CIRCULAR 6

ARKANSAS PEST CONTROL LAW

A.C.A. 17-37-101 THRU 17-37-107

&

17-37-201 THRU 17-37-221

Arkansas State Plant Board

ARKANSAS PEST CONTROL LAW

ACT 488 of 1975 as Amended

ACA Section 17-37-101 through 17-37-221

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This chapter shall be known by the short title of "Arkansas Pest Control Law".

17-37-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agent" means any person registered with the board, by a licensed operator, to solicit or sell pest control service, which the operator is licensed to perform. Including the signing of contracts, making inspections for the purpose of servicing or continuing contracts, and supervising workers and working crews in carrying out pest control service, when so designated by the licensed operator, or except as may be limited by the State Plant Board in its rules and regulations made under authority of this chapter. This is not to be construed as relieving the licensed operator in any way of being responsible for personal and direct supervision of all work performed under his license;

(2) "Applicant" means any person making application for a license to engage in pest control service work.

(3) "Board" means the State Plant Board;

(3) "Commercial applicator" means a person who has demonstrated, by written examination, his knowledge of the nature and effect of pesticides and how to use, supervise the use, or demonstrate the use of restricted-use pesticides, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, safely and properly. Qualification as a commercial applicator shall be integral to qualification as a licensed operator or qualified operator and vice versa;

(5) "Director" means the Director of the State Plant Board;

(6) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which classifies, regulates, and provides for the certification of all users of restricted-use pesticides, as defined in that act, including all persons who engage in commercial and noncommercial pest control service work;

(7) "Fungi or rot control responsibility" means that the license holder or licensed operator shall be held responsible for fungi or rot control only on substructure timbers such as sills, sub-sills, piers, floor joists, sub-floors, and floors;

(8) "Household pest and rodent" means any mammal, bird, arthropod, or reptile that may infest or invade a home or other buildings or the immediate area around or under a home or buildings, other than wood-damaging or wood-destroying insects, fungi, or organisms;

(9) "License holder" means the person, firm, or corporation to which a license is issued, the person being himself a licensed operator or there being one (1) or more licensed operators in the employ of the person, firm, or corporation;

(10) "Licensed operator" means 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;

(11) "Noncommercial applicator" means any person who uses, supervises the use of, or demonstrates the use of a restricted-use pesticide in any classification on his own or his employer’s property who does not hold himself out as being engaged for compensation in

pest control service work;

(12) "Person" means an individual, firm, partnership, corporation, organization, association, or any combination thereof, whether or not incorporated;

(13) "Pest control service" means any person who, for compensation, gives advice or engages in work to prevent, control, or repel arthropods, mammals, birds, reptiles, or wood-damaging or wood-destroying organisms that may invade or infest homes, other buildings, or similar structures and shall include arthropods, mammals, birds, reptiles, weeds, and plant diseases that may invade, infest, or infect shade trees, shrubs, lawns, turf, and pecan groves. This term shall also include any person who issues letters of clearance, or who shall solicit such work in any manner, but the term shall not be construed to include agricultural crops from planting to harvest other than those mentioned above;

(14) "Qualified operator" means a person who has fully qualified and has passed the board's written examination working under the bond and insurance of a license holder or licensed operator instead of his own. 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;

(15) "Soil pretreatment" means chemical treatment of the soil before or during construction of any building for the purpose of preventing or controlling subterranean termites;

(16) "Solicitor" means any person registered with the board by a licensed operator to solicit or sell pest control service work, which the operator is licensed to perform. A solicitor may not perform any pest control service work nor be placed in charge of workers or working crews;

(17) "Supervise" or "under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent and registered person acting under the instructions and control of a licensed operator or qualified operator who is responsible for the actions of that person and who is available if and when needed, even though the operator is not physically present at the time and place the pesticide is applied;

(18) "Termite and other structural pests" means any wood-damaging or wood-destroying insect, fungus, or organism;

(19) "Termite infestation" means any active termites found in or on a building, its foundation or attached appurtenances, or under the building, in or on debris, or in or on stumps under the building; and

(20) "Weed control" means the prevention, destruction, or removal of any plant from where it is not wanted by the use of herbicides.

17-37-103. Penalties.

(a) The violation of any of the provisions of this chapter or any of the rules and regulations of the Board promulgated under this chapter shall be deemed a misdemeanor.

(b) Upon conviction, an offender shall be punished by a fine of not less than fifty dollars ($50.00) for the first offense, not less than one hundred dollars ($100) for the second offense, and not less than two hundred dollars ($200) plus ten (10) days in jail for each offense thereafter, with no suspension of fines or imprisonment.

17-37-104. Injunctions.

(a) The board is authorized to apply to any court of competent jurisdiction for, and the court, upon hearing and for cause shown, may grant, a temporary or permanent injunction restraining any person from violating any provisions of this chapter or of the rules and regulations made under the authority of this chapter.

(b) The injunction is to be without bond.

17-37-105. Administration.

(a)(1) The board is vested with the authority to carry out the provisions of this chapter, including the employment of necessary personnel.

(2)(A) The board shall have the authority to adopt rules and regulations which shall have the full force and effect of law for the purpose of carrying into effect the provisions of this chapter.

(B) The rules and regulations may include the authorization to require licensed operators to submit written monthly reports setting out the description and location of properties on which pest control service has been rendered and such other information relative thereto as the board shall deem necessary.

(C) The rules and regulations may include minimum standards for pest control service work and shall include fees sufficient to pay the cost of carrying out the provisions of this chapter.

(b) The board or its authorized representative may enter upon and inspect properties, plants, or products for the purpose of carrying out the provisions of this chapter and of carrying out the rules and regulations made pursuant to this chapter.

17-37-106. Prior rules and regulations.

The rules and regulations made under authority of Acts 1965, No. 111 [repealed], shall continue in force and have the effect of law under authority of this chapter, except that those parts that may be in conflict with this chapter shall be considered invalid, and except as subsequently amended, invalidated, or added to by the board.

17-37-107. Fees.

(a) In its rules and regulations made pursuant to this chapter and after a public hearing, the board shall establish license, registration, inspection, re-inspection, reporting, and examination fees sufficient to carry out the provisions of this chapter.

(b) All fees collected under this chapter shall be deposited in the State Treasury to the credit of the board and are to be used in carrying out the provisions of this chapter.

17-37-201. License requirement.

(a) No person shall, for compensation, engage in pest control service work in any manner as

defined in this chapter without first having qualified, including the passing of the board's written examination, and having in force a valid license issued by the board for that purpose.

(b) It shall be unlawful for any person other than a licensed operator, qualified operator, noncommercial applicator, or persons working under their direct supervision to use restricted-use pesticides as defined by the Federal Insecticide, Fungicide, and Rodenticide Act.

17-37-202. Exemption for unlicensed operators under supervision of license holders.

(a) Persons who are not licensed as pest control operators under this chapter, but who worked as an unlicensed pest control operator prior to November 1, 1984, under the direct supervision of a holder of a license under this chapter, and who are working for such a license holder on June 28, 1985, may continue that arrangement without complying with this chapter.

(b) At the time such unlicensed pest control operators terminate their relationship with the license holder, the unlicensed pest control operators shall not thereafter perform services as pest control operators unless and until they have qualified under this chapter. However, when the licensed manager of a pest control company terminates his employment with the company, and if the company had been in operation at least one (1) year prior to the date of termination, the pest control company may continue to operate for a period not to exceed six (6) months after the date of termination, notwithstanding that the manager was the only licensed personnel in the company.

17-37-203. Exemptions for noncommercial applicators - Limitations.

(a)(1) This chapter shall not apply to persons doing pest control to their own property, or to their employees hired as laborers only, who do not hold themselves out as being engaged for compensation in pest control service work

(2)(A) However, no noncommercial applicator shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, unless the person has passed a prescribed examination and has been licensed by the State Plant Board.

(B)(i) The examination shall demonstrate the applicant's knowledge of how to apply pesticides under the classifications applied for and his knowledge of the nature and effect of the pesticides.

(ii) If the applicant is found qualified and has paid the required examination and license fees, the board shall issue a noncommercial applicator license limited to such activities and classifications as qualified for.

(C)(i) The license shall expire June 30 each year unless suspended or revoked prior thereto or cause.

(ii) Reexamination prior to license renewal may be required to ensure a continuing level of competence and ability to use restricted-use pesticides safely and properly as technology changes.

(b) Except for the requirements stated in this section, the noncommercial applicator shall be exempt from all other requirements of this chapter.

17-37-204. Occupational licenses, etc.

No occupational license, authorization, or similar license taxes shall be issued by municipalities,

counties, or other state or federal agencies, or subdivisions thereof, to any person to engage in pest control service work for compensation; unless the person holds a valid license issued by the board to do that work.

17-37-205. Applicants previously convicted of violations.

Nothing in this chapter shall require the board to issue a license or registration to an applicant who has been convicted in a court for a violation of this chapter or the Federal Insecticide, Fungicide, and Rodenticide Act.

17-37-206. License application.

(a) Any person desiring to obtain a license for pest control service work shall make application to the board on forms provided by the board, giving complete information requested.

(b) The applicant must prove to the satisfaction of the board that he is morally and financially responsible.

(c) An applicant must show proof of at least one (1) year of experience in the classification for which a license is desired or have completed at least two (2) years of work in an accredited college or university, including the completion of at least one (1) basic course in entomology, to be eligible to take the examination in either of the following classifications:

(1) Termite and other structural pests; or
(2) Household pests and rodent control.

(d)(1) To demonstrate the ability of the applicant to perform the classification of work for which a license is desired and to demonstrate his knowledge of the nature and effect of pesticides and how to apply them safely and properly, the board shall prescribe in advance an examination in writing to be taken by the applicant and to be given by a person designated by the board who is not interested financially or otherwise in pest control service work in Arkansas.

(2) This representative shall examine the applicant by a written examination as prescribed, and the examination shall be graded by the examiner with the results being certified to the board for approval either as having passed or failed the examination as the case may be.

(e)(1) The board is directed to give examinations on various classifications of pest control work on designated dates at least once each quarter.

(2) If the applicant is found qualified in one (1) or more of the classifications, he may be licensed to do the classification of work for which he is found qualified upon the payment of the required fees.

(f) By virtue of these qualifications, the applicant shall be eligible for certification under the Federal Insecticide, Fungicide, and Rodenticide Act, or state law as a commercial applicator.

(g) By regulation, the board shall make provisions to ensure that applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(h) Any licensee who fails to renew his license for a period of two (2) years shall be required to follow the same procedure as a new applicant in obtaining another license.

17-37-207. License classification.

(a) The license shall specify the classification of work in which the license holder is authorized to engage and shall show the name and address of the person, firm, or corporation to which it is issued and the name of the licensed or qualified operator, if he is someone other than the license holder.

(b)(1) The license holder shall do only the kind of work specified in the classification for which he has been licensed, regardless of whether for compensation or not.

(2) Any licensee performing any work in any classification for which he has not been licensed shall suffer invalidation of the license in any other classification.

(c)(1) The board may classify or subclassify commercial and noncommercial licenses to be issued under this chapter as may be necessary for the effective administration and enforcement of the chapter.

(2) The classifications may include, but not be limited to:

(A) Industrial, institutional, structural, and health-related;
(B) Ornamental and turf;
(C) Agricultural; and
(D) Noncommercial applicators.

(3) Separate sub classifications may be specified as to methods used by any licensee to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds.

(4) Each classification shall be subject to separate testing procedures and requirements.

17-37-208. Licensing standards.

(a) In promulgating regulations under this chapter, the board shall prescribe standards for the licensing of applicators of pesticides.

(b) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.

(c)(1) In determining standards, the board shall consider the characteristics of the pesticide formulation such as:

(A) The acute dermal and inhalation toxicity;
(B) The persistence, mobility, and susceptibility to biological concentration;
(C) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;
(D) The relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and
(E) The extent of the intended use.

(2) Further, the board shall take into consideration standards of the Environmental Protection Agency and is authorized to adopt by regulation these standards.

17-37-209. Eligibility for reexamination.

Any applicant who fails to pass the written examination in any classification must wait at least three (3) months before being eligible to take another examination in the same classification.

17-37-210. Bond and insurance requirements.

(a) BOND.

(1) Before a license is issued or renewed, the board shall be furnished an acceptable surety bond by each applicant for a license in either of the following classifications:

(A) Termite and other structural pests; or

(B) Household pests and rodent control.

(2)(A)(i) The bond shall be executed by the applicant for a termite and other structural pests license or any combination of licenses that includes termite and other structural pests as principal and by a surety company licensed to do business in this state in the surety amount of one hundred thousand dollars ($100,000).

(ii)(a) The bond shall be executed by an applicant for household pests and rodent control license or any combination of licenses that includes household pests and rodent control as principal and by a surety company licensed to do business in this state in the surety amount of fifty thousand dollars ($50,000).

(b) Subdivision (a)(2)(A)(ii)(a) of this section does not apply to a combination of licenses that includes termite and other structural pests.

(B) The bond shall be for a term not to exceed one (1) year and shall coincide with the licensing period.

(3)(A) A bond required by this chapter shall be in favor of the State of Arkansas for the benefit of any person damaged as the result of a violation of this chapter by an operator licensed under this chapter and for the benefit of any person who, after entering into a contract with the licensee, is damaged by the failure of the licensee to properly perform the contract.

(B) A person claiming against the bond may maintain an action at law against the licensee and the surety.

(C) The aggregate liability of the surety to all persons shall not exceed the sum of the bond.

(b) INSURANCE.

(1) In addition to the bond required in subdivision (a)(1) of this section, before a license is issued or renewed, each applicant for a license in the classification of household pests and rodent control or the classification of general fumigation shall furnish the board a certificate of insurance, written by an insurance company authorized to do business in this state, covering the public liability of the applicant for personal injuries, for not less than twenty-five thousand dollars ($25,000) for any one (1) person, and fifty thousand dollars ($50,000) for any one (1) accident and not less than five thousand dollars ($5,000) for property damage.

(2) In addition to the bond required in subdivision (a)(1) of this section, before a license is issued or renewed, each applicant for a license or any combination of licenses that includes the classification of termite and other structural pests shall furnish the board a certificate of insurance for a general liability insurance policy written by an insurance company authorized to do business in this state covering public liability of the applicant for personal injuries and property damage in an amount not less than five hundred thousand dollars ($500,000) per occurrence or five hundred thousand dollars ($500,00) per aggregate.

(c) CANCELLATION.

(1) The bond and insurance shall not be canceled or terminated until at least thirty (30) days after a notice of cancellation is received by the board.

(2) Upon failure of a licensee to maintain in full force and effect the bond and insurance required by this section, the license shall become void and shall not be reinstated until a satisfactory bond and insurance have been filed.

17-37-211. Issuance fee - License expiration.

The fee for the issuance of a license in each classification shall be paid annually. The license shall expire June 30 following the date issued.

17-37-212. Transferability - Change in licensee status.

(a) No license or registration shall be transferable.

(b) When there is a change in the status of a licensee, such as change of address, operator in charge, agents, or solicitors, the licensee shall immediately notify the board of the changes.

17-37-213. Agents and solicitors generally.

(a) Each licensed operator shall register with the board the name and address of each agent or solicitor and shall pay to the board a registration fee annually for each solicitor and agent, at the time of registration.

(b) All registrations shall expire when the license expires.

(c) In all cases where a solicitor or agent violates the provisions of this chapter or the rules and regulations made under authority of this chapter, the violations shall be grounds for invalidation of the license held by the operator under which the solicitor or agent had been registered.

17-37-214. Nonresident licensee - Resident agent.

Every nonresident licensee shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of this chapter or any liabilities arising from operation under this chapter.

17-37-215. Operator's name.

(a) No licensed operator or qualified operator shall operate under more than one (1) company name in any one (1) category.

(b) No person shall issue a solicitor's or agent's license to any other person for the purpose of operating under any other name except that of the licensed operator who registers the solicitor or agent with the board.

(c) All work shall be performed in the name of the licensed operator or his firm. All contracts, statements, bids, and letters shall be in his name and on his forms, and each agent shall drive vehicles lettered with the name of the licensed operator or his firm.

17-37-216. Refusal to issue license.

The board shall have the authority to refuse the issuance of a license even though a passing grade is made on the written examination if the board, in its judgment, after reviewing the evidence of

reference checks, deems the applicant is not morally and financially responsible.

17-37-217. Grounds for license invalidation or nonrenewal.

Acts which shall be grounds for invalidation or nonrenewal of a license shall include, but shall not be limited to, the following:

(1) Misrepresentations for the purpose of deceiving or defrauding;
(2) Making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage;
(3) Failure of the licensee to supply the board or its authorized representative, upon request, with true and accurate information concerning methods and materials used or work performed or other information essential to the administration and enforcement of this chapter;
(4) Performing work, whether for compensation or not, in a classification for which the licensee does not have a license;
(5) If repeated inspections by the board reveal that the licensee is not securing satisfactory control of the pests or diseases which the licensee engages to control or eradicate;
(6) Failure of licensee to register agents or solicitors, or failure to pay registration, inspection, or reporting fees due, or failure to make reports within the time specified;
(7) Conviction in any court of a violation of this chapter or of the Federal Insecticide, Fungicide, and Rodenticide Act;
(8) Intentional misrepresentation in any application for a license;
(9) Failure to correct substandard work;
(10) Making a pesticide recommendation or application which is inconsistent with any or all of the following:
    (A) The labeling;
    (B) Federal or state registration; or
    (C) Federal or state restrictions on the use of that pesticide; and

(11) Falsification of records or failure to maintain or make available the records required by this chapter.

17-37-218. Invalidation or nonrenewal proceedings.

(a) Invalidation or nonrenewal proceedings may be initiated against a license holder in the same manner and for the same reasons as against a licensed operator or qualified operator.

(b) The proceedings may be jointly and severally against any or all licensed operators or qualified operators employed by the license holder.

17-37-219. Automatic invalidity of license.

A license shall automatically become invalid should the licensed operator whose name appears on the license cease to personally supervise and be in direct charge of the pest control operation. The license shall remain invalid until some other person, having been examined in accordance with this chapter and the rules and regulations under this chapter shall be certified as the licensed operator in his stead.

17-37-220. Hearing and appeal.

(a) When any person is refused a license or his license is not renewed, or when the board contemplates invalidation of his license, he shall have the right of a hearing before the board, or an authorized committee of the board, by filing a written request for a hearing with the board by registered or certified mail.

(b) Any person whose license is denied, refused, or invalidated by the board may appeal the decision to the Circuit Court of Pulaski County within twenty (20) days after official notification of the decision.

17-37-221. Contracts, reports, and records.

(a) All licensed operators shall enter into a written contract with the property owner when employed to control or eradicate termites or other structural pests, or in such other classifications as the board may specify in its rules and regulations made under authority of this chapter. The contract for termite and other structural pests shall guarantee the performance of the work for at least one (1) year and that the property meets the minimum standards established by the board in its rules and regulations for the work, unless these standards are waived or altered upon approval of the board.

(b) A copy of the contract or "start-work agreement" and a complete outline of the work to be performed shall be given to the property owner before any work is started.

(c)(1) By the fifteenth of each month, all licensed operators shall file a report with the board covering termite and other structural pest work performed the previous calendar month, along with a copy of each contract issued for the prevention, control, or eradication of termites and other structural pests and any other information deemed necessary by the board and stipulated in the rules and regulations made under authority of this chapter.

(2)(A) Reporting and payment of inspection fees may also be required for household pest and rodent control work or such other classifications as the board may specify if deemed necessary or if required by the Federal Insecticide, Fungicide, and Rodenticide Act.

(B)(i) All fees due the board shall be filed with the board by the fifteenth day of each month to cover work performed the previous calendar month.

(ii) If payment of fees due is delayed more than thirty (30) days, then the fees due shall be doubled.

(3) In addition, the reports shall include letters of clearance issued and service contracts issued even though no chemical treatments were carried out. The reports shall list the name and address of the owner, address of the property, length and nature of the guarantee, date the contract was issued, a plat or diagram showing the location of termite or other structural pest infestations, if present, location of damaged areas, and an outline of the work to be carried out.

(4) A report shall be filed each month even though no work is performed.

(d)(1) Each licensed operator, qualified operator, or license holder in any classification shall keep a complete record of all work performed, including copies of all contracts issued.

(2) The records shall be available for examination by the board or its representatives after reasonable notice and during normal business hours.

(3) The records shall be kept for at least two (2) years and shall contain information on kinds, amounts, uses, dates, and addresses of applications of restricted-use pesticides.

(e)(1) All licensed operators, qualified operators, or license holders shall stencil or paint on both sides of all motor equipment that requires a state vehicle license, the name of the operator or company, with letters at least two inches (2") high.

(2) Vehicles used only for sales or soliciting are excepted.

RULES AND REGULATIONS OF THE STATE PLANT BOARD

The following Rules and Regulations have been promulgated and adopted by the State Plant Board Under authority of the Arkansas Pest Control Law Act 488 of 1975 as amended A.C.A., §17-37-101 et seq.

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. Non-Commercial Applicator Certificate (see restrictions in Section VIII):

A. Structural Pest Control
7. Non-Commercial Pest Control
8. Non-Commercial Fumigation

B. Ornamental Pest Control
9. Non-Commercial Tree & Turf Pest Control
10. Non-Commercial Golf Course Pest Control

SECTION I
REGULATIONS APPLYING TO ALL LICENSEES AND APPLICATORS

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

1. Applying for Examinations (Commercial Applicators and Non-Commercial Applicators):
All applicants must submit an application to the Plant Board, on forms furnished by the Plant Board, 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:
The written examinations in classifications 1, 2, and 3 will be given the second Monday of January, March, May, July, September and November. Examinations in classifications 4, 5, 6, 7, 8, 9, and 10 will be given the second Monday of February, April, June, August, October and December at a time and place designated by the State Plant Board. In the event of technological advances that allow for changes in the administration of the exams, circumstances beyond the control of the State Plant Board 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. The examinations will be graded by an examiner designated by the Plant Board.

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 Plant Board on forms provided by the Commercial Pest Control Section. 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 20 registered agents shall be supervised by any 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 Plant Board 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 Plant Board on forms provided by the Pest Control Section. 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) Non-Commercial Applicator:
Applicants must be a minimum age of eighteen (18). After passing the appropriate examinations (7, 8, 9 or 10), all non-commercial applicators must submit an application and the required fees to the Plant Board on forms provided by the Pest Control Section.

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 - 20 Registered agents……..$100.00
- 21 - 40 Registered agents ..……$250.00
- 41 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

Non-Commercial Applicator Certificate (Must be renewed prior to June 30 annually):

- Per Applicator .....…….....$70.00

Commercial and Non-Commercial 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:
License holders of classifications 1, 2, 3, 4, 5 or 6 shall register with the Plant Board all individuals employed by them, including those employed for solicitation as their agent. Clerical staff and persons employed for working only on the premises of the office (such as building or vehicle maintenance, cleaning, technical or communication services, etc.) 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. Within 45 working days of their employment and after the completion the on-the-job training the agent trainee must take an exam administered by the Plant Board, or a representative appointed by the Plant Board. Registered agent exams will be given on Wednesday of each week at a time and location designated by the State Plant Board. In the event of technological advances that allow for changes in the administration of the exams, circumstances beyond the control of the State Plant Board 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 registration the agent trainee may apply pesticides only in the physical presence of a commercial applicator or registered agent.

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 Plant Board. 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 State Plant Board. 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 Arkansas State Plant Board shall provide an agent examination and registration application form. The license holder shall complete the form and submit it to the Pest Control Section 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 Plant Board 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 the 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 Regulations – 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, Plant Board 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 Regulations – 1 hour

License holders shall document in house training on forms provided by the Plant Board. Ongoing education provided to agents by attending approved seminars, training schools, etc. 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 State Plant Board during normal business hours. At any time, should the Board determine that training requirements have not been met, the license holder may be subject to enforcement action as per the Arkansas State Plant Board Pest Control Enforcement Response Regulations – 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 Board action is taken. This Committee shall consist of the Board member who represents the Head of the Department of Entomology, University of Arkansas, who shall act as the Chairman, and the Board member who represents the Arkansas Pest Management Association. Remaining committee members shall be appointed by the Chairman of the Plant Board. This Committee may hold hearings regarding licenses, certificates, and agent registrations to take testimony and gather evidence regarding same. Such testimony, evidence and the committee's recommendation shall be made available to the Board for consideration and final action.

7. Keeping Abreast of Technology:
Each commercial applicator and non-commercial 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 Plant Board as proof of attendance. Any applicator failing to meet this provision shall be reexamined or lose the license or certificate.

8. Standards for Licensing Pesticide Applicators:
Plant Board standards for the licensing and certification of commercial applicators and non-commercial 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 Plant Board, 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 considered to be 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.

10. Clarification:
The following regulations are promulgated to clarify the Board's intent relative to certain sections of the Pest Control law.

A.C.A. § 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 Plant Board 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;

A.C.A. § 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.

A.C.A. § 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.

A.C.A. § 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).

A.C.A. § 17-37-203 Exemptions:

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

A.C.A. § 17-37-103 Penalties:

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

A.C.A. § 17-37-106 Prior Rules and Regulations:

This section does not repeal Act 389 of 1975 A.C.A. § 20-20-202 or act 410 of 1975 A.C.A. § 2-16-402 or any part of either act.

SECTION II
RULES AND REGULATIONS 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 Plant Board 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, 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 1to 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 <u>bold print</u>, 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 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 and the diagram of the property or by Letters of Clearance.

3. Meeting Minimum Standards:

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 regulations, unless unusual structural or physical conditions render the correction of certain conditions to portions of the building impractical. In such cases, an exclusion of certain minimum treating standards shall be made on forms supplied by the Plant Board. 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 Plant Board. 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. Each request for exclusion shall also clearly state which treatment standard is to be excluded. An inspection fee of $50.00 shall be assessed for each application submitted. Plant Board staff may contact property owners and discuss exclusion application as staff feels situation warrants. Should Plant Board 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. 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 also reported in the copies sent to the Plant Board. 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. 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 Plant Board, 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 Regulations and Appendix A of Circular 6.

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 ten percent (10%) 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 Plant Board. 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. If conditions exist in the crawl space that are favorable to the possibility of moisture damage to the substructure the license holder must disclose, in the additional comments section on the form, that a moisture condition exist in the crawl space. 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:
Each license holder shall remit to the Plant Board, 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 Plant Board, 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 and Regulations made there-under.

Should inspections, by the Plant Board's representatives, of buildings covered by a contract, including a renewal of a contract and/or Letter of Clearance, be found infested with termites or other structural pests for which prevention, control or eradication has been contracted, or 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 Plant Board, have not been met or fulfilled, or misrepresentations have been made to the owner, the Plant Board will send the license holder a notice to that effect. The license holder shall, within 15 days, retreat the building when necessary and otherwise bring the building into compliance with the law and these regulations and shall submit to the Plant Board 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 Plant Board office. When a notice has not been returned by the due date and the license holder has not contacted the Plant Board office concerning

the notice, a re-inspection of the building will be made and 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 Regulations. The~~se~~ fees for each notice are to pay for the cost of inspections and payment does not preclude invalidation of a license by the 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. Plant Board representatives will inspect the jobs to assess the applicator's performance and compliance with the law and regulations. New construction (pre-treat) applications must be monitored by Plant Board representatives. The new commercial applicator must notify the Commercial Pest Control Section 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 Plant Board. 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 Plant Board will consider revoking the applicator's license. A hearing before the Board's Pest Control Committee may be requested by filing a certified letter with the Board 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 20 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 and Regulations 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 regulations, the Pest Control Committee, after reviewing the record of the licensee in question, may instruct Plant Board 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 Plant Board 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.

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 any and 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, which is 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:

Where wood parts such as posts, door frames, partitions, or stair-carriages:

(a) have been attacked by termites working up thru concrete, or

(b) are set down into concrete,

said wood parts must be cut off and set on metal or concrete bases raised at least 1 inch above the floor level.

Exception: Stiff-legs, posts, or other wood supports supporting a raised sundeck, patio, wood porch, carport roof or similar attached appurtenance, located outside the exterior perimeter of a buildings foundation, need not be cut off and placed on concrete or metal bases as required in Sections 6 and/or 7; however, chemical must be applied 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. Dampness:

Dampness favors the development of termites and wood rots. If water can run under the building through access opening, ventilators, or other openings in or under sidewalls or skirting, this condition must be remedied. Seepage through or under walls should be prevented. An Exclusion of Minimum Treating Standards contract attachment (Exclusion form) shall not be required provided the property owner is clearly notified on the initial contract that prevention of seepage under the building is impractical to remedy.

If condensation of soil moisture upon wood of the substructure is a problem, it can be prevented by constructing a vapor barrier. An adequate barrier can be made by covering the soil under the building with roofing paper or a polyethylene sheet.

11. Ventilation:

Inadequate ventilation also favors the development of termites and wood rots. Provide ventilation at the rate of at least one 8 x 16 inch opening (or equivalent) for each 25 linear feet of foundation wall. Provide ventilation for all dead air pockets. If adequate ventilation is impractical an Exclusion of Minimum Treating Standards contract attachment (Exclusion form) shall not be required provided the property owner is clearly notified on the initial contract that adequate ventilation does not exist and will not be provided.

12. 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) at or above the subfloor, 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 which has been 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 provided that the owner is provided written notification in **bold** print that a condition exists to the substructure which is favorable to decay fungi and possible damage due to rot, on the termite or powder-post beetle control contract, graph, and letter of clearance, if issued.

13. 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 13.
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 13.

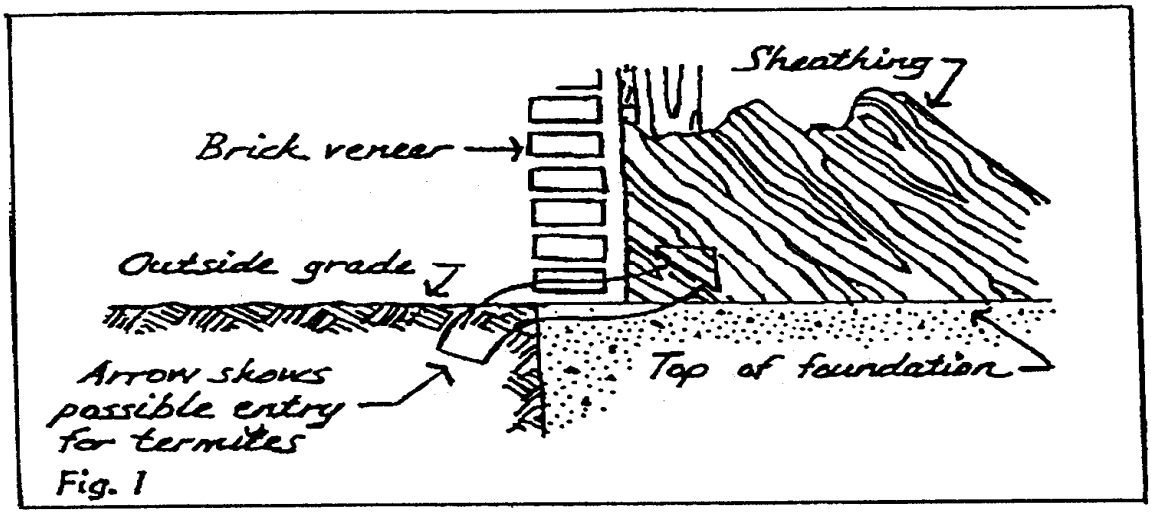


Fig. 1

14. 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.

15. Steps, Porches, Ground Slabs*, and Similar Structures:

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

1. 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-rodded, the route must be shown on the diagram of the building; or

2. Tunneled and treated, the tunnel must extend the length of the fill and be at least 12 inches deep (or down to grade) and 12 inches wide. Dirt of the tunnel must be saturated with chemical at all points of contact with wall and slab. Supports for the slab should be erected in the tunnel if needed.

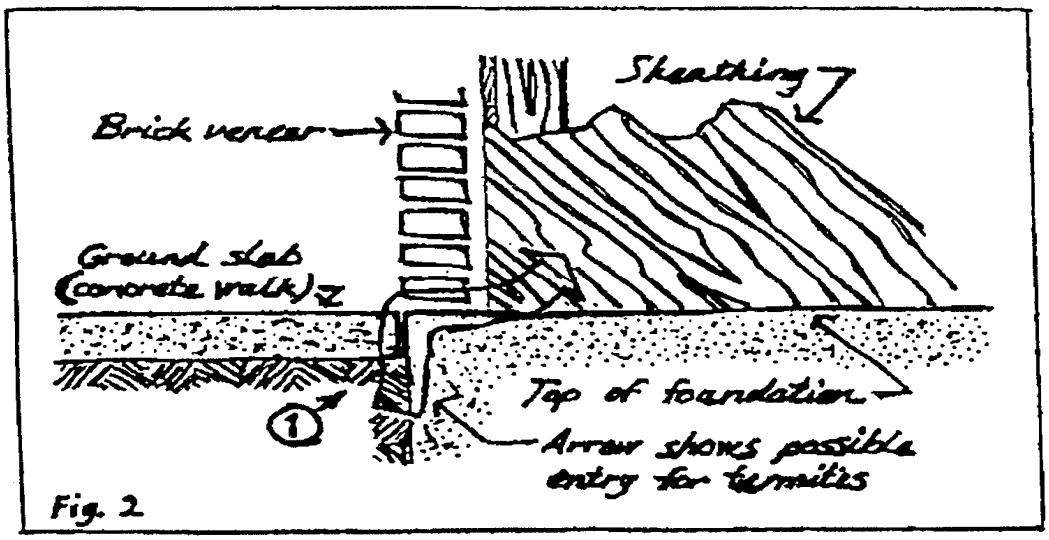
B. Structures below the sill line:

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.

FIGURE 2 EXPLAINS SECTION 15 A & B (IN PART).

When the top of the concrete walk (ground slab) is level with top of the foundation wall, termites may come up unseen thru the joint between foundation and slab, thru cracks in the first mortar joint, and into the sheathing. To correct this condition, a tunnel may be made at ① and chemical applied, or the slab may be drilled as specified by label directions at ① and the soil treated with chemical.



NOTE 1: Tunneling is preferred over drilling and treating in moist situations where wood is in contact with the soil.

NOTE 2: Solid (not dirt filled) porches and steps must be treated with approved chemicals according to the label directions or they may be made accessible for thorough inspection by opening the foundation sufficient for visual examination across the back of the structure. If drilling and treating is performed 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 the structures at a maximum of 12 inch intervals.

NOTE 3: Dirt filled or ground slab structures must be treated with approved chemicals according to the label directions, or tunneled, If drilling and treating is performed 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 the structures at a maximum of 18 inch intervals.

*"Ground Slab" refers to such structures as concrete or masonry walks, gutters, patios, etc., laid directly upon the ground rather than upon a dirt fill.

Tunneling and Treating Notes. (See Figures 2 and 3)

NOTE 1. The size of the tunnel under ground slabs is not specified.

NOTE 2. When the sill or other wood extends below the bottom of the concrete slab, the tunnel must be more than 12 inches deep next to the foundation wall, in order to provide at least 12 inches of clearance from the bottom of the wood to the bottom of the tunnel.

NOTE 3. When the bottom of the tunnel is above ground level under the structure, the trench for applying the chemical in the tunnel should, be dug down to the level of the trench on the opposite side of the wall, unless the wall is of solid, un-cracked, concrete. If this is impracticable, the wall should be drilled and injected at the level of the bottom of the tunnel, rather than at the ground level.

NOTE 4. If it appears that a fireplace hearth would fall in if tunneled, the chimney base may be

drilled and treated as stated in Paragraph 19,

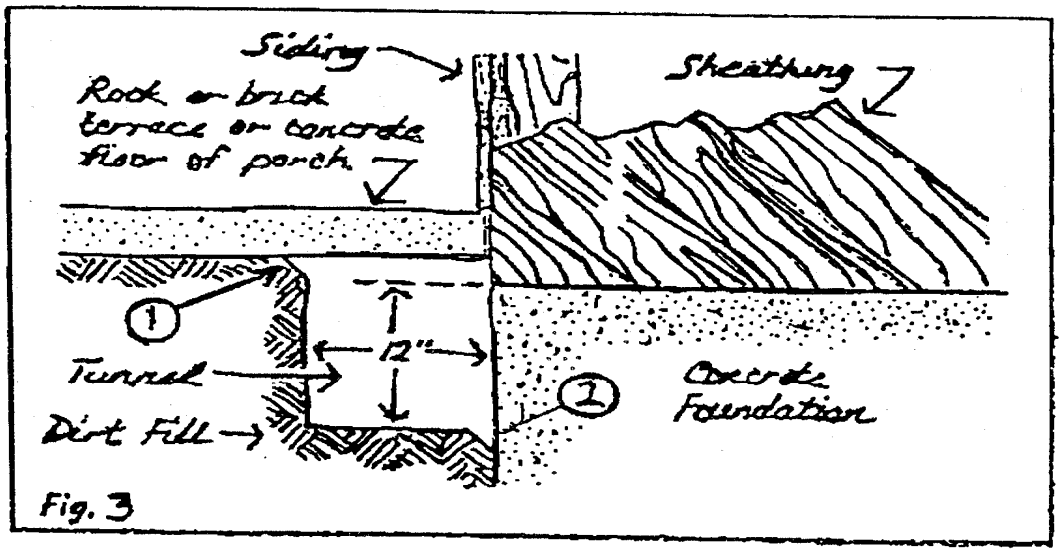


FIGURE 3 EXPLAINS 15 (IN PART).
When tunneling a dirt filled porch (or other dirt-filled structure) the bottom of the tunnel must be at least 12 inches below the sill or other wood parts of the building. Apply chemical at ① and ②.

16. 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 17).

17. 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.

18. Ground Treatment Outside Buildings:

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

19. 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 (Figure 4).

(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 17, 18, and 19 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.

20. 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.

21. Slab Construction:

Slab construction shall meet all of the foregoing minimum requirements except, as outlined in paragraphs 1, 3(a),4,9,10,11 and 17.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-rodding 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.

22. Foam Treatment for Concrete Slab and Masonry Veneer:

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

23. 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)

Pretreat: 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, 12 and 13A of the minimum requirements given for existing structures in Section IIIA. If ventilation is not provided as described in item 11 in Section IIIA, the license holder shall, in writing on the contract, notify the owner within 12 months of their acquiring ownership of the property, that proper ventilation needed to comply with the minimum requirements for termite and other structural pest work was not provided at the time of construction.

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, 12, and 13a 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, appropriate minimum requirements shall be met 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, 12 and 13a. of the minimum requirements for existing structures in Section III A. If ventilation is not provided as described in item 11 in Section IIIA, the license holder shall, in writing on the contract, notify the owner within 12 months of their acquiring ownership of the property that proper ventilation needed to comply with the minimum requirements for termite and other structural pest work was not provided at the time of construction. Slab buildings must meet items 3b, 12 and 13a of the

minimum requirements for existing structures in Section III A.

3. Bait treatment methods:

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

Note: Contracts and graphs for all pretreats 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 Arkansas State Plant Board 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 according to 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 matrix 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) at or above the subfloor, 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, which has been 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 holders responsibility, unless they have entered into an agreement to control this pest provided that the owner is provided written notification in **bold** print that a condition exists to the substructure which

is favorable to decay fungi and possible damage due to rot, on the termite or powder-post beetle control contract, graph, and letter of clearance, if issued.

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 Plant Board 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.

SECTION V

- **TREE AND TURF PEST CONTROL (CLASSIFICATION 4)**
- **WEED CONTROL (CLASSIFICATION 5)**
- **GOLF COURSE PEST CONTROL (CLASSIFICATION 6)**

The Plant Board 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.

SECTION VI

- **GENERAL FUMIGATION (CLASSIFICATION 3)**

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

SECTION VII

- **NON-COMMERCIAL STRUCTURAL PEST CONTROL (CLASSIFICATION 7)**
- **NON-COMMERCIAL FUMIGATION (CLASSIFICATION 8)**

Non-Commercial Structural Pest Control (Classification 7):
A Non-Commercial 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. Non-commercial applicators shall be restricted to pest control work at addresses owned or under the direct management of their employer as stated on the Non-Commercial Applicator Certificate. Non-commercial 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 non-commercial applicator shall be jointly and severally responsible for the proper use of pesticides by the employee. Non-commercial 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 Non-Commercial 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 regulations.

Non-Commercial Fumigation (Classification 8):
A Non-Commercial 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 non-commercial applicators shall be restricted to fumigation at addresses owned or under the direct management of their employer as stated on the Non-Commercial 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 non-commercial applicator shall be jointly and severally responsible for the proper use of fumigants. The Non-Commercial 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 regulations.

SECTION VIII

- **NON-COMMERCIAL TREE AND TURF PEST CONTROL (CLASSIFICATION 9)**
- **NON-COMMERCIAL GOLF COURSE PEST CONTROL (CLASSIFICATION 10)**

Non-Commercial Tree and Turf Pest Control (Classification 9):
A Non-Commercial 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 non-commercial applicators shall be restricted to pest control work at the address or addresses stated on the Non-Commercial Applicator Certificate. A Non-Commercial 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 non-commercial applicator shall be jointly and severally responsible for the proper use of pesticides by the employee. The Non-Commercial 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 regulations.

Non-Commercial Golf Course Pest Control (Classification 10):
A Non-Commercial 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 Non-Commercial 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 Non-Commercial 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 regulations.

SECTION IX
ARKANSAS STATE PLANT BOARD PEST CONTROL ENFORCEMENT RESPONSE REGULATIONS

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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 regulation is to provide a fair and consistent mechanism by which compliance with the Arkansas Pest Control Law, as amended, and the regulations 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 Plant Industry Division Director or his/her designee, 2. The Agency Assistant Director or his/her designee, and 3. The Agency Director 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 violation 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 Plant Board. The previous violation/violations must have occurred within the past 3 years.

D. **Minor Violation**: A violation 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 violation 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 violation incidents. Any violation consisting of a label violation that involves a 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 regulations written pursuant thereto.

XII. LEGAL AUTHORITY

A. "Arkansas Pest Control Law" A.C.A. 17-37-101 et. seq. and Regulations.

B. "The Arkansas Plant Act" A.C.A. 2-16-203 et. seq. and Regulations.

XIII. ENFORCEMENT ACTIONS

Under the preceding Arkansas Codes, the 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 Plant Board Staff. The group will seek consensus on an appropriate enforcement action for recommendation to the 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 Full 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 can not be reached during the informal hearing, a hearing will be held by the Pest Control Committee of the 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 Board. The Full 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 Board may be in addition to, or in conjunction with, a civil penalty fine.

E. **Injunction**: The Board may apply for an injunction to any court of competent jurisdiction for violations of the 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 regulations.

F. **Referral to Prosecuting Attorney**: The Plant Board has the option of referring violations of the Pest Control Law to the prosecuting attorney.

G. **Referral to EPA**: The Plant Board 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.

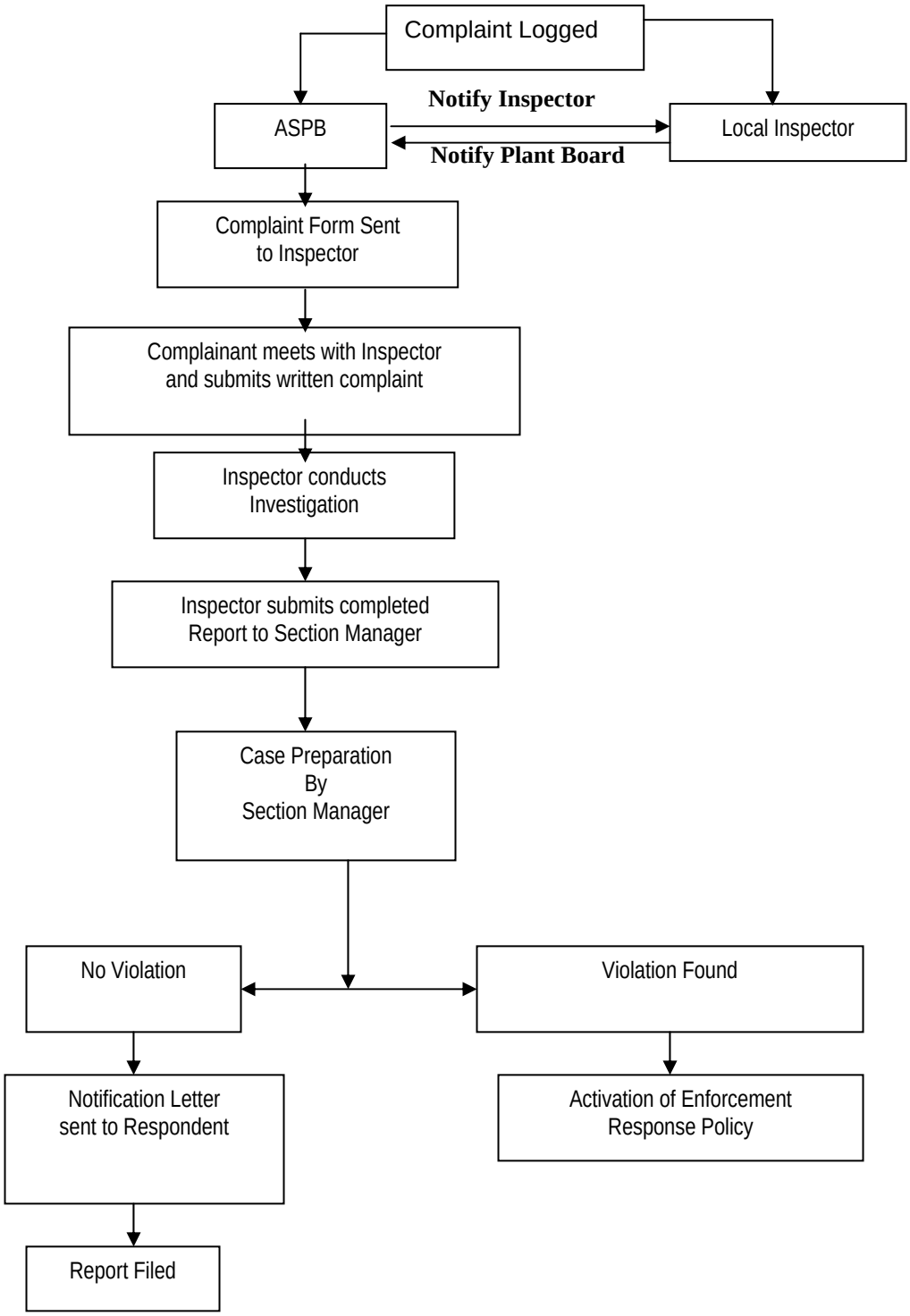
B. A formal complaint that an alleged violation incident has occurred (Filing of a written form by a complainant). In cases of apparent immediate endangerment to health or the environment, the written notification may be waived and the investigation of the alleged incident will begin immediately).

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



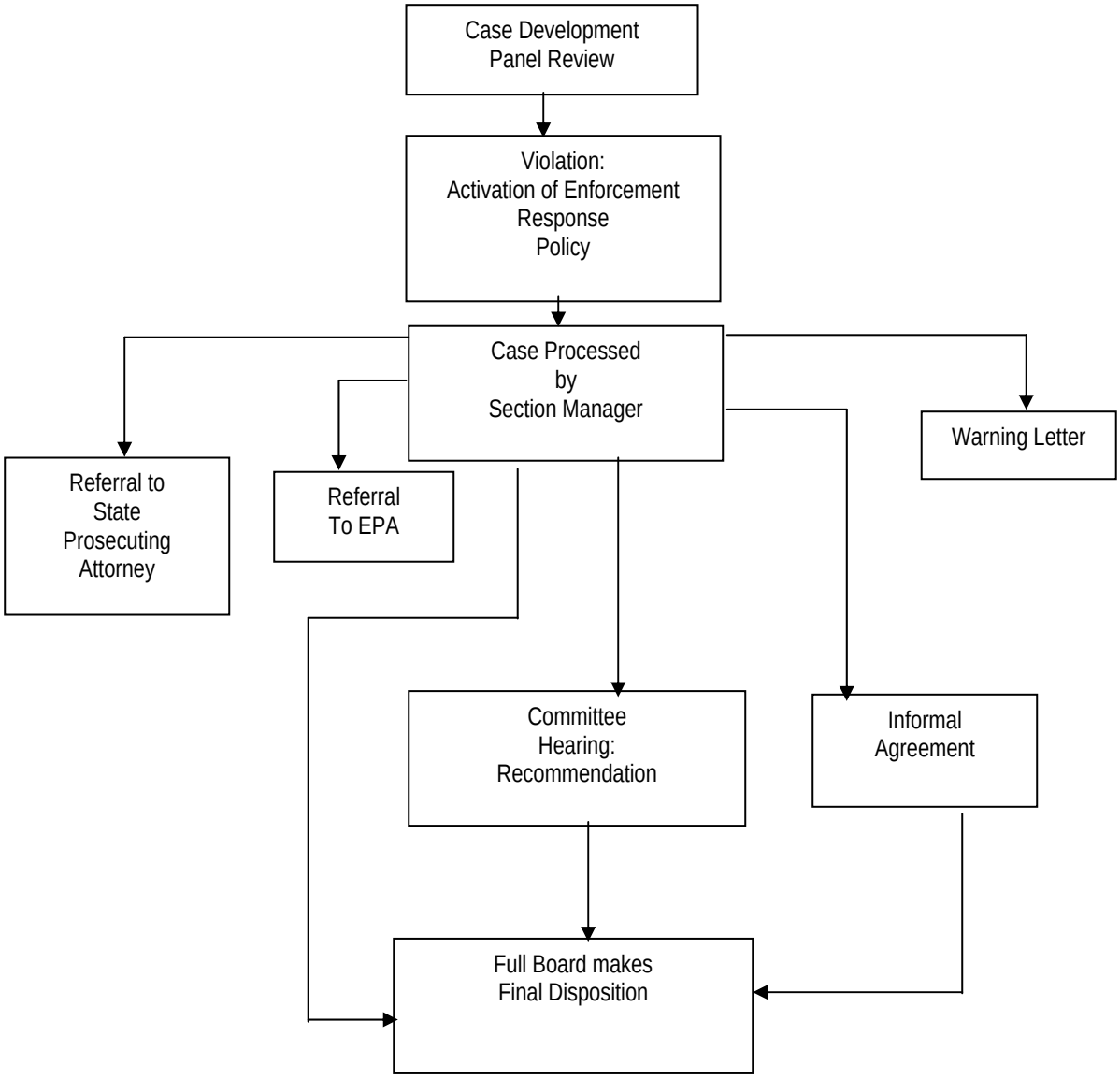
XV. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

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

Documentation must conform to the requirements of the Plant Industry Division.

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 Full 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 Full Board will take action to determine the final disposition of the case.

XVIII. RIGHT OF APPEAL

Any person aggrieved by any action of the 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 Plant Board be set aside.

APPENDIX - A

PENALTY MATRIX

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
1. Failure to secure required pest control licenses.	Minor	A							
	Major	B,C,E,F	200-1000	B,C,E,F	400-1000	B,C,E,F	600-1000	B,C,E,F	800-1000
2. Pesticide recommendations or applications which are inconsistent with any/or all of the following: A. Labeling B. Federal or State registrations C. Federal or State restrictions of the use of a pesticide	Minor	A		B,C	200-400				
	Major	B,C,G	200-400	B,C,G	400-600	B,C,D,G	600-800	B,C,D,E,G	800-1000
3. Intentional misrepresentation(s) in any application for a license.	Minor								
	Major	B,C	200-400	B,C	400-600	B,C	600-800	B,C,E	800-1000
4. Misrepresentations for the purpose of deceiving for defrauding.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D	800-1000
5. Knowingly making a false statement for the purpose of inducing others to act to their damage.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000

ENFORCEMENT ACTION OPTIONS

A - Warning letter
B - Informal Agreement
C - Board/Committee Hearing
D - Suspension/Revocation of License
E - Injunction
F- Referral to Prosecuting Attorney
G - Referral to EPA

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
6. Performing work, with or without compensation, in a classification for which the licensee does not hold a license.	Minor								
	Major	B,C,D,E,F	200-1000	B,C,D,E,F	400-1000	B,C,D,E,F	600-1000	B,C,D,E,F	800-1000
7. Falsification of records or failure to maintain or make available all records required by this Act.	Minor	A		B,C	200-400	B, C, D	400-800	B, C, D, E, F	600-1000
	Major	B, C, D	200-1000	B, C, D	400-1000	B,C, D E	800-1000	B, C, D, E, F	800-1000
8. Failure of licensee to supply the Board or its authorized representative, upon request with true and accurate information concerning methods and materials used on work performed.	Minor	A		B,C	200-400				
	Major	B, C, D	200-1000	B, C, D	400-1000	B,C, D, E	800-1000	B, C, D, E. F	800-1000
9. Failure of licensee to register agents or solicitors, or failure to pay registration inspection or reporting fees due or failure to make reports within the time specified	Minor	A		B,C	200-400				
	Major	B,C	200-400	B,C	400-600	B,C,D	600-800	B,C,D,E	800-1000

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		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
10. Failure to report structural pest control work.	Minor	A		B,C	100-400				
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000
11. Failure to correct substandard work.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000
12. Failure of licensee to obtain satisfactory control of the pests or diseases which the licensee engages to control or eradicate as evidenced by repeated inspections by the Board.	Minor	A		B,C	200-400				
	Major					B,C,D	600-800	B,C,D,E	800-1000
13. Conviction by any court of a violation of this chapter or of FIFRA.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D,G	600-800	B,C,D,E,G	800-1000
14. Operation of faulty or unsafe equipment.	Minor	A		B, C	200-600	B, C, D	400-800	B, C, D, E	
	Major	B, C	200-600	B, C, D, F	400-800	B, C, D, E, G	600-1000	B, C, D, E, F, G	800-1000
15. Distribution of adulterated and/or misbranded pesticides.	Minor	A		B, C	200-600	B, C, D	600-800	B, C, D, E, G	800-1000
	Major	B, C	200-600	B, C, D	400-800	B, C, D, E, F, G	800-1000	C, D, E, F, G	800-1000

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