

**RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-09-02
RESTRICTED USE PESTICIDES**

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0080-09-02-.01 SCOPE.

- (1) This chapter applies to any person who buys, sells, or uses a restricted use pesticide.
- (2) Any person who buys, sells, or uses a restricted use pesticide must be licensed by the department as a commercial pest control operator, certified by the department as a certified applicator, or acting under the direct supervision of a license or certificate holder.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.02 DEFINITIONS.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2 of the Tennessee Code, and the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21 of the Tennessee Code.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act and the Tennessee Application of Pesticides Act of 1978, collectively or individually;
 - (b) Commercial applicator means a person who uses, supervises the use of, sells, or buys restricted use or general use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking its license examination;
 - (c) External training means:
 1. Training that is conducted outside of a commercial pest control operator's place of business;
 2. Training that is open to the public; or,
 3. Training that is conducted by a presenter who is not employed by the pest control operator requesting continuing education credit for the training.
 - (d) General use pesticide means a pesticide that may be purchased and used by individuals without obtaining prior certification or licensing;

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

- (e) In-house training means training that is conducted within the employer's place of business and attendance is limited to those persons employed by that employer. In-house training may include but is not limited to satellite attendance through the use of internet, computer software, or video presentations;
- (f) Reciprocity or words of similar import refer to an agreement or recognition of an agreement between the department and another state for the purpose of mutually accepting each state's certification of a certified applicator;
- (g) Restricted use pesticide dealer means an individual who is certified in the category of Pesticide Dealer and who sells or offers for sale restricted use pesticides.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.03 CERTIFICATION REQUIREMENTS.

- (1) Applicants for certification as a private applicator or commercial applicator must be 16 years of age or older and be a United States citizen or possess current proof of qualified alien status prior to receiving certification.
- (2) All certifications issued under this rule shall expire on June 30 of the third year of the certification period in which the certification was issued.
- (3) Private Applicator Certification.
 - (a) Applicants for private applicator certification from the department must successfully complete a specialized training course provided by the University of Tennessee Extension Service on the proper use of restricted use pesticides. Applicants must submit to the department a copy of the three-part form signed by the extension agent verifying completion of the training course and payment of a Tier 1 certification fee under T.C.A. § 43-1-703(f).
 - (b) Applicants for private applicator certification under reciprocity with another state must hold valid certification in the reciprocating state and must submit application to the department for a reciprocal Private Applicator card.
- (4) Commercial Applicator Certification.
 - (a) Applicants for commercial applicator certification from the department must submit a completed application to sit for a commercial certification exam in the certification category(ies) of service in which the applicator desires to engage.
 - 1. Applicants must remit with their application payment of a Tier 1 examination fee under T.C.A. §43-1-703(f) for each exam to be taken by the applicant.
 - 2. Applicants must score 70% or higher on the commercial certification exam. Individuals who score below 70% are ineligible to retake the exam for two weeks.
 - 3. Applicants who exhibit unethical behavior during the commercial certification exam shall immediately fail the exam and are ineligible to retake the exam for one year.
 - 4. An applicant who cannot take a scheduled exam due to circumstances beyond his control may reschedule the exam without payment of an additional examination fee, provided that the applicant contact the department more than

(Rule 0080-09-02-.03, continued)

48 hours prior to the previously scheduled exam. Applicants who reschedule an exam with less than 48 hours' notice shall forfeit the examination fee for the previously scheduled exam.

- (b) Applicants for commercial applicator certification under reciprocity with another state must hold valid certification in the reciprocating state. Applicants must also submit to the department an application for reciprocity and a copy of the front and back of the commercial applicator card issued by the reciprocating state.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-8-106, 43-8-113, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.04 LICENSE REQUIREMENTS.

- (1) Any person who offers or performs custom applications of pesticide as a commercial pest control operator must hold a valid pest control operator's license..
- (2) Applicants for licensure as a commercial pest control operator must, prior to sitting for the license exam, be certified as a commercial applicator in the category of service to be offered..
- (3) Applicants for licensure as a commercial pest control operator must meet all applicable requirements of the Act..
- (4) Applicants for licensure as a commercial pest control operator must remit to the department payment of a Tier 2 biennial license fee under T.C.A. §43-1-703(f) for each category license held by the applicant. Applicants for any pesticide dealer license must remit to the department payment of a Tier 2 annual license fee under T.C.A. §43-1-703(f) for each location where restricted use pesticides are sold or offered for sale at wholesale or retail.
- (5) Commercial pest control operator licenses shall expire on June 30 of the second year following their issuance. Pesticide dealer licenses shall expire on June 30 following their issuance.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-8-106, 62-21-111, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.05 CERTIFICATION CATEGORIES.

- (1) Agricultural Pest Control (C01).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and non-crop agricultural land.
 - (b) Standards of competency. Applicators must demonstrate a practical knowledge of: the crops on which the applicator may be using restricted use pesticides and the pests incident to those crops; soil and water problems; pre-harvest intervals; re-entry intervals; phytotoxicity; potential for environmental contamination; non-target injury; and community problems resulting from the use of restricted use pesticides in agricultural areas.
- (2) Forest Pest Control (C02).

(Rule 0080-09-02-.05, continued)

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in forests, forest nurseries, and forest seed producing areas.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: the types of forests, forest nurseries, and seed production in the state and the pests incident to those areas; the cyclic occurrence of certain pests and specific population dynamics that are basic to programming pesticide applications; relative biotic agents and their vulnerability to specific pesticides; control methods to minimize unintended effects of pesticide application; and proper use of specialized equipment, particularly as it may relate to meteorological factors and adjacent land use.
- (3) Ornamental and Turf Pest Control (C03).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, plants, and grasses, including but not limited to fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf courses, and athletic fields.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf; awareness of potential phytotoxicity due to a wide variety of plant material, drift, and persistence of pesticide chemicals beyond the intended period of pest control; and application methods that minimize or prevent potential hazards to humans, pets, and other animals.
- (4) Seed Treatment (C04).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides on seeds.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: types of seeds that require chemical protection against pests; seed coloration; carriers; surface active agents that influence pesticide binding; factors that may affect germination; hazards associated with handling, sorting, and mixing of treated seed; misuse of treated seed into food and feed channels; and proper disposal of unused treated seeds.
- (5) Aquatic Pest Control (C05).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in aquatic environments.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: secondary effects of restricted use pesticides, including but not limited to those effects caused by improper application rates, incorrect formulations, and faulty application; various water-use situations; potential for downstream effects; effects on plants, fish, birds, beneficial insects, and other organisms present in aquatic environments; and principles of limited-area application.
- (6) Right-of-Way Pest Control (C06).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, highways,

(Rule 0080-09-02-.05, continued)

transmission lines, drainage ditches, and the like. This category includes the control of plants, whether woody or herbaceous.

- (b) Standards of competency. Applicators must demonstrate practical knowledge of: a wide variety of environments where rights-of-way may be treated; problems with runoff, drift, and excessive foliage destruction; ability to recognize target organisms; the nature of herbicides; the need for herbicide containment within the right-of-way; and the impact of herbicide application to adjacent areas and communities.
- (7) Industrial, Institutional, Structural and Health Related Pest Control (C07).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in, on, or around food-handling establishments, human dwellings, schools, hospitals, industrial establishments, warehouses, grain elevators, and any other similar institutions, facilities, structures or adjacent areas, public or private. Schools refer to child-serving facilities, for children through 12th grade, public or private. Children are physiologically more vulnerable to pesticides. Children can spend long hours at school and therefore have an increased risk of pesticide exposure if pesticides have been applied in a manner incompatible with integrated pest management (IPM). This category also includes pesticide application for the protection of stored, processed, or manufactured products, and the control of birds, imported fire ants, or rodents.
 - (b) Standards of competency. Applicators must demonstrate a practical knowledge of: a wide variety of pests and their life cycles; types of formulations appropriate for their pest control; methods of application to avoid contamination of food, damage or contamination of habitat, and exposure of people and pets; specific factors that may lead to a hazardous condition, including continuous exposure; and environmental conditions related to the activity of this category. In addition, applicators should be knowledgeable about the components in an Integrated Pest Management (IPM) program in child-serving facilities. Integrated Pest Management is a process for achieving long-term, environmentally sound, pest suppression by using a variety of technologies and management practices including preventing pest populations using sanitation, exclusion and habitat modification and applying pesticides in the least hazardous manner only when needed to correct verified problems to manage targeted pests effectively and economically.
- (8) Public Health Pest Control (C08).
 - (a) Description. This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described under this rule.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: vector-disease transmission as it relates to and influences application programs; pests incident to this field; understanding of the pests' life cycles and habitats necessary to develop a control strategy; a great variety of environments ranging from streams to conditions found in buildings; and nonchemical control methods such as sanitation, waste disposal, and drainage.
- (9) Limited Herbicide Applicator.
 - (a) Description. This category includes persons who incidentally apply herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments

(Rule 0080-09-02-.05, continued)

adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders, and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging.

- (b) Standards of competency. Applicators must demonstrate practical knowledge of: safety in handling, mixing, and applying pesticides; environmental hazards in using pesticides; calculations; calibrations; and label comprehension.

(10) Demonstration, Research, and Regulatory Pest Control (C10).

- (a) Description. This category includes state, federal, and other governmental employees, including but not limited to extension specialists and county agents, who recommend, use, or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals, including but not limited to commercial representatives demonstrating pesticide products and application methods, who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides. This category also includes persons, including but not limited to state, federal, commercial, and other agents, who use or supervise the use of general or restricted use pesticides in the conduct of field research.

- (b) Standards of competency. Persons demonstrating the safe and effective use of pesticides to other applicators and the public must meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge is required regarding problems, pests, and population levels occurring in each demonstration situation. Persons in this category must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment by restricted use pesticides used in suppression and eradication programs. Persons in this category shall also demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Required knowledge shall extend beyond that required by the persons' immediate duties because their services are frequently used in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(11) Wood Preservatives (C11).

- (a) Description. Applicators in this category must demonstrate practical knowledge of, and shall meet, the specific standards required for categories (C01) through (C07) that are applicable to the applicator's particular activity, including the use or supervision of use of general or restricted use pesticides.
- (b) Standards of competency. Applicators must demonstrate practical and technical knowledge of: wood preservatives; the type of pests controlled by the preservatives; methods of applying preservatives to wood; safety equipment necessary to protect persons involved in application of the preservatives; and the after effects of applications as they pertain to plants, humans, pets, and other domestic animals.

(12) Pesticide Dealers (C12).

- (a) Description. For each location where restricted use pesticides are sold at wholesale or retail, a person licensed as a pesticide dealer must be employed at the location. The licensed pesticide dealer shall bear responsibility for the actions of every person at the

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location who sells restricted use pesticides. Persons holding a Pesticide Dealer certification are permitted to purchase and use restricted use pesticides. However, a Pesticide Dealer certification does not permit custom applications of pesticides.

- (b) Standards of competency. Pesticide dealers must demonstrate practical knowledge necessary to advise applicators and the public on the safe and effective use of pesticides. Pesticide dealers must meet comprehensive standards reflecting a broad knowledge of pesticide uses. Pesticide dealers must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.
- (13) Antifouling Marine Paint (C13).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use antifouling marine paints.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: tributyltin product labels and understanding of why the products are classified as restricted use pesticides; health and environmental hazards associated with the use of antifouling paints; application, testing equipment, and personal protective equipment associated with antifouling paints; and proper storage, handling, transport, and disposal of antifouling paints, including disposal of excess material, waste, and containers.
- (14) Microbial Pest Control (C14).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: antimicrobial agents in the control of bacteria, fungi, algae, and viruses; health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus; application, testing equipment, and personal protective equipment associated with the use of antimicrobial agents; and proper storage, handling, transport, and disposal of antimicrobial agents, including disposal of excess material, waste, and containers.
- (15) Reserved.
- (16) Sewer Line Treatment (C16).
- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: metam-sodium products for root control; health and environmental hazards associated with metam-sodium in sewer lines and wastewater treatment facilities; personal protective equipment associated with use of metam-sodium products; and proper storage, handling, transport, spills cleanup, and waste disposal of metam-sodium products.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.06 RECERTIFICATION REQUIREMENTS.

- (1) Recertification of any private applicator or commercial applicator shall expire on June 30 of every third year.
- (2) Certified applicators must notify the department in writing of any change to their name or address within 30 days after the change takes place.
- (3) Private Applicator. To obtain recertification, a private applicator must successfully complete an instructional course offered by the University of Tennessee Extension Service in the last calendar year during which the applicator's certification is valid.
- (4) Commercial Applicator.
 - (a) To obtain recertification, a commercial applicator must obtain every three years the required number of continuing education units in his certification category. In case of extenuating circumstances, such as a medical condition or military service, applicators may receive in the department's discretion an extension in which to accrue required continued education units.
 - (b) Continuing Education Units (CEU).
 1. The following number of CEUs are required for recertification in each respective certification category:
 - (i) Agricultural Pest Control (C01): 18 CEUs;
 - (ii) Forest Pest Control (C02): 12 CEUs;
 - (iii) Ornamental and Turf Pest Control (C03): 18 CEUs;
 - (iv) Seed Treatment (C04): 12 CEUs;
 - (v) Aquatic Pest Control (C05): 12 CEUs;
 - (vi) Right-of-Way Pest Control (C06): 18 CEUs;
 - (vii) Industrial, Institutional, Structural and Health Related Pest Control (C07): 30 CEUs;
 - (viii) Public Health Pest Control (C08): 18 CEUs;
 - (ix) Limited Herbicide Applicator: requirements equivalent to certification under Ornamental and Turf Pest Control (C03), 18 CEUs;
 - (x) Demonstration, Research, and Regulatory Pest Control (C10): 18 CEUs;
 - (xi) Wood Preservatives (C11): 9 CEUs;
 - (xii) Pesticide Dealers (C12): 18 CEUs;
 - (xiii) Antifouling Marine Paint (C13): 9 CEUs;
 - (xiv) Microbial Pest Control (C14): 9 CEUs;
 - (xv) Reserved;

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- (xvi) Sewer Line Treatment (C16): 9 CEUs.
 - 2. The number of CEUs required for recertification shall be prorated for persons obtaining original certification during a recertification period.
 - 3. An applicator shall accrue one CEU for each hour of attendance at CEU approved training on certification related topics.
 - 4. No more than 50% of the required number of CEUs may be accrued at in-house training.
 - 5. No more than 75% of the required number of CEUs may be accrued at any one external training.
 - 6. CEUs may be awarded for electronic media used in conjunction with a presentation as part of in-house training.
 - 7. Applications for approval of CEU training must be filed with the department at least 30 days prior to the date of the training. Applications submitted by educational institutions must be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).
 - 8. All attendance rosters for CEU approved training must be submitted to the department no later than 30 days after the training. A violation of this requirement is grounds for denial of any future application for approval of CEU training by the sponsor or facilitator.
 - 9. Representatives of the department and PSEP employees may attend any CEU approved training without incurring registration fees.
- (c) An applicator who does not accrue the required number of CEUs prior to expiration of his certification may be subject to regulatory enforcement measures by the Department and must, in order to maintain valid certification, successfully retake the exam in his certification category.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.07 RECORDKEEPING REQUIREMENTS OF PRIVATE APPLICATORS.

As state standards for pesticide recordkeeping requirements of private applicators using restricted use pesticides, the department adopts by reference, as if fully stated herein, those federal standards for recordkeeping on restricted use pesticides by certified applicators, compiled at 7 C.F.R. 110, as last amended and codified January 1, 2006.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.08 USE OF RESTRICTED USE PESTICIDES.

- (1) No person shall use or buy a restricted use pesticide unless certified as a private applicator or a commercial applicator or unless licensed as a commercial pest control operator.
- (2) No person shall act as a private applicator unless he is certified by the department as a private applicator.

(Rule 0080-09-02-.08, continued)

- (3) No person shall act as a commercial applicator unless he is certified by the department as a commercial applicator. A commercial applicator may only act within the certification category for which he is certified.
- (4) No person shall act as a commercial pest control operator unless he is licensed by the department as a commercial pest control operator. A commercial pest control operator may only act within the category for which he is licensed.
- (5) Pesticide dealers.
 - (a) No one shall sell restricted use pesticides at wholesale or retail unless he is certified in the category of Pesticide Dealers (C12) and has obtained a Restricted Use Pesticide Dealer license.
 - (b) A licensed pesticide dealer shall not sell or allow the sale of a restricted use pesticide to any person who is not certified or licensed by the department for the purchase of restricted use pesticides.
 - (c) Pesticide dealers shall submit with their applications for license renewal all yearly sales records of restricted use pesticides sold, including for each sale: the date of the sale, the name and quantity of the pesticide purchased, the name of the purchaser, the purchaser's certification or license number, and the expiration date of the purchaser's license, certificate, or private applicator card.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.09 EXEMPTIONS.

Persons licensed pursuant to T.C.A. §43-8-301 et. seq. are exempt from the requirements of this chapter for aerial applications of pesticides.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.10 VIOLATIONS.

- (1) Violations of the Act or this chapter are actionable against any person when committed by either the person or his agent.
- (2) Each violation of the Act or this chapter is grounds for issuance of a stop sale, stop use, or removal order against the violator, in addition to or in lieu of any other lawful disciplinary action.
- (3) In addition to all other requirements of the Act and this chapter, each occurrence of the following shall constitute a separate violation of this chapter:
 - (a) Label violations. Any violation of federal standards for labeling requirements for pesticides, compiled at 40 C.F.R. Part 156, which the department adopts by reference as if fully stated herein.
 - (b) Formulation violations.
 1. Chemical deficiencies;

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2. Net weight inaccuracies;
 3. Chemical contamination;
 4. Over-formulated.
- (c) Use violations.
1. Use or disposal of a pesticide in a manner inconsistent with its labeling;
 2. Violation of stop sale, use or removal order.
- (d) Records, books, documentation violations.
1. Failure to maintain as required by the Act;
 2. Failure to produce for inspection.
- (e) Product registration violations. Failure to have products registered.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.11 PESTICIDE MANAGEMENT AND DISPOSAL.

The department adopts by reference, as if fully stated herein, those federal standards for pesticide management and disposal and standards for pesticide containment structures, compiled at 40 C.F.R. 165, Subparts A and E, as either subpart may be amended from time to time.

Authority: T.C.A. §§ 4-3-203, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.

0080-09-02-.12 PESTICIDE PRODUCT REGISTRATION FEE.

The fee for each pesticide product registration shall be a Tier 5 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-8-104, 43-8-106, and 62-21-118. **Administrative History:** Original rule filed April 1, 2016; effective June 30, 2016.