

PEST CONTROL RULES

The following Rules have been promulgated and adopted by the State Plant Board under the authority of the Arkansas Pest Control Law, Act 488 of 1975 as amended, (Ark. Code §§17-37-101 *et seq*), and are administered by the Arkansas Department of Agriculture (Department).

Classifications:

The following classifications have been established for applicator licensing and certification purposes.

I. Commercial Applicator License (Licensed Operator):

A. Structural Pest Control

1. Termite and Other (Wood Destroying) Structural Pest Control
2. Household Pest and Rodent Control
3. General Fumigation

B. Ornamental Pest Control

4. Tree and Turf Pest Control
5. Weed Control
6. Golf Course Pest Control

II. Noncommercial Applicator Certificate (see restrictions in Section VIII):

A. Structural Pest Control

7. Noncommercial Pest Control
8. Noncommercial Fumigation

B. Ornamental Pest Control

9. Noncommercial Tree & Turf Pest Control
10. Noncommercial Golf Course Pest Control

SECTION I RULES APPLYING TO ALL LICENSEES AND APPLICATORS

- LICENSE HOLDERS (business owner, firm, corporation, etc.)
- COMMERCIAL APPLICATORS (Licensed Operator)
- NONCOMMERCIAL APPLICATORS
- REGISTERED AGENTS

1. Applying for Examinations (Commercial Applicators and Noncommercial Applicators):

All applicants must submit an application to the Department on forms furnished by the Department at least 5 working days prior to the examinations. Processing of each application must be completed before the examinations are given. All applicants must be a minimum age of eighteen (18).

2. Examination Dates:

Online exam registration in classifications 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 is available after completion of application and payment of proctoring fees.

Written examinations in classifications 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 will be given onsite at the request of the applicant after submitting an exam application provided by the Department and the

required exam fee. Upon receipt of the exam application and required fee, the applicant will be scheduled to take the exam within 10 business days.

3. Applying for License or certificate:

(a) License Holder (Commercial Classifications 1, 2, 3, 4, 5, or 6):

Applicants must be a minimum age of eighteen (18). Applicants must submit an application to the Department on forms provided by the Commercial Pest Control Program. The license holder must themselves be or shall employ and maintain at least one commercial applicator licensed for each classification of pest control service work provided by the license holder. The commercial applicators shall maintain direct supervision over all pest control services provided by the license holders business. No more than 30 registered agents shall be supervised by one (1) commercial applicator. The license holder's license shall be issued in the name of the Pest Control firm. Prior to the issuance of the license for Classifications 1, 2, or 3 the license holder shall provide the Department with copies of all required surety bond and/or insurance policies. The surety bond and insurance shall be issued to the license holder and the license holder shall guarantee that the insurance and bond policies cover all pest control service work performed by the license holder's commercial applicators and/or registered agents.

(b) Commercial Applicator (Licensed Operator):

Applicants must be a minimum age of eighteen (18). After passing the appropriate examinations (1, 2, 3, 4, 5, or 6), all commercial applicators must submit an application and the required fees to the Department on forms provided by the Pest Control Program. Commercial applicator applicants must themselves be or must be employed by a license holder prior to the issuance of an applicator's license. A commercial applicator's license shall become invalid in the event they cease to be themselves a license holder or employed by a license holder. The applicators license shall remain invalid until such time the applicator re-establishes employment with a license holder or acquires a license holder's license.

(c) Noncommercial Applicator:

Applicants must be a minimum age of eighteen (18). After passing the appropriate examinations (7, 8, 9 or 10), all noncommercial applicators must submit an application and the required fees to the Department on forms provided by the Pest Control Program.

4. Fees:

The following fees have been established to carry out the provisions of Arkansas Pest Control Law.

License Holder License (Must be renewed prior to June 30 annually):

- 0 – 30 Registered agents.....\$100.00
- 31 – 60 Registered agents.....\$250.00
- 61 or more Registered agents\$500.00

Commercial Applicator License (Must be renewed prior to June 30 annually):

- Applicators First Classification \$150.00
- Each Additional Classification.....\$100.00
- Maximum per Applicator.....\$300.00

Agent Registration (Must be renewed prior to June 30 annually):

- Initial registration.....Exam Fee
- Annual renewal.....\$30.00

Noncommercial Applicator Certificate (Must be renewed prior to June 30 annually):

- Per Applicator\$70.00

Commercial and Noncommercial Applicator Examination:

- Each classification.....\$100.00

Registered Agent Examination:

- Per Exam.....\$30.00

Reporting:

- Each building on which a Class 1 structural pest contract is issued\$5.00
- Late fee (30 or more days after due date)\$10.00
- Each first 5 building treated by new Class 1 licensee.....\$20.00

Inspection (Each building treated for Class 1 structural pest found not in compliance):

- First Notice\$50.00
- Second Notice\$100.00
- Third Notice\$500.00

5. Agent Training, Examination, and Registration:

Registered agents must be a minimum age of eighteen (18). License holders of classifications 1, 2, 3, 4, 5 or 6 shall register with the Department all individuals employed by them for the purpose of performing pest control services, including those employed for solicitation as their agent. Clerical staff are excluded. Each agent shall be registered only in the classification of pest control for which the license holder is licensed to perform. Agent trainees must be on-the-job trained by the license holder within 20 working days of their employment. In accordance with 40 CFR 171.201(e)(2), license holders should verify safety training requirements before RUPs are applied by the agent trainee. Within 45 working days of their employment and after the completion of the on-the-job training the agent trainee must take an exam administered by the Department, or a representative appointed by the Department. Registered agent exams will be given on Wednesday of each week at a time and location designated by the Department. In the event of technological advances that allow for changes in the administration of the exams, circumstances beyond the control of the Department occur, or any of the designated dates occur on a day, when State offices are closed, the Director of the State Plant Board may designate alternate dates for the examinations. Until registered, and only during the initial 45 day on the job training and examination period, the agent trainee may apply pesticides only in the physical presence of a commercial applicator or registered agent. Agent applicants failing to pass the exam are prohibited from performing pest control service work until such time the agent applicant passes the exam. If at any time an employee, other than a commercial applicator, registered agent, or agent trainee undergoing the initial 45 days of on the job training and examination preparation, is found handling pesticides or performing pesticide applications the license holder and/or the licensed operator/s will be subject to enforcement action as per the Arkansas State Plant Board Pest Control Enforcement Response Rules– Penalty Matrix – Violation #9 – beginning at the 3rd level of enforcement.

Training:

Forty hours of verifiable on-the-job training, performed under the direct supervision, direction and control of a qualified trainer. A qualified trainer shall be a commercial applicator or agent with at least one year of experience in the pest control industry or other individual approved by the- **Department**. During the application of pesticides a qualified trainer must be physically present on the job site. On-the-job training must be documented by the license holder on an agent training verification form provided by the Department. The information shall include the names of the trainee and trainer, the dates of training, and the total hours worked for each date of the training.

Examination and Registration:

The Department shall provide an agent examination and registration application form. The license holder shall complete the form and submit it to the Pest Control Program with a copy of the agent trainee's on-the-job training verification form and the examination fee. Examination and registration forms submitted without the on-the-job verification and/or the examination fee will be considered incomplete and the trainee will not be eligible to take the examination. Complete agent exam and registration applications must be submitted to the Department at least 5 working days prior to the examination. Upon passing the exam agents will be considered registered. Official agent registration identification cards will be provided to the license holder within 30 days of the exam date.

Registered agents who cease to be employed by a license holder must receive 40 hours of on-the-job training before being eligible for re-registration. Agents not registered for more than 24 months will lose eligibility for re-registration and must complete the initial training and examination requirements to be re-registered. Registered agents under the minimum age of 18 are restricted from performing pesticide applications or being in sole possession of pesticides. License holders and commercial applicators found in violation of allowing employees of their pest control firm under the age of 18 perform pesticide applications or being in sole possession of pesticides will be subject to enforcement action as per the Arkansas State Plant Board Pest Control Enforcement Response Rules – Penalty Matrix – Violation # 2 (C).

Continuing Education:

To maintain registration, agents shall be kept abreast of pest control technology and receive a minimum of 6 hours of continuing education each year. Continuing education may be achieved by completing a license holder's in-house training program or attendance of Department approved seminars sponsored by the various associations, manufactures or suppliers affiliated with the pest control industry or the cooperative extension service. Agent annual continuing education training shall consist of:

- Applicator safety (PPE, label instructions, human and/or non-target species exposure, safe storage and transportation of pesticides, etc.) – 2 hours
- Integrated Pest Management (IPM) – 1 hour
- Application equipment maintenance and methods of application – 1 hour
- Environmental concerns (container disposal, spill clean-up, drift, etc.) – 1 hour
- Laws and Rules – 1 hour

License holders shall document in-house training on forms provided by the Department. Ongoing education provided to agents by attending approved seminars, training, or schools shall be documented with appropriate forms issued by the training's sponsors to the attendees. Records of training must be kept by the license holder for as long as the agent is employed. Such records shall be available for review by the Department during normal business hours. At any time should the Department determine that training requirements have not been met, the license holder may be subject to enforcement action in accordance with the Arkansas State Plant Board Pest Control Enforcement Response Rules – Penalty Matrix – Violation # 7.

6. Hearings - Invalidation of Licenses, Certificates, and/or Agent Registrations:

Any person or firm who is refused a license, certificate, or agent registration or whose license, certificate, or agent registration is being considered for invalidation, may secure a hearing before the Pest Control Committee before the final State Plant Board action is taken. This Committee shall consist of the State Plant Board member who represents the Head of the Department of Entomology and Plant Pathology, University of Arkansas, who shall act as the Chairman, and the State Plant Board member who represents the Arkansas Pest Management Industry. Remaining committee members shall be appointed by the Chairman of the State Plant Board. This Committee may hold hearings regarding licenses, certificates, and agent registrations to take testimony and gather evidence regarding the same. Testimony, evidence and the committee's recommendation shall be made available to the State Plant Board for consideration and final action.

7. Keeping Abreast of Technology:

Each commercial applicator and noncommercial applicator shall keep himself / herself abreast of changing pest control technology to assure a continuing level of competence and ability to use pesticides safely and properly. The completion of a Cooperative Extension Service approved pest control training, conference, seminar, etc. every third year shall be considered adequate to satisfy this requirement. An appropriate form shall be filed with the Department as proof of attendance. Any applicator failing to meet this provision shall be reexamined or lose the license or certificate.

Recertification:

A. Maintenance of continued competency

1. Certification expiration. In order for a certified applicator's certification to continue without interruption, the certified applicator must be recertified under this section before the expiration of their current certification.

a. Each commercial applicator and noncommercial certification shall expire three years after issuance, unless the applicator is recertified in accordance with this section.

B. Process for recertification

1. Continuing education programs. Commercial and noncommercial applicators may be found eligible for recertification upon attending a University of Arkansas Cooperative Extension Service approved pest control program.

a. Quantity, content, and quality. In order for a continuing education program to count towards recertification, the content must be sufficient to ensure the applicator continues to demonstrate the level of competency required by 40 CFR171.103 for commercial and noncommercial applicators. This may include a pest control training, conference, seminar, etc.

noncommercial

i. To count towards recertification, programs and agendas must include all of the following:

(1) Safety – labeling, protective gear, pesticide handling, first aid, toxicity, symptoms of poisoning, etc.

(2) Integrated Pest Management (IPM) – pest identification, biology, scouting/inspecting, alternative methods of control (non- pesticide, baits, etc.)

(3) Application equipment and/or methods of application – types of equipment, different methods of application, calibration, and equipment precautions, etc.

(4) Environmental concerns – waste/container disposal, clean-up, ground/surface water protection, drift (if applicable), and wildlife protection (if applicable).

(5) Laws and rules – updates on pertinent laws and rules certification/recertification requirements, etc., as appropriate.

b. Approval by the certifying authority. The University of Arkansas Cooperative Extension Service must approve of a program's content before it may count towards applicator recertification. The program agenda or syllabus for any programs offered outside of the University of Arkansas Cooperative Extension Service must be submitted for review before credit for attending will count towards recertification by the Arkansas Department of Agriculture.

c. Verification of applicator course completion. In order to qualify for recertification, an appropriate form shall be filed with the Plant Board as proof of attendance.

C. Any applicator failing to meet this provision shall be reexamined or lose the license or certificate.

8. Standards for Licensing Pesticide Applicators:

State Plant Board standards for the licensing and certification of commercial applicators and noncommercial applicators shall be the same as the standards set forth in Section 171.4 thru 171.6 of the Code of Federal Regulations 40 CFR part 171 written pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Said sections are as follows: Section 171.4, Standards for Certification of Commercial Applicators; Section 171.5 Standards for Certification of Private Applicators, and Section 171.6 Standards for Supervision of Non-Certified Applicators by Certified Private and Commercial Applicators.

9. Office Operations:

On forms provided by the Department, license holders in classifications 1, 2, 3, 4, 5 or 6 shall register the physical address of each office from which they will engage in the practice of pest control service. An office is any building or similar structure where normal business activity might occur including any and all locations (excluding service vehicles) where pesticide products are stored and/or distributed.

In addition, the license holder shall keep pesticide records for two years. The records must include the following:

- The name and address of the person for whom the restricted use pesticide was applied.
- The location of the restricted use pesticide application.
- The size of the area treated.
- The crop, commodity, stored product, or site to which the restricted use pesticide was applied.
- The time and date of the restricted use pesticide application.
- The brand or product name of the restricted use pesticide applied. The EPA registration number of the restricted use pesticide applied.
- The total amount of the restricted use pesticide applied per location per application.

The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

- Records required under § 171.201(e).

10. Clarification:

The following rules are promulgated to clarify the State Plant Board's intent relative to certain sections of the Pest Control law.

Ark. Code § 17-37-102. Definitions:

(1) Agent - An agent is an individual employed by a license holder. Agent's registration will be issued upon the written request by a license holder on forms prescribed by the Department only in the name of the person who is an employee of the license holder making the application.

Individuals for whom an agent's registration is requested shall not be an employee, owner operator, franchise holder or independent contractor of any pest control service other than that of the license holder. An agent may be terminated by the license holder at any time. All contractual agreements for pest control services executed between agents and customers are the property of the license holder.

(9) License Holder - A commercial applicators license shall not be required of License Holders who employ licensed commercial applicators (Licensed Operators) and who do not themselves use or supervise the use of restricted use pesticides.

(10) Licensed operator (Commercial applicator) - a person who has fully qualified and has passed the board's written examination and has in force a valid license from the board to engage in the work indicated in the license. The person shall also have met the requirements of and be eligible for certification under the Federal Insecticide, Fungicide, and Rodenticide Act and state law as a

commercial applicator;

Ark. Code § 17-37-206 License Application:

(f) Persons holding valid licenses issued under the authority of the Pest Control Law whose licenses become subject to renewal, shall be examined and found to meet the Standards for Licensing and Certification of Pesticide Applicators set forth in Sections 171.4 thru 171.6 of the Code of Federal Regulations, 40 CFR Part 171, pursuant to FIFRA, as amended.

Ark. Code § 17-37-216 & 17-37-217:

Refusal to issue a license, certificate, or agent registration. Grounds for invalidation or non-renewal of a license, certificate, or agent registration.

In addition to invalidation and denial, this section shall also be considered as providing for the suspension of a license, certificate, or agent registration. Items (1) thru (11) shall be considered as grounds for suspension as well as denial or invalidation of a license, certificate, or agent registration. In addition, the use of a pesticide inconsistent with its labeling shall also be considered grounds for denial, suspension or invalidation of a license, certificate, or agent registration.

Ark. Code § 17-37-202 (b) Exemption:

Shall provide for the use of general use pesticides only, during the period of time a pest control company may operate without a commercial applicator (licensed operator).

Ark. Code § 17-37-203 Exemptions:

The exemptions stated in 17-37-203 shall apply only to persons who use general use pesticides.

Ark. Code § 17-37-103 Penalties:

Items (1) thru (11) of Ark. Code §17-37-217 shall be considered violations of the Pest Control Law and its rules and shall be subject to the penalties stated in Ark. Code § 17-37-103 and the Pest Control Enforcement Response Rules as stated in Section IX.

Ark. Code § 17-37-106 Prior Rules and Regulations:

This section does not repeal Act 389 of 1975, Ark. Code §§ 20-20-202 *et. seq.*, or act 410 of 1975 Ark. Code §§ 2-16-402 *et. seq.*, or any part of either act.

SECTION II

RULES FOR HOLDERS AND APPLICATORS OF A TERMITE AND OTHER STRUCTURAL PESTS LICENSE (CLASSIFICATION ONE)

1. Contracts:

All license holders in Classification One shall issue a signed contract, along with a complete plot or diagram showing the location of visible damage, active or previous infestation and an outline of the work to be carried out on each job performed for the prevention, control or eradication of termites and other structural pests, including soil pre-treatments and letters of clearance. Effective July 1, 2013 all plots or diagrams (graphs) shall have imprinted, on the face, a legend or key containing symbols (of the license holders choice) clearly identifying, at a minimum, the following conditions:

- Termite activity

- Termite damage
- Powder Post Beetles
- Powder Post Beetle damage

Said contracts must guarantee the performance of work for a period of not less than one year and clearly state, on the face of the contract, the name and EPA Registration number of the chemical used, if repairs of damage are included or if the license holder's liability is limited to re-treatment only for the control of termites under the guarantee. License holders must submit a legible copy of all contracts to the Department for review prior to their issuance. When issuing a letter of clearance on a building that is already under a current contract by the license holder writing the letter of clearance, for a real estate transaction, a new contract, including diagram, shall be issued in the name of the new buyer, guaranteeing the performance of work for one year from the date the letter of clearance is issued. The new contract requirement shall not apply in cases where the letter of clearance is issued on buildings already under contract and that are being refinanced, provided the license holder holding the contract issues the letter of clearance. Letters of clearance, written on buildings under contract by the license holder, must show the original date of treatment.

The number of contracts providing a re-treatment only guarantee for the control of termites that a license holder may issue per fiscal year (July 1 to June 30) shall not exceed 20% of the number of buildings for which the license holder reported and paid reporting fees during the previous fiscal year (July 1 to June 30).

Renewals:

Each time a contract is renewed the license holder shall assume responsibility for bringing substandard conditions in the building under contract up to standards, except on prior approved substandard buildings. **This shall also apply to all new additions to the building unless the license holder shows in bold print, on the renewal notice, that the renewal does not cover new additions to the building.** When a license holder elects not to renew a viable contract, the owner must be notified by return receipt requested certified mail, at least 30 days prior to the contract expiration date, of the intent not to renew the contract. Notification by the license holder of non-renewal does not apply when the contract is terminated for non-payment of the renewal fee or canceled by the consumer; **provided the consumer was notified a renewal fee was due.**

2. Reporting – Responsibility:

License holders shall give complete information required by Ark. Code § 17-37-221 of the Pest Control Law by filing monthly reports. This information shall be filed with the Board even though it is understood that payment for the service will be made at a later date. In all cases where there is a question as to whether a job is completed, the criterion for a completed job shall be payment in part or in full. Each license holder shall be responsible for, or shall guarantee for at least one year, all representations, provisions, declarations, work, or services called for by the contract, the diagram of the property, or by Letters of Clearance.

3. Meeting Minimum Standards:

A. Each building on which a contract is issued for the prevention, control or eradication of termites shall meet the Minimum Standards outlined in Section III A, III B, III D or III E of these rules, unless unusual structural or physical conditions render the correction of certain conditions to portions of the building impractical.

1. In such cases, an exclusion of certain minimum treating standards shall be made on forms supplied by the Department. Provided the remainder of the structure is treated to meet all remaining Minimum Standards, requests for exclusion of certain minimum treating standards shall be made on forms supplied by the Department.

2. Each request for exclusion of certain minimum treating standards shall contain all property owner and pest control operator information and all information must be provided or the request will be considered incomplete and may not be processed.

3. Each request for exclusion must clearly state which treatment standard is to be excluded.

4. An inspection fee of \$50.00 shall be assessed for each application submitted.

5. Department staff may contact property owners and discuss exclusion application as staff feels situation warrants. Should Department staff determine, through direct communication, that the property owner is not fully informed and in agreement with the type and quality of work to be performed under the exclusion agreement, approval to exclude the requested treatment standard will be denied.

6. The approval/denial decision will be made within two (2) working days from the date of receipt of the request. If a request for exclusion of certain minimum treating standards is approved, a form with a notification of approval will be returned to the Pest Control Operator. The Pest Control Operator shall sign the form, secure the signature of the Property Owner, and date of signing. The signed and dated form shall be considered an attachment of the Contract for Control of Termites issued on the subject property and shall be submitted with a copy of the contract and graph to the property owner and reported in the copies sent to the Department.

7. The contract, issued on the building for which the Exclusion of Certain Minimum Treating Standards has been approved, shall clearly state that minimum requirements for Structural Pest Control Work have not been fulfilled and reference the form as being a part of the contract. Contracts for which an Exclusion has been approved but that do not clearly reference the exclusion form as a part of the contract, the exclusion approval shall be considered invalid and the operator shall be issued a Report of Sub-Standard Termite Treatment (Pink Slip) for the specific substandard conditions.

8. The use of any document or agreement, for the purpose of issuing a substandard termite treatment contract, other than a pre-approved Exclusion of Certain Minimum Treating Standards form, issued by the Department, is strictly prohibited. Enforcement action shall be taken against all license holders and licensed operators found attempting to use such documents and the violation shall be considered Misrepresentation for the Purpose of Deceiving or Defrauding and subject to the fourth (4th) level of enforcement as per Arkansas State Plant Board Pest Control Enforcement Response Rules and Appendix A of Circular 6.

B. The maximum number of Exclusions of Certain Minimum Treating Standards approvals available to any license holder in any license year (currently July 1 to June 30) shall be limited to a number equal to twenty percent (20%) of the number of buildings covered with a termite protection plan for which the license holder reported and paid reporting fees during the previous license year.

4. Letters of Clearance / Wood Destroying Insect and Organisms Report:

Any statements as to the condition of a building pertaining to termites or other wood destroying insects or decay fungi (Rot), other than a bid or proposal for treatment, shall be considered a Letter of Clearance. Letters of Clearance shall not be issued by any person, business, or entity without first acquiring a commercial license to perform Classification 1 (Termite and Other Structural Pest Control) work. Letters of Clearance issued in connection with a real estate transaction shall be made on a form officially adopted by the State Department. This form shall be the current Wood Destroying Insect Infestation Inspection Report form prescribed by HUD. Letters of clearance must be accompanied by a signed contract providing a guarantee of at least one year and a graph or diagram showing, if present, the location of active or inactive wood destroying insect infestations and visible damage. Structures upon which letters of clearance are written must meet all conditions stated in the letter as well as all the minimum requirements for structural pest work in Sections IIIA, IIIB, and IIID or III E. For additional responsibility on Letters of Clearance see Section II, Item I, Contracts.

Areas which are inaccessible for inspection must be clearly described in the letter. Inaccessible areas in crawl spaces must be made accessible as per minimum treating standards or excluded by an Exclusion of Minimum Treating Standards attachment to the contract.

When a Letter of clearance is issued on a building for which previous substandard prior approval, waiver of the minimum treating requirements, or exclusion of certain minimum treating standards has been given, the license holder shall notify the new owner on the Clearance Letter and Contract that specified prior approved substandard conditions exist in the structure. When this is done the license holder shall not be issued a Report of Substandard Termite Treatment on the specified

substandard conditions.

5. Reporting and Re-inspection Fees - Correcting Substandard Work:

A. Each license holder shall remit to the Department, by the 15th day of each month, an inspection fee of \$5.00 for each building on which a contract has been issued during the previous calendar month, excluding new contracts issued with letters of clearance on buildings under current contracts. The \$5.00 reporting fee shall be paid on each building treated regardless of how many buildings are covered by a single contract. If for any reason the payment of this fee is delayed more than 30 days the fee shall be doubled. The Department, through its authorized representatives, reserves the right to inspect any or all buildings on which a contract has been issued to determine compliance with the Pest Control Law and Rules made there-under.

B. The Department will send the license holder a notice after Department inspections of buildings covered by a contract, including a renewal of a contract and/or Letter of Clearance, if:

1. The building is found infested with termites or other structural pests for which prevention, control or eradication has been contracted, or

2. If the Plant Board's minimum standards (Sections IIIA, IIIB, IIID and IIIE), other than those excepted in the contract and given prior approval, a waiver of certain minimum treating standards, or an exclusion of certain minimum treating standards by the Department, have not been met or fulfilled, or

3. Misrepresentations have been made to the owner to that effect.

B. The license holder shall, within 15 days, retreat the building when necessary and otherwise bring the building into compliance with the law and these rules and shall submit to the Department along with the report of correction an appropriate re-inspection fee. If the necessary corrections cannot be made in 15 days due to circumstances beyond the license holder's control, additional time may be requested from the Department.

C. When a notice has not been returned by the due date and the license holder has not contacted the Department concerning the notice, a re-inspection of the building will be made. Another notice will be issued if the building has not been brought up to standard at the time of the re-inspection. Should subsequent re-inspections reveal the building still not in compliance, a third and final notice will be issued following the same procedure outlined above. Should re-inspections of the third and final notice reveal the building is still not in compliance the license holder will be subject to enforcement action according to Arkansas State Plant Board Pest Control Enforcement Response Rules. The fees for each notice are to pay for the cost of inspections and payment does not preclude invalidation of a license by the State Plant Board should this be warranted.

6. Inspection of First Five Properties Treated:

Within 90 days of issuance of a first termite and other structural pest license to a commercial applicator, the new commercial applicator shall submit a report on their first five termite treatments including all required forms and information. The report shall be accompanied by an inspection fee of \$20.00 for each job and the regular \$5.00 reporting fee will be waived on these first five jobs. The new commercial applicator must be present and directly perform and/or supervise the first five termite treatments. Department representatives will inspect the jobs to assess the applicator's performance and compliance with the law and rules. New construction (pre-treat) applications must be monitored by Department representatives. The new commercial applicator must notify the Commercial Pest Control Program 48 hours prior to all first five pre-treat applications.

An extension of the 90-day due date may be granted upon written request submitted to the Department. If a commercial applicator does not complete and report their first five jobs in 90 days or upon the extended due date, or if inspection shows that the applicator is apparently not qualified, a notification that no more work is to be performed will be issued and the Department will consider revoking the applicator's license. A hearing before the State Plant Board's Pest Control Committee may be requested by filing a certified letter with the Department within 20 days of receipt of the notice.

7. Supervision:

A commercial applicator (licensed operator) shall be considered in charge of all pest control work and/or services performed. Commercial applicators shall be readily available and shall maintain a supervisory position over all pest control agents performing work in the classification or classifications for which the commercial applicator is licensed. No more than 30 registered agents shall be supervised by any one commercial applicator. The license holder shall assign supervisory charge of commercial applicators over registered technicians. If evidence shows a registered technician commits a violation of Arkansas Pest Control Law or Rules, the license holder shall be required to identify the technicians supervising commercial applicator. If evidence shows a commercial applicator and/or applicators are no longer in charge of the license holder's pest control operation, the commercial applicator (and/or applicators) and license holder's licenses shall be deemed invalid in accordance with the provisions of the Pest Control Law.

8. Notice that all Jobs are to be inspected:

Any time that an unreasonably high (15% or more) number of jobs of a license holder upon inspection are found not in compliance with the law and these rules, the Pest Control Committee, after reviewing the record of the licensee in question, may instruct Department inspectors to inspect all jobs reported during the previous year. In such a case the license holder will be notified by registered or certified letter (return receipt requested) that their work has not been satisfactory. The Department will withhold any further inspections for 60 days following the receipt of this notice. After the 60-day delay, all jobs reported the previous year, not including those previously checked and in compliance, will be inspected. The time period covered will be the year previous to the date that the above notice is received by the license holder.

9. Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 1: Termite and Other Structural Pest Control. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(7) [Industrial, institutional, and structural pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g).

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

SECTION III A
MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON
EXISTING STRUCTURES

1. Access opening:

An opening, at least 14 inches high and 16 inches wide, shall be provided to permit inspection under all parts of the building.

2. Chemicals:

The term chemical, when used hereafter, shall apply to pesticides used for the control or prevention of termites, powder-post beetles, wood destroying fungi, and other wood destroying organisms. The name of the chemical used and the product's EPA Registration number shall be clearly stated on the face of each contract and clearly identified on all re-treatment records. This requirement shall also apply to Reports of Substandard Termite Treatment when additional chemical applications are required or performed. The pesticides are described in Section III C-materials.

3. Debris and Form Boards:

(a) All wood including stumps, roots, and other cellulose debris which can be caught by a rake on the surface of the ground must be removed from underneath the building. Large stumps that are impractical to remove may be trenched, drilled, or rodded and treated provided they are not in contact with or within 5 inches of the building's substructure timbers.

(b) All unnecessary form boards and grade stakes must be removed from underneath and around the outside of the building. Grade stakes embedded in the foundation footing which are impractical to remove should be cut off flush with the concrete and treated as per label directions with chemical.

4. Clearance Under Buildings:

All soil within 12 inches of bottom edge of floor joists or within 5 inches of sub-sills must be removed.

Note: Scuttle holes, 14 inches high and 16 inches wide, must be provided under drop sills, plumbing, air ducts, or any other similar obstructions. All areas under the building must be made accessible for complete inspection.

5. Shelter Tubes:

Brush all termite shelter tubes from piers, walls, sills, joists, sub-floors, pipes, and other parts of the building.

6. Piers and Stiff-legs:

Stiff-legs, wood piers, or other wood supports must have concrete or metal-capped bases extending at least 3 inches above the ground.

7. Wood on Concrete Floors:

Wood parts such as posts, door frames, partitions, stair-carriages, stiff-legs, posts, or other wood supports that have been attacked by termites working up thru concrete, or are set down into concrete may be cut off and placed on concrete or metal bases and/or treated as per label directions around such supports.

8. Wood Steps:

Wood steps must be treated with approved chemicals according to the label directions.

9. Pipes:

Pipes must be treated with approved chemicals according to the label directions.

10. Replacements / Exclusion of Existing Damage:

A. Wood substantially weakened by termites, powder-post beetles or decay fungi (rot) should be replaced. Replacements may be made by the license holder or the property owner, or both. Replacements made by the license holder exceeding two thousand dollars (\$2,000.00) must be performed by a licensed contractor. Replacement of damage caused by termites or powder-post beetles for which the operator is not responsible must be specifically excluded in writing by:

1. Describing the excluded replacements in the contract and stating therein that they are not to be made by the license holder;
2. Showing their location on the diagram of the structure and;
3. Noting that the replacement of un-infested hidden damage (that which cannot be seen by thorough visible inspection without defacing the property), which is not covered by (1) and (2)

and which was caused by an infestation occurring prior to the operator's first treatment of the property or the issuance of a letter of clearance, shall not be the responsibility of the license holder.

B. The license holder shall be required to replace substantially weakened wood damaged by termites on buildings covered by a contract, providing a guarantee for retreatment and replacement of termite damage, when inspectors find active termites associated with the damaged wood and/ or visible damage not excluded as required in paragraph A.

C. Replacement of wood weakened by decay fungi (rot) shall not be the license holder's responsibility, unless they have entered into an agreement to control this pest.

11. Outside Grade: (See Figure 1)

A. Wood Construction.

Top of foundation wall and all exterior wood, such as siding and framing, must be at least 3 inches above outside grade. To lower grade, soil next to wall must be removed to necessary depth and treated with approved chemicals according to the label directions.

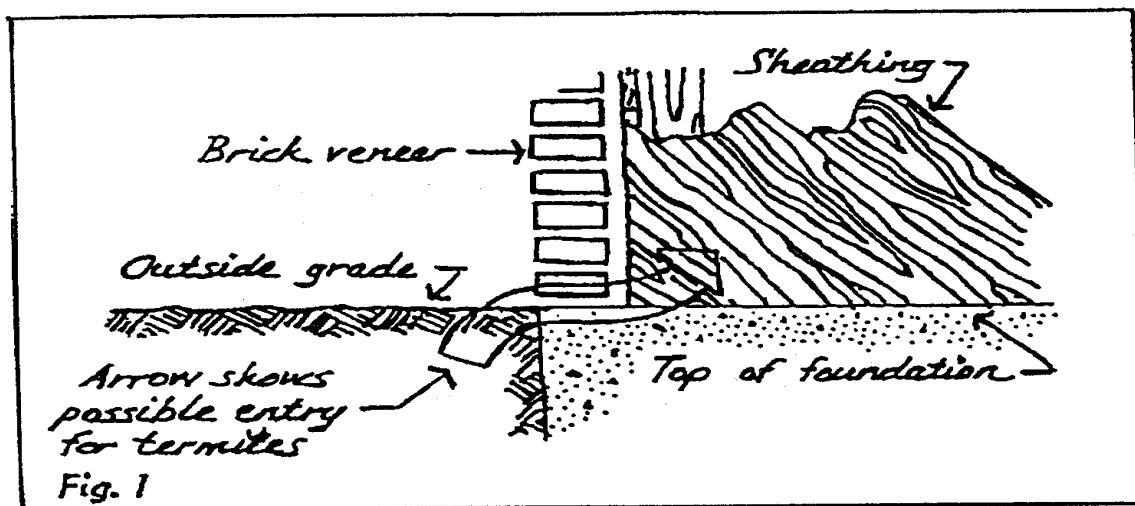
B. Masonry Veneer Construction.

Soil against masonry veneer must be treated with approved chemicals according to the label directions.

FIGURE 1 EXPLAINS 11.

In this drawing, the top of the foundation is level with the outside grade. This is a hazardous condition for two reasons:

- (1) Wood at or near ground level is often damp, a condition favorable to termites;
- (2) Termites can easily enter from the outside, unseen, by going thru cracks in the first mortar joint and then into the sheathing. Unless the outside grade is at least 3 inches below the wood parts of the house (including the siding on a frame house), it must be treated as described in Section 11.



12. Skirting and Lattice Work:

Skirting and Lattice Work should rest on solid concrete or cemented brick extending at least 3 inches above the outside grade, unless suspended, in which case there should be at least 3 inches clearance above grade. Contact must be broken between the building and any lattice which may rest

on or in the soil.

Exception: Skirting and lattice work outside the perimeter of a buildings foundation, attached to a wood porch or deck, need not be serviced to provide 3 inches of clearance above the outside grade. These items must be treated with approved chemicals according to the label directions.

13. Steps, Porches, Ground Slabs and Similar Structures:

A. Structures which are even with, or above the sill line, must be:

Drilled and treated at intervals specified by label directions at the juncture of the structure and foundation or wall. If the label directions are not specific, the intervals at which the operator drills to achieve adequate barriers shall be stated on the graph. In such cases if the maximum intervals are not stated on the graph the operator will be required to drill and treat the structures at a maximum of 18 inch intervals. If the structure is long-rodged, the route must be shown on the diagram of the building;

B. Structures below the sill line:

1. Veneer construction, must be treated with approved chemicals according to the label directions.

2. Frame construction, in which the structure is within 3 inches of the wood, must be treated with approved chemicals according to the label directions. If the structure is more than 3 inches below the wood no treatment is required unless an infestation is associated with the structure, or otherwise specified by the label directions.

14. Stucco:

(a) Wood supports for stucco must be at least 6 inches above outside ground level, or 4 inches above the level of ground under an adjacent slab.

(b) Where stucco extends to or below grade, the soil must be treated with approved chemicals according to the label directions. This is in addition to ground treatment under building (see 15).

15. Ground Treatment Under the Building:

The inside of foundation wall and around all pipes, chimneys, and piers must be treated with approved chemical according to the label directions.

16. Ground Treatment Outside Buildings:

The outside of foundation walls must be treated with approved chemicals according to the label directions.

17. Chemical Treatment of Masonry:

Treatment with approved chemicals shall be in accordance with label directions as follows to foundation walls, piers, and chimneys.

(a) To all cracks in concrete.

(b) To mortar joints, cracks, and voids in the horizontal layer of masonry (stone, brick, concrete blocks, and tiles) which is adjacent to the treated ground at the bottom of the trench.

(c) To voids between walls, as in brick veneer and stucco construction.

NOTE 1: When the foundation wall is of hollow masonry blocks and the blocks are not capped with

metal or solid concrete, each void should be drilled and injected with chemical unless specified otherwise by the label directions. This should be done even though there is no visible sign of infestation.

NOTE 2: When footing is of solid concrete, with no cracks, and trenches on both sides of wall extend down to it, drilling and injection of mortar joints in wall is ordinarily not necessary.

NOTE 3: Items 15, 16, and 17 do not permit spot treatment of dwellings. The license holder is held responsible for the entire structure on one family dwelling units. Commercial, industrial and institutional buildings may, however, be spot treated at the license holder's option. The license holder's responsibility in such cases shall be limited to retreatment and repair of the area spot treated, provided the area is shown on the graph, described in the contract and understood by the property owner before the contract is signed.

18. Powder-Post Beetles:

If powder-post beetles are not to be treated or covered by the contract, the owner must be so informed in writing on the initial contract. Treatment, if made, should be applied to all wood showing signs of infestation. This can be done by spraying, brushing, or mopping as per label directions onto wood surfaces any pesticide approved for use in powder-post beetle control as described in Section IIIC-Materials. Two or more applications must usually be made at intervals to achieve control. Special formulations are required for treating flooring or furniture to avoid damage to the finish.

19. Slab Construction:

Slab construction shall meet all of the foregoing minimum requirements except as outlined in paragraphs 1, 3(a), 4, 9, and 15. Treatments should be made when swarms occur or damage is found, or as a preventive measure. Treatment under the slab is accomplished by drilling holes in the slab or foundation through which chemical can be applied in accordance with label directions to establish a barrier in the soil. Long-rodging can sometimes be accomplished without drilling. Brick and stone veneer on slab construction is treated by drilling through the veneer and injecting the void between the veneer and the slab with chemical. Brick and stone veneer shall be treated with approved chemicals according to the label directions. If the label directions require drilling and treating and the maximum interval requirements are not specific, the intervals at which the operator drills to achieve adequate barriers shall be stated on the graph. In such cases if the maximum intervals are not stated on the graph the operator will be required to drill and treat at a maximum of 18 inch intervals.

NOTE: On structures which are part slab and part crawl space, appropriate minimum requirements shall be met on each part.

20. Foam Treatment for Concrete Slab and Masonry Veneer:

Treatment is accomplished by applying the chemical according to the label directions.

21. Foam Treatment for Crawl Space:

Treatment is accomplished by applying the chemical according to the label directions.

NOTE: All contracts and graphs must specify when foam treatment is used and clearly state the name and the EPA Registration number of the product used.

SECTION IIIB

MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON NEW CONSTRUCTION (PRE-TREAT)

Pre-treat: New buildings which are treated for the control of termites before, during and/or at the conclusion of construction. Pretreatments shall be made as directed by one or a combination of the following treatment methods

1. Chemical soil barrier treatments:

Crawl space construction: approved chemical at concentration rate and volume must be applied according to label directions to establish a vertical barrier in the soil adjacent to both sides of the foundation, around piers, pipes and other construction elements that would permit termites to infest the building from the ground. Horizontal chemical barriers must be established by applying chemical at the concentration rate and volume specified by the label directions to all soil surfaces to be covered by steps, porches, garage floors, carport slabs, patios or other structures adjoining the building. In addition to the establishment of both vertical and horizontal chemical barriers in the soil the building must meet items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11a of the minimum requirements given for existing structures in Section IIIA.

Slab Construction: approved chemical at concentration rate and volume must be applied according to label directions to establish a horizontal chemical barrier in the soil under all parts of the building, adjoining steps, carports, garage floors, patios, porches, or other structures adjoining the building. Chemical must be applied at concentration rate and volume according to the label directions in the soil adjacent to the foundation wall around the outside of the building to establish a vertical barrier in the soil. In addition to the establishment of horizontal and vertical chemical barriers in the soil, the building must meet items 3b, 5, 7, 8, 10, and 11a of the minimum requirements given for existing structures in Section III A.

Foam Treatments: Treatment is accomplished by applying the chemical as specified by the label directions.

NOTE: Contracts and graphs must specify when foam treatment is used and clearly state the name and the EPA Registration number of the product used.

NOTE: Buildings which are part slab and part crawl space must meet appropriate minimum requirements on each part.

2. Above ground wood treatment methods:

Approved chemical must be applied to the wood according to the label directions, concentration rates and volumes. In addition crawl space buildings must meet items 1, 3, 4, 5, 6, 10, and 11a of the minimum requirements for existing structures in Section III A.

Bait treatment methods:

When baits are used for pre-treatment of a new building, all requirements in Section III E must be met.

Note: Contracts and graphs for all pre-treats must state the name and the EPA Registration number of the material used. All materials used must comply with the requirements for materials given in Section III C.

SECTION III C

MATERIALS

Any pesticide or combination of pesticides approved by the United States Environmental Protection Agency, registered with the Department, and labeled for the prevention or control of termites, powder-post beetles, wood-rotting fungi, or other wood destroying organisms may be used to treat structural pests provided that the pesticides are used in accordance with the label directions.

SECTION III D MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON WOOD DECKS AND WOOD PATIOS ON EXISTING AND NEW CONSTRUCTION

1. Chemical Treatment to wood decks and wood patios (an open platform adjoining a building, not covered by a roof and/or supported by and enclosed masonry foundation):

Approved chemicals shall be applied or reapplied according to label directions around and under wood decks and wood patios to control subterranean termites.

2. New contracts, Contract Transfers, Clearance Letters and Soil Treatment Certificate Responsibility:

Wood decks and/or wood patios are INCLUDED as part of the contract, contract transfer or clearance letter issued on an attached structure UNLESS the contract, contract transfer or clearance letter shows in BOLD PRINT that existing termite damage, or damage that occurs in the future, is NOT to be replaced on wood decks and/or wood patios.

3. Replacements:

- A. License holders shall not be required to replace damaged wood caused by termites on wood decks or wood patios treated, even if infested with live subterranean termites, provided that Section III D, subsection 2 above has been complied with.
- B. License holders shall not be required to replace damaged wood caused by weather related rot or other rots on wood decks or wood patios.
- C. License holders shall be required to replace damage caused by termites in the treated structure adjacent to the wood deck or wood patio even though the infestation causing such damage originates in the wood deck or patio after the initial treatment to the property.

CLARIFICATION:

- A. License holders electing to issue contracts for future termite damage replacement on wood decks and wood patios shall be held equally responsible as for any other part of a building.
- B. License holders failing to comply with Section III D, subsection 2 above shall be required to make replacements as needed on wood decks and wood patios.
- C. Wood decks and wood patios NOT connected to a treated building are excluded from treatment or repair requirements, unless they are specifically covered by a contract for treatment and damage replacement.

SECTION III E

MINIMUM REQUIREMENTS FOR TERMITE WORK WHEN USING BAITS AS THE METHOD OF CONTROL

1. Contracts:

In addition to requirements specified in SECTION II item 1, contracts must specifically state the initial number of bait stations that are to be installed and the frequency upon which an inspection of the bait placements or monitoring stations are to be performed. The diagram must show the location of each bait station.

2. Treatment:

The materials, baits, monitoring stations, and matrixes shall be applied and maintained according to label directions and schedule specified in the contract.

3. Replacements / Exclusion of Existing Damage:

A. Wood substantially weakened by termites, powder-post beetles or decay fungi (rot) should be replaced. Replacements may be made by the license holder or the property owner, or both. Replacements made by the license holder exceeding two thousand dollars (\$2,000.00) shall be performed by a licensed contractor. Replacements of damage caused by termites or powder-post beetles for which the license holder is not responsible must be specifically excluded in writing by:

- (1) Describing the excluded replacements in the contract and stating therein that they are not to be made by the operator.
- (2) Showing their location on the diagram of the structure and;
- (3) Noting that the replacement of un-infested hidden damage (that which cannot be seen by thorough visible inspection without defacing the property), which is not covered by (1) and (2) which was caused by an infestation occurring prior to the operator's first treatment of the property or the issuance of a letter of clearance, shall not be the responsibility of the operator.

B. The license holder shall be required to replace substantially weakened wood damaged by termites on buildings covered by a contract providing a guarantee for retreatment and replacement of termite damage, when inspectors find active termites associated with the damaged wood and / or visible damage not excluded as required in paragraph A.

C. Replacement of wood weakened by decay fungi (rot) shall not be the license holder's responsibility, unless they have entered into an agreement to control this pest.

SECTION IV HOUSEHOLD PEST AND RODENT CONTROL (CLASSIFICATION 2)

Household Pest and Rodent Control shall consist of the control of any mammal, bird, arthropod, reptile or other organism that may infest or invade a home or other buildings or the immediate area around or under these homes or buildings or other areas, other than wood-damaging or destroying insects, fungi or organisms. Holders of a license in this classification shall not be restricted in performing Household Pest and Rodent Control services.

The Department will investigate complaints against license holders and monitor each operator's work from time to time, and may invalidate a license for fraud, misrepresentation, failure to carry out contracts, use of improper methods or materials, or other reasons specified in the law.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 2: Household Pest and Rodent Control. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(7) [Industrial, institutional, and structural pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g).

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

Supervision:

A commercial applicator (licensed operator) shall be considered in charge of all pest control work and/or services performed. Commercial applicators shall be readily available and shall maintain a supervisory position over all pest control agents performing work in the classification or classifications for which the commercial applicator is licensed. No more than 30 registered agents shall be supervised by any one commercial applicator. The license holder shall assign supervisory charge of commercial applicators over registered technicians. If evidence shows a registered technician commits a violation of Arkansas Pest Control Law or Rules the license holder shall be required to identify the technicians supervising commercial applicator. If evidence shows a commercial applicator and/or applicators are no longer in charge of the license holder's pest control operation, the commercial applicator (and/or applicators) and license holder's licenses shall be deemed invalid in accordance with the provisions of the Pest Control Law.

SECTION V
TREE AND TURF PEST CONTROL (CLASSIFICATION 4)
WEED CONTROL (CLASSIFICATION 5)
GOLF COURSE PEST CONTROL (CLASSIFICATION 6)

The Department will investigate complaints against license holders and may cancel license for fraud, misrepresentation, failure to carry out promises, use of improper methods or materials, or other reasons specified in the law.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 4: Ornamental, Tree, and Turf Pest Control, Classification 5: Weed Control, and Classification 6: Golf Course Pest Control. The materials within these manuals will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(3) [Ornamental and turf pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g).

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

Supervision:

A commercial applicator (licensed operator) shall be considered in charge of all pest control work and/or services performed. Commercial applicators shall be readily available and shall maintain a supervisory position over all pest control agents performing work in the classification or classifications for which the commercial applicator is licensed. No more than 30 registered agents shall be supervised by any one commercial applicator. The license holder shall assign supervisory charge of commercial applicators over registered technicians. If evidence shows a registered technician commits a violation of Arkansas Pest Control Law or Rules the license holder shall be required to identify the technicians supervising commercial applicator. If evidence shows a commercial applicator and/or applicators are no longer in charge of the license holder's pest control operation, the commercial applicator (and/or applicators) and license holder's licenses shall be deemed invalid in accordance with the provisions of the Pest Control Law.

SECTION VI GENERAL FUMIGATION (CLASSIFICATION 3)

Holders of a license in this category shall not be restricted in performing fumigation services.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 3: General Fumigation. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(14) [Non-soil fumigation], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g). Specifically, this manual will be updated to address: Problems and mistakes resulting in direct exposure to fumigants (40 C.F.R. § 171.103(d)(14)(ii)(B)); Steps if applicator experiences sensory irritation (40 C.F.R. § 171.103(d)(14)(ii)(E)); Buffer zones, buffer zone monitoring, and who may be in a buffer zone (40 C.F.R. § 171.103(d)(14)(ii)(G)); How fumigants disperse in the application zone (40 C.F.R. § 171.103(d)(14)(iii)(D)); Factors that influence gaseous movement through the area being fumigated and into the air (40 C.F.R. § 171.103(d)(14)(v)(B)); Importance of proper application rate and timing (40 C.F.R. § 171.103(d)(14)(v)(E)); Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping (40 C.F.R. § 171.103(d)(14)(vi)(D)), and; fumigant management plans and post-application summaries (40 C.F.R. § 171.103(d)(14)(vii)).

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

Supervision:

A commercial applicator (licensed operator) shall be considered in charge of all pest control work and/or services performed. Commercial applicators shall be readily available and shall maintain a supervisory position over all pest control agents performing work in the classification or classifications for which the commercial applicator is licensed. No more than 30 registered agents shall be supervised by any one commercial applicator. The license holder shall assign supervisory charge of commercial applicators over registered technicians. If evidence shows a registered technician commits a violation of Arkansas Pest Control Law or Rules the license holder shall be required to identify the technicians supervising commercial applicator. If evidence shows a commercial applicator and/or applicators are no longer in charge of the license holder's pest control operation, the commercial applicator (and/or applicators) and license holder's licenses shall be deemed invalid in accordance with the provisions of the Pest Control Law.

SECTION VII
NONCOMMERCIAL STRUCTURAL PEST CONTROL
(CLASSIFICATION 7)
NONCOMMERCIAL FUMIGATION (CLASSIFICATION 8)

Noncommercial Structural Pest Control (Classification 7):

A Noncommercial Applicator Certificate (not a license) shall be issued in this classification to owners or employees of government, institutions, businesses, companies, or corporations for the purpose of performing pest control work (including wood destroying insects and organisms) on the premises of property owned or managed by themselves or their employer. Noncommercial applicators shall be restricted to pest control work at addresses owned or under the direct management of their employer as stated on the Noncommercial Applicator Certificate.

Noncommercial applicators shall be restricted from issuing Letters of Clearance, wood destroying insect inspection reports, or termite contracts. Any person issuing any type of termite inspection related reports or contracts or performing pest control work for more than one government agency, institution, business, company, or corporation shall qualify and be licensed, bonded, and insured under Classification 1 (Termite and Other Structural Pest) and/or Classification 2 (Household Pest and Rodent Control) rather than in this classification. The business, companies, or corporations and the noncommercial applicator shall be jointly and severally responsible for the proper use of pesticides by the employee. Noncommercial applicators must take special precautions when performing pesticide applications in areas such as for food preparation, areas occupied by tenants, pets, workers, etc. All pesticide product label directions must be strictly followed. The Noncommercial Applicator Certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR Code Annotated §17-37-101 as amended or these rules.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 7: Food Manufacturing, Processing and Storage Pest Control. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(7) [Industrial, institutional, and structural pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g). The title of the manual will be updated to reflect the current category name for Classification 7.

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

Noncommercial Fumigation (Classification 8):

A Noncommercial Applicator Certificate (not a license) shall be issued in this classification to owners or employees of, primarily wholesale food manufacturing, processing and storing businesses, companies, or corporations for the purpose of performing fumigation pest control work on the premises of property owned or managed by themselves or their employer. Said noncommercial applicators shall be restricted to fumigation at addresses owned or under the direct management of their employer as stated on the Noncommercial Applicators Certificate. Any person performing fumigation for more than one business, company, or corporation shall qualify and be licensed under Classification 3 (General Fumigation) rather than in this classification. The business, company, or corporation and the noncommercial applicator shall be jointly and severally responsible for the proper use of fumigants. The Noncommercial Applicator certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR Code Annotated §17-37-101 as amended or these rules.

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 8: Food Related Fumigation. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(14) [Non-soil fumigation], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g). Specifically, this manual will be updated to address: Problems and mistakes resulting in direct exposure to fumigants (40 C.F.R. § 171.103(d)(14)(ii)(B)); Steps if applicator experiences sensory irritation(171.103(d)(14)(ii)(E)); Buffer zones, buffer zone monitoring, and who may be in a buffer zone (40 C.F.R. § 171.103(d)(14)(ii)(G)); How fumigants disperse in the application zone (40 C.F.R. § 171.103(d)(14)(iii)(D)); Basic techniques for calibrating application equipment (40 C.F.R. § 171.103(d)(14)(iv)(G)); Factors that influence gaseous movement through the area being fumigated and into the air (40 C.F.R. § 171.103(d)(14)(v)(B)); Importance of proper application rate and timing (171.103(d)(14)(v)(E)); Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping 40 C.F.R. § (171.103(d)(14)(vi)(D)), and; Fumigant management plans and post-application summaries (40 C.F.R. § 171.103(d)(14)(vii)). The title of the manual will be updated to reflect the current category name for Classification 8.

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

SECTION VIII

NONCOMMERCIAL TREE AND TURF PEST CONTROL (CLASSIFICATION 9)

NONCOMMERCIAL GOLF COURSE PEST CONTROL (CLASSIFICATION 10)

Noncommercial Tree and Turf Pest Control (Classification 9):

A Noncommercial Applicator Certificate (not a license) shall be issued to owners or employees of government, institutions, businesses, companies, or corporations for the purpose of performing tree and turf pest control work on the premises of property owned by themselves or their employer. Said noncommercial applicators shall be restricted to pest control work at the address or addresses stated on the Noncommercial Applicator Certificate. A Noncommercial Applicator shall not perform pest control services for more than one governmental agency, institution, business, company, or corporation without having fully qualified and become licensed as a Commercial Applicator under Classifications 4 (Tree and Turf Pest Control) or Classification 5 (Weed Control). The agency, institution, business, company, or corporation and the noncommercial applicator shall be jointly and severally responsible for the proper use of pesticides by the employee. The Noncommercial Applicator Certificate shall be subject to denial, suspension, or invalidation for any or all grounds stated in AR code Annotated §17-37-101 et seq. as amended or these rules.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 9: Ornamental, Tree, and Turf Pest Control – Noncommercial Applicator. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(3) [Ornamental and turf pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g). The title of the manual will be updated to reflect the current category name for Classification 9.

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

Noncommercial Golf Course Pest Control (Classification 10):

A Noncommercial Applicator Certificate (not a license) shall be issued in this classification to employees of the owner or owners of specific golf courses. Said employees shall be restricted to pest control work on courses owned or under control of said golf course owner or owners. The golf course owner or owners and the employee shall be jointly and severally responsible for the proper use of pesticides. A Noncommercial Applicator shall not perform pest control service for more than one golf course without having fully qualified and become licensed as a Commercial Applicator under Classification 6 (Golf Course Pest Control). The Noncommercial Applicator Certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR code Annotated § 17-37-101 et seq. as amended or these rules.

Training manuals for examinations:

The University of Arkansas Cooperative Extension Service has developed a training manual for Classification 10: Golf Course Pest Control – Noncommercial Applicator. The materials within this manual will be updated as needed to meet or exceed the competency requirements of 40 C.F.R. § 171.103(d)(3) [Ornamental and turf pest control], to meet the requirements of changing technology, and ensure a continuing level of competence and ability to use pesticides safely and properly, pursuant to Ark. Code § 17-37-206(g).

In addition, applicants must also pass the basic core examination as per the federal competency standard 40 C.F.R. § 171.103(d)(7). The training materials and examinations will be updated as the federal standards are updated.

**SECTION IX
ARKANSAS STATE PLANT BOARD PEST CONTROL
ENFORCEMENT RESPONSE RULES**

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X. STATEMENT OF PURPOSE

Pesticides are valuable to Arkansas' agricultural production and the protection of man and his possessions from insects, rodents, weeds, plant diseases, and other pests. It is essential to the public health and welfare that pesticides be used properly to prevent adverse effects on man and the environment.

The purpose of the rules is to provide a fair and consistent mechanism by which compliance with the Arkansas Pest Control Law, as amended, and the rules written pursuant thereto can be achieved.

XI. DEFINITIONS (As used in this policy)

- A. **Base Civil Penalty:** The midpoint of a civil penalty range. [Example: The civil penalty range for failure to report structural pest control work (1st level of enforcement) is \$200.00 to \$400.00. The base penalty is \$300.00]
- B. **Case Development Review Panel:** An internal committee of staff including: 1. The Regulatory Services Section Manager or his/her designee, 2. The Plant Industries Division Director or his/her designee, and 3. The Secretary of the Department of Agriculture or his/ her designee. The Case Development Review Panel will carefully review all case documentation to insure completeness and to insure that the recommended enforcement action is appropriate.
- C. **Level of Enforcement:** The category by which a violative incident is considered a first, second, third, or fourth offense.

For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation for which a previous enforcement action has been taken by the State Plant Board. The previous violation/violations must have occurred within the past 3 years.
- D. **Minor Violation:** A violative incident which does not involve human health, safety, or endanger the environment; or other incidents of non-compliance which do not create a competitive disadvantage for licensees in full compliance.
- E. **Major Violation:** A violative incident which affects human health, safety, or the environment; or other incidents of non-compliance which create a competitive advantage over licensees in full compliance; or a history of repetitive violative incidents. Any violation consisting of a label violation that involves potential human exposure may result in elevation of the violation to the fourth level of enforcement.

*In no case shall the failure to meet minimum requirements for structural pest work (Sections III A, III B, III C, and III D) adopted under the authority of Ar. Code 17-37-105, except those which require a termiticide application, be considered a violation and subject to a civil penalty.

- F. **Respondent:** A person charged with a violation of the Arkansas Pest Control Law as amended, and the rules written pursuant thereto.

XII. LEGAL AUTHORITY

- A. "Arkansas Pest Control Law" Ark. Code §§ 17-37-101 *et. seq.* and Rules.
- B. "The Arkansas Plant Act" Ark. Code §§ 2-16-203 *et. seq.* and Rules.

XIII. ENFORCEMENT ACTIONS

Under the preceding Arkansas Codes, the State Plant Board has several options for enforcement action. These are:

- A. **Warning Letter:** For minor, 1st level of enforcement violations, the Board or Board Staff will issue a warning letter. The letter will cite the specific violation. The letter will also identify any corrective action that may be needed and notify the respondent that further violations will result in more severe enforcement action.
- B. **Informal Agreement:** When a violation has been alleged, the respondent has the option of an informal hearing or a board/committee hearing. The purpose of the informal hearing is to resolve a complaint or incident. A hearing officer will meet jointly with the respondent and Department Staff. The group will seek consensus on an appropriate enforcement action for recommendation to the State Plant Board. Enforcement action based on the Penalty Matrix (Appendix A) will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. The State Plant Board acts on all recommendations resulting from the informal hearing.
- C. **Board/Committee Hearing:** If the respondent chooses to bypass the informal agreement process, or if an agreement cannot be reached during the informal hearing, a hearing will be held by the Pest Control Committee of the State Plant Board. Enforcement action will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. Following the Committee hearing, a written Finding of Fact, Conclusion of Law, and recommendation will be submitted to the State Plant Board. The State Plant Board will act on all recommendations of the Committee.
- D. **Suspension / revocation / non-renewal of a license or registration:**
The suspension, revocation, or non-renewal of a license by the State Plant Board may be in addition to, or in conjunction with, a civil penalty fine.
- E. **Injunction:** The State Plant Board may apply for an injunction to any court of competent jurisdiction for violations of the Arkansas Pest Control Law. The court, upon hearing and for cause, has the option of temporary or permanent injunction restraining any person from violating any provisions of The Arkansas Pest Control Law and rules.
- F. **Referral to Prosecuting Attorney:** The State Plant Board has the option of referring violations of the Arkansas Pest Control Law to the prosecuting attorney.
- G. **Referral to EPA:** On behalf of the State Plant Board, the Department will negotiate cases of referral with EPA to determine the appropriate action.

XIV. INCIDENT INVESTIGATION

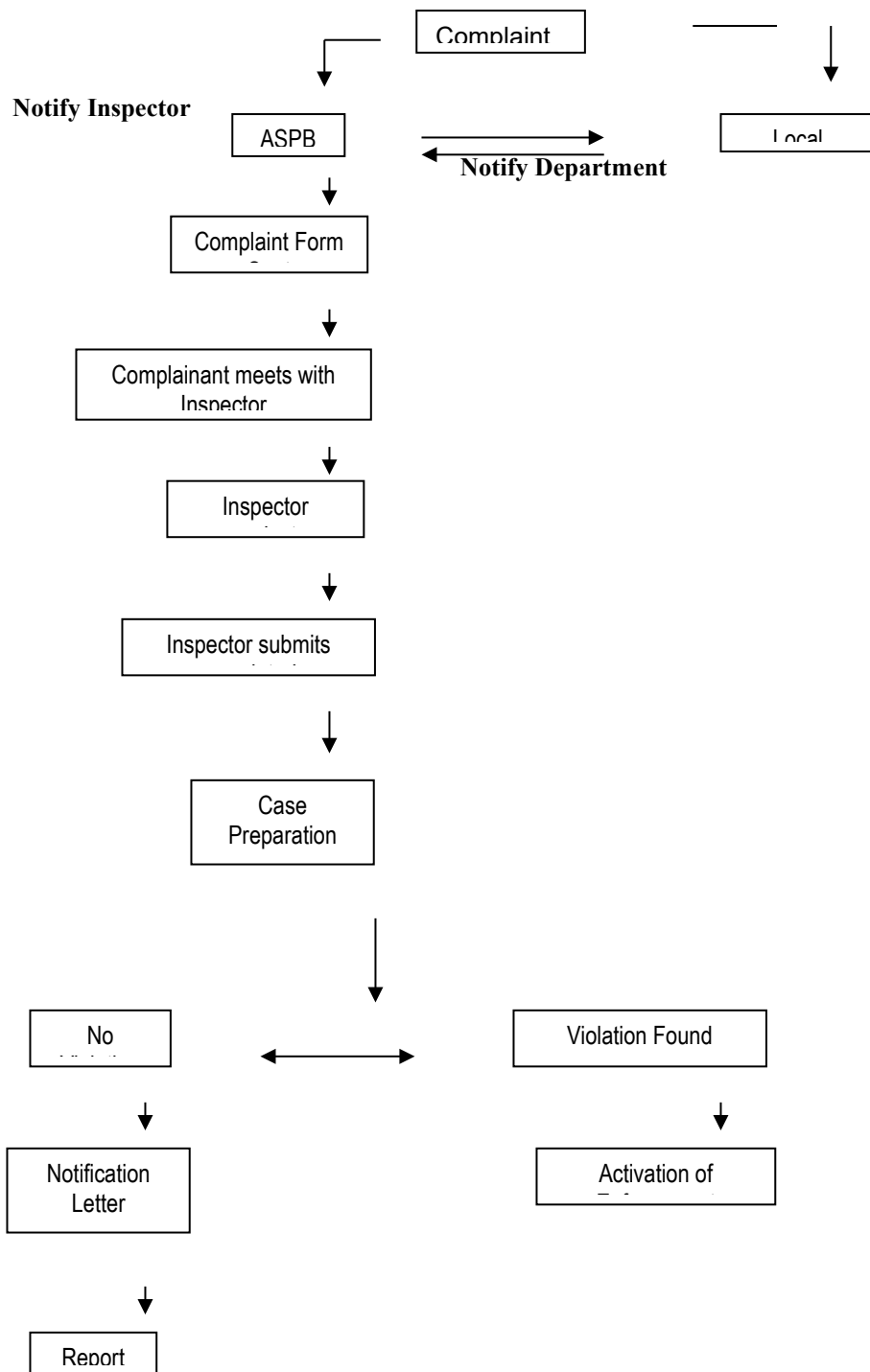
An incident investigation will be initiated when:

- A. Routine compliance monitoring indicates a violation has occurred.
- B. A formal complaint that an alleged violative incident has occurred (Filing of a written form by a complainant). In cases of apparent immediate endangerment to health or the environment, the written notification may be waived, and the investigation of the alleged incident will begin immediately).
- C. Possible human exposure to pesticides is assigned priority status.

The processing sequence for an incident investigation is outlined in Figure I.

FIGURE I

Processing Sequence



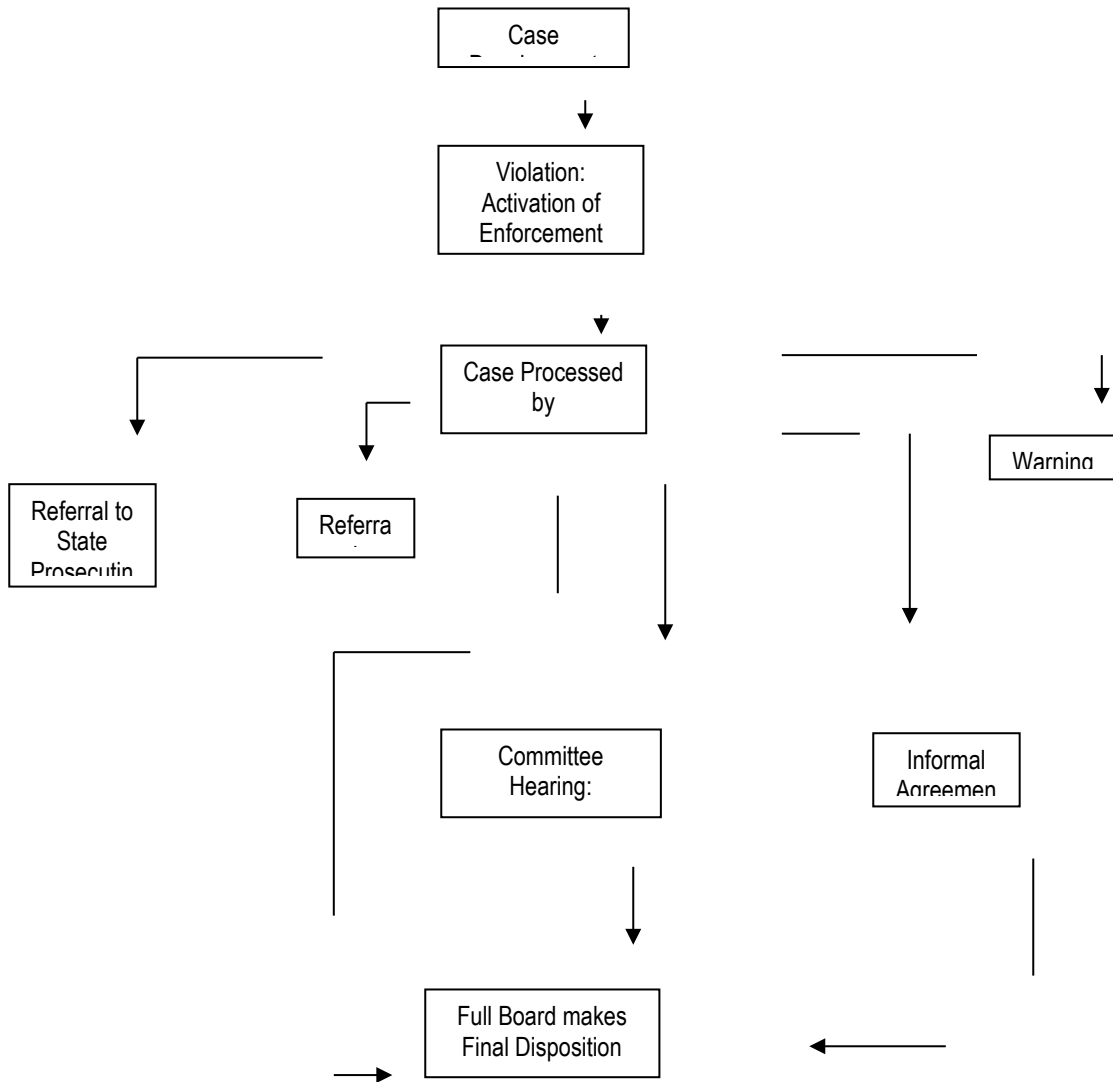
XV. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

An apparent violation of law and/or rules must be documented to initiate an enforcement action.

Documentation must conform to the requirements of the Department.

The sequence of events within the enforcement response policy is as follows:

FIGURE II



XVI. INTERNAL REVIEW

The Case Development Panel will carefully review all documentation and records to determine:

- A. That apparent violation / violations have occurred.
- B. Whether the apparent violation or violations are **Minor** and/or **Major** violations.
- C. The correct level of enforcement based on the penalty matrix and the documented history of the respondent.

Concurrence with the Division's finding by the Panel must be unanimous before further action can be taken on the case.

XVII. HEARINGS

The informal hearing officer and/or the appropriate Committee and/or the State Plant Board will carefully review the documentation and hear cases of alleged violations.

Should it be determined a violation(s) has occurred, the severity and level of enforcement of each violation will be determined by the three (3) factors in Section VII; as they are applied to the Penalty Matrix (Appendix A).

If a violation is determined in this sequence; the following factors will be considered:

- A. Cooperation of the respondent.
- B. Other extenuating/mitigating circumstances.

The Hearing Officer/Committee/Board may use these factors to accelerate or mitigate enforcement action. When a civil penalty is the preferred action, the base penalty may be increased or decreased based on these factors. The civil penalty will not be more or less than the range for the specific violation listed in Appendix A.

The State Plant Board will take action to determine the final disposition of the case.

XVIII. RIGHT OF APPEAL

Any person aggrieved by any action of the State Plant Board may obtain a review thereof, by filing in circuit court within 30 days of notice of the action, a written petition praying that the action of the State Plant Board be set aside.