LAWS AND REGULATIONS GOVERNING PEST CONTROL OPERATORS AND APPLICATORS OF RESTRICTED USE PESTICIDES

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CHAPTER 21
PEST CONTROL OPERATORS

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PART 1
GENERAL PROVISIONS

62-21-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Application of Pesticides Act of 1978."

[Acts 1978, ch. 844, § 1; T.C.A., § 62-2101.]

62-21-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:
(1) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used;

(2) "Branch office" means any location other than the principal base of operation from which a pest control firm carries out its pest control activities. The maintenance of personnel and equipment at these locations where pest control activities are carried out constitutes a branch office under this chapter;

(3) "Category" means an area of licensing or certification for which commercial pest control operators or restricted use applicators are qualified;

(4) "Certification" means the authorization by the commissioner to use, supervise the use of, buy or sell restricted use pesticides, or to issue a wood destroying insect infestation inspection report;

(5) "Certified applicator" means any individual who is certified by the commissioner as authorized to use, buy, sell or supervise the use of restricted use pesticides;

(6) "Charter" means an instrument issued by the department, authorizing a person, firm, or corporation to engage in the business of commercial pest control operations;

(7) "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 infestation 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;

(8) "Commissioner" means the commissioner of agriculture;

(9) "Custom application of pesticides" means the application of pesticides for a fee;

(10) "Department" means the department of agriculture;

(11) "Labeling" means all labels and written, printed or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label and the pesticide must be used consistent therewith;

(12) "Licensee" means any person duly licensed under this chapter;

(13) "Office" means point of headquarters or location of the principal operation of a pest control firm or a point or location where branch offices are supervised;

(14) "Pesticide" means any substance or mixture of substances, or chemical intended for defoliating or desiccating plants, or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticide, fungicide, bacteriacide, herbicide, desiccant, defoliant, adjuvant or nematocide;

(15) "Prevention" means the prevention of conditions conducive to termite harborage or activity, or both, by advice of a licensed operator;

(16) "Private applicator" means an individual who uses, supervises the use of or buys any pesticide which is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the individual or the individual's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(17) "Recertification" means the reauthorization every three (3) years by the commissioner to use, supervise the use of, buy or sell restricted use pesticides;

(18) "Registration" means an instrument authorizing a person to act as solicitor, salesperson or agent for a chartered pest control business;

(19) "Restricted use applicator" means a person who uses or supervises the use of, sells or buys restricted use pesticides for any use, or for use on any property other than as defined under private applicator or commercial pest control operator;

(20) "Restricted use pesticide" means any pesticide, the efficacy data on which indicates it may have adverse effect on people and/or the environment;

(21) "Termite warranty without initial chemical treatment" means any agreement entered into between a chartered commercial pest control operator and any other person or entity for the purpose of termite prevention or control for any structure or building, regardless of any initial chemical application for prevention or control to the property;

(22) "Under the direct supervision" means any application or sale of a pesticide by a certified applicator acting under the instructions and control of a private applicator, commercial applicator or commercial pest control operator who is available if and when needed, if the applicator or operator is physically present or in direct communication by conventional means of communication; and

(23) "Wood destroying insect infestation inspection report" means a report written by a chartered commercial pest control operator employing a person licensed in the category of wood destroying organisms. The report shall indicate the presence or absence of visible wood destroying insects and the presence or absence of visible damage caused by such insects and shall be issued after an on-site inspection of the property.

[Acts 1978, ch. 844, § 2; T.C.A., § 62-2102; Acts 1988, ch. 545, §§ 1-5; 1996, ch. 805, §§ 7, 8; 2000, ch. 668, §§ 1-3; 2001, ch. 105, §§ 1, 2; 2009, ch.363, § 1; 2011, ch. 87, §1.]

62-21-103. Business charter requirement.

(a) No person shall engage in business as a commercial pest control operator until the person has secured a charter from the department.

(b) Any form of solicitation for pest control business or advertising is forbidden under this chapter unless the person has a charter issued in one (1) or all of the categories established by regulation under the provisions of this chapter.

(c) All printed advertising shall contain a statement of the charter number of the person on whose behalf the advertising is presented.

(d) Such charter may be granted in any one (1) or all of the categories established by regulation under the provisions of this chapter.

(e) Such charter may be issued only if the requirements of this chapter have been met and the stipulated fees have been received by the department.

(f) A charter shall be required for each office and each branch office. The requirements of this chapter do not apply to any class of commercial pest control operators such as, but not limited to, aerial applicators, when that class of commercial pest control operators is the subject of specific laws and regulations relating to that specific class in the commercial application of pesticides.

(g) All chartered companies are required to label the sides of company vehicles with the name of the company and the charter number. The size of the lettering shall not be less than two inches (2") tall.

(h) All chartered persons, companies or corporations shall have a physical address, and shall maintain a physical address, while the charter is in effect.

[Acts 1978, ch. 844, § 3; T.C.A., § 62-2103; Acts 1988, ch. 545, § 6.]

62-21-104. Creation of board - Notification of vacancy - Termination due to vacancy.

(a) A seven (7) member pest control board is hereby created and established. Such board shall consist of the commissioner, or the commissioner's designated representative, the director of the division of plant industries, a member of the staff of a university of this state, two (2) licensed commercial pest control operators and two (2) Tennessee citizens who are not associated with the pest control industry.

(b) (1) The governor shall appoint the members of the board to serve four-year terms, and, in the event of a vacancy, the governor shall appoint an interim member to fill the unexpired portion of the previous member's term. The terms of the present board members shall not be altered by this chapter. If the board incurs a vacancy, it shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs and shall provide a list of qualified persons to be appointed to the board and information regarding such persons that is sufficient for the appointing authority to make an informed decision. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, such board shall report to the house and senate government operations committees why such vacancies have not been filled. If more than one half (1/2) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. The board that is terminated pursuant to this subsection shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board. This subsection shall only apply if the governor is authorized to make appointments to at least one half (1/2) of the positions on such board.

(2) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(c) With the exception of the commissioner, no proxies, nor power to designate a representative to serve in the place of a board member, shall be allowed when this board sits as a licensing examining board.

(d) The department shall establish by written policy, rule or regulation, provisions relative to conflicts of interest of board members.

[Acts 1978, ch. 844, § 4; T.C.A., § 62-2104; Acts 1983, ch. 125, §§ 1, 2; 1988, ch. 545, § 7; 1988, ch. 1013, § 36; 2000, ch. 835, § 3.]

62-21-105. Powers and duties of board.

(a) The board has the following powers and duties:

(1) Advise the commissioner as to the promulgation of rules and regulations;

(2) Determine the different categories of service or classes which will require separate charters or licenses, prescribe the required qualifications for applicants for the various licenses and charters, and devise or approve the necessary examinations or testing procedures for the examination of applicants; and

(3) Certify the qualifications of such applicants to the commissioner requesting issuance of a license.

(b) (1) The board shall meet quarterly for the purpose of examining and certifying applicants for licenses, and at any time when requested by the commissioner or by a majority of the board.

(2) The questions and answers of all examinations to determine the qualifications of those seeking to be licensed as commercial pest control operators to engage in the various classes of pest control shall be written, and all such examinations shall be substantially uniform in content, difficulty, and equity as to each of the various classes.

[Acts 1978, ch. 844, § 5; T.C.A., § 62-2105.]

62-21-106. Office and branch office requirements - Employees.

(a) (1) Each person applying for or holding a charter shall have, for each office or branch office, a licensed commercial pest control operator for each category of service offered.

(2) The technical service work of each such office or branch office shall be under the direct supervision of such licensed operator.

(3) The technical service work shall be performed by employees who meet such qualifications as the board may establish by regulation.

(b) (1) Each person chartered shall be required to have a commercial pest control operator for the main or supervisory office.

(2) Branch offices must be supervised by licensed operators.
(c) No licensed commercial pest control operator shall be permitted to supervise more than one (1) office or branch office. The commercial pest control operator for each such office or branch shall be domiciled and resident at or near the office that the operator supervises and shall report to the office the operator supervises on a regular routine work basis.

[Acts 1978, ch. 844, § 6; 1981, ch. 78, § 2; T.C.A., § 62-2106; Acts 1988, ch. 545, § 9.]

62-21-107. Bond.

(a) Each application for a charter must be accompanied by a corporate surety bond satisfactory to the commissioner and conditioned that the principal therein named shall honestly conduct the business in accordance with the pest control laws of this state and the rules and regulations promulgated thereunder, and shall faithfully perform any contracts for pest control work.

(b) Any person having a right of action against such charter operation may bring suit against the principal and sureties of such bond.

(c) The amount of such bond shall be at least ten thousand dollars ($10,000).

[Acts 1978, ch. 844, § 7; T.C.A., § 62-2107; Acts 2000, ch. 668, § 4.]

62-21-108. Insurance required.

Each application for a charter must be accompanied by evidence that the applicant holds liability insurance of two hundred fifty thousand dollars ($250,000) for a single occurrence of liability, and five hundred thousand dollars ($500,000) aggregate liability for the annual period of insurance. Applicants filing for charters desiring to conduct work in the wood destroying organisms category shall, in addition to the above liability insurance, hold errors and omissions insurance of one hundred thousand dollars ($100,000) for a single occurrence of such liability, and three hundred thousand dollars ($300,000) aggregate errors and omissions liability for the annual period of insurance.

[Acts 1978, ch. 844, § 8; T.C.A., § 62-2108; Acts 1988, ch. 545, § 8; 2000, ch. 668, § 5, ch. 427 § 2.]

62-21-109. Registration of solicitors.

(a) A person chartered under this chapter shall list with the department, the name, residence, and address of each salesperson or agent who is authorized to solicit business or anyone authorized to enter into a pest control contract on behalf of such chartered person. A person listed as a licensee or registered technician is considered to be a registered solicitor for such chartered person without a requirement of separate solicitor registration.

(b) (1) Each person chartered is required to secure from the department a solicitor's registration for any salespersons or agents.

(2) Registration shall be issued when it has been shown that such prospective solicitor or agent is an employee of the chartered firm and has written authority to solicit business for the firm and bind the firm to contracts for pest control service, and when the fees hereinafter provided for have been paid and received by the department.
(c) No person registered under this section shall possess more than one (1) registration card at a time, and can be gainfully employed by only one (1) chartered person.

(d) It is a violation for a registered solicitor under this chapter knowingly to use false information or a deceptive representation to sell pesticide application services.

(e) Each person registered under this section shall possess commercial certification in each category of service offered for sale or provided.

[Acts 1978, ch. 844, § 9; T.C.A., § 62-2109; Acts 1994, ch. 960, § 11.]

62-21-110. List of employees.

(a) All persons chartered under this chapter shall be required to list with the department the names, residences and addresses of all employees (exclusive of clerical employees) who are engaged in the handling, transportation or application of pesticide chemicals.

(b) Immediate notification of any changes in employment of these employees shall be forwarded to the department by the chartered person, including any change of address or residence.

[Acts 1978, ch. 844, § 10; T.C.A., § 62-2110.]

62-21-111. Cost.

(a) The cost for a charter shall be set by rule pursuant to § 43-1-703.

(b) The cost for a license shall set by rule pursuant to § 43-1-703, applicable for each category in which a license is requested.

(c) The cost for a registration of all nonclerical employees shall be set by rule pursuant to § 43-1-703.

(d) The cost for a consultant's license shall be set by rule pursuant to § 43-1-703.

[Acts 1978, ch. 844, § 11; T.C.A., § 62-2111; Acts 1991, ch. 441, § 1; 2015, ch. 485, § 40].

62-21-112. Examination of license applicants - Fees.

(a) Each application for initial examination of a license applicant shall be accompanied by an examination fee of one hundred fifty dollars ($150) for each category in which such examination is requested.

(b) (1) When a license applicant has been examined by the board and found not qualified, the applicant may be reexamined at a subsequent date in accordance with regulations promulgated by the board. Each application for reexamination shall be accompanied by a reexamination fee of one hundred fifty dollars ($150) for each category in which reexamination is requested.

(2) A separate application and reexamination fee must be filed by an applicant each time a reexamination is requested for any category except the category of private pesticide applicator.

[Acts 1978, ch. 844, § 12; 1981, ch. 78, § 3; T.C.A., § 62-2112; Acts 1991, ch. 441, §§ 2, 3.]

62-21-113. [Repealed.]

62-21-114. Termite service contracts.

(a) (1) Every chartered person shall enter into a written contract for any service rendered in the category of wood destroying organisms.

(2) A separate contract must be given for each structure or building; provided, that an industrial complex or group of buildings may be covered by a single contract when it is an integral part of one (1) industrial unit.

(3) A garage, pump house or other outbuilding commonly a part of a residential establishment may be covered by the same contract as that covering the residence itself; provided, that the garages, etc., are not used as separate residential units.

(4) An apartment complex cannot be construed to be an industrial complex.

(b) (1) No person or business entity may enter into an agreement to provide services for termite prevention, control or a termite warranty without initial treatment unless properly chartered as a commercial pest control operator pursuant to § 62-21-103.

(2) (A) Notwithstanding this chapter or any other law to the contrary, a chartered commercial pest control operator may enter into an agreement to provide ongoing services for a termite warranty without initial treatment of any such structure or building regardless of any initial chemical application for prevention or control of termites of any such structure or building.

(B) Any agreement for a termite warranty without initial treatment shall clearly state in one-half inch (1/2") high letters on the front of the agreement if a damage repair guarantee is not offered. A violation of this subdivision (b)(2)(B) constitutes a violation of the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

(3) Prior to entering into a termite warranty without initial treatment agreement with any person or entity under this subsection (b), the chartered commercial pest control operator must conduct an initial inspection and issue an initial report that includes:

(A) A graph or diagram of the property where any visible damage or infestation, if any, is located;

(B) A written description of the type of damage, if any: and

(C) The date of the initial inspection report.

(4) The commissioner shall, subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate all necessary rules and regulations, consistent with this chapter. Rules promulgated to implement this subsection (b) shall regulate the commercial pest control industry and provide for the protection of the consumer.

[Acts 1978, ch. 844, § 14; T.C.A., § 62-2114; Acts 1991, ch. 441, § 5; 1994, ch. 960, § 12.; 2009, ch. 363, § 2,]

62-21-115. Operator or aerial applicator license requirement.

To use, buy or sell a restricted use pesticide, an individual must be certified by the commissioner, hold a valid commercial pest control operator's license, or hold an aerial applicator's license under § 43-8-301.

[Acts 1978, ch. 844, § 15; T.C.A., § 62-2115.]

62-21-116. Use of pesticide consistent with labeling.

No person shall use a pesticide in a manner inconsistent with its labeling.
[Acts 1978, ch. 844, § 16; T.C.A., § 62-2116.]

62-21-117. Labeling of pesticides.

(a) It is illegal to store or transport any pesticide chemicals unless the containers for such chemicals are labeled to show the:

(1) Name of the pesticide; and
(2) Concentration of the pesticide.

(b) When pesticides are stored or transported in containers other than those in which they were placed by the manufacturer or formulators, the label must also show the name of the chartered person, firm or corporation.
[Acts 1978, ch. 844, § 17; T.C.A., § 62-2117.]

62-21-118. Powers and duties of commissioner.

(a) The commissioner has the power and duty to:

(1) Administer this chapter;

(2) Promulgate rules and regulations which are consistent with the requirements of the United States environmental protection agency implementing and supplementing this chapter and provide for its orderly administration;

(3) Issue licenses upon approval by the board and collect appropriate fees, and issue charters upon application and qualification as provided by this chapter;

(4) Determine requirements for and issue certification and recertification for users of restricted use pesticides;

(5) Promulgate rules and regulations concerning handling and usage of pesticides;

(6) Classify pesticides as to whether general or restricted use;

(7) Hold hearings and deny, revoke, modify or suspend charters, licenses and certification, and/or impose civil penalties of up to one thousand dollars ($1,000) for each violation;

(8) The commissioner or the commissioner's designee may enter any place during normal business hours where pesticides are used or stored for the purposes of inspection, sampling or observation;

(9) Through rule and regulation require the maintenance or filing of records;

(10) Issue subpoenas for persons and records incidental to any hearing; and

(11) Inspect periodically the operation and conduct of a charter holder, licensee or certificate holder.

(b) The commissioner shall promulgate such rules and regulations as may be requested by a two-thirds' (2/3) affirmative vote of the legislative body of any municipal and/or county government, within any county having a population of less than two hundred fifty thousand (250,000) according to the 1990 federal census or any subsequent federal census, that have as their purpose the regulation of the use of pesticides in their specific area of jurisdiction. These regulations must be reasonable and not in conflict with state or federal law and regulations, but for good cause shown may be more stringent than such standards.

[Acts 1978, ch. 844, § 18; T.C.A., § 62-2118; Acts 1988, ch. 545, § 10; 1988, ch. 878, § 6; 1992, ch. 667, § 6.]

62-21-119. Denial, suspension or revocation of charter, license or certificate - Penalties - Warnings.

(a) (1) If the commissioner has reason to believe that any person has violated this chapter, including its rules, or has used economic poison in violation of the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2, including its rules, the commissioner may:

(A) Deny, revoke, suspend, or modify a license, charter, or certification. The denial, suspension, revocation, or modification may be indefinite or for a time certain;

(B) Impose civil penalties of up to one thousand dollars ($1,000) for each violation or issue a warning notice; or

(C) Deny, revoke, suspend, or modify a license, charter, or certification pursuant to subdivision (a)(1)(A) and impose civil penalties pursuant to subdivision (a)(1)(B).

(2) The commissioner shall send the person against whom a violation is alleged written notice setting forth the charges. The person shall have ten (10) days from the date the notice was sent to request a hearing. If a hearing is requested, it shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) A charter shall automatically be suspended should the licensed pest control operator whose name appears on the charter cease to be in charge of the charter holder's pest control operations. A grace period of no more than one hundred twenty (120) days may be granted to the charter holder so that another qualified person may be examined in accordance with this chapter.

[Acts 1978, ch. 844, § 19; T.C.A., § 62-2119; Acts 1988, ch. 545, § 11; 2015, ch. 198, § 1].

62-21-120. Offense - Penalties - Limited term of ineligibility following conviction.

(a) It is an offense for any person, required by this chapter to be chartered or licensed to engage in commercial pest control activities to knowingly engage in commercial pest control activities without first obtaining the required charter or license.

(b) Violation of subsection (a) is a Class A misdemeanor.

(c) Each custom application of pesticides without the required charter or license constitutes a separate offense.

(d) Persons convicted under subsection (a) are ineligible to obtain a charter or license to engage in commercial pest control activities for a period of one (1) year from the date of such person's conviction of such offense.

[Acts 1978, ch. 844, § 20; T.C.A., § 62-2120; Acts 1989, ch. 591, § 113; 1994, ch. 960, § 13; 2001, ch. 105, § 3.]

62-21-121. Delinquent fees - Collection.

(a) The fees and taxes imposed by this chapter shall become delinquent on the last day of each succeeding month.

(b) The commissioner is empowered and may act to collect such delinquent fees and taxes as provided by §§ 67-6-516 - 67-6-518.

[Acts 1978, ch. 844, § 21; T.C.A., § 62-2121.]

62-21-122. Deposit of funds - Operating expenses.

All fees and fines collected under this chapter shall be paid into the treasury of the state and the fees and fines are appropriated exclusively to the department to be used in carrying out this chapter.

[Acts 1978, ch. 844, § 22; T.C.A., § 62-2122.]

62-21-123. Expiration of charters and licenses - Renewals.

(a) (1) Notwithstanding any provision of this chapter to the contrary, the board, with the approval of the commissioner, shall establish a system of license renewals at alternative intervals which will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Licenses issued under the alternative method are valid for twenty-four (24) months, and shall expire on the last day of the last month of the license period. However, during a transition period, or at any time thereafter when the board shall determine that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both of them, may be issued for

terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period of other than twenty-four (24) months shall be proportionate to the annual fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest quarter of a dollar ($.25).

(2) No renewal application will be accepted after the last day of the month following the license expiration date under the alternative method authorized in this subsection (a).

(b) A thirty-day grace period shall be given to renew licenses or charters. After the grace period expires, a ten dollar ($10.00) per day penalty shall be levied for each day charter or license fees and applications are late.

[Acts 1978, ch. 844, § 23; T.C.A., § 62-2123; Acts 1989, ch. 360, § 12.]

62-21-124. Pesticides in buildings used for food preparation and service, lodging, educational purposes or commercial food processing.

(a) Whether or not engaged in the business of applying pesticides, a person may not apply a pesticide within any of the following buildings, except under the direct supervision of a person licensed to apply pesticides in accordance with this chapter:

(1) Any building used for the preparation or serving of food;

(2) Any building used for the temporary or permanent lodging of others;

(3) Any building used primarily for educational purposes, except those buildings used primarily for religious instruction or for providing education to not more than ten (10) persons; or

(4) Any commercial food processing facility.

(b) Subsection (a) does not apply to the application of pesticides by an individual in the individual's dwelling, nor to the application of pesticides by the owner of a multi-unit dwelling in which the owner resides and which contains not more than three (3) additional units used for the temporary or permanent lodging of others.

[Acts 1978, ch. 844, § 24; 1981, ch. 78, § 4; T.C.A., § 62-2124; Acts 1985, ch. 217, § 1; 1994, ch. 960, § 14.]

62-21-125. Rules and regulations promulgated under former statute.

All rules and regulations promulgated under the Tennessee Pest Control Operators Act of 1972 shall hereby become rules and regulations under this chapter.

[Acts 1978, ch. 844, § 25; T.C.A., § 62-2125.]

62-21-126. Licenses issued to pest control operators licensed under former statute.

All licensed pest control operators under the Tennessee Pest Control Operators Act of 1972, whether first class or second class, shall be issued upon application and payment of renewal fee after July 1, 1978, a commercial pest control operators license in the category previously licensed.

[Acts 1978, ch. 844, § 26; T.C.A., § 62-2126.]

62-21-127. Rules and regulations subject to review.

All rules or regulations promulgated to implement the provisions of this chapter or otherwise affecting implementation of this chapter shall be subject to review by the standing legislative committees on government operations, and shall be subject to action by the committees in accordance with § 4-5-226.

[Acts 1978, ch. 844, § 27; T.C.A., § 62-2127.]

62-21-128. Monthly report requirement - Exemption.

Notwithstanding any provision of law, rule or regulation to the contrary, persons licensed in the category of wood destroying organisms shall not be required to file a monthly report to the department. A monthly report shall not be required to be filed whether any application of chemicals was made or not.

[Acts 1991, ch. 441, § 6.]

62-21-129. Local regulation of pesticides.

(a) Except as provided in § 62-21-118(b) or § 43-8-115, no city, town, county or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition.

(b) This section shall be construed to limit the authority of a city, town or county to zone for storage of such products or to provide or designate sites for disposal of such products, to regulate discharge to sanitary sewer system or to implement an approved pesticide management plan as may be required by the Safe Drinking Water Act, compiled in 42.U.S.C. § 300f et seq.

(c) This section do not apply to any municipality having a population of not less than sixteen thousand five hundred (16,500) nor more than seventeen thousand five hundred (17,500) according to the 1990 federal census or any subsequent federal census.

[Acts 1992, ch. 667, §§ 3, 5.]

62-21-130. Assessment of investigation and hearing costs - Rules and regulations.

(a) Notwithstanding any contrary provision of law, the department or any division, board, commission or agency attached thereto may assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized or regulated by the department or its respective divisions, board, commissions or agency. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges, court reporters and any other persons involved in the investigation, prosecution and hearing of the action.

(b) (1) All costs assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served.

(2) If the individual or entity disciplined fails to pay an assessment when it becomes final, the department may apply to the appropriate court for a judgment and seek execution of such judgment.

(3) Jurisdiction for recovery of such costs shall be in the chancery court of Davidson County.

[Acts 2001, ch. 105, § 4.]

62-21-131. Surety bond for new charter in category 7.

A person, company or corporation applying for a new charter in category 7 shall furnish a surety bond in the amount of fifty thousand dollars ($50,000) for the first three (3) years a person, company or corporation is in business. In the fourth year and subsequent years in business, surety bond shall be ten thousand dollars ($10,000) per year. This section shall not apply to a person, company or corporation that, on July 1, 2005, has a current commercial pest control operator business charter as required by § 62-21-103.

[Acts 2005, ch. 427, § 1.]

PART 2
WOOD DESTROYING INSECT INFESTATION INSPECTION REPORTS

62-21-201. Persons authorized to issue reports - Persons authorized to conduct inspections.

Wood destroying insect infestation inspection reports, as defined in this chapter, issued in conjunction with the sale or transfer of any real property shall only be issued by a chartered pest control operator licensed, or employing personnel licensed, in the category of wood destroying organisms. Only those persons licensed in the category of wood destroying organisms or certified in the category of industrial, institutional, structural and health related pest control working under the direct supervision of one licensed in the category of wood destroying organisms are authorized to conduct inspections for wood destroying insect infestation reports.

[Acts 2000, ch. 668, § 7.]

62-21-202. Contents of report - Warranty - Civil liability.

(a) A wood destroying insect infestation inspection report issued by a chartered pest control operator evidences the presence or absence of visible wood destroying insects and the presence or absence of visible damage caused by such insects noted on the day the inspection is made. Obstructions and inaccessible areas shall be so noted in the report.

(b) The wood destroying insect infestation inspection report shall be submitted on forms prescribed by the National Pest Management Association and the department of housing and urban development. In addition to other information, the report shall include the address of the property, a graph or other diagram showing the layout of the property, the areas of damage or active infestation (if any), the name of the licensed or certified employee conducting the inspection, the pest control operator name, address and charter number, the date of the inspection and any recommendations for corrective action.

(c) Notwithstanding any provision of law to the contrary, a wood destroying insect infestation inspection report is a warranty for ninety (90) days of the accuracy of any representations in such inspection report.

(d) The person to whom a wood destroying insect infestation inspection report is issued may recover from the warrantor for breach of warranty compensatory damages, including all repair costs which are proximately related to the warranty as provided in § 62-21-203.

(e) Any person knowingly issuing a false report or who issues a report without making a physical inspection of the site shall be liable in treble the amount of damages resulting from or incident to the breach of the warranty. The party injured by such breach may bring suit for the breach and for such damages.

[Acts 2000, ch. 668, § 8.]

62-21-203. Remedies.

Disputes which cannot be resolved between property owners, lenders, and/or trustees and persons issuing a wood destroying insect infestation inspection report may be resolved in a court of appropriate jurisdiction. Prior to filing a suit for compensatory damages, the issuer of the report shall be given an opportunity to inspect the premises and to offer within thirty (30) days of such inspection a proposal for repair and treatment of the premises. Notwithstanding any other provision of law or rule to the contrary, if the property owner files suit prior to offering the issuer of the report an opportunity to inspect and propose repairs and treatments as required by this section, the issuer of the report shall have, in addition to the thirty (30) days in which to answer the complaint as provided in Rule 12 of the Tennessee Rules of Civil Procedure, another thirty (30) days from the service of the summons and complaint within which to inspect and propose repairs and treatments before being required to answer the complaint. No property owner or lender shall be required to engage in an alternate dispute resolution process before filing a suit for compensatory damages.

[Acts 2000, ch. 668, § 9.]

62-21-204. Effect of transfer of commercial pest control operation assets.

When the assets of a commercial pest control operation that issues wood destroying insect infestation inspection reports or performs other services relating to wood destroying organisms are sold or transferred or any servicing or financing rights are transferred, any contracts for wood destroying insect infestation inspections or other services which are a part of such assets or which are subject to such servicing or financing rights, shall be enforceable against the persons or entities to which such assets, servicing or financing rights are transferred.

[Acts 2000, ch. 668, § 10.]

62-21-205. Penalty.

Any person issuing a wood destroying insect infestation inspection report who does not hold a valid commercial pest control charter and who is not licensed in the category of wood destroying organisms is in violation of this chapter and commits a Class A misdemeanor punishable only by a fine of not more than two thousand five hundred dollars ($2,500).

[Acts 2000, ch. 668, § 11.]

62-21-206. Rules and regulations.

The commissioner has the authority, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to promulgate all necessary rules and regulations concerning the provisions of this part.
[Acts 2000, ch. 668, § 12.]

RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE

CHAPTER 0080-09-03
COMMERCIAL AERIAL APPLICATION OF PESTICIDES

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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, and 43-8-304.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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 and 43-8-302.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE

CHAPTER 0080-09-04
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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

(Rule 0080-09-04-.01, continued)

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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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.

(Rule 0080-09-04-.02, continued)

Authority: *T.C.A. §§ 4-3-203 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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.

(Rule 0080-09-03-.03, continued)

(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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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

(Rule 0080-09-03-.04, continued)

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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

0080-09-04-.05 LICENSE REQUIREMENTS 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).

(Rule 0080-09-04-.05, continued)

(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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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

(Rule 0080-09-04-.07, continued)

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.

(Rule 0080-09-04-.07, continued)

(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

(Rule 0080-09-04-.07, continued)

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 Copotermes, 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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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;

(Rule 0080-09-04-.09, continued)

(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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

0080-09-04-.11 REQUIREMENTS FOR SPOT TREATMENT ONLY IN LAW 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.

(Rule 0080-09-04-.11, continued)

(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 and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

TIFRA

STATE OF TENNESSEE
XVI
AGRICULTURE
COMMERCE
DEPARTMENT OF AGRICULTURE

CHAPTER 8
PESTICIDES

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PART 1
GENERAL PROVISIONS

43-8-101. Short title.

This part and part 2 of this chapter shall be known and may be cited as the "Tennessee Insecticide, Fungicide, and Rodenticide Act."

[Acts 1951, ch. 150, § 1 (Williams, § 6808.7); T.C.A. (orig. ed.), § 43-701; Acts 1980, ch. 539, § 1.]

Cross-References. Commercial aerial application of pesticides, part 3 of this chapter.

Hazardous chemical right to know law, title 50, ch. 3, part 20.

Pest control compact, ch. 6, part 3 of this title.

Pest control operators, regulation and licensing, title 62, ch. 21.

Section to Section References. This chapter is referred to in §§ 68-131-102, 68-131-303.

This part is referred to in §§ 43-8-301, 43-8-302, 62-21-119.

Law Reviews. Torts - Products Liability - Cattle Killed by Weedicide, 24 Tenn. L. Rev. 1066.

Comparative Legislation. Insecticides, fungicides and rodenticides:

Ala. Code § 2-27-1 et seq.

Ark. Code § 2-16-401 et seq.

Ga. O.C.G.A. § 2-7-1 et seq.

Ky. Rev. Stat. Ann. § 217.541 et seq.

Miss. Code Ann. § 69-23-1 et seq.

Mo. Rev. Stat. § 263.269 et seq.

N.C. Gen. Stat. § 143-434 et seq.

Va. Code § 3.1-249.27 et seq.

COLLATERAL REFERENCES

61A Am. Jur. 2d Pollution Control § 293 et seq.

3 C.J.S. Agriculture § 95-100.

Liability of manufacturer or seller for injury caused by animal feed or medicines, crop sprays, fertilizers, insecticides, rodenticides, and similar products. 12 A.L.R.4th 462, 29 A.L.R.4th 1045.

Agriculture <key> 1, 8, 9.

43-8-102. Part Definitions.

As used in this part and part 2 of this chapter, unless the context otherwise requires:
(1) "Active ingredient" means:
(A) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate;
(B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of plant growth;
(C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
(D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue; and
(E) In the case of a spray adjuvant, any ingredient which will act as a functioning agent;
(2) "Adulterated" means a condition wherein strength or purity of a pesticide falls below the professed standard of quality as expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent thereof has been wholly or in part abstracted;
(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment;
(4) "Commissioner" means the commissioner of agriculture;
(5) "Inert ingredient" means an ingredient which is not an active ingredient;
(6) "Ingredient statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of all inert ingredients in the pesticide;
(7) "Label" means the written, printed or graphic matter on or attached to a pesticide, or the immediate container thereof and the outside container or wrapper of the retail package, if any there be, of the pesticide;

(8) "Labeling" means all labels and other written, printed or graphic matter:
(A) Upon the pesticide or any of its containers or wrappers;
(B) Accompanying the pesticide at any time;
(C) To which reference is made on the label or literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the state experiment station, the state institute of agriculture, the Tennessee department of agriculture, the department of environment and conservation, or similar federal institutions or other official agencies of this state or other states when such agencies are authorized by law to conduct research in the field of pesticides;
(9) "Misbranded" means a condition as to a pesticide, wherein:
(A) Its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
(B) It is an imitation of or is offered for sale under the name of another pesticide;
(C) Advertisement by any means is misleading in any particular;
(D) The labeling accompanying the pesticide does not contain directions for use which are necessary and when complied with would be adequate to protect health and the environment;
(E) The label does not bear an ingredient statement which is displayed on the outside of the immediate container and cannot be easily read as the container is presented or displayed under customary conditions of purchase;
(F) Any word, statement or other information required by or under authority of this part and part 2 of this chapter to appear on the label or labeling is not as prominently displayed as other material on the label or labeling;
(G) When used as directed or in accordance with commonly recognized practice, it is injurious to humans or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;
(H) The label does not contain a warning or caution statement which may be necessary and if complied with is adequate to protect health and the environment;
(I) The label does not bear the registration number assigned in connection with its registration;
(J) The labeling does not contain a statement of the use classification under which the product is registered; or
(K) In the case of a plant regulator, defoliant, or desiccant when used as directed it is injurious to health and the environment: provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with label claims and recommendations;
(10) "Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not;
(11) "Pesticide" means any substance or mixture of substances or chemical intended for defoliating or desiccating plants or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators, adjuvants or nematocides;

(12) "Registrant" means the person registering any pesticide pursuant to the provisions of this part and part 2 of this chapter;
(13) "Use in a manner inconsistent with labeling" as to a pesticide means any use of a registered pesticide in a manner not permitted by its labeling, except that "use in a manner inconsistent with labeling" does not include:
(A) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;
(B) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless federal requirements demand that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling;
(C) Employing any method of application not prohibited by the labeling;
(D) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited on the labeling; or
(E) Any other use otherwise inconsistent but specifically permitted under federal law; and
(14) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

[Acts 1951, ch. 150, § 2 (Williams, § 6808.8); 1961, ch. 12, § 1; 1977, ch. 65, § 1; T.C.A. (orig. ed.), § 43-702; Acts 1980, ch. 539, § 2; 1992, ch. 693, § 1; 1996, ch. 805, §§ 1-3.]

Cross-References. Agricultural production inputs, ch. 31 of this title.

Section to Section References. This section is referred to in § 43-31-102.

43-8-103. Pesticides - Prohibitions as to sale or transportation.

(a) It is unlawful for any person to distribute, sell, or offer for sale within the state of Tennessee, or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:
(1) Any pesticide which is not registered pursuant to the provisions of § 43-8-104, or any pesticide if any of the claims for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of the pesticide differs from its composition as represented in connection with its registration;
(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to any outside container or wrapper of the retail package where required information on the immediate container cannot be clearly read, a label bearing:
(A) The name and address of the manufacturer, registrant or person for whom manufactured;
(B) The name, brand or trademarks under which the article is sold; and
(C) The net weight or measure of the contents subject, however, to such reasonable variations as the commissioner may permit;

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in § 43-8-106, unless the label shall bear, in addition to any other matter required by this part and part 2 of this chapter:
(A) The skull and crossbones;
(B) The word "poison" prominently, in red on a background of distinctly contrasting color; and
(C) A statement of an antidote for the pesticide; or
(4) Any pesticide which is adulterated or misbranded.
(b) A violation of this section is a Class A misdemeanor.

[Acts 1951, ch. 150, § 3 (Williams, § 6808.9); 1975, ch. 239, § 1; T.C.A. (orig. ed.), § 43-703; Acts 1980, ch. 539, § 3; 1989, ch. 591, § 113. Amended by 2004 Pub. Acts, c.464, § 3, eff. July 1, 2004]

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 43-8-109.

43-8-104. Registration of products - Annual renewal - Labeling - Statement filed by registrant - Registration of brand or grade - License to sell registered brands - Refusal or cancellation of registration.

(a) Every pesticide which is distributed, sold or offered for sale within this state or transported within this state shall be registered with the commissioner, except as provided below. The commissioner may register and permit the sale of any pesticide which has been duly registered under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, but products so registered shall be subject to the registration fees provided for herein, and to all other provisions of this part and part 2 of this chapter. All pesticide products shall be registered annually and their registration shall expire on June 30, following the date of issuance.
(b) Products having the same formula and manufactured by the same person or firm, where the labeling contains the same claims, and the labels bear a designation identifying the products as the same pesticide, may be registered as a single pesticide, with additional names and labels added by a supplemental statement during the registration term. Within the discretion of the commissioner or the commissioner's authorized representative, a change in the labeling or formulas of a pesticide may be made within the registration term without requiring a reregistration of the product; provided, that the name of the item is not changed, and that no change is made which lowers the efficacy of the product.
(c) The registrant shall file with the commissioner a statement including:
(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;
(2) The name of the pesticide;
(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use; and
(4) In the case of adjuvants, surfactants, emulsifiers, wetting agents, and other materials included as adjuvants which have nonionic surfactants as the principal agent, the ingredient statement on the label must show the percentage of the active adjuvant at least by the generic chemical name and, further, that the specific chemical name identifying the hydrophobic and hydrophilic portions of the molecule and the ratio of the same must

be given on a data sheet that shall accompany the label when application for registration is made, the latter being necessary in order that the chemical content may be determined by the department of agriculture, division of technical services for regulatory purposes. In the case of products having cationic and anionic surfactants as the principal agent, the chemical names of such materials must be used in the ingredient statement on the label along with the percentage contents of the principal surfactants. In the case of products not involving hydrophobic and hydrophilic portions of the molecule such as in the case of most synergists and other nonsurfactant adjuvants, the chemical name of such material must be used in the ingredient statement on the label.

(d) If it does not appear to the commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this part and part 2 of this chapter, the commissioner shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this part and part 2 of this chapter so as to afford the registrant an opportunity to make the necessary corrections.

(e) The commissioner may refuse to register or may revoke or suspend any or all registrations where the registrant is found to have violated any provision of this part and part 2 of this chapter, including rules promulgated under authority of this part and part 2 of this chapter. Any such proceedings shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(f) Registration shall not be required of a pesticide which is merely shipped from one (1) plant or warehouse in this state to another for use as a constituent in a registered pesticide. Neither shall registration be required of a pesticide distributed under an experimental use permit issued by the federal environmental protection agency.

(g) Registration shall be maintained for one (1) year after the effective date upon which a registrant ceases to distribute a pesticide within this state, unless the registrant can offer reasonable proof that no quantities of the pesticide remain commercially available.

[Acts 1951, ch. 150, § 5 (Williams, § 6808.11); 1961, ch. 12, § 2; 1975, ch. 239, § 2; T.C.A. (orig. ed.), § 43-706; Acts 1980, ch. 539, § 6; 1985, ch. 195, § 1; 1994, ch. 960, § 7; 1996, ch. 805, § 4.]

Compiler's Notes. The Federal Insecticide, Fungicide and Rodenticide Act referred to in subsection (a) is compiled in 7 U.S.C. §§ 135-136y.

Cross-References. Inspection fees, § 43-1-703.

Section to Section References. This section is referred to in §§ 43-8-103, 43-8-104.

43-8-105. Defacing or destroying label, refusing information, false guaranty, revelation of formula, noncooperation with officials prohibited.

It is unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this part and part 2 of this chapter or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purposes of this part and part 2 of this chapter;

(2) For any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of pesticide to which such request relates,

to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this part and part 2 of this chapter;
(3) For any person to give a guaranty or undertaking provided for in § 43-8-108 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under § 43-8-108 may give a guaranty to the same effect, which guaranty shall contain, in addition to such person's own name and address, the name and address of the person residing in the United States from whom such person received the guaranty or undertaking;
(4) For any person to use for such person's own advantage or to reveal, other than to the commissioner, or officials or employees of the state of Tennessee, or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the commissioner may prescribe, any information relative to formulas of products acquired by authority of § 43-8-104;
(5) For any person to oppose or interfere in any way with the commissioner or the commissioner's duly authorized agents in carrying out the duties imposed by this part and part 2 of this chapter;
(6) For any person to handle, transport, store, display or distribute pesticides in such a manner as to endanger health and the environment or to endanger food, feed, or other products that may be transported, stored, displayed or distributed with such pesticides; or
(7) For any person to dispose of, discard or store any pesticide or pesticide containers in such a manner as to cause injury to man, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any water supply or waterways.

[Acts 1951, ch. 150, § 3 (Williams, § 6808.9); T.C.A. (orig. ed.), § 43-704; Acts 1980, ch. 539, § 4; T.C.A. § 43-8-104.]

43-8-106. Powers of commissioner.

(a) The commissioner is authorized, after opportunity for a hearing, to:
(1) Declare any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles or substances to be a pest;
(2) Determine whether pesticides are highly toxic to humans; and
(3) Determine standards of coloring or discoloring for pesticides.
(b) The commissioner is further authorized to:
(1) Collect and make laboratory analysis of pesticides to determine their compliance with the requirements of this part and part 2 of this chapter; and the commissioner has the authority at all reasonable hours to enter into any car, warehouse, store, building, boat vessel or other place where pesticides are held for distribution or sale for the purpose of inspection or sampling, to procure samples for analysis or examination from any lot, package or parcel containing a pesticide;
(2) Publish from time to time information concerning the production, sale and use of any pesticide and make reports of the results of any analysis based on official samples of pesticides sold within the state;
(3) Classify pesticides for general use, for restricted use, or for both uses as well as prohibited from use by regulation; provided, that such regulations shall be consistent with

the requirements of the Federal Insecticide, Fungicide and Rodenticide Act and regulations as administered by the environmental protection agency; and
(4) Review periodically the records of sales of restricted use pesticides by licensed dealers.
(c) The commissioner is authorized to promulgate such reasonable regulations relating to the sale and distribution of pesticides as the commissioner may find necessary to carry out the full intent and meaning of this part and part 2 of this chapter.
(d) The commissioner is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, another state, or the federal government for the purpose of carrying out the provisions of this part and part 2 of this chapter.

[Acts 1951, ch. 150, § 6 (Williams, § 6808.12); 1975, ch. 239, § 3; T.C.A. (orig. ed.), § 43-707; Acts 1980, ch. 539, § 7; 1988, ch. 878, § 4.]

Compiler's Notes. The Federal Insecticide, Fungicide and Rodenticide Act referred to in subsection (b)(3) is compiled in 7 U.S.C. §§ 135-136y.

Cross-References. Records of restricted use pesticides, § 43-8-206.

Section to Section References. This section is referred to in § 43-8-103.

43-8-107. Notice given of violations - Hearing - Prosecution upon certification of facts.

(a) If it shall appear from the examination or evidence that any of the provisions of this part and part 2 of this chapter or the rules and regulations issued thereunder have been violated, the commissioner may cause notice of such violations to be given to the registrant, distributor, and possessor from whom the sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after such hearing that there has been a sufficient number of violations of this part and part 2 of this chapter or the rules and regulations issued thereunder, the commissioner may certify the facts to the district attorney general or the county attorney or the city attorney for the county or municipality in which the violation shall have occurred and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the state chemist or other officer making the examination. It shall be the duty of every such attorney to whom the commissioner shall report any violation of this part and part 2 of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provision of this part and part 2 of this chapter or the rules and regulations issued thereunder commits a Class A misdemeanor.
(b) Nothing in this section shall be construed as requiring the commissioner to report for the institution of proceedings under this part and part 2 of this chapter, minor violations of this part and part 2 of this chapter, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

[Acts 1951, ch. 150, § 7 (Williams, § 6808.13); T.C.A. (orig. ed.), § 43-708; Acts 1989, ch. 591, § 113. Amended by 2004 Pub. Acts, c.464, § 3, eff. July 1, 2004]

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Law Reviews. The Tennessee Court Systems - Prosecution, 8 Mem. St. U.L. Rev. 477.

43-8-108. Exemptions from penalties.

(a) The penalties provided for violations of § 43-8-103 do not apply to:
(1) Any carrier, while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the commissioner or the commissioner's designated agent to copy all records showing the transactions in and movements of the articles;
(2) Public officials of this state and the federal government engaged in the performance of their official duties;
(3) The manufacturer or shipper of a pesticide for experimental use only:
(A) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
(B) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only - not to be sold," together with the manufacturer's name and address; provided, that if a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit; or
(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom such person purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to such person, and that it complies with the other requirements of this part and part 2 of this chapter, designating this part and part 2 of this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this part and part 2 of this chapter.
(b) This part and part 2 of this chapter shall not apply to any preparation, drug, or chemical intended to be used or sold solely for medicinal use or for toilet purposes.

[Acts 1951, ch. 150, § 8 (Williams, § 6808.14); T.C.A. (orig. ed.), § 43-709; Acts 1980, ch. 539, § 9.]

Section to Section References. This section is referred to in § 43-8-104.

Law Reviews. Report on Administrative Law to the Tennessee Law Revision Commission, 20 Vand. L. Rev. 777.

43-8-109. Injunction obtained to restrain violations.

In addition to other remedies herein provided, the commissioner may apply to any court having chancery jurisdiction in the county where a violation occurs, for a temporary or permanent injunction restraining any person from violating any provision of this part and part 2 of this chapter or regulations promulgated pursuant thereto, irrespective of whether there exists an adequate remedy at law.

[Acts 1951, ch. 150, § 4 (Williams, § 6808.10); T.C.A. (orig. ed.), § 43-705; Acts 1980, ch. 539, § 8.]

43-8-110. "Stop sale, use, or removal" orders - Issuance and enforcement.

It is the duty of the commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of pesticide and to hold at a designated place when the commissioner finds the pesticide is being offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and the pesticide is released in writing by the commissioner or the violation has been otherwise legally disposed of by written authority; provided, that the owner or custodian of such pesticide shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the pesticides are found, praying for a judgment as to the justification of the order, and for the discharge of such pesticide from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this part and part 2 of this chapter. The commissioner shall release the pesticide so withdrawn when the requirements of the provisions of this part and part 2 of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

[Acts 1951, ch. 150, § 9 (Williams, § 6808.15); T.C.A. (orig. ed.), § 43-710; Acts 1980, ch. 539, § 10.]

43-8-111. Seizure, condemnation and sale of pesticide for noncompliance with provisions of law.

(a) Any lot of pesticide not in compliance with the provisions of this part and part 2 of this chapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which the pesticide is located. In the event the court finds the pesticide to be in violation of this part and part 2 of this chapter and orders the condemnation of the pesticide, it shall be disposed of in any manner consistent with the quality of the pesticide and the laws of the state; provided, that in no instance shall the disposition of the pesticide be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of the pesticide or for permission to process or relabel the product to bring it into compliance with this part and part 2 of this chapter.

(b) When a decree of condemnation is entered against a pesticide, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide.

[Acts 1951, ch. 150, § 10 (Williams, § 6808.16); T.C.A. (orig. ed.), § 43-711; Acts 1980, ch. 539, § 10.]

43-8-112. Authority vested in commissioner delegable to department of agriculture employees.

All authority vested in the commissioner by virtue of the provisions of this part and part 2 of this chapter may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for such purpose.

[Acts 1951, ch. 150, § 11 (Williams, § 6808.17); T.C.A. (orig. ed.), § 43-712.]

43-8-113. Funds collected - Disbursement.

All funds collected under the provisions of this part and part 2 of this chapter shall be paid into the state treasury, and the same are hereby appropriated exclusively to the department of agriculture to be used solely and separately in carrying out the provisions of this part and part 2 of this chapter.

[Acts 1951, ch. 150, § 12 (Williams, § 6808.18); T.C.A. (orig. ed.), § 43-713.]

43-8-114. Local regulation of pesticides.

(a) Except as provided in § 43-8-115 or § 62-21-118(b), no city, town, county or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including, but not limited to, registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition.
(b) No provision of this section shall be construed to limit the authority of a city, town or county to zone for storage of such products or to provide or designate sites for disposal of such products, to regulate discharge to a sanitary sewer system or to implement an approved pesticide management plan as may be required by the Safe Drinking Water Act.
(c) The provisions of this section do not apply to any municipality having a population of not less than sixteen thousand five hundred (16,500) nor more than seventeen thousand five hundred (17,500) according to the 1990 federal census or any subsequent federal census.

[Acts 1992, ch. 667, §§ 2, 5.]

Compiler's Notes. The Safe Drinking Water Act, referred to in this section, is generally codified in 42 U.S.C. § 201 et seq.

Section to Section References. This section is referred to in § 43-8-115.

43-8-115. Agreements with certain municipal or county governments to implement the enforcement provisions of this chapter.

(a) Notwithstanding the provisions of this section, § 43-8-114, § 62-21-118(b) or § 62-21-129 or any other law to the contrary, the commissioner shall enter into an agreement with any municipal and/or county government, within any county having a population in excess of two hundred fifty thousand (250,000) according to the 1990 federal census or any subsequent federal census, which requests authority to implement the enforcement provisions of this chapter, its equivalent or any part thereof, in its respective area of jurisdiction; provided, that each of the following conditions are met:
(1) The local government program standards are not less stringent than those of state law and regulations;
(2) The local government will adequately implement and enforce the program in the respective area of jurisdiction; and

(3) Upon execution of the agreement, the local government will be the sole entity responsible for implementation and enforcement of the local government program standards adopted.
(b) As used in subsection (a), "respective area of jurisdiction" means:
(1) In the case of a municipal government which enters into an agreement pursuant to subsection (a), the area lying within the corporate boundaries of the municipality; and
(2) In the case of a county government which enters into an agreement pursuant to subsection (a), the area lying within the boundaries of the county excluding that portion located within the corporate boundaries of a municipal government which has entered, or which subsequently enters, into an agreement pursuant to subsection (a).
(c) The commissioner shall retain the right to exercise oversight and evaluation of performance of local government and may terminate the agreement if, after an administrative hearing pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, it is found that the local program does not meet the state standards.
(d) Local governments which enter into an agreement pursuant to subsection (a) have the authority through their local legislative bodies to enact fees to provide for the administrative, regulatory and enforcement costs of the program.

[Acts 1992, ch. 667, § 4.]

Section to Section References. This section is referred to in §§ 43-8-114, 62-21-129.

43-8-116. Offense of use of pesticide in manner that causes harm.

(a) It is an offense for any person to knowingly use a pesticide in a manner inconsistent with its labeling so as to cause harm to persons, animals, property or the environment.

(b) A violation of this section is a Class A misdemeanor punishable by fine or term of imprisonment not to exceed thirty (30) days, or both.

(c) This section shall be construed to be supplemental to § 43-8-306.
[Acts 2007, ch. 395 § 1.]

PART 2
PESTICIDE DEALERS

43-8-201. Licenses and permits.

(a) No person shall sell or offer for sale within this state pesticides classified by the commissioner as being for restricted use, unless such person is the holder of a valid pesticide dealer license. A separate license shall be obtained for each location or outlet from which business is conducted.
(b) No person shall sell or offer for sale within this state any pesticide classified by the commissioner as being for restricted use unless the person to whom the sale is made

holds a valid certificate or license issued by the department of agriculture, as required by § 62-21-115. The pesticide dealer shall require that each purchaser show evidence of such certificate or license prior to finalizing the sale.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5. Amended by 2004 Pub. Acts, c.464, § 3, eff. July 1, 2004]

Cross-References. Distribution of adulterated fertilizer products, § 43-11-124.

Hazardous chemical right to know law, title 50, ch. 3, part 20.

Pest control operators, regulation and licensing, title 62, ch. 21.

Section to Section References. This part is referred to in §§ 43-8-101 - 43-8-115, 43-8-301, 43-8-302, 62-21-119.

43-8-202. [Repealed.]

Compiler's Notes. Former § 43-8-202 (Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5), concerning applications for licenses, fees and renewals, was repealed by Acts 1994, ch. 960, § 8.

43-8-203. Qualifications for pesticide dealer license.

Each applicant for an original license must demonstrate, upon written, or written and oral, examination to be prescribed by the commissioner, the applicant's knowledge of pesticides, their usefulness and their hazards, the applicant's competence as a pesticide dealer and the applicant's knowledge of the laws and regulations governing the use and sale of pesticides.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5.]

43-8-204. [Repealed.]

Compiler's Notes. Former § 43-8-204 (Acts 1975, chapter 239, § 2; T.C.A., § 43-706), concerning the regulations promulgated by the commissioner, was repealed by Acts 1980, ch. 539, §§ 5, 6.

43-8-205. Pesticide dealer's employees - List of names furnished to commissioner - Dealer's responsibility for employees' actions.

(a) Every licensed pesticide dealer shall submit to the commissioner with each application for an original or renewal license, and at such other times as the commissioner may prescribe, the names of all persons employed by the pesticide dealer who sell or solicit the sale of restricted use pesticides.
(b) Each pesticide dealer shall be responsible for the action of every person who acts as the dealer's employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides; however, it is not the intent of this section to license a pesticide applicator who sells pesticides as an integral part of such applicator's services when such applicator has complied with existing applicators' laws.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5.]

43-8-206. Records of restricted use pesticides.

(a) Every licensed pesticide dealer shall maintain records necessary to identify all purchasers of restricted use pesticides.
(b) Each pesticide dealer's records shall include the name of the purchaser, the purchaser's certification number, and the name and the amount of the pesticide purchased.

[Acts 1988, ch. 878, § 3.]

PART 3
AERIAL APPLICATION OF PESTICIDES

43-8-301. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

(2) "Aircraft" means any contrivance known or hereafter invented that is used or designed for navigation of or flight in the air over land or water and is designed or adaptable for use in applying pesticides in any form;

(3) "Commercial aerial applicator" means any person who engages in the application of pesticides by aircraft;

(4) "Commissioner" means the commissioner of agriculture, or the commissioner's authorized agent;

(5) "Custom application of pesticides" means any application of pesticides for hire;

(6) "Department" means the department of agriculture;

(7) "Licensee" means any person duly licensed under this part;
(8) "Person" means any individual, partnership, firm, corporation, company, trust, association, or other legal entity;

(9) "Pesticide" means any substance or mixture of substances, or chemical intended for defoliating or desiccating plants, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other form of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticide, fungicide, bactericide, herbicide, desiccant, defoliant, adjuvant or nematocide;

(10) "Pilot" means any person flying an aircraft;

(11) "Restricted use pesticide" means a pesticide that the commissioner has so designated by regulation under the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter;
HISTORY: Acts 1973, ch. 90, § 1; 1974, ch. 431, § 1; 1975, ch. 209, § 1; T.C.A., § § 43-2901, 43-9-101; Acts 1996, ch. 805, § § 5, 6.
NOTES:
CROSS-REFERENCES. Agricultural production inputs, ch. 31 of this title.
Distribution of adulterated fertilizer products, § 43-11-124.
Hazardous chemical right to know law, title 50, ch. 3, part 20.
Insecticides, fungicides and rodenticides, parts 1 and 2 of this chapter.
Pest control compact, ch. 6, part 3 of this title.
Pest control operators, title 62, ch. 21.
Plant Pest Act, ch. 6, part 1 of this title.

43-8-302. Powers and duties of commissioner .

The commissioner has and shall exercise the following powers and duties:

(1) Promulgate rules and regulations which the commissioner determines are necessary to implement and supplement this part and provide for its orderly administration;

(2) Prescribe qualifications for applicants for licenses to engage in the custom application of pesticides and render such tests as are necessary to determine whether the applicant meets the qualifications;

(3) Obtain the advice of members of the commercial aerial applicators industry before issuing rules, regulations, or qualifications for applicants for licenses;

(4) Issue licenses to qualified applicants and collect the appropriate fees;

(5) Hold hearings to determine whether or not any violation of this part or rules and regulations issued pursuant thereto has taken place, and transmit any information or material to the local district attorney general for prosecution if the commissioner determines that a violation has occurred;

(6) Suspend or revoke any permit following a hearing as provided for in § 43-8-305;

(7) Declare states of emergency and issue temporary permits as provided for in § 43-8-309;

(8) Require that licensees maintain records and submit reports as necessary to show the nature and extent of their operation and any other information necessary to carry out the provisions and intent of this part;

(9) Impose such limitations on the licenses granted to pilots, particularly with respect to compliance with the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter, as the commissioner may find necessary after determination of the applicant's qualifications;

(10) Promulgate rules and regulations as required by the environmental protection agency; and

(11) Inspect periodically the operation and conduct of licensees.

HISTORY: Acts 1973, ch. 90, § 2; 1975, ch. 209, § 2; 1977, ch. 210, § 1; T.C.A., § § 43-2902, 43-9-102; Acts 1988, ch. 878, § 5.

43-8-303. [Repealed.]

NOTES:

COMPILER'S NOTES. Former § 43-8-303 (Acts 1973, ch. 90, § 3; 1974, ch. 431, § 1; 1977, ch. 210, § 2; T.C.A., § § 43-2903, 43-9-103; Acts 1991, ch. 441, § 7) concerning commercial aerial applicator licenses and fees therefor, was repealed by Acts 1994, ch. 960, § 9. For new law, see ch. 1, part 7 of this title.

[Repealed.]

43-8-304. Licensing requirements – Insurance.

(a) Each licensee-pilot must hold a valid federal aviation administration agranaut license and prove such licensee's proficiency to the commissioner. These requirements can be supplemented by rule or regulation issued by the commissioner.

(b) An acceptable liability insurance policy in the amount of one hundred thousand dollars ($100,000) shall be in effect, and proof of such insurance shall accompany each application for license for an aircraft.

(c) The aircraft licenses shall be prominently displayed on each aircraft and each pilot must carry the license any time such pilot is working as a pilot engaged in custom application of pesticides.

(d) Any person applying for a license as a commercial aerial applicator shall have first obtained a certification in the category of pesticides that they intend to apply, as provided in the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21, or provide sufficient evidence of an equivalent certification from a state with which the state of Tennessee has a current and official reciprocal agreement.

(e) Any person applying for a license as a commercial aerial applicator shall take an examination administered by the department of agriculture as directed by the commissioner in order to determine if the applicant has the knowledge and technical qualifications necessary for the issuance of such license.

(f) Aerial applicators holding a current license under Tennessee law may renew such license without examination, but such renewed license shall be subject to whatever restrictions or limitations as are indicated by the license pursuant to the provisions of § 43-8-302(9).

HISTORY: Acts 1973, ch. 90, § 4; 1974, ch. 431, § 1; T.C.A., § § 43-2904, 43-9-104; Acts 2003, ch. 120, § 1.

NOTES:

AMENDMENTS. The 2003 amendment added (d) through (f).

43-8-305. License revocation or suspension - Hearing – Review.

(a) In the event the commissioner has reason to believe a licensee has violated any of the provisions of this part, including the rules and regulations promulgated hereunder, the

licensee shall be notified and a hearing shall be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(b) The commissioner, on determining that any person may have violated any provision of this part, may petition for injunctive relief from further violation. Such petition shall be addressed to the chancery court in the county in which the offense occurred. The court, on determining that probable cause of a violation of this part exists, shall issue appropriate injunctive relief.

(c) The commissioner has the power to subpoena any persons or records incident to the hearing and a charge of contumacy may be filed for those who refuse to comply.

(d) Upon a finding that a violation has occurred, the commissioner may:

(1) Issue a civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation;

(2) Permanently revoke the license;

(3) Temporarily revoke the license;

(4) Suspend the license for a definite period of time; or

(5) Impose other conditions as are necessary for environmental or public safety.

(e) The action of the commissioner may be reviewed by filing a petition for review in the chancery court of Davidson County in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The decision of the commissioner shall remain final until modified by the commissioner or by the courts.
HISTORY: Acts 1973, ch. 90, § 5; T.C.A., § § 43-2905, 43-9-105; 2006, ch. 626 § 2.

43-8-306. Violations – Penalties.

Operating as a commercial aerial applicator without a license, using or applying a pesticide in a manner that is not consistent with the label or label restrictions, or otherwise violating this part, including any rules or regulations, is a Class A misdemeanor.
HISTORY: Acts 1973, ch. 90, § 6; 1977, ch. 210, § 3; T.C.A., § § 43-2906, 43-9-106; Acts 1989, ch. 591, § 113; 2003, ch. 120, § 3.
NOTES:
AMENDMENTS. The 2003 amendment substituted "Class A misdemeanor" for "Class C misdemeanor".
CITED: *Horn v. State, 553 S.W.2d 736 (Tenn. 1977).*

43-8-307. Enjoining violations.

The commissioner, on determining that any person, firm, partnership, or corporation may have violated any provision of this part, may petition for injunctive relief from further violation. Such petition shall be addressed to the chancery court in the county in which the offense occurred or in which the offender's principal place of business is located, or

where the offender is doing business or resides. The chancellor, on determining that probable cause of a violation of this part exists, shall issue appropriate injunctive relief.
HISTORY: Acts 1973, ch. 90, § 7; T.C.A., § § 43-2907, 43-9-107.

43-8-308. Exemption from law.

(a) This part does not apply to local, state, or federal government aerial operations nor where legitimate agricultural experiments are being conducted as recognized by the commissioner, nor shall this part apply where a landowner wishes to make an application of pesticides with the landowner's personally owned aircraft on the landowner's personally owned land.

(b) The exemptions enumerated in this section do not apply to any user of pesticides that have been designated for restricted use.
HISTORY: Acts 1973, ch. 90, § 8; 1975, ch. 209, § 3; T.C.A., § § 43-2908, 43-9-108.

43-8-309. State of emergency - Temporary permits - Fee - Bond of nonresidents.

(a) The commissioner is hereby authorized to declare a state of emergency if there is an epidemic or plague of such proportions to endanger public health and safety, or to threaten loss or severe damage to a crop. Under such conditions, the commissioner is authorized or empowered to permit additional commercial aerial applicators to operate within the state and shall issue temporary permits for the same. A fee of one hundred dollars ($ 100) must accompany each application for such permit.

(b) All nonresident licensees or nonresident persons issued temporary permits shall file with the department an acceptable liability insurance policy in the amount of one hundred thousand dollars ($100,000) guaranteeing an answer for damages resulting from custom application of pesticides. In addition, every nonresident licensee is required to appoint a resident service agent.
HISTORY: Acts 1973, ch. 90, § 9; 1974, ch. 431, § 1; 1975, ch. 209, § 4; 1977, ch. 210, § 4; T.C.A., § § 43-2909, 43-9-109.

43-8-310. Denial of licensing - Contesting denial.

The commissioner of agriculture may deny licensing to applicants not meeting the requirements for certification and/or licensing or for violations of the rules or statutes concerning the use, purchase or sale of pesticides; provided, however, that any person denied such certification or licensure may contest such decision by requesting a hearing under the Tennessee Administrative Procedures Act, compiled in title 4, chapter 5.
HISTORY: Acts 2003, ch. 120, § 2.

43-8-311. Photographic identification.

Aerial applicators shall have in their possession a valid aerial applicators license, containing photographic identification, issued by the Tennessee department of agriculture, at all times when they are engaged in the aerial application of pesticides in the state of Tennessee.

HISTORY: Acts 2003, ch. 120, § 2.

43-8-312. Notification of application.

Aerial applicators applying pesticides in the state of Tennessee shall notify the sheriff's office in the county in which an application is to be made. Such notification shall be made prior to the pesticide application and no later than the day of the application. The aerial applicator shall report the name of the landowner and the location of each intended pesticide application as well as the name or names of the pesticide or pesticides to be sprayed.
HISTORY: Acts 2003, ch. 120, § 2.

43-8-313. Securing aircraft.

All aircraft licensed under this chapter shall be secured or otherwise rendered inoperable by means of a prop chain lock, gust lock, throttle restriction, or other measures acceptable to the commissioner of agriculture except when the aircraft is in use or under the direct control of an aerial applicator licensed under this chapter or under the direct responsibility of an airport operator.
HISTORY: Acts 2003, ch. 120, § 2.

43-8-314. Log Records -- Product Label Directions.

(a) Aerial applicators shall maintain a log record for a period of thirty-six (36) months on each application. Such record shall be made available on demand to the commissioner for review and copies shall be provided to representatives of the department of agriculture upon request. Aerial applicators located outside the boundaries of the state of Tennessee, shall submit a certified copy of any log record for any or all applications as required by the commissioner within forty-eight (48) hours at a time and location designated by the commissioner.

(b) The log record shall clearly set out the following information relative to each pesticide application:

(1) The pesticide used and its EPA registration number;

(2) The crop or plant to which the pesticide was applied;

(3) The dosage rate of the application;

(4) The approximate acreage to which the pesticide was applied;

(5) The location, description, and GPS coordinates of the area to which the pesticide is applied;

(6) The landowner, producer, or other person employing such aerial applicator's services;

(7) The date of pesticide application;

(8) The name and Tennessee license number of the aerial applicator; and

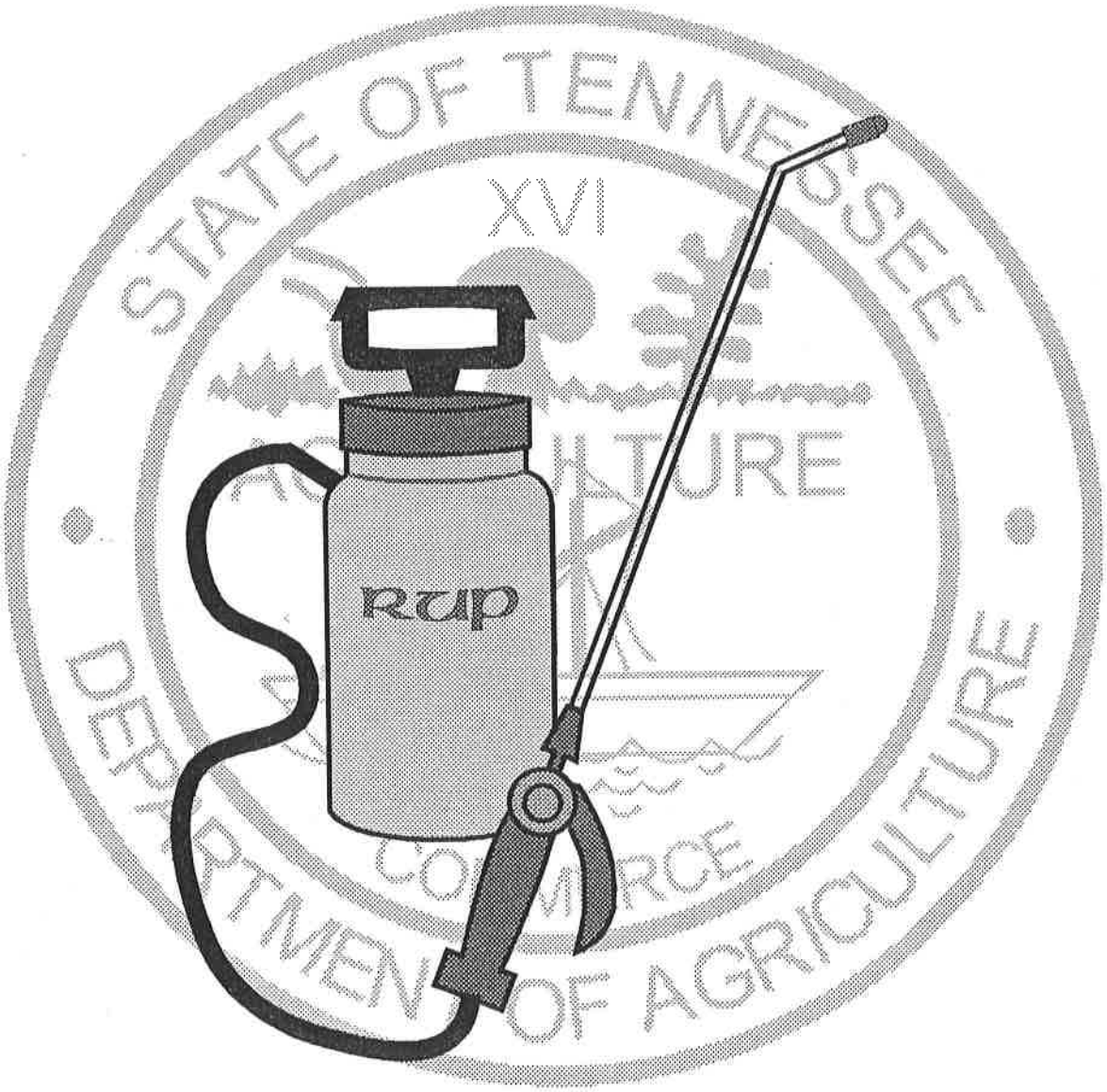
(9) The decal number of the aircraft used for the application.

(c) Aerial applicators shall apply all pesticides in a manner that is consistent with the label directions for that product. Aerial applicators must submit evidence to prove that label directions were followed and all restrictions were fully met when requested to do so by the commissioner.
HISTORY: Acts 2003, ch. 120, § 2.
NOTES:
EFFECTIVE DATES. Acts 2003, ch. 120, § 4. May 12, 2003.

43-8-315. Recovery by the department of costs of disciplinary hearings – Payment of penalties and costs – Failure to make payment.

(a) Notwithstanding any contrary provision of law, the department shall recover, in addition to civil penalties, the actual and reasonable costs of the hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized or regulated by the department or its respective divisions, boards, commissions or agencies. These costs shall include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, expert witnesses, administrative judges, court reporters and any other persons involved in the prosecution and hearing of the action.
(b) (1) All civil penalties and costs assessed pursuant to this part shall be paid within thirty (30) days after the date of the final order is entered.
(2) If the individual or entity disciplined fails to pay the civil penalty or costs assessed within thirty (30) days after the date a final order is entered, the department is entitled, as a matter of law, to a judgment directing such person to pay the civil penalties and costs to the department. Jurisdiction for recovery of civil penalties and costs shall be in the chancery court of Davidson County.
HISTORY: Acts 2006, ch. 626, § 1.

LAWS AND REGULATIONS GOVERNING APPLICATORS OF RESTRICTED USE PESTICIDES



RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE

CHAPTER 0080-09-02
RESTRICTED USE PESTICIDES

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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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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;

(Rule 0080-09-02-.02, continued)

(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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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

(Rule 0080-09-02-.03, continued)

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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).

(Rule 0080-09-02-.05, continued)

(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,

(Rule 0080-09-02-.05, continued)

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

(Rule 0080-09-02-.05, continued)

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

(Rule 0080-09-02-.05, continued)

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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;

(Rule 0080-09-02-.06, continued)

(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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

0080-09-02-.07 RECORDKEEPING REQUIREMENTS OF PRIVATE APPLICATORS.

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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.

(Rule 0080-09-02-.08, continued)

(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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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;

(Rule 0080-09-02-.10, continued)

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE

CHAPTER 0080-09-05
WORKER PROTECTION

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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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

0080-09-05-.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;

(Rule 0080-09-05-.03, continued)

(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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*

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, and 62-21-118.* ***Administrative History:*** *Original rule filed April 1, 2016; effective June 30, 2016.*