

302 KAR 29:010. Definitions for 302 KAR Chapter 29.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes the definitions which apply to 302 KAR Chapter 29, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects humans or the environment.

(2) "Application" means placing of a pesticide for effect, including mixing and loading.

(3) "Authorized agent" means a manager or license holder that is actively engaged in the company.

(4) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(5) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(6) "Commercial structural applicator" means a certified applicator that, for compensation, uses or supervises the use of any pesticide on any structure or substandard structure as defined in subsections (43) and (44) of this section.

(7) "Commercial structural fumigation license" means a license issued to a person allowing him to engage in the business of using poisonous gases to control pests in structures.

(8) "Common exposure route" means a probable manner, oral, dermal, or respiratory, by which a pesticide may reach or enter an organism.

(9) "Compatibility" means chemical property of a pesticide that permits use with other chemicals without undesirable results being caused by the combination.

(10) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

(11) "Consumer disclosure" means a form which:

(a) Discloses to the consumer any wood destroying organism work to be performed by the commercial structural applicator; and

(b) Includes the elements of the consumer discloser form recommended by the Pest Control Advisory Board, approved by the Kentucky Department of Agriculture, and incorporated by reference in 302 KAR 29:050.

(12) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(13) "Conventional termite treatment" means treatment with a registered liquid termiticide, used according to label instructions.

(14) "Environment" means water, air, land, plants, humans and other animals living therein, and the interrelationships which exist among them.

(15) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(16) "Graph" means a drawing of a structure that identifies the type of structure, provides an outline of the structure indicating approximate length and width and records current visible wood-destroying activity, any current visible wood-destroying damage, and treatment methods recommended.

(17) "Hazard" means a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(18) "Health care center" means hospitals, nursing homes, convalescent centers, clinics, medical centers, or any facility that provides overnight stay for the purpose of health care.

(19) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(20) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(21) "Integrated pest management program" means a strategy of controlling pests by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.

(22) "Kentucky State Plan" means the certification maintenance requirements and training courses approved by the department on recommendation of the Pest Control Advisory Board as set forth in 302 KAR 29:060.

(23) "Moisture control treatment" means a treatment applied under the structure which consists of a ventilation system, soil cover, liquid chemical treatment, or any combination of the above.

(24) "Negligent manner" means failure to use reasonable care in application or use of pesticides.

(25) "New employee" means a person who has not been previously trained for thirty (30) days pursuant to KRS 217B.560.

(26) "Noncommercial structural applicator" means a certified person who uses or supervises the use of any pesticide while making applications to any structure owned, occupied, or managed by him or his employer.

(27) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(28) "Operator in charge" means a person certified to apply fumigants and charged with the duty of overseeing the fumigation operation.

(29) "Partial termite treatment" means any treatment performed to selected areas of a structure.

(30) "Practical knowledge" means the comprehension of and ability to identify and use pertinent facts in dealing with specific problems and situations.

(31) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(32) "Registry" means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.

(33) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, humans, or the environment.

(34) "Remote pesticide sales agent" means an individual located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.

(35) "Resident pesticide sales agent" means an individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.

(36) "School" means an institution for teaching children such as, but not limited to, preschool, kindergarten, child day care centers, primary, and secondary schools.

(37) "School authority" means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.

(38) "Spot fumigation" means a fumigation operation performed for the control of structural pests or wood-destroying organisms in special rooms, vaults, chambers, tanks, railroad boxcars, barges, aircraft, or other enclosed areas of limited size, and which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic concentrations of the fumigants used.

(39) "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(40) "State" means the Commonwealth of Kentucky.

(41) "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.

(42) "Structural pest control license" means a license issued to a person allowing him to engage in the business of structural pest control.

(43) "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(44) "Substandard structure" means those structures with less than fourteen (14) inches of clearance between the soil and the bottom of the floor joists in the crawl area, structures with wood-to-soil contact, or any other structures that cannot be treated according to label directions.

(45) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(46) "Termite baiting system" means a termite monitoring and control program that uses bait stations, according to label directions, to deliver toxicant to termites.

(47) "Termite pretreatment" means the application of an approved termiticide or baiting system, according to label directions, in new construction.

(48) "Toxicity" means the property of a pesticide that causes any adverse physiological effects to a living organism.

(49) "Unauthorized personnel" means any individual or individuals not belonging to, or a part of, the fumigating crew performing a fumigation operation. (28 Ky.R. 745; Am. 1375; eff. 12-19-2001; 37 Ky.R. 112;684; eff. 9-8-2010.)

302 KAR 29:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

(1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides;

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

(a) Name and address of person receiving services and location of performance of services;

(b) Brand or product name of pesticides applied;

(c) Date of application;

(d) Type of area treated;

(e) Name of applicator; and

(f) Total amount of each pesticide applied, excluding paste baits.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide

Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation applies to all persons who have occasion to store pesticides.

(2) Standards for storage:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and

(e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 USC 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 USC 14.

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

Section 6. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicles, which are actively and regularly engaged in service work, marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.565 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state.

Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 746; Am. 1376; eff. 12-19-2001.)

302 KAR 29:040. Settlement proceedings.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 13B.070(3), 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the

Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the settlement of administrative complaints brought pursuant to KRS 217B.545.

Section 1. Commencement of Settlement Proceedings. At any time after the service of an administrative complaint upon a licensee and before hearing, the responding licensee may seek a settlement of any pending allegation.

Section 2. Presentation of Proposal to Board. If an appropriate settlement has been negotiated, it shall be presented to the board and if accepted, shall be signed by the chairman and forwarded to the commissioner for acceptance or rejection.

Section 3. Effect of Rejection. If the board rejects an offer of settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B, unless the licensee requests that the offer be submitted directly to the commissioner for decision. If requested by the licensee, the offer shall be submitted directly to the commissioner along with the board's reasons for rejecting the offer and a recommendation from the board that the commissioner not approve the offer. The commissioner shall accept or reject the offer after reviewing the whole record. He may allow oral argument on the proposed offer before he makes a decision if either party moves for it and if it appears that such argument would substantially contribute to the decision-making process. If the commissioner approves the offer, he shall enter an appropriate order in conformance with the proposal. If the commissioner rejects the offer, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B. Rejection shall not be taken as a finding or determination of any kind on behalf of the board, and no orders or other pleadings shall be filed in regard to any rejected offer.

Section 4. Action by the Commissioner. If the commissioner approves of the board's recommendation for acceptance or rejection, a request by the licensee for settlement after rejection by the board, or if the commissioner dismisses the complaint in whole or in part, he shall enter an order in conformance with his findings. If the commissioner rejects the settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B.

Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 749; Am. 1377; eff. 12-19-2001.)

302 KAR 29:050. Commercial structural pest control and fumigation.

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

- (1) Commercial structural pest control applicator;
- (2) Commercial structural pest control manager;
- (3) Commercial structural fumigation applicator;
- (4) Commercial structural fumigation manager; or
- (5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:

- (a) A completed "Commercial Structural Pest Control Examination Application";
 - (b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
 - (c) College transcripts if applicable; and
 - (d) Written verification of pesticide work experience, pursuant to KRS 217B.520.
- (2) All applications for applicator or manager examinations shall be sworn to and notarized.
- (3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.
- (4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.
- (5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.
- (6) The application of any applicant convicted of a felony shall require approval by the board.
- (7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.
- (8) The manager's license examination shall be timed and shall be completed within two (2) hours.
- (9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed "Structural Pest Control Renewal" form with a fee of \$100 for each place of business maintained in Kentucky, shall result in the license holder having his license suspended until the renewal registration has been received and the fee and any associated fines are paid.

(3) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

- (a) Name, address, and home telephone number;
- (b) Social Security number; and
- (c) Job title.

(4) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after the change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termite treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label.

1. Loose cellulose debris that can be raked from beneath structures shall be removed.

2. Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.

(b) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(3) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and

(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following shall be the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) The applicator shall determine the moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:

1. Install a vapor barrier over approximately seventy (70) percent of the soil;

2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;

3. Install vents to give cross ventilation with a vapor barrier;

4. Improve drainage;

5. Waterproof the foundation; or

6. Perform any combination of the items specified in subparagraphs 1 to 5 of this paragraph.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. a. The separate areas of a structure shall be:

(i) Left front;

(ii) Right front;

(iii) Left rear;

(iv) Right rear;

(v) Left center; and

(vi) Right center.

b. Moisture readings shall be recorded on a graph at the time of original sale of treatment.

c. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed.

Section 6. Wood-destroying Organism Reports. (1) A person holding a commercial structural pest control applicator's license shall submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report.

(2) Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment.

(3) All reports shall be signed by the licensed applicator or authorized agent for that company.

(4) Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued except those for preconstruction treatments shall be accompanied by a consumer disclosure signed by the consumer or an individual authorized by the consumer and a graph. If a signature cannot be obtained, a detailed explanation for the absence of the signature shall be included on the form.

Section 8. Inspections by the Department. (1) The commissioner or his authorized representative may examine properties treated for the purpose of determining compliance with the treatment standards established in Section 5 of this administrative regulation.

2. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department.

3. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations.

4. If the license holder neglects or refuses to abate the violations, the license shall be suspended, as provided by KRS 217B.545, except for good cause shown.

(5) If a license is suspended, the license holder shall:

(a) Retreat all properties on which a violation has been found;

(b) not otherwise service any current contracts or solicit any new business; and

(c) notify the department of the dates of all reexaminations and retreatments.

(6) When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall make the reinspections at its earliest convenience.

(7) If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants operation shall not be conducted unless at least two (2) individuals work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation.

(a) Before performing general fumigation in a structure or enclosed space, a license or certification holder shall notify in writing the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed.

(b) 1. Except as provided in subparagraph 2 of this paragraph, the written notification shall be given to each fire department and police department at least three (3) hours prior to the time stated in the notice for the release of the fumigant.

2. Notification shall be provided in advance of the fumigating operation, without the time limit established by subparagraph 1 of this paragraph, for fumigation of vessels, aircraft, boxcars, trucks, or common carriers.

(c) The notice shall give the following information:

1. Location of structure or enclosed space to be fumigated as well as its character and use;

2. The fumigant to be used;

3. The date and time of release of fumigant and approximate exposure period; and

4. The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this subsection shall not apply to spot fumigation.

(4) Structures to be vacant.

(a) Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation.

(b) The operator in charge shall make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs.

(a) Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

(Skull and Crossbones)	Danger Fumigation with (Name of Fumigant) Deadly Poison All persons are warned to keep away	(Skull and Crossbones)
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Name of Fumigator:

Address:

Telephone:

Operator in Charge:

Day Phone:

Night Phone:

(b) The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final prefumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;

(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;

(c) That no open fires or open flames, pilot lights or oil lamps are burning;

(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen.

(a) During the period of fumigation, and until the structure has been ventilated and declared safe, at least one (1) capable, alert watchman or guard, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen.

(b) The guard or watchman shall prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period.

(c) Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge.

(d) If a warning agent is used, the requirements established in this subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and

(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses. (1) A person holding a general pest and wood-destroying organism or fumigation license may continue to do business in those categories of pest control for which the person is licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29:020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29:060.

Section 12. Pesticide Application in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the items specified in this section:

(1) Advance notification of pesticide use.

(a) If a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school and parents or guardians of students enrolled in the school as determined by the contact information maintained on file. Notice shall not be required if:

1. A pesticide is to be applied at a time the school is not in session under the calendar set by the school board; and

2. Persons other than the applicators and the minimum number of school staff necessary to allow the applications are not scheduled to be in the building during the application and for at least twenty-four (24) hours after the application.

(b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty four months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel.

(2) The notification shall include the following:

(a) The date of possible pesticide application;

(b) A description of the general location of the pesticide application;

(c) description of pests treated, the brand name of the pesticides applied, including the list of active ingredients, and the pesticide application method; and

(d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise that prevent advance notice from being provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as

possible. The notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection 2(a) to (d) of this section.

(4) The certified applicator shall only be responsible to furnish to the school the information needed by the school to comply with subsections (2)(a) to (c) of this section:

(a) At least thirty-six (36) hours prior to the application of the pesticide, if the school notification is provided as required by subsection (1)(a) of this section; or

(b) As early as possible, if the school notification is provided as required by subsection (3) of this section;

(5) Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) Exemptions. This administrative regulation shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and

(d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait;

or

(e) Paraffin-based rodent control products placed in industry identified tamper-resistant bait stations.

Section 13. Qualifications for Pesticide Application for Health Care Centers. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commercial Structural Pest Control Examination Application", 2002;

(b) "Monthly Report of Wood-Destroying Organism Treatments" form, 11/99;

(c) "Structural Pest Control Renewal Form", December 2006; and

(d) "Consumer Disclosure Form", 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at www.kyagr.com. (28 Ky.R. 749; Am. 1378; eff. 12-19-2001; 33 Ky.R. 889; 1607; 1794; eff. 2-2-07; 37 Ky.R. 114; 686; eff. 9-8-2010.)

302 KAR 29:060. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Unless otherwise specified, the certifications provided for in this chapter shall be valid for three (3) years and must be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides for structural pests only, in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

(a) Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to the provisions of 302 KAR Chapter 29.

(b) Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesticides.

(c) Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.

(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to humans, and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and

(g) The proper selection and use of personal protective equipment for the handling and application of pesticides;

(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms; and

- (d) Drainage patterns;
- (4) Pest identification, including consideration of the following factors:
 - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
 - (b) Pest maturation and development as it may relate to the problem of identification and control.
- (5) Pesticides, including consideration of the following factors:
 - (a) Types of pesticides;
 - (b) Types of pesticide formulations;
 - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
 - (d) Hazards and residues associated with use;
 - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
 - (a) Types of pesticide application equipment and advantages and limitations of each; and
 - (b) Uses, maintenance, and calibration of equipment.
- (7) Application techniques; factors including:
 - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
 - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:

(a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. Because school and health-related pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.

(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of this 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.

(c) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by these administrative regulations and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date.

(2) Category 8. Public health. Each person with certification in category 8 in effect on the effective date of this administrative regulation shall be granted certification in category 7(a) and category 7(b) with a expiration date of December 31, 2012.

(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6. License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7. Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training, approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2012. Credit shall be given in full continuing education unit increments only. All persons holding certification in any category shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation.

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be permitted to perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 753; Am. 1380; eff. 12-19-2001; 37 Ky.R. 118; 9-8-10.)

302 KAR 29:070. Fine schedule for violation of KRS 217B.550.

RELATES TO: KRS 217B.515, 217B.550, 217B.585

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.990 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations set forth in KRS 217B.550. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.550.

Section 1. Notice of Noncompliance and Abatement of Violation Pursuant to KRS 217B.193. (1) The Department of Agriculture shall issue a notice of violation to license holders found to be in violation of KRS 217B.550 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(2) In addition to the information required to be set out in the notice of violation pursuant to KRS 217B.193, the department shall notify the person, license holder, permit holder or certification holder that:

(a) Except for good cause shown, an administrative fine in the amount specified in Section 2 of this administrative regulation shall be assessed if the violation is not abated within the time specified in the notice of violation;

(b) He shall have thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and

(c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Pesticide Regulation, Frankfort, Kentucky 40601.

(3) The period for abatement of a violation shall commence on the day the notice of violation is mailed pursuant KRS 217B.193(1).

(4) The department may allow additional time for abatement of a violation, not to exceed ninety (90) days, if it is determined that the violation cannot be corrected within the time period specified in subsection (3) of this section.

(5) The Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for a first violation of KRS 217B.550 shall be:

- (a) \$200 for a violation of KRS 217B.550(1);
- (b) \$200 for a violation of KRS 217B.550(2);
- (c) \$300 for a violation of KRS 217B.550(3);
- (d) \$100 for a violation of KRS 217B.550(4);
- (e) \$100 for a violation of KRS 217B.550(5);
- (f) \$200 for a violation of KRS 217B.550(6);
- (g) \$200 for a violation of KRS 217B.550(7);
- (h) \$200 for a violation of KRS 217B.550(8);
- (i) \$100 for a violation of KRS 217B.550(9);
- (j) \$100 for a violation of KRS 217B.550(10);
- (k) \$100 for a violation of KRS 217B.550(11);
- (l) \$200 for a violation of KRS 217B.550(12);
- (m) \$100 for a violation of KRS 217B.550(13);
- (n) \$200 for a violation of KRS 217B.550(14);
- (o) \$200 for a violation of KRS 217B.550(15);

- (p) \$200 for a violation of KRS 217B.550(16);
- (q) \$200 for a violation of KRS 217B.550(17); and
- (r) \$200 for a violation of KRS 217B.550(18).

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation or modification of a license pursuant to KRS 217B.545.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period set by the department pursuant to KRS 217B.193.

(6) Nothing in this section shall prohibit the department from suspending, revoking, or modifying a license or certificate at any time pursuant to KRS 217B.545.

Section 3. Failure to pay any fine within thirty (30) days of the end of the time period prescribed in Section 1 of this administrative regulation shall result in a suspension, revocation, or modification of a license or certification pursuant to KRS 217B.545.

Section 4. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 6. Incorporation by Reference. (1) The "Kentucky Enforcement Response Policy" (April 1999, Revised October 20, 2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 755; Am. 1382; eff. 12-19-2001.)