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 or misrepresentation;
  (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) 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, including powderpost beetles and old house borers, shall be in accordance with directions on the product label.
(3) Loose cellulose debris that can be raked from beneath structures shall be removed.
(4) Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.
(5) Upon performance of treatment for control or prevention of wood-destroying organisms, an agreement shall be made between the company and the property owner. This shall be a duplicate agreement, one (1) copy being issued to the property owner and one (1) copy retained by the company. The agreement shall include a graph.
(6) 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. 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 7. Rodent Control. Rodenticides shall be used only according to label directions.

Section 8. 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. Fumigation 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:

Danger

Fumigation with

(Skull and Crossbones) (Name of Fumigant) (Skull and Crossbones)

Deadly Poison

All persons are warned to keep away

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 9. 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 10. Integrated Pest Management in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling pests, general pests, and wood-destroying organisms with the judicious use of pesticides.

(1) Pesticides may be applied without notification indoors and to outside areas when children are not present.

(2) Pesticides may be applied without notification when children are present but shall be limited to:

(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;

(d) Manufactured paste, gel, or other formulations designated on the product label as bait and applied according to label instructions where humans do not have reasonable access to the application area; and

(e) Rodent control products placed in industry identified tamper-resistant bait stations or rodenticides placed in wall voids or other rodent harborage sites that are inaccessible to humans.

(3)

(a) Each school authority shall maintain a registry of electronic mail or telephone contact numbers of parents or guardians who have requested notification prior to the application of pesticides in schools when children are present, and shall provide written notice to parents or guardians at the beginning of each school year of the existence of the registry and the process for being placed on the registry. The written notice shall be as follows: "Dear Parent or Guardian: Each school district in the Commonwealth is required to implement a program of "integrated pest management" with the primary goal of preventing and controlling pests through strategies that may include judicious use of pesticides. The application of pesticides in the school or on school grounds during times when children are present is limited by state regulation, but there may be occasions when, after consulting with a certified pesticide applicator, the school administration determines that a pesticide application is necessary when children are present in the school. As required by state regulation, we have created a registry for parents or guardians who wish to receive an electronic message or telephone call prior to the application of pesticides in the school when children are present. Please provide the school administration your email address or phone number if you wish to be placed on this registry."

(b) Notification by the school to parents or guardians on the registry shall be required if the school authority, after consultation with the certified applicator, determines that a pesticide application other than those listed in subsection (2) of this section, is necessary when children are present in the school.

(c) For pesticide applications made when children are present, the school authority shall provide the notification to persons listed on the registry at least one (1) hour prior to the making of the application.

(4) The notification required by subsection (3)(b) of this section shall include:

(a) The date and time of the pesticide application;

(b) The target pests to be treated;

(c) A description of the use of the area treated;

(d) The brand name of the pesticides applied and the pesticide application method; and

(e) A telephone number that persons requesting prior notification can use to contact the school authority for more information.

(5) A copy of the notification shall be maintained by the school authority for twenty-four (24) months after the notification is issued and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(6) The certified applicator shall only be required to provide to the school authority the information required in subsection (4)(a) to (d) of this section on an Integrated Pest Management School Acknowledgement form provided by the department. The certified applicator shall retain a copy of the completed form.

(7) The completed form required by subsection (6) of this section shall:

(a) Include the information required in subsection (4)(a) to (d) of this section; and

(b) Be signed by the school authority acknowledging that the required information was received from the certified applicator prior to the application of pesticides when children are present.

(8) A copy of the completed form shall be maintained for thirty-six (36) months by the certified applicator after it is received and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(9) The area where the point of application of a pesticide occurred shall be posted by the certified applicator regardless of the absence or presence of children.

Section 11. Branch Office Operations. Each branch office shall have a licensed manager. Any vacancy in the position of branch manager shall be filled within sixty (60) days of the occurrence of the vacancy.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

(b) "Integrated Pest Management School Acknowledgement", 2015; and

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

(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.

(28 Ky.R. 749; 1378; eff. 12-19-2001; 33 Ky.R. 889; 1607; 1794; eff. 2-2-2007; 37 Ky.R. 114; 686; eff. 9-8-2010; 42 Ky.R. 1333; 2065; eff. 2-5-2016.)