 62-21-118.

~~0080-06-14-15 Denial, Suspension or Revocation of License, Certification or Permit Penalties.~~

- ~~(1) If the Commissioner has reason to believe the holder of a permit, license or certificate has violated any provision of this chapter, including its rules and regulations, or has used any aquatic pesticide in violation of the provisions of the "Tennessee Insecticide, Fungicide and Rodenticide Act", including its rules and regulations, the Commissioner shall conduct a hearing to determine if any license, certification or permit should be denied, revoked, suspended, or modified, and/or impose civil penalties of up to one thousand dollars (\$1,000) for each violation.~~

~~0080-06-14-16~~ 0080-09-04-11 Requirements for Spot Treatment Only ~~in~~ Lawn Maintenance.

- (1) Any person who incidentally ~~applying a~~ applies herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices ~~such as, e.g. spot treatments adjacent to fencing, driveways, parking lots, cemetery markers, and landscape borders and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging,~~ shall not be considered ~~as to be applying a custom application of pesticide for a fee and shall not be required to be licensed as a commercial pest control operator when, provided that~~ the person meets the following criteria:
- (a) The applicator has obtained and maintained certification by ~~successfully completing (score of 70) an exam demonstrating general knowledge of pesticides including safety in handling, mixing and applying pesticides, environmental hazards in using pesticide, calculations, calibrations and label comprehension. The certification category created specifically for such application is to be known as "in the category of Limited Herbicide Applicator". Recertification requirements are stipulated in rule 0080-06-16-04. Any person exhibiting unethical behavior during an examination shall be ineligible to take another certification exam for two (2) years.~~
 - (b) The application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of ~~twenty-five (25) gallons;~~ an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no ~~more longer~~ than ~~fifteen (15) feet long.~~
 - (c) The applicator or his ~~or her~~ employer has ~~furnished~~ provided to the department proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products/ and completed operations, and the policy has been endorsed to cover herbicide applications.
 - (d) The name of the business and certificate number issued to the applicator is displayed ~~in on~~ the upper right hand corner of the applicator's vehicle used in the business ~~or on both right and left sides of any all company vehicles or trailers used in the business. The name of the business shall be displayed on the right and left sides of all company vehicles or trailers. Lettering shall not be less, in lettering no shorter~~ than two inches (2") tall; and,
 - (e) Application records shall contain the date of application and the property address.
- (2) A person operating under this section ~~is not authorized to:~~
- (a) ~~Arule shall not advertise~~ the application of herbicides or any other pesticide application.
 - (b) ~~A person operating under this rule shall not S~~supervise the application of any pesticide by an uncertified person.
- (3) Persons certified as ~~limited herbicide applicators in the category of Limited Herbicide Applicator~~ are not required to obtain a business charter, bond, or license.
- (4) ~~A person is not required to meet the above requirements in order to apply~~ This rule shall not apply to any person who applies a herbicide with the sole active ingredient of Glyphosate for the control of weeds in

in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided, and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.12 Fees

- (1) The fee for a special local need (24-C) shall be a Tier 6 fee under T.C.A. §43-1-703(f).
- (2) The fee for a commercial pest control operator charter shall be a Tier 9 biennial fee under T.C.A. §43-1-703(f).
- (3) The fee for registration of nonclerical employees and issuance of solicitor and technician cards shall be a Tier 2 biennial fee under T.C.A. §43-1-703(f) for each employee, solicitor, or technician registered with the department.
- (4) The fee for each consultant or custom applicator license examination shall be a Tier 4 fee under T.C.A. §43-1-703(f).
- (5) The fee for a pest control consultant license shall be a Tier 10 biennial fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-113; 62-21-111; 62-21-112; 62-21-118.

Chapter 0080-06-27-0080-09-05 Worker Protection

0080-06-27-.01-0080-09-05-.01 Definitions.

Farm Labor Contractor means any person who does not own and is not responsible for the management or condition of an agricultural establishment; and who hires or contracts for services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, but does not own, or is not responsible for, the management or condition of the agricultural establishment in exchange for compensation of any kind.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-06-27-.02-0080-09-05-.02 Worker Protection Standards (WPS).

The Commissioner of Agriculture department adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations titled Worker Protection Standards and Part 156 Subpart K of the Code of Federal Regulations titled Worker Protection Statements as if fully stated herein, the federal standards for labeling requirements for pesticides and devices and worker protection standards, compiled at 40 C.F.R. Part 156, Subpart K, and Part 170.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-06-27-.03-0080-09-06-.03 WPS Trainer Requirements.

- (1) Persons currently certified as a private applicator of restricted use pesticides or as a commercial applicator in categories C01, C03, or C10 are exempt from the pesticide safety trainer requirements and

may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(c)(1).

- (2) A trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(c)(1). The roster shall include the following:
 - (a) The name, address, telephone number, and signature of the applicant; and,
 - (b) The date of the training.
- (3) The commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this ~~Section~~ rule.
- (4) ~~Any of~~ the following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
 - (a) ~~failing-Failure to follow the worker and/or handler training requirements prescribed in detailed under 40 C.F.R. §§ 170.130(d)(1), §170.130(4), §170.230(c)(1) and §170.230(4);~~
 - (b) ~~failing-Failure to maintain the training information prescribed in 0080-6-27-.03(2) or to fulfill verification requirements detailed under paragraph (2) of this rule;~~
 - (c) ~~a~~Acting as a trainer without authorization; or,
 - (d) ~~failing to fulfill the requirements of the verification as prescribed in paragraph (2); or~~
 - (e) ~~having had a similar authorization revoked, suspended, or denied~~ Revocation, suspension, or denial of trainer authorization in any jurisdiction within the last previous three years.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-06-27-.04~~ 0080-09-05-.04 Notice to Farm Labor Contractors.

- (1) The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
 - (a) ~~¶~~The location of the agricultural establishment's central posting site; and,
 - (b) ~~the~~ Any restrictions on entering a treated area, as specified in under 40 C.F.R. §-170.120(d), if a treated area is within 1/4 mile of a location where workers ~~will be working-work~~ and the treated area is not posted as ~~allowed or required in-under~~ 40 C.F.R. §170.120(a), ~~(b) and-(c)~~.
- (2) The farm labor contractor shall:
 - (a) ~~¶~~Post or provide workers in writing with the information ~~in-required~~ under 40 C.F.R. §-170.122 or the specific location of the central posting site for each agricultural establishment on which the worker will be working; and,
 - (b) ~~¶~~Provide workers with restrictions on entering a treated area, as specified in 40 C.F.R. § 170.120(d), if the treated area is within 1/4 mile of a location where the worker ~~is-will be~~ working and the treated area is not posted as ~~allowed or required in-under~~ 40 C.F.R. §-170.120(a), ~~(b) and-(c)~~.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Repeal

Chapter 0080-06-14
Pest Control Operators

Chapter 0080-06-14 Pest Control Operators is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES**

**CHAPTER 0080-06-14
PEST CONTROL OPERATORS**

TABLE OF CONTENTS

0080-06-14-.01	Qualifications of Applicants	0080-06-14-.12	Record-Keeping Requirements for
0080-06-14-.02	Certification of Qualifications		Commercial Pest Control Operators and
0080-06-14-.03	Examination of License Applicants		Commercial Applicators
0080-06-14-.04	License Categories	0080-06-14-.13	Repealed
0080-06-14-.05	Repealed	0080-06-14-.14	Requirements for Licensees in Aquatic
0080-06-14-.06	Licensees Requirement of Active Practice		Weed Control
0080-06-14-.07	Requirements for Licensees in Fumigation	0080-06-14-.15	Denial, Suspension or Revocation of
0080-06-14-.08	Requirements for Licensees in Weed		License, Certification or Permit—Penalties
	Destroying Organisms	0080-06-14-.16	Requirements for Spot Treatment Only—
0080-06-14-.09	Repealed		Lawn Maintenance
0080-06-14-.10	Notification to Bee Keepers		
0080-06-14-.11	Certification of Commercial Pesticide Applicators		

~~0080-06-14-.01 QUALIFICATIONS OF APPLICANTS.~~

- ~~(1) Applicants are required to have a Commercial Pesticide Applicator Certificate in the particular license category before taking a license examination as provided in Rule 0080-06-16-.03.~~
- ~~(2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued visa prior to taking the license examination.~~
- ~~(3) Education—Except for the license examination for Weed Destroying Organisms, applicants are qualified to take any license examination(s) based on their education, as follows:~~
 - ~~(a) Applicants are qualified to take a license examination based on their education if they have a Bachelor's degree with a major or minor, as evidenced by an official transcript, in at least one or more of the following curricula: Agriculture, Biology, Chemistry, Forestry, Horticulture, Entomology, Plant Pathology and Plant Science or other similar degree.~~
 - ~~(b) Applicants are qualified to take the Pest Control Consultant license examination if they are a graduate of an accredited college or university with a Bachelor's degree in the field of pest control in which the consultation is being offered. A license in this category does not qualify the holder to conduct pest control operations.~~
- ~~(4) Education and Experience: Applicants are qualified to take any license examination(s) based on a combination of their education and experience as follows:~~
 - ~~(a) Applicants with a degree as set forth in 3(a) above and one (1) year of full time work experience in Weed Destroying Organisms are qualified to take the license examination in that category.~~
 - ~~(b) Applicants with a Masters or PhD degree in entomology that have graduated from the Tennessee Apprentice Termite Technician School are qualified to take the license examination in the category of Weed Destroying Organisms.~~

(Rule 0080-06-14-.01, continued)

- (c) ~~Applicants who hold a current Horticulture, Lawn and Turf (HLT); Horticulture Interior (HRI); Weed Control Right of Way and Industrial (WEC); or Agricultural Ground Equipment (AGE) license are qualified to take the license examination in another of those four categories, provided they are certified in the license category applied for, have two or more years work experience in the license category applied for, or have at least twelve (12) college level semester hours or twenty four (24) Continuing Education Units (CEU) related to the license category applied for.~~
- (d) ~~Applicants are qualified to take the Agricultural Ground Equipment or Horticulture Lawn and Turf license examination if they have twenty four (24) months' work experience, a BA degree, a minimum of twelve (12) college level semester hours or twenty four (24) continuing education units (CEU) related to the categories of Agricultural Ground Equipment or Horticulture Lawn and Turf.~~
- (5) ~~Experience—Applicants who wish to take a license examination based only on experience must have been registered with the department as a pest control technician or salesperson, as provided in Tenn. Code Ann. § 62-21-109, for twenty four (24) months of full-time work experience, or provide documentary evidence of such employment if the registration failed to occur at no fault of the applicant, or if the experience was obtained out of state.~~

Applicants are qualified to take the license examinations below as follows:

- (a) ~~Applicants with a valid Certified Crop Advisors (CCA) Certificate are qualified to take the Horticulture Lawn and Turf (HLT) or Agricultural Ground Equipment (AGE) examinations, provided they have satisfied the requirements above, have one (1) year of full-time work experience applying pesticide in the category of license applied for and are certified in the category of same.~~
- (b) ~~Applicants with a current General Pest and Rodent Control license and a Public Health Mosquito Control certificate are qualified to take the license examination in the latter category.~~
- (6) ~~Applicants who misrepresent their work experience shall be ineligible to take the examination for two (2) years after the applicant meets the required qualifications.~~
- (7) ~~If the Department determines that the application contained inaccurate information after a person passes the examination and is issued a license, the license shall be revoked in accordance with the Uniform Administrative Procedures Act, and the person shall not be allowed to resubmit an application for the license examination for two (2) years.~~

~~**Authority:** T.C.A. §§ 62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed November 16, 1978; effective January 1, 1979. Repealed and rule filed September 22, 1982; effective October 22, 1982. Amendment filed August 8, 1984; effective September 7, 1984. Amendment filed November 13, 1986; effective December 28, 1986. Amendment filed October 30, 1987; effective December 14, 1987. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.~~

~~**0080-06-14-.02 CERTIFICATION OF QUALIFICATIONS.** Upon application to take a license examination, or at such other time as the Pest Control Board (hereinafter referred to as Board) may require, the applicant shall present:~~

(Rule 0080-06-14-.02, continued)

- (1) ~~A certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience; and/or~~
- (2) ~~A copy of a transcript or certificate properly evidencing a qualifying degree, professional standing, course hours or continuing education units (CEU).~~

Authority: ~~T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Repeal filed September 22, 1982; effective October 22, 1982. New rule filed October 26, 1988; effective December 10, 1988. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.~~

0080-06-14-.03 EXAMINATION OF LICENSE APPLICANTS.

- (1) ~~Applications to take a license examination shall be submitted by the tenth day of the month preceding the month of the scheduled examination.~~
- (2) ~~License examinations will be given the first month of each quarter at Ellington Agricultural Center in Nashville, Tennessee or when and where the Board decides.~~
- (3) ~~Qualified applicants who have submitted an application will be notified of the date, place and time of the examination(s). Applicants who are not qualified will be notified in writing that the application was not approved with the reason(s) stated.~~
- (4) ~~License examinations shall be given in two (2) parts as follows:~~
 - (a) ~~The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure:~~
 1. ~~State and Federal Laws & Regulations~~
 2. ~~Insects~~
 3. ~~Weeds & Disease~~
 4. ~~Plant Management Decision Making~~
 5. ~~Herbicide Technology~~
 6. ~~Pesticide Safety~~
 7. ~~Adjuvants~~
 8. ~~Fumigation and Soil Fumigation~~
 9. ~~Integrated Pest Management~~
 10. ~~Environmental Considerations~~
 11. ~~Principles of Vegetation Management~~
 12. ~~Plant Growth Regulators~~
 13. ~~Calibration of Application Equipment~~
 14. ~~Common Problems Encountered During Application~~
 15. ~~Professionalism and Public Relations in Vegetation Management~~
 16. ~~Pest, Bird, Plant, Tree and Disease Identifications~~
 17. ~~Pesticides and Human Health~~
 18. ~~Drift Management~~
 19. ~~Navigation (Aerial using GPS, DGPS, OmniSTAR)~~
 20. ~~Calculating Area of Target Site~~
 21. ~~Pesticide Measurement Systems~~
 22. ~~Operations (Aerial pilot & ground crews, aircraft crash response)~~
 23. ~~Mosquitoes & Human Diseases~~
 24. ~~Life Cycle of Mosquitoes~~
 25. ~~Wood Destroying Organisms~~
 26. ~~Vertebrates and Invertebrates~~
 27. ~~Pests on or Near Food~~

(Rule 0080-06-14-03, continued)

- 28. Urban IPM Programs
- 29. Implementing Urban Pest Management Programs

- (b) ~~The second part of the examination will test applicants on specimen identification as it relates to the particular license category.~~
- (5) ~~To pass the license examination, applicants must score seventy (70) percent or higher on both parts.~~
- (6) ~~Applicants will be allowed two (2) hours to complete the first part of the examination and three (3) hours to complete the second part.~~
- (7) ~~While there is no limitation on the number of categories for which a license applicant may be examined during any examination period, the above-stated time limits shall apply.~~
- (8) ~~Applicants approved to take the license examination(s) are required to present a photo ID on the day of testing.~~
- (9) ~~Applicants must pass the first part of the examination before they can take the second part. Applicants that fail the second part shall only be required to retake that part of the examination.~~
- (10) ~~Applicants exhibiting unethical behavior during an examination shall be ineligible to take another license examination for two (2) years.~~
- (11) ~~Applicants who cannot take a scheduled examination due to circumstances beyond their control must contact the Department within forty eight (48) hours of the scheduled examination to reschedule or their examination fee will be forfeited.~~

Authority: ~~T.C.A. §§62-21-105, 62-21-112 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed February 14, 1977; effective March 16, 1977. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 10, 1989. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-04 LICENSE CATEGORIES. ~~The substance of the license examinations will be taken from study material developed by the University of Tennessee. Such material can be purchased by contacting the University of Tennessee at (865) 974-7138 or at the University's website at <http://eppserver.ag.utk.edu/psep/psep.htm>. The license categories are as follows:~~

- (1) ~~Agricultural Ground Equipment (AGE) is the control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.~~
- (2) ~~Aquatic Pest Control (APC) is the control of aquatic plants and algae through the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.~~
- (3) ~~Bird Control (BDC) is the control of bird pests through the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health Related Pest Control.~~
- (4) ~~Forest Pest Control (FPC) is the control of tree pests and diseases in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.~~

(Rule 0080-06-14.04, continued)

- (5) ~~Fumigation—Soil (FUS)—is the control of agricultural pests found in the soil application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Agricultural Plant Pest Control.~~
- (6) ~~Fumigation—Structural (FUM)—is the control of pests by application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- (7) ~~General Pest and Rodent Control (GRC)—is the control of vertebrate and invertebrate pests that invade or are normally known to invade a structure, and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- (8) ~~Horticultural—Interior (HRI)—is the control of plant pests and diseases. The category applies to residential and commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.~~
- (9) ~~Horticulture—Lawn and Turf (HLT)—Control of pests and diseases that normally invade turf, lawns, and landscape in non agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fire ants, fleas and ticks, but no other pests that normally invade the inside of a structure and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Ornamental and Turf Pest Control.~~
- (10) ~~Pest Control Consultant (PGC)—is a graduate of an accredited college or university with a Bachelor's degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to conduct pest control operations.~~
- (11) ~~Public Health Mosquito Control (PHMC)—is the management of mosquitoes, in all stages of their development, on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.~~
- (12) ~~Weed Control—Right of Way and Industrial (WEC)—is the control of plants, whether woody or herbaceous, by the application of chemicals generally classified as herbicides, to industrial sites and rights of way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right of Way Pest Control.~~
- (13) ~~Wood Destroying Organisms (WDO)—is the control of termites, various wood borers, carpenter bees, carpenter ants and decay, without regard to the type or use of structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- (14) ~~Wood Preservatives (WPC)—is the control of insects, fungi, marine borers and the effects of weather on wood products at the manufacturing or distribution stage that may damage or degrade the wood. Applicants for this license must be certified in Wood Preservation Pest Control.~~
- (15) ~~Special (SPC)—is the control of pests in special situations by methods not included in the other license categories listed above. These licenses may or may not require an examination in the discretion of the Board and are limited to specific pesticide uses and situations as determined by the Board.~~

(Rule 0080-06-14-.04, continued)

Authority: ~~T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991. Amendment filed August 22, 1995; effective December 30, 1995. Amendment filed October 28, 2002; effective February 28, 2003. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.~~

0080-06-14-.05 REPEALED.

Authority: ~~T.C.A. §§62-21-118 and 62-21-119. **Administrative History:** Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Repeal filed January 5, 1989; effective February 19, 1989.~~

0080-06-14-.06 LICENSES - REQUIREMENT OF ACTIVE PRACTICE AND CERTIFICATION.

- (1) ~~Applicants who have passed the license examination(s) must pay all fees within one year of the examination date to obtain the license(s) or be required to re take the examination(s). Individuals with extenuating circumstances, such as a medical condition or military service, are required to provide documented proof of such circumstances and will be evaluated on a per case basis.~~
- (2) ~~License holders with expired licenses and certifications must re take the license and certification examinations before they can renew their license. Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per case basis.~~
- (3) ~~Licenses will be suspended upon the expiration of the license holder's certification and reinstated when certification is obtained again, provided that the certification has not been expired for more than one year. Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per case basis.~~

Authority: ~~T.C.A. §§ 4-3-203, 62-21-105, 62-21-118 and 62-21-123. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-.07 REQUIREMENTS FOR LICENSEES IN FUMIGATION. ~~When a gas poisonous to human beings is used in fumigation, a certified applicator licensed in the category of fumigation, as provided in Rule 0080-06-14-.04 (5) and (6), shall be present, actively in charge of work and shall ensure that the following requirements are adhered to:~~

- (1) ~~A gas mask that protects against the gas being used shall be kept at the location where the fumigation is being done.~~
- (2) ~~Signs shall be prominently displayed at all entrances to the building, structure, or other fumigation site, declaring that the property is being fumigated and that no one should enter.~~
- (3) ~~A guard shall be maintained at any building or structure that is entered by the public. All doors shall be locked, posted and patrolled by the guard, who shall have access to a gas mask at all times.~~
- (4) ~~The certified and licensed applicator shall be responsible for clearing the structure of fumigants by following all label directions prior to re-entry.~~

(Rule 0080-06-14 .07, continued)

Authority: ~~T.C.A. §§ 1-3-203, 62-21-105 and 62-21-118. Administrative History: Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14 .08 REQUIREMENTS FOR LICENSEES IN WOOD DESTROYING ORGANISMS.

- (1) ~~Persons operating under licenses for wood destroying organisms shall conform to the following regulations or shall use other department approved methods.~~
 - (a) ~~A written contract (warranty optional) with all blanks completed shall be executed in duplicate on every control job for wood destroying organisms, other than termites. A written contract with a warranty shall be issued on every job for control of termites. In each case one copy is to be left with the property owner or his agent, and a copy retained by the operator. These contracts shall be numbered to assure that both parties hold identical documents. All such contracts and warranties, shall be transferable so as to remain with the treated property for the remainder of the current year's contract term.~~
 - (b) ~~When a contract with a warranty is issued on any structure for control of termites that does not meet state specifications, these areas or portions thereof not meeting state specifications must be treated and brought up to state specifications.~~
 - (c) ~~A graph shall be drawn and attached to each contract as described in (1)(a) and said graph shall show the condition of the property as it relates to termite infestation and damage at the time of the initial contract.~~
- (2) ~~Unless authorized by paragraph (6) of this rule or unless prohibited by the label, the operator shall give the following minimum services on each job for control of termites:~~
 - (a) ~~All applications of pesticides for the purpose of controlling wood destroying organisms shall be done in accordance with label directions. 40 C.F.R. (2)(ee) shall not apply when mixing or applying termiticides.~~
 - (b) ~~All pretreatments shall be completed according to label directions within one (1) year of the date the initial treatment or to coincide with the completion of the backfill.~~
- (3) ~~Each property under contract by a termite control operator shall be examined by the operator at least once per year if the owner or agent makes the property available. A report of the re-examination and all subsequent inspections showing the condition of the property with respect to the absence or presence of termites and/or other wood destroying organisms shall be filed with the property owner and a copy kept in the operator's file, subject to inspection by the Department.~~
- (4) ~~At such time as he may deem desirable, the Commissioner or his authorized representative, shall examine records and properties treated for the purpose of determining the efficiency of the treatment given. Whenever unsatisfactory or substandard treatments are found, the operator and/or charter holder will be notified and will be given a reasonable length of time in which to correct such conditions. If the operator shall neglect or refuse to make such corrections, his license and/or charter or both may be suspended as provided for by law, unless he can show to the satisfaction of the Department of Agriculture why such action should not be taken. While his license is suspended for this cause, the operator or charter holder shall have the privilege of retreating all properties on which he has current contracts, but shall not solicit any new business. He shall notify the Department of Agriculture of the~~

(Rule 0080-06-14-08, continued)

~~dates of any such reexaminations and retreatments. When all properties previously reported to be in an unsatisfactory condition have been re-examined and retreated, the Department of Agriculture shall then make the reinspections at its earliest convenience. If the Department of Agriculture, upon reinspection shall find all of the properties in satisfactory condition, then the suspension may be removed. Otherwise, the license and/or charter or both may be permanently revoked. A license or charter may be suspended or revoked for gross neglect of contracts, falsifying the presence of an insect pest, or general failure to give satisfactory service.~~

~~(5) All contracts for termite control shall carry a one-year warranty for retreatments of termites only. The issuance of a damage guarantee is optional.~~

~~(6) Less than complete treatments may be given when:~~

~~(a) Physical reasons or conditions prevent a full treatment, such as, well beneath building, heat/air duct pipe embedded in slab, plenum air space, crawl space too low or;~~

~~(b) When the label prohibits and;~~

~~(c) The owner of the treated property is fully informed.~~

~~(7) No warranty or guarantee need be given for less than complete treatment of non-commercial buildings. However, the contract covering such work shall have the stipulation that no guarantee is given. In addition, the words "No guarantee" shall be stamped or printed in letters one-half inch high on both sides of the invoice and guarantee/agreement form referring to this treatment.~~

~~(8) Wood-Destroying Beetles~~

~~(a) When treatment will be permitted—When it is determined that an active infestation exists, treatment will be permitted for the control or prevention of reinfestation of the families of beetles which are known to reinfest seasoned wood, i.e., Anobiidae, Lyctidae, Bostrichidae, Cerambycidae, (old house borer and flat oak borer only) and Curculionidae. Preventive treatment in the absence of an infestation is prohibited. Treatment for the control or prevention of other beetles, such as bark beetles, that do not cause structural damage to seasoned wood is prohibited.~~

~~(b) Determining Active Infestations:~~

~~1. Anobiidae (Anobiid Powder Post) Beetles:~~

~~(i) The presence of fresh frass will be acceptable as evidence of an active infestation of the Anobiidae.~~

~~(ii) The presence of holes alone or holes and dull-colored frass will not be acceptable evidence of an active infestation of the Anobiidae except in such cases when live larvae and pupae are found in wood members.~~

~~(iii) Anobiidae Beetles usually infest products older than 10 years and most infestations are confined to softwoods, whereas the Lyctidae only actively infest recently processed hardwoods.~~

~~2. Powder Post Beetles (Lyctidae):~~

(Rule 0080-06-14-.08, continued)

- (i) ~~If hardwoods are less than 10 years old, they are much more likely to be infested with Lyctidae Beetles, but fresh frass should still be present to warrant treatment.~~
 - (ii) ~~If wood is over 10 years old, only fresh frass and/or live larvae or pupae in wood will be acceptable evidence of activity.~~
3. ~~Old House Borer (Hylotrupes bajulus L.):~~
- (i) ~~The presence of adult beetles and oval exit holes with fresh sawdust-like frass in softwoods will be evidence of an active infestation.~~
 - (ii) ~~The presence of live larvae or pupae in softwoods will be evidence of an active old house borer infestation, if the frass is sawdust-like.~~
- (c) ~~Treatment Procedures:~~
- 1. ~~When wood destroying beetles are present at or below the subfloor level, then control measures should be applied from underneath the structure using any approved pesticide labeled for that use.~~
 - 2. ~~If there is evidence to indicate or reasonable cause to suspect that a substantial active infestation of wood destroying beetles exists above the subfloor level, then fumigation with an approved fumigant is permitted, provided the property owner has been informed of other alternative treatments such as removal and replacement of infested wood members or treatment of the substructure only if it is actively infested.~~
- (9) ~~Carpenter Ants and Bees:~~
- (a) ~~Carpenter Ants (Camponotus, Sp.) damage can be recognized by the presence of hollow, irregular, clean chambers cut across the grain, and by the presence of fine to coarse wood fibers, which are removed from the chamber by the ant as the nest is constructed. Treatment of carpenter ants may be localized treatments by an approved pesticide. The nest should be found and treated if possible. Carpenter ants are generally present due to excess moisture somewhere in the wooden structures. To help in controlling the carpenter ant infestation, the moisture problem should also be corrected.~~
 - (b) ~~Carpenter Bee (Xylocopa spp.). These bees often burrow into the exposed, dry wood of buildings, posts, wooden fences, etc. Since the bees often colonize the same piece of wood, the damage to timber can be quite extensive. Control can be had by applying any approved chemical into the entrance holes. Holes should not be filled until fall as the bees entering the holes will come in contact with the dust.~~
- (10) (a) ~~All infestations of Coptotermes Formosanus Shiaki or any other members of the genus Coptotermes, known as the Formosan termite, shall be reported to the Tennessee Department of Agriculture, Plant Industries, or to any employee or agent thereof.~~
- (b) ~~All known infestations of Coptotermes termites are to be treated. This treatment is to be carried out utilizing accepted industry methods, with appropriately labeled pesticides.~~

Authority: ~~T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed August 8, 1984; effective September~~

~~(Rule 0080-06-14 .08, continued)~~

~~7, 1984. Amendment filed March 15, 1985; effective June 14, 1985. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991.~~

0080-06-14-.09 REPEALED.

Authority: T.C.A. §§62-21-105 and 62-21-118. *Administrative History:* Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed February 14, 1977; effective March 16, 1977. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Repeal filed October 11, 1991; effective November 26, 1991.

0080-06-14-.10 NOTIFICATION TO BEEKEEPERS.

- (1) Notification shall be given as far in advance as possible to all beekeepers in the area where agricultural ground application of pesticides is to be done. Notification to the Department of Agriculture as far in advance as possible of the time the pesticide application shall be sufficient notice to comply with this regulation. The materials having the least toxic qualities to honeybees shall be used whenever possible.

Authority: T.C.A. §62-21-118. *Administrative History:* Original rule certified June 5, 1974. Repeal and new rule filed September 22, 1982; effective October 22, 1982.

0080-06-14-.11 CERTIFICATION OF COMMERCIAL PESTICIDE APPLICATORS

- (1) No charter holder or licensed applicator shall allow an uncertified person to apply pesticides except in accordance with this rule.
- (2) Pesticides must be applied by a certified applicator or in the presence of an applicator certified in accordance with Rule 0080-06-16-.03 in the category in which services are being provided.
- (3) Commercial Pesticide Applicators who apply pesticides under the direct supervision of a licensed pest control operator must be certified in accordance with Rule 0080-06-16-.03 in the category in which services are being provided.
- (4) Commercial Pesticide Applicators will be issued an individual commercial certification card and are responsible for maintaining their certification as provided in Rule 0080-06-16-.04.

Authority: T.C.A. §§ 4-3-203, 62-21-105 and 62-21-118. *Administrative History:* Original rule certified June 5, 1974. Repeal filed September 22, 1982; effective October 22, 1982. New rule filed October 26, 1988; effective December 10, 1988. Amendment filed June 28, 2007; effective September 11, 2007.

0080-06-14-.12 RECORDKEEPING REQUIREMENTS FOR COMMERCIAL PEST CONTROL OPERATORS AND COMMERCIAL APPLICATORS.

- (1) All commercial applicators and pest control operators shall keep true and accurate records of both restricted and non-restricted pesticide use, retain such record for two (2) years, and make the original records and copies thereof available to the Commissioner of Agriculture or his designee.
- (2) The records must show:
- (a) The applicator name(s) and TDA assigned ID number;
 - (b) The pesticide used;
 - (c) The target pest(s);

(Rule 0080-06-14 .12, continued)

- (d) ~~The crop, plant, house, business, or building the pesticide is applied on or to and the location thereof; including the physical address or Farm Services Agency number;~~
- (e) ~~The application rate;~~
- (f) ~~The percentage of mixed-use dilution;~~
- (g) ~~The landowner, agent or other person employing such applicator;~~
- (h) ~~The date of service, and~~
- (i) ~~The amount of pesticide used.~~

~~**Authority:** T.C.A. §§ 62-21-105, 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal filed November 16, 1978; effective January 1, 1979. Amendment filed June 28, 2007; effective September 11, 2007.~~

~~**0080-06-14 .13 REPEALED.**~~

~~**Authority:** T.C.A. §62-2120. **Administrative History:** Original rule certified June 8, 1974. Repeal filed November 16, 1978; effective January 1, 1979.~~

~~**0080-06-14 .14 REQUIREMENTS FOR LICENSEE IN AQUATIC WEED CONTROL.** Any person or government entity applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of one licensed in Aquatic Pest Control under the provisions of this chapter.~~

~~**Authority:** T.C.A. §62-21-118. **Administrative History:** Original rule filed January 23, 1995; effective May 31, 1995. Amendment filed June 28, 2007; effective September 11, 2007.~~

~~**0080-06-14 .15 DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION OR PERMIT PENALTIES.**~~

- (1) ~~If the Commissioner has reason to believe the holder of a permit, license or certificate has violated any provision of this chapter, including its rules and regulations, or has used any aquatic pesticide in violation of the provisions of the "Tennessee Insecticide, Fungicide and Rodenticide Act", including its rules and regulations, the Commissioner shall conduct a hearing to determine if any license, certification or permit should be denied, revoked, suspended, or modified, and/or impose civil penalties of up to one thousand dollars (1,000) for each violation.~~

~~**Authority:** T.C.A. §62-21-118. **Administrative History:** Original rule filed January 23, 1995; effective May 31, 1995.~~

~~**0080-06-14 .16 REQUIREMENTS FOR SPOT TREATMENT ONLY — LAWN MAINTENANCE.**~~

- (1) ~~Any person incidentally applying a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders and areas in lieu of or in conjunction with hand weeding or mechanical weed trimming and edging shall not be considered as applying a pesticide for a fee and shall not be required to be licensed as a commercial pest control operator when the person meets the following criteria:~~
 - (a) ~~The applicator has obtained certification by successfully completing (score of 70) an exam demonstrating general knowledge of pesticides including safety in~~

(Rule 0080-06-14 .16, continued)

~~handling, mixing and applying pesticides, environmental hazards in using pesticide, calculations, calibrations and label comprehension. The certification category created specifically for such application is to be known as "Limited Herbicide Applicator". Recertification requirements are stipulated in rule 0080-06-16 .04. Any person exhibiting unethical behavior during an examination shall be ineligible to take another certification exam for two (2) years.~~

- ~~(b) The application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of twenty-five (25) gallons; an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no more than fifteen (15) feet long.~~
 - ~~(c) The applicator or his or her employer has furnished proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products/completed operations, and the policy has been endorsed to cover herbicide applications.~~
 - ~~(d) The certificate number issued to the applicator is displayed in the upper right-hand corner of the applicator's vehicle used in the business or on both sides of any trailer used in the business. The name of the business shall be displayed on the right and left sides of all company vehicles or trailers. Lettering shall not be less than two inches (2") tall.~~
 - ~~(e) Application records shall contain the date of application and the property address.~~
- (2) A person operating under this section is not authorized to:
 - (a) Advertise the application of herbicides or any other pesticide application.
 - (b) Supervise the application of any pesticide by an uncertified person.
 - (3) ~~Persons certified as limited herbicide applicators are not required to obtain a business charter, bond, or license.~~
 - (4) ~~A person is not required to meet the above requirements in order to apply a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.~~

Authority: ~~T.C.A. § 62-21-118(a)(5). **Administrative History:** Original rule filed March 17, 2009; effective July 29, 2009.~~

Chapter 0080-06-15
Rules and Regulations Governing Commercial Aerial Application of Pesticides

Chapter 0080-06-15 Rules and Regulations Governing Commercial Aerial Application of Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

~~0080-6-15-.02 DENIAL OF LICENSE. The Commissioner of Agriculture may deny licensing after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. §4-5-14) for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides or for any violation of the commercial aerial application of "Pesticides Act".~~

~~*Authority: T.C.A. §43-2902 (1), (4), (10). Administrative History: Original rule certified June 5, 1974. Amendment filed August 22, 1983; effective November 14, 1983.*~~

Chapter 0080-06-16
Regulations Governing Use of Restricted Use Pesticides

Chapter 0080-06-16 Regulations Governing Use of Restricted Use Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

**RULES
OF
DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES**

**CHAPTER 0080-06-16
REGULATIONS GOVERNING USE OF
RESTRICTED USE PESTICIDES**

TABLE OF CONTENTS

0080-06-16-.01-General	0080-06-16-.06-Denial, Suspension or Revocation of Certification
0080-06-16-.02-Definitions	0080-06-16-.07-Use of Restricted Use Pesticides
0080-06-16-.03-Certification Requirements	0080-06-16-.08-Exemptions
0080-06-16-.04-Recertification Requirements	0080-06-16-.09-Civil Fine Schedule
0080-06-16-.05-Record Keeping	

~~0080-06-16-.01 GENERAL.~~

- ~~(1) The Commissioner of Agriculture determines that the use and application of restricted use pesticides may affect public health and environment.~~
- ~~(2) To use, buy or sell restricted use pesticides, an individual must be certified by the Commissioner or hold a valid pest control operator's license or act under the direct supervision of a licensee or certificate holder.~~

~~**Authority:** T.C.A. § 62-2120(4). **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977.~~

~~0080-06-16-.02 DEFINITIONS.~~

- ~~(1) Category means an area of licensing or certification for which commercial pest control operators of general or restricted use applicators are qualified.~~
- ~~(2) Certified Applicator means any individual who is certified by the Commissioner of Agriculture as authorized to use, buy, sell, or supervise the use of general or restricted use pesticides.~~
- ~~(3) Commercial Applicator means a person who uses, supervises the use of, sells, or buys restricted use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking the license examinations.~~
- ~~(4) Commercial Pest Control Operator means a person or business entity who engages in the custom application of pesticides or inspection of real property for the purpose of issuing a weed-destroying insect inspection report and who has demonstrated to the satisfaction of the pest control licensing and advisory board such person's qualifications to design and direct pest control and inspection operations:~~
- ~~(5) Custom Application means the application of pesticides for a fee.~~
- ~~(6) External Training means training conducted outside of a pest control operator's place of business and open to anyone to attend or training conducted by an outside presenter who is not employed by the pest control company making the training request.~~

~~(Rule 0080-06-16 .02, continued)~~

- ~~(7) General Use Pesticides means a pesticide that may be purchased and used by individuals without obtaining any certification or licensing.~~
- ~~(8) In-House Training means training that is conducted within the employer's place of business and attendance is limited to those employed by that specified company only. In-house training includes but is not limited to internet training, computer based CD-ROM training, or DVD training.~~
- ~~(9) Private Applicator means an individual who uses, supervises the use of, or buys any restricted use pesticide for the purposes of producing an agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
- ~~(10) Recertification means the authorization every three (3) years by the commissioner to use, supervise the use of, sell, or buy general or restricted use pesticides.~~
- ~~(11) Reciprocity means an agreement between the Tennessee Department of Agriculture and state(s) that have similar laws and regulations for the purpose of obtaining certification only. All associated fees are the responsibility of the applicator.~~
- ~~(12) Restricted Use Pesticide means any pesticide classified for restricted use by the Commissioner of Agriculture.~~
- ~~(13) Restricted Use Pesticide Dealer means an individual who is certified in the category of Pesticide Dealer and who wholesales or retails restricted use pesticides.~~
- ~~(14) Under the Direct Supervision means any application or sale of a pesticide by a certified applicator acting under the instructions and control of private applicator, commercial applicator, or commercial pest control operator who is available if needed. An application or sale is under the direct supervision of an applicator or operator if the applicator or operator is physically present or in direct communication by conventional means of communication.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16 .03 CERTIFICATION REQUIREMENTS.~~

- ~~(1) Private Applicator Certification Requirements~~
 - ~~(a) Successfully complete a specialized training session provided by the University of Tennessee Extension Service teaching the proper use of restricted use pesticides. Send a copy of the three part form signed by the extension agent verifying the completion of training to the Tennessee Department of Agriculture with appropriate fees as outlined in T.C.A. § 43-1-703.~~
 - ~~(b) Be certified to use restricted use pesticides in any other state having comparable certification requirements. Individuals who hold a current certification from another state must apply for and receive a reciprocal Private Applicator card with the Tennessee Department of Agriculture.~~
 - ~~(c) Private applicator certification expires on October 21 of the 3rd year of the certification period.~~
 - ~~(d) All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming privately certified.~~

(Rule 0080-06-16-.03, continued)

- (2) ~~Commercial Pesticide Applicator Certification Requirements~~
- (a) ~~All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming a commercial pesticide applicator.~~
 - (b) ~~Complete a commercial certification exam application form and submit the form to the commissioner with appropriate fees as outlined in T.C.A. § 43-1-703.~~
 - (c) ~~Individuals must score seventy (70) percent or higher to pass the commercial certification exam.~~
 - (d) ~~Individuals who cannot take a scheduled examination due to circumstances beyond their control must contact the Department within forty eight (48) hours of the scheduled examination to reschedule or their examination fee shall be forfeited.~~
 - (e) ~~Individuals who fail the certification exam will have a two (2) week waiting period before being rescheduled.~~
 - (f) ~~Individuals exhibiting unethical behavior during an examination shall fail the test and be ineligible to take the certification exam for one (1) year.~~
 - (g) ~~Individuals who possess a certification from another state that has a reciprocal agreement with the Tennessee Department of Agriculture will be issued a commercial pesticide applicator certification card. The applicant shall submit a copy of the front and back of the current applicator card issued by the reciprocating state along with the reciprocity application form furnished by the Tennessee Department of Agriculture.~~
 - (h) ~~Commercial applicator certification expires on December 31st of the 3rd year of the certification period.~~
- (3) ~~Requirements for Certification as a Commercial Pest Control Operator.~~
- (a) ~~Anyone who charges a fee for custom application as a Commercial Pest Operator must hold a valid pest control operator's license.~~
 - (b) ~~Any person desiring to be licensed as a Pest Control Operator must meet the requirements of T.C.A. §§ 62-21-101 et seq.~~
 - (c) ~~Original certification expires at the end of five (5) years.~~
- (4) ~~Categories of Commercial Applicators and Commercial Pest Control Operators.~~
- (a) ~~Agricultural Pest Control (C01)~~
 - 1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and noncrop agricultural land.~~
 - 2. ~~Standards of Competency—Applicators must demonstrate a practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extension areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is~~

(Rule 0080-06-16-03, continued)

~~required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury, and community problems resulting from the use of restricted use pesticides in agricultural areas.~~

(b) ~~Forest Pest Control (C02)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the forest, forest nurseries, and forest seed producing areas.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in this State and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must demonstrate practical knowledge of control methods that will minimize the possibility of secondary problems such as unintended effects on wildlife. Knowledge of proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.~~

(c) ~~Ornamental and Turf Pest Control (C03)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, including fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf greens, athletic fields, and the like.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other animals.~~

(d) ~~Seed Treatment (C04)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides on seeds.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents that influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.~~

(e) ~~Aquatic Pest Control (C05)~~

(Rule 0080-06-16-.03, continued)

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in aquatic environments.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of the secondary effects, which can be caused by improper application rates, incorrect formulations, and faulty application, of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms, which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.~~
- (f) ~~Right of Way Pest Control (C06)~~
1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights of way, or other similar areas. This category includes the control of plants, whether woody or herbaceous, to industrial sites and rights of way including but not limited to highways, transmission lines, and drainage ditches.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of a wide variety of environments since rights of way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right of way area, and the impact of their application activities in the adjacent areas and communities.~~
- (g) ~~Industrial, Institutional, Structural and Health Related Pest Control (C07)~~
1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in, on, and around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent area, public or private. This category also includes pesticide application for the protection of stored, processed, or manufactured products. This category further includes the control of birds and rodents.~~
 2. ~~Standards of Competency—Applicators must demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.~~
- (h) ~~Public Health Pest Control (C08)~~

(Rule 0080-06-16-03, continued)

1. ~~Description—This category includes all governmental employees and commercial applicators that use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described herein.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of vector disease transmission as it relates to and influences application programs. It is essential to know and recognize the wide variety of pests involved in this field. It is also essential to understand the pests' life cycles and habitats to develop a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.~~
- (i) ~~Demonstration and Research and Regulatory Pest Control (C10)~~
1. ~~Description—This category includes state, federal, or other governmental employees who recommend, use or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides and persons conducting field research with pesticides that, in doing so, use or supervise the use of general or restricted use pesticides. Included in the first group are persons such 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 restricted use pesticides.~~
 2. ~~Standards of Competency—Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environments of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.~~
- (j) ~~Wood Preservatives (C11)~~
1. ~~Description—In general, it is expected that applicators of this category possess a practical knowledge of the specific standards required for categories (C01) through (C07) applicable to their particular activity. In addition, they shall meet the specific standards required for categories (C01) through (C07) of this section as may be applicable to that particular activity. Including the use or supervising the use of general or restricted pesticides.~~

(Rule 0080-06-16 .03, continued)

2. ~~Standards of Competency—Producers and applicators shall demonstrate practical and technical knowledge of wood preservatives. They should demonstrate knowledge in the type of pests being controlled. They must also demonstrate practical knowledge in the methods of applying the preservatives to wood. Applicators should have knowledge of types of safety equipment necessary to protect those involved in the application as well as the aftereffects of application to plants, humans, pets, and other domestic animals.~~

~~(k) Pesticide Dealers (C12)~~

1. ~~Description—This category is for persons who are engaged in wholesale or retail sales of restricted use pesticides. Each dealer location selling restricted use pesticides must have a certified dealer at that location. Each certified dealer shall be responsible for the actions of every person who acts as the dealer's employee or agent in the sale of restricted use pesticides. Persons holding a current Pesticide Dealer certification are allowed to purchase and use restricted use pesticides. This category does not allow for custom application of pesticides.~~
2. ~~Standards of Competency—Pesticide Dealers shall demonstrate the practical knowledge to advise applicators and the public on the safe and effective use of pesticides. They shall also be expected to meet comprehensive standards reflecting a broad knowledge of pesticide uses. They shall also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.~~

~~(l) Antifouling Marine Paint (C13)~~

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use antifouling marine paints.~~
2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of tributyltin product labels and understand why they are classified as restricted use pesticides. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antifouling paints. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. In addition, applicators will demonstrate knowledge of proper storage, handling, transport, and disposal, including disposal of excess material, waste, and containers.~~

~~(m) Microbial Pest Control (C14)~~

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted pesticides to control microorganisms (bacteria, fungi, algae, and viruses) in cooling towers and water treatment plants. This category also includes application in restoration treatments targeting mold and fungus.~~
2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of antimicrobial agents in the control of bacteria, fungi, algae and viruses. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. They~~

(Rule 0080-06-16-03, continued)

shall also demonstrate knowledge of proper storage, handling, transport and disposal including disposal of excess material, waste, and containers.

(n) Sewer-Line Treatment (C16)

1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
2. Standards of Competency—Applicators shall demonstrate the practical knowledge of metam sodium products for root control. Applicators shall demonstrate knowledge of health and environmental hazards associated with metam sodium in sewer lines and wastewater treatment facilities. They shall demonstrate practical knowledge of the need to use personal protective equipment. In addition, applicators will demonstrate the knowledge of proper storage, handling, transport, spills, cleanup, and waste disposal.

Authority: T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Amendment filed April 26, 1994; effective August 28, 1994. Amendment filed October 28, 2002; effective February 28, 2003. Repeal and new rule filed March 31, 2014; effective June 29, 2014.

0080-06-16-04—RECERTIFICATION REQUIREMENTS.

- (1) After original certification expires, one must be recertified to use, apply, supervise, sell, or buy restricted use pesticides.

(2) Private Applicator Recertification Requirements

Private Applicator—Successfully complete an instructional course offered by the University of Tennessee Extension Service beginning in January of the last year in the current certification period. Private Applicator certification shall expire on October 21st every third year.

(3) Commercial Pesticide Applicator Certification Recertification Requirements

- (a) All commercial pesticide applicators shall obtain the required continuing education credits (CEU's) in the category of certification or retest in the same category to maintain certification.
- (b) Individuals becoming certified on or after July 1st of the third (3rd) year of the certification period will be rolled over to the next three year recertification period.
- (c) Each certification category shall require the following continuing education credits:
 1. Thirty (30) CEU's for certification category: C07—Industrial, Institutional, Structural and Health Related Pest Control.
 2. Eighteen (18) CEU's for certification categories: C01—Agricultural Plant and Animal, C03—Ornamental Turf, C06—Right of Way, C08—Public Health, C10—Demonstration, Research and Regulatory Pest Control and C12—Pesticide Dealer and LHA (Limited Herbicide Applicator)
 3. Twelve (12) CEU's for certification categories: C02—Forest Pest Control, C04—Seed Treatment, and C05—Aquatic Pest Control.

(Rule 0080-06-16-.04, continued)

4. ~~Nine (9) CEU's for certification categories: C11—Wood Preservatives, C13—Antifouling Marine Paint, C14—Microbials, and C16—Sewer Line Treatment.~~
- (d) ~~Continuing Education Units shall be prorated for those becoming certified during the recertification period.~~
 - (e) ~~Continuing Education Units shall only be awarded for electronic media used in conjunction with a presentation as part of In-house training.~~
 - (f) ~~Applications submitted by industry for training are required to be in the Tennessee Department of Agriculture office no later than 30 days prior to the date of the training session. Applications submitted by educational institutions shall be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).~~
 - (g) ~~All attendance rosters from industry and educational institutions are required to be submitted to the Department no later than 30 days after training. If training rosters are not received, sponsors and/or facilitators may not be approved for future training.~~
 - (h) ~~The sponsor shall permit representatives from the Department or PSEP employees to attend training sessions without being assessed registration fees.~~
 - (i) ~~One (1) continuing education unit shall be warranted per hour for certification-related topics.~~
 - (j) ~~In-house points will be limited to 50% of the total CEU requirement. Individuals may accrue half of their CEU's internally and the remaining half externally or accrue all of their CEU's by attending external meetings.~~
 - (k) ~~No more than 75% of the required continuing education units shall be accrued at any one external meeting.~~
 - (l) ~~Applicators shall be required to retest the third year if the required number of continuing education units is not obtained prior to the expiration date.~~
 - (m) ~~Applicators shall notify the Department in writing if there is a change in name or address.~~
 - (n) ~~Commercial Pesticide Applicator recertification shall expire every third year on December 31.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118) **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed October 28, 2002; effective February 28, 2003. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16-.05 RECORD KEEPINGS.~~

~~C.F.R. Title 7, Subtitle B, Chapter 1, Subchapter E, Part 110—Recordkeeping on Restricted Use Pesticides By Certified Applicators; Surveys and Reports is adopted by reference by the Department of Agriculture as the state standards for pesticide recordkeeping for private applicators using restricted use pesticides.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16-.06 DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION.~~ The Commissioner of Agriculture may revoke, suspend, or deny certification or licenses after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. 4-514), for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides.

~~Authority: T.C.A. § 62-2120(4). Administrative History: Original rule filed October 7, 1977; effective November 7, 1977.~~

~~0080-06-16-.07 USE OF RESTRICTED USE PESTICIDES.~~

- ~~(1) No one may use or buy a restricted use pesticide unless certified as a Private Applicator or a Commercial Applicator, or unless licensed as a Commercial Pest Control Operator by the Commissioner of Agriculture.~~
- ~~(2) No person shall use a pesticide in a manner inconsistent with its labeling.~~
- ~~(3) No person shall act as a private applicator unless he is certified as such by the Commissioner of Agriculture.~~
- ~~(4) No person shall act as a commercial applicator unless certified by the Commissioner of Agriculture as such and he may only act in the category in which he is certified.~~
- ~~(5) No person shall act as a Commercial Pest Control Operator unless he holds a valid Pest Control Operators license and may only act in the subcategory which he is licensed.~~
- ~~(6) No one holding a Pesticide Dealer certification shall sell, or allow the sale of, a restricted use pesticide to a noncertified person.~~
- ~~(7) No one shall sell restricted use pesticides until that person is certified in the category of Pesticide Dealer and has obtained a Restricted Use Pesticide Dealer's license.~~
- ~~(8) Restricted use pesticide sales records shall be submitted yearly with the renewal for Pesticide Dealer license.~~

~~Authority: T.C.A. §§ 43-8-106, 62-2-120(4), and 62-21-118. Administrative History: Original rule filed October 7, 1977. Amendment filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16-.08 EXEMPTIONS.~~ Individuals licensed under T.C.A. 43-2901 et seq. are exempt from the provisions of these regulations while engaged in the commercial aerial application of pesticides.

~~Authority: T.C.A. §§ 62-2120(4). Administrative History: Original rule filed October 7, 1977; effective November 7, 1977.~~

~~0080-06-16-.09 CIVIL FINE SCHEDULE.~~ Pursuant to the provisions of T.C.A. § 4-3-204(b), the following shall be the minimum and maximum amounts to be imposed as civil penalties for violations of the "Tennessee Insecticide, Fungicide and Rodenticide Act."

(1) LABEL VIOLATIONS	MINIMUM—MAXIMUM		
(a) Lacks Signal Word or Caution: Keep-out-of-Reach-of-Children		\$100.00	\$500.00
(b) Lacks Required Precautionary Labeling		\$100.00	\$500.00
(c) Deficient Precautionary Statements: Lacks Symbols or Statements		\$100.00	\$500.00

RESTRICTION GOVERNING USE OF RESTRICTED USE PESTICIDES

CHAPTER 0080-06-16

~~(Rule 0080-06-16-.09, continued)~~

(d)	Directions for Use.	\$100.00	\$500.00
(e)	Defective Ingredient Statement	\$100.00	\$500.00
(f)	Failure to Bear Required Statement of Net Weight or Content	\$50.00	\$500.00
(g)	Failure to Bear Name and Address of Producer, Registrant or Person for Whom Manufactured	\$50.00	\$500.00
(h)	Labeling Is Detached, Altered, Defaced or Destroyed	\$100.00	\$500.00
(i)	Ingredient Statement Absent on Immediate Container	\$100.00	\$500.00
(j)	Ingredient Statement Does Not Appear on Front Panel of Immediate Container	\$50.00	\$500.00
(k)	Label Does Not Bear a Registration Number or Established Number	\$50.00	\$500.00
(l)	Net Weight Not Stated on Label	\$50.00	\$500.00
(m)	Label Does Not Bear Name, Brand, or Trademark under Which Product Was Sold	\$50.00	\$500.00
(2)	FORMULATION VIOLATIONS		
(a)	Chemical Deficiencies	\$100.00	\$500.00
(b)	Net Weight	\$100.00	\$500.00
(c)	Chemical Contamination	\$100.00	\$500.00
(d)	Over Formulated	\$250.00	\$500.00
(3)	USE VIOLATIONS		
(a)	Use or Disposal of a Pesticide in a Manner Inconsistent with Its Labeling	\$250.00	\$500.00
(b)	Violation of Stop Sale, Use or Removal Order	\$250.00	\$500.00
(4)	RECORDS, BOOKS, DOCUMENTATION		
(a)	Failure to Maintain as Required By TIFRA and FIFRA	\$100.00	\$500.00
(b)	Failure to Produce for Inspection	\$250.00	\$500.00
(5)	REGISTRATION OF PRODUCTS		
(a)	Failure to Have Products Registered	\$100.00	\$500.00

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118. Administrative History: Original rule filed April 28, 1992; effective June 12, 1992. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16 .10 PESTICIDE MANAGEMENT AND DISPOSAL~~

- ~~(1) The Department of Agriculture adopts herein by reference the current versions of 40 C.F.R. Part 165, Subpart A.~~
- ~~(2) The Department of Agriculture adopts herein by reference the current version of 40 C.F.R. Part 165, Subpart E, as the State standards for pesticide containment structures.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

Chapter 0080-06-27
Worker Protection

Chapter 0080-06-27 Worker Protection is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

**RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-06-27
WORKER PROTECTION**

TABLE OF CONTENTS

0080-06-27-.01	Definitions	0080-06-27-.03	WPS-Trainer-Requirements
0080-06-27-.02	Worker Protection Standards	0080-06-27-.04	Notice to Farm Labor Contractors

~~0080-06-27-.01 DEFINITIONS.~~

~~Farm Labor Contractor means any person who hires or contracts for services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, but does not own, or is not responsible for, the management or condition of the agricultural establishment.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-27-.02 WORKER PROTECTION STANDARD (WPS).~~

~~The Commissioner of Agriculture adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations titled Worker Protection Standards and Part 156 Subpart K of the Code of Federal Regulations titled Worker Protection Statements.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-27-.03 WPS TRAINER REQUIREMENTS.~~

- ~~(1) Persons currently certified as a private applicator of restricted use pesticides or as a commercial applicator in categories C01, C03, or C10 are exempt from the pesticide safety trainer requirements and may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(e)(1).~~
- ~~(2) A trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(e)(1). The roster shall include the following:
 - ~~(a) The name, address, telephone number, and signature of the applicant; and~~
 - ~~(b) The date of the training.~~~~
- ~~(3) The commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this Section.~~
- ~~(4) The following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
 - ~~(a) failing to follow the worker and handler training requirements prescribed in 40 C.F.R. §170.130(d)(1), §170.130(4), §170.230(e)(1) and §170.230(4);~~
 - ~~(b) failing to maintain the training information prescribed in 0080-6-27-.03(2);~~~~

(Rule 0080-06-27-03, continued)

- (c) acting as a trainer without authorization;
- (d) failing to fulfill the requirements of the verification as prescribed in paragraph (2); or
- (e) having had a similar authorization revoked, suspended, or denied in any jurisdiction within the last three years.

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

0080-06-27-04 NOTICE TO FARM LABOR CONTRACTORS.

- (1) ~~The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:~~
 - (a) ~~the location of the agricultural establishment's central posting site; and~~
 - (b) ~~the restrictions on entering a treated area, as specified in 40 C.F.R. § 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 C.F.R. §170.120(a), (b) and (c).~~
- (2) ~~The farm labor contractor shall:~~
 - (a) ~~post or provide workers in writing with the information in 40 C.F.R. § 170.122 or the specific location of the central posting site for each agricultural establishment on which the worker will be working;~~
 - (b) ~~provide workers with restrictions on entering a treated area, as specified in 40 C.F.R. § 170.120(d), if the treated area is within 1/4 mile of where the worker is working and the treated area is not posted as allowed or required in 40 C.F.R. § 170.120(a), (b) and (c).~~

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on _____ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/27/16

Rulemaking Hearing(s) Conducted on: (add more dates). 03/21/16

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

The Department of Agriculture held a public hearing on March 21, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-01-03 Civil Penalties; 0080-06-14 Pest Control Operators; 0080-06-15 Rules and Regulations Governing Commercial Aerial Applications of Pesticides; 0080-06-16 Regulations Governing Use of Restricted Use Pesticides; 0080-06-27 Worker Protection; 0080-09-01 Classification of Pesticides; 0080-09-02 Restricted Use Pesticides; 0080-09-03; Commercial Aerial Application of Pesticides; 0080-09-04 Pest Control Operator Regulations; and 0080-09-05 Worker Protection.

Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Kenny Crenshaw of Herbi-Systems in Millington, Tennessee made comment both on behalf of the state Pest Control Board and on behalf of himself as a pesticide applicator. On behalf of the Board, Mr. Crenshaw maintained that while notice of these rules was made with the Tennessee Secretary of State's Office, the rules had not been received or discussed by the Board or with industry generally. He requested that the Department attempt other means in the future to put industry and the Board on notice regarding rule changes. More generally, Mr. Crenshaw objected to the proposed change to increase the minimum age for certified applicators from 16 to 18 because the change would unduly burden farms and farmers where 16 year olds are already eligible for certification as applicators. Mr. Crenshaw also objected to both the proposed increase in certification examination fees, from \$15 to \$50, and the rule's re-certification examination fees of \$250. Mr. Crenshaw indicated that the re-certification examination fee operates as a penalty the Department is not specifically authorized by the Agricultural Regulatory Fund law to levy and that the fee is unwarranted where the Department provides no greater service or privilege for re-certification than is provided by taking the original certification exam. Mr. Crenshaw maintains that open adoption of federal rules for record keeping requirements of private applicators is too sweeping a requirement and that the language of the rule should be amended to limit adoption of federal rules to a date certain in case future federal rules on this subject are at odds with Tennessee governance. Finally, Mr. Crenshaw requested an indication from the Department regarding future changes to these rules and future pesticide rules of the Department.

Response:

The Department appreciates Mr. Crenshaw's comments; generally finds them well-taken, and has amended the rules accordingly.

With regard to notice, the Department submits that these rules were noticed in accordance with all applicable requirements of the Uniform Administrative Procedures Act and state law. Further, the Department offers that these rules underwent review with the Tennessee Pest Control Association and various members of industry prior to being noticed, and the Department received general consensus from those members for advancement of the rules. Nonetheless, the Department also acknowledges its continual aim to invite and to maintain open dialogue with all of its constituents affected by the Department's work. Consequently, the Department will take stock of its notice procedures in a manner aimed at their continual improvement.

With regard to certification and recertification exam fees, the Department is specifically authorized under T.C.A. §62-21-118 to establish certification and re-certification requirements, which need not be identical in application. On this topic, pesticides program fees have not been increased since 1994. Since that time, the Department has been called upon for consecutive and significant budget cuts; yet, the current cost recovery of pesticide program costs from fees is only 69%. The Department believes that further cuts to the pesticides section programs may unduly increase risks associated with sales and applications of pesticides in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time. While no fee increase is ever desired, the Department believes that a middle-ground increase may be had both to better facilitate the proper administration of pesticide laws in this state, pursuant to T.C.A. §43-1-703, and not create an undue burden on pesticide applicators and licensees. For this reason, the Department has amended the rule to set certification and recertification exam fees at Tier 1 (\$25) each.

The Department expects to proceed with Attorney General review of these rules as necessary for their promulgation. The Department always strives for improvement of its rules and practices to increase governmental efficiency and to improve clarity of regulatory requirements, while not unduly burdening the

Tennessee public. These and all rules of the Department will be subject to the Department's perpetual review.

Comment:

Jeff Fedorchak of TruGreen in Memphis, Tennessee requested consideration of the certification exam fee increase being lowered from \$50 to \$25 and offered his support for a rule that set the fee at \$25. Mr. Fedorchak also offered appreciation for both the Department's efforts at an open dialogue with affected industry and accounting of program requirements where increased fees are needed.

Response:

The Department appreciates Mr. Fedorchak's comments; finds them well-taken and has amended the rule accordingly. The Department appreciates Mr. Fedorchak's support for its programs.

Comment:

Ronnie Griffis of Memphis, Tennessee echoed many of the comments made by Mr. Crenshaw. Mr. Griffis further requested consideration of a medical and military leave exemption for accumulation of continuing education units necessary for recertification as a certified applicator.

Response:

The Department appreciates Mr. Griffis' comments, and would offer its same response as noted above for Mr. Crenshaw's comments. With respect to Mr. Griffis' request for medical and military leave exemption from continuing education requirements for certified applicators, the Department notes that the exemption already exists under 0080-09-04-.05(1) for active practice and certification. In an abundance of caution, the Department has amended this rule to insert similar language in 0080-09-02-.06(4) for recertification requirements of commercial applicators.

Comment:

Scott Burnett of Alpha Pest Management Association offered his support for a \$250 re-certification examination fee as previously noticed in this rule. In support, Mr. Burnett noted he and other members of industry participated with the Department in development of the rules and that various members of industry similarly supported requirements that applicators obtain required continuing education units. He maintained that continuing education offers vital updates to industry practices that are not otherwise made known to persons who retest in lieu of obtaining continuing education, e.g. label changes. Consequently, he and other members of industry, including the Tennessee Pest Control Association, supported a higher \$250 re-examination fee for applicators that retest in lieu of obtaining continuing education.

Response:

The Department appreciates Mr. Burnett's comments and agrees that continuing education units serve an important role in knowledgeable practice of applying pesticides. To that end, continuing education units are required by this rule, and those applicators who do not obtain them are required to retest and may be subject to assessment of civil penalties or other regulatory enforcement measures.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include those businesses engaged in sale of pesticides or performance or advertising of pest control services in the state.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 1,462 firms, 10,634 certified commercial applicators, and 8,172 private applicators are licensed, certified, or registered with the department for pest control services.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the pesticides program.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Most states maintain similar requirements for licensing or registering persons in the manufacture, distribution, or application of pesticide products.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risks associated with sale and application of pesticides and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule adjusts fee schedules for licenses and inspection services conducted by the department of agriculture's pesticides program, pursuant to amendment of the Agricultural Regulatory Fund law. The rule also clarifies requirements of licensees in the wood destroying organisms category.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Insecticide, Fungicide, and Rodenticide Act; title 43, chapter 8, part 3, relative to the aerial application of pesticides; and the Tennessee Application of Pesticides Act, and the costs of the Department. See also Tenn. Code Ann. §§ 43-8-113; 43-8-302; and 62-21-111.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Businesses most affected by this rule include those that are engaged in the sale of pesticides or performance/advertising of pest control services in the state. TruGreen, Corporate Affairs, supports adoption of this rule. Herbi-Systems objects to fee increases for certification and re-certification examinations of pesticide applicators. Alpha Pest Management Association and the Tennessee Pest Control Association both supported an increase in re-certification examination fees, to \$250, which has been amended in this rule to \$25.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Estrin v. Moss, 430 S.W.2d 345 (Tenn. 1968).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to generate approximately \$974,889 of additional revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing pesticides inspection and examination services by the department, up from 69% cost recovery provided by the current fee structure.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Waddell, Administrative Director, and Kathy Booker, Pesticides Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Tennessee Secretary of State

Tre Hargett



Publications Division
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243-1102

Cody Ryan York
Director of Publications

615-253-4564
Cody.York@tn.gov

June 13, 2016

Jay Miller
Consumer & Industry Services
Department of Agriculture
PO Box 40627
Nashville, TN 37204

Mr. Miller,

It has come to our attention that the Rulemaking Hearing Rule filing form that your office filed with us on April 1, 2016 contains an error. On page twenty-three (23) of the filing, in Chapter 0080-09-05 Worker Protection, "0080-09-06-.03 WPS Trainer Requirements" is listed instead of "0080-09-05-.03 WPS Trainer Requirements." The table of contents on page two (2) of the filing lists the rule correctly as "0080-09-05-.03 WPS Trainer Requirements."

We have corrected the numbering error to match what is listed on the table of contents. If you have any questions, please feel free to contact my office at 615-741-2650.

Sincerely,

A handwritten signature in black ink, appearing to read "Cody York", written over a white background.

Cody Ryan York
Director of Publications