

1 GENERAL GOVERNMENT

2 DEPARTMENT OF AGRICULTURE

3 DIVISION OF PESTICIDE REGULATION

4 (New Administrative Regulation)

5 302 KAR 29:050. Commercial Structural Pest Control and Fumigation.

6 RELATES TO: KRS Chapter 217B

7 STATUTORY AUTHORITY: KRS 217B.050

8 NECESSITY AND FUNCTION AND CONFORMITY: This administrative regulation sets forth  
9 requirements applicable to commercial structural pest control and fumigation.

10 Section 1. Applicability. No person shall engage in commercial structural pest control or  
11 fumigation without first obtaining a license from the Department. A person may apply for a  
12 license in one or more of the following categories:

13 (1) Commercial structural pest control applicator;

14 (2) Commercial structural pest control manager;

15 (3) Commercial structural fumigation applicator; or

16 (4) Commercial structural fumigation manager.

17 Section 2. License Application. (1) All applications for applicator or manager licenses shall  
18 contain the following:

19 (a) Name and address;

20 (b) Date of birth;

21 (c) Social security number;

1 (d) Photograph;

2 (e) A statement from a statewide law enforcement agency that the applicant has never been  
3 convicted of fraud, misrepresentation, or a felony;

4 (f) Home telephone number;

5 (g) College transcripts where applicable;

6 (h) Written verification of pesticide work experience. In lieu of requirements of KRS  
7 217B.520, the following documentation shall be accepted as verification of pesticide work  
8 experience:

9 1. W-2 forms; or

10 2. Two (2) years active certification; or

11 3. Letters of verification from other state departments of agriculture.

12 (2) All applications for applicator or manager examinations shall be sworn to and notarized.

13 (3) All applications for applicator or manager licenses shall be postmarked thirty (30) days  
14 prior to the next scheduled testing date. Any application received after the thirty (30) day  
15 deadline shall be returned.

16 (4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled  
17 testing date shall not be allowed to test.

18 (5) Any false or misleading statements made in a license application shall be grounds to deny or  
19 revoke the license.

20 (6) The Board must approve the application of any applicant convicted of a felony.

21 (7) The manager's license examinations shall be given the second Tuesday of each month at a  
22 location specified by the Department. If the second Tuesday falls on a holiday, the examination  
23 shall be given on the following Tuesday.

1 (8) The manager's license examination shall be timed and shall be completed within two (2)  
2 hours.

3 (9) An applicant for an applicator's or manager's license must pass both parts of the examination  
4 in a single testing session.

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

6 (2) Failure to submit, by July 1 of each year, a completed renewal registration form with a fee of  
7 \$100 for each place of business maintained in Kentucky, shall result in the lapse of the license.

8 (3) Any license holder who fails to submit a completed renewal registration form and the  
9 required fee by July 1 of each year, or whose license has been suspended or revoked, shall be  
10 required to take and pass a manager or applicator licensing examination before a new license may  
11 be issued.

12 (4) At the time of license renewal, each company shall submit to the Department a list with the  
13 following information on each employee:

14 (a) Name, address, and home telephone number;

15 (b) Social security number; and

16 (c) Job title.

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

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

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

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

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

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

8 1. Removal of loose cellulose debris of such size as can be raked from beneath structures; and

9 2. Removal of all accessible termite tubes except in the case where a component of a termite  
10 baiting system is affixed to termite tubes.

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

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

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

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

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

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

4 (a) Determine moisture content of joists, sills, and subfloor in the building. Where excess  
5 dampness from the soil under a building contributes to moisture readings above twenty (20%)  
6 percent, the applicator shall:

- 7 1. Install a vapor barrier over approximately seventy (70%) percent of the soil; or
- 8 2. Install additional ventilation so there is at least one (1) square foot of vent space per 150  
9 square feet of crawl space area without a vapor barrier, or
- 10 3. Install vents to give cross ventilation with a vapor barrier; or
- 11 4. Improve drainage; or
- 12 5. Waterproof the foundation; or
- 13 6. Any combination of the above.

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

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

18 2. Complete liquid treatment may only be performed in conjunction with subsection 4(a) above  
19 when moisture readings are above twenty (20%) percent in four separate areas of a structure.

20 Separate areas of a structure are defined as: (1) left front; (2) right front; (3) left rear; (4) right rear;  
21 (5) left center; and (6) right center. Moisture readings shall be recorded on a graph at the time of  
22 original sale of treatment. If a structure qualifies with four moisture readings, a moisture control  
23 treatment must be performed as defined in 302 KAR 29:010(23).

1 Section 6. Wood-destroying Organism Reports. All persons holding a commercial structural  
2 pest control applicator's license shall be required to submit to the Department a monthly report of  
3 all work done for control or prevention of wood-destroying organisms. Each office or branch  
4 office shall file a separate report. Reports shall be made on a form prescribed and supplied by the  
5 Department and received by the Department no later than the 15th of the month following  
6 treatment. All reports shall be signed by the licensed applicator or authorized agent for that  
7 company. Upon performance of treatment for control or prevention of wood-destroying  
8 organisms, a contract shall be made between the company and the property owner. This shall be,  
9 at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1)  
10 copy retained by the company.

11 Section 7. Consumer Disclosure. All contracts issued shall be accompanied by a consumer  
12 disclosure and a graph.

13 Section 8. Inspections by the Department. At such times as he may deem desirable, the  
14 Commissioner or his authorized representative shall examine properties treated for the purpose of  
15 determining compliance with treatment standards in Section 5. The pest control operator shall not  
16 accompany the inspector on the initial inspection unless requested by the Department. When  
17 violations are found, the license holder shall be notified and given a reasonable length of time in  
18 which to abate such violations. If the license holder neglects or refuses to abate such violations, his  
19 license shall be suspended, as provided by law, except for good cause shown. While his license is  
20 suspended, the license holder shall have the privilege of retreating all properties on which he has  
21 current contracts but shall not solicit any new business. He shall notify the Department of the dates  
22 of all reexaminations and retreatments. When all properties previously reported in an  
23 unsatisfactory condition have been reexamined and retreated, the Department shall then make the

1 reinspections at its earliest convenience. If the Department, on reinspection, finds all the properties  
2 in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be  
3 permanently revoked.

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

7 Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2)  
8 individuals shall compose a crew for the release of any fumigant or fumigants and no fumigation  
9 operation shall be conducted unless and until at least two (2) individuals shall work jointly and  
10 concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot  
11 fumigation.

12 (2) Official notice of fumigation. Each license or certification holder, before performing  
13 general fumigation in any structure or enclosed space, shall notify in writing, the fire department  
14 and the police department having jurisdiction over the location where the fumigation operation is  
15 to be performed. This written information shall be given to each fire department and police  
16 department no later than three (3) hours prior to the time set forth in the notice for the release of the  
17 fumigant. A shorter time for filing written notice of fumigation of vessels, aircraft, boxcars, trucks  
18 or common carriers shall be permitted, and the time for such notification shall only be in advance  
19 of the fumigating operation. Such notice shall in each and every case give the following  
20 information:

21 (a) Location of structure or enclosed space to be fumigated as well as its character and use;

22 (b) The fumigant to be used;

23 (c) The date and time of release of fumigant and approximate exposure period; and

1 (d) The name and day and night telephone numbers of the operator in charge.

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

5 (4) Structures to be vacant. Neither the structure to be fumigated, nor any part or parts thereof,  
6 shall be occupied by human beings or domestic animals during the period of fumigation. In  
7 addition, structures or enclosed spaces which are physically joined to or in contact with the  
8 structure to be fumigated shall not be occupied by human beings or domestic animals during the  
9 period of fumigation. It shall be the duty of the operator in charge to make a careful examination  
10 of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or  
11 in contact with said structure, to verify that no human beings or domestic animals are remaining in  
12 the structure and that all necessary precautions have been taken to safeguard the lives and health of  
13 all persons.

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

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

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

(Skull and	Danger	(Skull and
Crossbones)	Fumigation with	Crossbones)



(Name of Fumigant)

Deadly Poison

All persons are warned to keep away

1

2 Name of Fumigator:

3 Address:

4 Telephone:

5 Operator in Charge:

6 Day Phone:

7 Night Phone:

8 The signs shall be printed in indelible red ink or insoluble paint on a white background. The words

9 "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall

10 be in proportion.

11 (8) Final prefumigation inspection. Immediately before the fumigant is to be released, the

12 operator in charge shall then make a final inspection and shall ascertain the following:

13 (a) That all preparations have been completed;

14 (b) That no human beings or domestic animals are present within the structure or enclosed space

15 to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of

16 danger from the fumigation operation;

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

18 (d) That all personnel engaged in the fumigation operation are outside the structure or enclosed

19 space to be fumigated unless proper application of the fumigant requires personnel to be within the

20 enclosed space at the time of application; and

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

3 (9) Guards and watchmen. During the period of fumigation, and until the structure has been  
4 ventilated and declared safe, a capable, alert watchman or guard, or watchmen and guards, shall  
5 remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman  
6 shall be considered sufficient for each fumigation operation unless, in the judgment of the operator  
7 in charge, the conditions and circumstances necessitate additional guards or watchmen. It shall be  
8 the duty of said individual(s) to prevent the entrance of unauthorized personnel into said structure  
9 or enclosed space during the exposure period and while the structure or enclosed space is being  
10 ventilated after the exposure period. Spot fumigation does not require a guard or watchman, unless  
11 deemed necessary in the judgment of the operator in charge. If a warning agent is used, the above  
12 subsection does not apply unless specified by the label.

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

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

20 (12) The following procedures shall not be considered fumigation operations where non-  
21 restricted use pesticides are used according to label directions:

22 (a) Aerosol dispersions; and

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

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

7 (2) Commercial Structural Pest Control or fumigation licenses shall be renewed by June 30 of  
8 each year and are subject to all the terms and conditions of other licenses issued under this  
9 administrative regulation. These licenses may be modified, suspended, or revoked for the same  
10 reasons, and using the same procedures, that a manager's or applicator's license may be modified,  
11 suspended, or revoked. These license holders shall meet the application standards and obey the  
12 requirements for contracting, record keeping, and reporting, established by statute and by 302  
13 KAR 29:020.

14 (3) A person holding a general pest and wood-destroying organism or fumigation license is, by  
15 reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This does not  
16 relieve such persons from obtaining certification under the federal law as contained in the Federal  
17 Insecticides, Fungicide, and Rodenticide Act of 1972, as amended. The certification of persons  
18 certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR  
19 29:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the  
20 requirements of 302 KAR 29:070.

21 Section 12. Pesticide Application in Schools. Each school district is required to implement an  
22 integrated pest management program with a primary goal of controlling dangerous and destructive  
23 pests with the judicious use of pesticides. An integrated pest management program shall include

1 the following:

2 (1) Advance notification of pesticide use:

3 (a) At the start of each semester or school year segment a verifiable notice shall be sent or  
4 given to all staff members, health professionals, and parents or guardians of school children  
5 concerning twenty-four (24) hour advance notification of pesticide applications.

6 (b) Maintain a registry of those requesting advance notification.

7 (2) The notification shall include the following:

8 (a) The anticipated date of possible pesticide application. If special circumstances arise and  
9 the advance notice is not provided as required, such as the emergency application of pesticides to  
10 control organisms that pose an immediate health threat or that may be disruptive to a normal  
11 learning environment, the school shall provide the notice as soon as possible. In this situation,  
12 the notice shall explain the reasons why advance notice was not provided and what pesticide was  
13 applied.

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

15 (c) The routine scheduled service, a description of pests encountered, the brand name of the  
16 pesticides applied, a list of active ingredients, and pesticide application method;

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

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

1 (4) Exemptions: This policy does not apply to application of the following types of pesticides:

2 (a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming

3 pool chemicals used in normal cleaning activities;

4 (b) Personal insect repellents;

5 (c) Human or animal ectoparasite control products administered by qualified health

6 professionals or veterinarians; and

7 (d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not

8 have reasonable access to the bait.

9 Section 13. Pesticide Application for Health Care Centers. (1) Qualifications. Pesticide

10 applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and

11 Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides.

12 Applicators currently holding a Category 7(a) certification on the effective date of this regulation

13 shall receive their Category 7(b) certification without additional examination.

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Billy Ray Smith  
Commissioner  
Department of Agriculture

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Date

APPROVED AS TO FORM:

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Mark Farrow  
General Counsel  
Department of Agriculture

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Date

302 KAR 29:050

**PUBLIC HEARING:** A public hearing on this administrative regulation will be held on Friday, September 24, 2001, at 9:00 a.m. at the Department of Agriculture, Conference Room, 7th Floor - Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Friday, September 14, 2001, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made.

If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Mark Farrow  
General Counsel  
Department of Agriculture  
7th Floor - Capital Plaza Tower  
500 Mero Street  
Frankfort, Kentucky 40601  
Phone: 502/564-4696  
Fax: 502/564-2133

REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

Administrative Regulation Number: 302 KAR 29:050

Contact person: John McCauley, Director, Division of Pesticide Regulation

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth requirements for commercial structural pest control and fumigation.

(b) The necessity of this administrative regulation: To establish requirements for commercial structural pest control and fumigation licensing, procedures for license renewal, measures for treatment of wood-destroying organisms and fumigation operations, guidelines for consumer disclosure and notice of fumigation operations; guidelines for implementation of integrated pest management programs in schools, and to establish qualifications of applicators who apply pesticides in schools and health care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the Department to promulgate administrative regulations to carry out the provisions of KRS 217B. This regulation establishes requirements for the issuance of licenses in commercial structural pest control and fumigation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will inform all applicants for licensing in commercial structural pest control and fumigation of the requirements for licensing.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This regulation does not amend an existing administrative regulation.

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1366 commercial structural applicators and non-commercial structural applicators in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Implementation of regulation will necessitate compliance with requirements to obtain a license to apply pesticides.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cost will be determined by the number of persons seeking certification. The cost will be in administering the test and reviewing and processing documentation associated with the licensing and certification process. The cost will be personally offset by testing fees and the balance of funds will be from the Department's budget.

(b) On a continuing basis: See (5)(a).



(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Testing fees and Department's budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: For certification in each additional category, a different test is required. The proposed fee of \$10 is to cover the cost of administration of the test.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An initial certification testing fee of \$25 is proposed; a fee of \$10 per category is proposed for each additional category certification requested by potential licensee.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering was not used. This regulation applies equally to all individuals regulated by it.