

Insec(tc)ure*:

Are you insecure about your insect cures?

A UT Urban IPM Lab Newsletter for the Pest Management Industry

New R & R

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No, I'm not writing about rest and relaxation, but am referring to rules and regulations. On December 27, 2021, I received an email from Kathy Booker, Tennessee Department of Agriculture's Pesticide Administrator, indicating that the state's attorney general had approved the new TAPA and TIFRA rules. TAPA or Tennessee Application of Pesticides Act of 1978 ([TCA title 62, chapter 21, parts 1 - 2](#)) and TIFRA or Tennessee Insecticide, Fungicide, and Rodenticide Act ([TCA title 43, chapter 8, parts 1 – 3](#)) are laws regulating the pest control industry in Tennessee. The rules that provide the guidance, details, interpretation or the daily operations regarding the TAPA and TIFRA laws were changed the last week in December. However, the rules were not revised quickly. Suggested changes were first brought to the Tennessee Pest Control Advisory Board in September 2020. Through the input of the board and pest management industry and many iterations with TDA, the rules were finally approved 1.25 years later. I'm going to discuss some rule changes mainly as they apply to category 7 certification and General Pest and Rodent Control (GRC) and Wood-destroying Organism (WDO) licenses, but it's your responsibility to read through all of the changes in the official document. Below, I've listed parts of the rules in *italics* if I copied them directly from the rules. Items not in italics are my interpretation of the rules. Emphasized items are in **bold**, often emphasis is due to a change from previous versions. A printed copy of the TAPA and TIFRA rules and the TAPA and TIFRA laws (EPP#792 TN Laws and Regulations) will be available shortly at the UT PSEP program, <https://psep.tennessee.edu/wp-content/uploads/sites/91/2022/01/2022-Study-Manual-Order-Form-F818-1-7-22-final.pdf>.

Many of the rule changes were made to clarify or simplify language and processes. For instance, the standards of competency were removed for each certification category and a generalized statement for all certifications placed in the next section.

Standards for each category include relevant practical knowledge of structures, livestock, cropland, rights-of-way, seed production, landscapes, public areas, or waterscapes where pesticides are expected to be applied; the identification of associated pests, their biology and population dynamics; pre-harvest restrictions and restricted entry intervals, as applicable; specific pesticide's toxicity and hazards; formulations; residue potential; proper storage, handling, transport, application and disposal of specific pesticides; and non-target injuries or drift, and other environmental precautions or potential exposures associated with pesticide applications.

Competency for all categories is determined consistent with federal requirements at 40 C.F.R. §§ 171.101 and 171.103 and includes comprehension and practical knowledge of pesticide label sections, warnings, and symbols; safety including personal protective equipment, poisoning symptoms, and first aid; environmental concerns; target pests; pesticide types; equipment calibration; application methods; laws and regulations; responsibilities of direct supervision and control of noncertified applicators; and professionalism of applicators.

Applicants must be at least 16 years old to take a certification exam, but at least 18 years old to buy, sell, mix, apply, or supervise the use or sale of restricted use pesticide. Other rules apply to private applicators.

Reciprocity. In lieu of examination, applicants may apply for certification based on reciprocity with another state.

- (a) Applicants for reciprocal certification must show proof of valid, equivalent certification in the reciprocating state.*
- (b) Reciprocity satisfies the testing requirements and examination fees associated with certifications under this chapter.*
- (c) Reciprocity is not available for receipt or renewal of any pesticide license.*

The number of CEUs required for category 7 will change July 1, 2023. Now and through June 30, 2023, those certified in category 7 need 30 CEUs (1 CEU per hour of training), no more than 50% from in-house training and no more than 75% from any one external training. Starting July 1, 2023, those certified in category 7 will only need 21 CEUs (1 CEU per 50 minutes of training) by June 30, 2026; 14 of those CEUs will need to come from external training. *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.*

To be a CEU course presenter, you must be certified in the category the CEU is offered; an academic with research on the subject of the CEU, regulatory or Extension personnel in the pesticide field; OR *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.* Course materials must be submitted 30 days before the training and attendance rosters must be submitted within 30 days of the training.

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.

The experience and/or education prerequisites for WDO are:

- a) Masters or doctoral degree in entomology; and certificate from the Tennessee Apprentice Termite Technician School offered by the department;*
- b) One year of full-time work experience that required C07 certification; and a baccalaureate degree with a major or minor in a related course of study; or,*
- c) Two years of full-time work experience that required C07 certification.*

Statement c was missing from the last version of the rules.

For GRC licenses, *applicants must have completed one of the following education and experience prerequisites:*

- (i) Baccalaureate degree from an accredited college or university with a major or minor in a related course of study;*
- (ii) One year of full-time work experience that required the applicable certification; and 12 college level semester credits in a related course of study; or,*
- (iii) Two years of full-time work experience that required the applicable certification.*

Any applicant who misrepresents qualifications for a pesticide license or who engages in cheating on any exam shall be given a failing score for the exam and shall immediately be removed from the testing site. The applicant shall forfeit payment of the examination fee and shall be ineligible to sit for any commercial certification or license examination for two years. The department may also summarily revoke any license or certification previously issued to the applicant.

Expirations. All charters and all pest control licenses expire on June 30 of odd-numbered calendar years. *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.* Pesticide manufacturer registrations and pesticide dealer licenses expire on June 30 following their issuance. That means June 30, 2023 and every 6 years thereafter, all of these certifications and licenses will be renewed at the same time. Hopefully these job responsibilities are shared!

0080-09-04-.03 PESTICIDE CHARTERS. (This got very specific about partners and such, and with so many PMPs contemplating starting their own companies recently, I decided to include this in its entirety.)

- (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;
 - (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.

Record requirements are similar **but a little more specific in some cases**. 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. Records must be kept for at least two years. **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.**

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;
- (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.

INSPECTIONS. 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. **I interpret this to mean that TDA is not required to give you 48 hours notice for access as they did in the previous set of rules.**

(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.
 - (iv) Any contract for control of termites shall include a one-year warranty providing for retreatment of the property. **There is no exclusion for warranties for less-than-complete treatments of non-commercial buildings as there was in the previous rules.**
 - (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;*
 - 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.*

Missing in this version of the rules is preventative wood-destroying beetle treatments of new framing or new log construction or existing log structures regardless of moisture level. As it's currently written, five areas with moisture content at or above 18% must be documented before a treatment can be applied preventatively for wood-destroying beetles.

(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.

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;
 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.

For more information on certification and licensing, see the Tennessee Department of Agriculture website at <https://www.tn.gov/agriculture/businesses/pesticides.html> and the University of Tennessee Pesticide Safety Education Program (PSEP) at <https://psep.tennessee.edu/>. While I didn't list the new requirements for certification and licensing testing online using EverBlue, see <https://www.tennesseepestcontrolassociationinc.com/wp-content/uploads/Everblue-TN-Pesticide-Exam-Candidate-Bulletin-3.2.2021.pdf> for details.

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Insec(tc)ure is edited by Jennifer Chandler and Pat Parkman and archived online at <https://epp.tennessee.edu/urban-ipm-new/>

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Precautionary Statement

To protect people and the environment, pesticides should be used safely. This is everyone's responsibility, especially the user. Read and follow label directions carefully before you buy, mix, apply, store or dispose of a pesticide. According to laws regulating pesticides, they must be used only as directed by the label and registered for use in your state.

Disclaimer

This publication contains pesticide recommendations that are subject to change at any time. The recommendations in this publication are provided only as a guide. It is always the pesticide applicator's responsibility, by law, to read and follow all current label directions for the specific pesticide being used. The label always takes precedence over the recommendations found in this publication.

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