

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-09-04
PESTICIDE APPLICATIONS**

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0080-09-04-.01 SCOPE.

- (1) This chapter applies to any person who engages in the business of commercial pest control; who makes or supervises any pesticide application for which certification is required; or who inspects or supervises inspections of real property for issuance of a wood destroying insect infestation report.
- (2) This chapter does not apply to sale or distribution of pesticides or to applications of pesticide for which no certification is required.
- (3) Persons holding a charter, license, or certification issued under this chapter shall be responsible for operations under the charter, license, or certification until the document expires or until the department receives written notification from the holder requesting it be terminated. The department shall not refund fees for early termination of any charter, license, or certification issued under this chapter.
- (4) Charters, licenses, and certifications issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.02 DEFINITIONS.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Application of Pesticides Act of 1978, T.C.A. §§ 62-21-101, et seq.
- (2) When used in the Act or this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Application of Pesticides Act of 1978, compiled at T.C.A. §§ 62-21-101, et seq.;
 - (b) Domiciled and resident at or near the office and supervising on a regular routine work basis under the Act means that a licensee lives within a proximity and reports to the office at a frequency approved by the charter holder as sufficient to oversee operations and needs of the office;
 - (c) Engages in the business of commercial pest control means the advertisement, offer, or sale of:

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

1. Pesticide applications for a fee to control identified pests, or
 2. Inspections for wood destroying organisms;
- (d) Fee means financial or other consideration that is paid or charged for a service;
- (e) Fumigation means the application of gas even if the substance that is applied is originally a solid or liquid that later turns to gas upon being dispensed;
- (f) Non-clerical employee means any person engaged in work incident to the handling, transportation, or application of pesticides. Clerical employee means any person engaged solely in office work related to routine documentation and administrative tasks of a business. For purposes of the Act and this chapter, all employees of a pesticide charter holder are either clerical or non-clerical employees but not both;
- (g) Person means an individual, partnership, corporation, or any other form of legal entity; and,
- (h) Pest or disease means any insect, rodent, fungi, bacteria, plant life, or biotic agent that is injurious either to the environment or to the agricultural, horticultural, silvicultural, or other interests of the state. Pest or disease includes insect pests and plant diseases as defined under the Tennessee Plant Pest Act, compiled at T.C.A. §§ 43-6-101, et seq., and may also include any form of animal or plant life, any infectious plant disease, or any plant disorder that manifests symptoms or behavior determined by a federal or state pest prevention agency to be characteristic of infectious disease.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.03 PESTICIDE CHARTERS.

- (1) A pesticide charter is required per office for any person who engages in the business of commercial pest control.
- (2) Application for a charter shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name of the applicant;
 - (b) Date of birth of any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant who is not an individual or a partner in a general partnership:
 1. Entity's registration in its state of incorporation; or,
 2. Entity's business license issued by a local governmental authority;
 - (d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of office where applicant will engage in the business of commercial pest control;

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

- (f) Name and pesticide control operator license number of each person assigned to supervise commercial pest control operations under the charter;
 - (g) Proof of bonding and insurance as required under the Act;
 - (h) Solicitors registration. Roster and applicant's written verification of all employees authorized under the charter to solicit pest control business or to enter into contract on the applicant's behalf;
 - (i) Technicians registration. Roster of non-clerical employees who are not included in the solicitors registration; and,
 - (j) Other information as required by the department.
- (3) Charter holders shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) Applicants shall include with their application payment of a charter fee and solicitor and technician registration fee.
- (a) Charter fee. The fee for a pesticide charter is a Tier 9 biennial fee under T.C.A. § 43-1-703(f), which may be prorated in the initial term of the charter as a Tier 5 fee for each year remaining in the term.
 - (b) Solicitor and technician registration fee. The fee for solicitor and technician registration is a Tier 2 biennial fee under T.C.A. § 43-1-703(f) for each non-clerical employee registered with the department. The solicitor and technician registration fee may be prorated as a Tier 1 fee for each person employed by the charter holder for less than one year preceding the application.
 - (c) Term. All charters expire on June 30 of odd numbered calendar years.
- (5) Applicants for renewal shall submit the appropriate fees and required application materials to the department on or before July 1 of the year in which the charter expires.
- (a) If an applicant for renewal fails to pay required fees or to provide required application materials on or before July 16 following expiration of the charter, the applicant shall also be required to pay a late charge assessed under T.C.A. § 43-1-703 prior to renewal of the applicant's charter.
 - (b) Lapse of bonding or insurance at any time shall result in immediate expiration of the charter. The charter holder shall be afforded a grace period of 30 days to submit proof of valid bonding and insurance to the department without accrual of charges to reinstate the charter. Following the grace period, the firm shall be required to obtain a new pesticide charter and pay all associated fees in order to operate in the business of commercial pest control.
- (6) The department may deny any application for a charter that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 62-21-111, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.04 PEST CONTROL OPERATOR LICENSES.

- (1) A pest control operator license is required for oversight of technical service work as stated under 0080-09-02-.03 License Categories. Pest control operator licenses are issued only to individuals and not formalized business entities.
- (2) Application for a license shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name and date of birth of the applicant;
 - (b) Contact information for applicant, to include employer's name, telephone number, email address, and address of the principal place of business;
 - (c) Address of charter holder's office where licensee will be employed;
 - (d) Proof of current pesticide applicator certification in the category necessary for licensure;
 - (e) Proof of passing pest control operator license examination within the previous year; and,
 - (f) Other information as required by the department.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) The fee for any pest control operator license, except a PCC license, is a Tier 2 biennial fee under T.C.A. § 43-1-703(f), which may be prorated as a Tier 1 fee for each year remaining in the term. The fee for a PCC license is a Tier 10 biennial fee, which may be prorated as a Tier 6 fee for each year remaining in the term.
- (5) All pest control operator licenses expire on June 30 of odd numbered calendar years.
- (6) Applicants for renewal shall submit the appropriate license fee and proof of current pesticide applicator certification required for the license to the department on or before July 1 of the year in which the license expires. If an applicant for renewal fails to pay required fees on or before July 16 following expiration of the license, the applicant shall also be required to pay a late charge assessed under T.C.A. § 43-1-703 prior to renewal of the applicant's license. If an applicant fails to maintain pesticide applicator certification required for the license, the license shall expire and require examination for both the applicable certification and the license before being reissued.
- (7) The department may deny any application for a license that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203, 62-21-111, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.05 PESTICIDE APPLICATOR CERTIFICATIONS.

- (1) Pesticide applicator certification is required for performance of technical service work as stated under 0080-09-02-.04 Certification Categories. Pesticide certifications are issued only to individuals and not to formalized business entities.

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

- (2) Application for certification shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name and date of birth of the applicant;
 - (b) Contact information for applicant, to include employer's name, telephone number, email address, and address of the principal place of business;
 - (c) Address of pesticide charter holder's office where the applicant will be employed;
 - (d) Proof of passing applicator certification examination within the previous year; and,
 - (e) Other information as required by the department.
- (3) Certification holders shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) All certifications issued under this rule expire on a three-year certification cycle, beginning June 30, 2023, and again on June 30 of every third year thereafter. Applicants for renewal of either commercial applicator or private applicator certifications must recertify by completing all testing requirements for issuance of the original certification, as detailed under 0080-09-02-.05 License and Certification Testing.
 - (a) 1. In lieu of testing for recertification, applicators may recertify by accrual of approved continuing education unit credits (CEUs) prior to expiration of their certification, according to the following schedule:

| Service Category Number | Service Category Description | Number of CEUs Required for Recertification |
|-------------------------|--|---|
| C01 | Agricultural Pest Control | 18 |
| C02 | Forest Pest Control | 12 |
| C03 | Ornamental and Turf Pest Control | 18 |
| C04 | Seed Treatment | 6 |
| C05 | Aquatic Pest Control | 12 |
| C06 | Right-of-Way Pest Control | 18 |
| C07 | Industrial, Institutional, Structural, and Health-Related Pest Control | 21 |
| C08 | Public Health Pest Control | 18 |
| C09 | Limited Herbicide Applicator | 12 |
| C10 | Demonstration, Research, and Regulatory Pest Control | 18 |
| C11 | Wood Preservatives | 6 |
| C12 | Pesticide Dealer | 18 |
| C13 | Antifouling Marine Paint | 6 |
| C14 | Microbial Pest Control | 12 |
| C16 | Sewer Line Treatment | 6 |
| | Private Applicator | 3 |

2. External training requirement.

- (i) To recertify by accrual of CEUs, applicators in all service categories except C07 must attend at least half of the required CEUs as external trainings. C07 applicators must attend at least two-thirds of the required CEUs as external trainings.

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

- (ii) External training means that CEU attendees and presenters are not employed by the same charter holder and that the training is conducted in a manner that allows presenters and attendees to interact in real time.
- (b) Continuing Education Units.
 - 1. Courses.
 - (i) Course presenters. CEU course presenters must be:
 - (I) Certified in the category for which the CEU is being offered;
 - (II) A member of the academic community related to pesticide research that is the subject of the CEU;
 - (III) Regulatory or extension personnel in the pesticide field; or,
 - (IV) A member of industry with direct work experience related to pesticides that are the subject of the CEU, as evidenced by pesticide product registration, pesticide applicator certification, or pest control operator licensing in Tennessee or another state.
 - (ii) Course materials. At least 30 days prior to the course offering, presenters must submit to the department for review a CEU course application, overview, description of class time anticipated for the course, and any supporting course materials. For courses offered by educational institutions, presenters must submit these materials to the University of Tennessee, Pesticide Safety Education Program (PSEP).
 - (iii) Approval and verification. Courses approved for credit will receive written confirmation from the department detailing the number of CEU credits eligible for the proposed course. Courses must be presented according to the approved application, curriculum, and materials. Representatives of the department or PSEP may attend approved courses, without incurring registration fees, for purposes of verifying course content and presentation. The department may deny approval for any course materials or presentation inconsistent with requirements of the certification category in which the course is being offered.
 - (iv) CEU courses are approved at the rate of one CEU credit per 50 minute attendance hour.
 - 2. Accrual.
 - (i) Persons attending or presenting a CEU course receive CEU credits in the amount and certification category as approved by the department for the course.
 - (ii) Attendance rosters. CEU course presenters must submit to the department an attendance roster of all attendees and presenters per CEU course presented. Presenters must submit the roster to the department within 30 days following the CEU course presentation. Failure to submit attendance rosters timely may result in denial of CEU credits for the course attendees and denial of future applications for CEU course approval by the presenter(s) for up to five years.

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

- (iii) Expiration. CEU credits accrued in previous certification periods are not assignable for CEU credit in subsequent certification periods.
 - (iv) The number of CEU credits required for recertification may be prorated per year for persons obtaining original certification during the current certification period.
- 3. The department may revoke course approval or deny CEU credit for any failure to comport with this rule.
- (c) Reciprocity. In lieu of testing for recertification or acquiring CEU credits, applicants may apply for recertification based on reciprocity with another state. Applicants for reciprocal recertification must show proof of valid, equivalent recertification in the reciprocating state.
- (d) Given extraordinary circumstances, the department may in its discretion extend the deadline for recertification testing or accrual of CEU credits applicable to particular applicators or service categories.
- (e) Failure to recertify within the certification period, by a manner authorized under this rule, shall cause the certification to expire.
- (5) Fees.
 - (a) Commercial applicator. Other than examination fees, there is no fee for certification or recertification of commercial applicators.
 - (b) Private applicator. The fee for Private Applicator Certification is a Tier 1 fee under T.C.A. § 43-1-703(f). There is no fee for recertification of private applicators.
- (6) The department may deny any application for a certification that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.06 RECORDS.

- (1) Commercial applicators shall maintain records for each custom application of pesticides and each application of restricted use pesticide that they apply or that they authorize by direct supervision.
- (2) Private applicators shall maintain records for each application of restricted use pesticide that they apply or authorize by direct supervision.
- (3) Each application record shall include:
 - (a) Applicator's first and last name and certification number;
 - (b) Trade name, as it appears on the product label, of the pesticide applied;
 - (c) Address where the application was made;
 - (d) Date of the application;

(Rule 0080-09-04-.06, continued)

- (e) Target area (e.g. crop, plant, house, business, or building where the pesticide was applied);
 - (f) Target pest. For mixtures of pesticides made in a single application, the record must clearly indicate which pests were targeted by the separate pesticides in the mixture;
 - (g) Total amount of pesticide applied;
 - (h) Percentage use dilution;
 - (i) Application rate;
 - (j) First and last name of property owner or tenant where pesticide applied; and,
 - (k) For each application of a restricted use pesticide, the application record shall include EPA registration number of the pesticide applied and the time of its application.
- (4) Applicators shall supply a copy of required application records within 48 hours of request by a property owner or tenant where the pesticide was applied.
- (5) Applicators shall maintain records required under this rule for a period of two years from the date of application.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.07 INSPECTIONS.

- (1) For any location where the department has reason to believe a person is engaged in the business of commercial pest control or has made application of pesticide otherwise regulated under this chapter, the department may enter the location at a time in accordance with the Act for the purpose of sampling; examining equipment, pesticides, and application sites; and examining and copying records, as necessary to determine compliance with the Act and this chapter.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.08 REQUIREMENTS OF SPECIFIC CATEGORIES AND PESTICIDES. The following requirements apply in addition to use and recordkeeping requirements of pesticide applications under this chapter.

- (1) Fumigations poisonous to humans.
- (a) When any fumigation application is made of a pesticide that is poisonous to humans, a FUM or FUS licensee must be present at the application site; actively in charge of the work; and ensure the following:
- 1. At least one gas mask, must be readily available at the application site for each person present during the application. Each mask must be capable of protecting its wearer from the pesticide being applied;
 - 2. Warning signs must be conspicuously posted at all entrances to the structure or area of the fumigation site. Signs must clearly indicate that the property is being fumigated with poisonous gas and that no one should enter;

(Rule 0080-09-04-.08, continued)

3. A guard must be posted at all entrances available to the public and must prevent entry by any unauthorized person. All entry doors where a guard is not posted must be locked and patrolled regularly by a guard. All guards shall have ready access to a gas mask capable of protecting its wearer from the pesticide being applied; and,
 4. The structure or area of the fumigation site must be cleared of all fumigants in accordance with the pesticide's label instructions before re-entry is authorized.
- (2) Limited herbicide applicators.
- (a) Limited herbicide applicators are exempt from charter, licensing, and recordkeeping requirements associated with applications of Glyphosate covered by the C09 certification, provided that:
 1. Glyphosate application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of 25 gallons and an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute;
 2. The name of the business and certification number are displayed on company vehicles in the same manner as required for display of charter numbers under the Act;
 3. Records are made to include the date and property address of each application, and the records are maintained for two years from the date of application; and,
 4. The certification holder does not allow any uncertified person to make application of the pesticides even under direct supervision.
 - (b) Applications of Glyphosate stored, provided, or mixed by a homeowner or renter are deemed personal use applications of the owner or renter.
- (3) Wood destroying organisms.
- (a) Contracts.
 1. WDO licensees shall ensure that a written contract is executed in duplicate prior to any pesticide application for control of wood destroying organisms. Upon execution, one copy of the contract shall be retained by the chartered pest control operator, and one copy of the contract shall be provided to the party contracting for the pesticide service.
 2. Each contract for control of any wood destroying organism must include, prior to execution:
 - (i) A date of inspection and graph of the property covered by the contract, showing portions of the property exhibiting the presence of visible wood destroying insects or damage caused by wood destroying insects;
 - (ii) A provision for transfer of the contract to subsequent owners or renters of the property within the term of the contract; and,
 - (iii) A unique number to distinguish the contract from other contracts issued by the chartered pest control operator.

(Rule 0080-09-04-.08, continued)

- (iv) Any contract for control of termites shall include a one-year warranty providing for retreatment of the property.
 - (v) Guarantees for damage caused by wood destroying organisms during the term are optional. Any contract that does not provide a damage guarantee shall clearly indicate the absence of a damage guarantee in one-half inch tall letters on the front of the agreement.
 - 3. For each property under contract, charter holders must conduct an annual inspection of the property and document the date of inspection. If termite activity is discovered inconsistent with the previous graph, the charter holder must make application of an appropriate pesticide and create a new graph of the property showing the new termite activity. Copies of records for annual inspections and treatments shall be made available within 48 hours of request by the contracting party.
- (b) Applications.
 - 1. Termites.
 - (i) Notwithstanding allowances under any state or federal law, pesticide applicators shall not exceed a 10% variance of label directions when mixing or applying termiticides.
 - (ii) Applicators may perform less than complete treatments if:
 - (I) The applicator informs the contracting party of possible outcomes associated with a less than complete treatment;
 - (II) Acceptance of less than complete treatments is noted in bold font within the contract for services and initialed by the owner or tenant of the property contracting for service; and,
 - (III) The applicator marks on the graph of the property where less than complete treatments will be performed.
 - (iii) Unless contrary to pesticide label directions, pretreatments for new construction shall be completed within 90 days after backfill of the project.
 - 2. Wood destroying beetles.
 - (i) Active infestations.
 - (I) Prior to making a pesticide application for control of wood destroying beetles, the applicator must inform the property owner or agent of potential risks in making the application and alternative ways to control the beetles and avoid the risks of pesticide application, e.g. by removal and replacement of infested wood.
 - (ii) Preventative treatments of existing structures.
 - (I) Applicators may make pesticide applications to prevent wood destroying beetles in existing structures only if:
 - I. Applied according to label directions;

(Rule 0080-09-04-.08, continued)

- II. Prior to application, the applicator tests the wood moisture content in the target area using an instrument designed to measure moisture content of wood;
- III. At least five areas where the wood moisture content is tested show moisture content of at least 18%; and,
- IV. The applicator provides a written report to the property owner or agent detailing these findings to be included in the contract for control of the wood destroying organism.

(c) Records.

- 1. Charter holders shall maintain copies of all contracts under this rule for two years following expiration of the contract.
- 2. Charter holders shall maintain inspection records and associated graphs under this rule for two years following the date of inspection.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.09 VIOLATIONS.

- (1) In addition to other requirements of this chapter,
 - (a) Certified pesticide applicators shall maintain areas where pesticides and equipment are housed so as to be readily accessible for inspection;
 - (b) Certified pesticide applicators shall maintain records required under this chapter so as to be readily available for inspection;
 - (c) Certified pesticide applicators shall give full information as to the manner of any pesticide application and source of pesticides applied or pesticides held for application;
 - (d) Certified pesticide applicators shall manage and dispose of pesticides in a manner consistent with this division of rules;
 - (e) A person shall not apply pesticides for which certification is required unless certified or operating under direct supervision of a certified person. This provision does not limit stricter application requirements otherwise included in this chapter of rules;
 - (f) A person shall not authorize by direct supervision any application of pesticide unless certified in the category of service for which the pesticide is applied;
 - (g) A person shall not oversee the technical service work of a branch office unless licensed in the category of services for which pesticide services are advertised or applied;
 - (h) Certified pesticide applicators shall not apply or supervise applications of pesticide inconsistent with the pesticide's label directions;
 - (i) Certified pesticide applicators shall not give less than complete treatments of pesticide unless:
 - 1. The less than complete treatment is authorized by the pesticide's label directions or state or federal law;

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

2. A complete treatment is ill-advised or prevented by physical conditions of the target area; or,
 3. The property owner or tenant for whom the treatment is applied requests less than complete treatment;
- (j) Certified pesticide applicators shall not falsify the presence of an insect pest or any portion of a record required under this chapter;
 - (k) Pesticide charter holders shall not employ any person as a solicitor or non-clerical employee unless the person is registered with the department;
 - (l) A person shall not knowingly provide any false, misleading, or incorrect information regarding the person's sale, offer for sale, or distribution of pesticides in commerce;
 - (m) A person shall not interfere with a representative of the department in the performance of his or her duties; and,
 - (n) Pesticide charter holders, licensed pest control operators, and certified pesticide applicators shall not violate any order issued by the department.
- (2) Pesticide charter holders, licensed pest control operators, and certified pesticide applicators are responsible for violations of the Act or this chapter when committed by either the person or his agent.
 - (3) Each violation of the Act or this chapter is grounds for issuance of stop work or disposal orders for any pesticide held by the violator or his agent; denial or revocation of any charter, license, or certification issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016. Amendments filed September 27, 2021; effective December 26, 2021.

0080-09-04-.10 REPEALED.

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0080-09-04-.12 REPEALED.

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. Repeal filed September 27, 2021; effective December 26, 2021.