

OPM Laws, Effective July 29, 2010

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32-2301. Definitions

In this chapter, unless the context otherwise requires:

1. "Acting director" means the person appointed pursuant to section 32-2302 to serve as the acting director of the office.
2. "Branch office" means any fixed place of business, other than the primary office, where records are kept, mail is received, statements are rendered, money is collected, requests for service or bids are received or information pertaining to the business of structural pest control is given and from which the use of pesticides and devices is supervised by a licensed applicator or qualifying party.
3. "Business license" means a license that is issued pursuant to this chapter to a person and that entitles that person and the person's employees to engage in the business of structural pest control.
4. "Business of structural pest control" means engaging in, offering to engage in, advertising for, soliciting or performing structural pest control, including any of the following:
 - (a) Identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of households or other structures and the surrounding area by any of the following:
 - (i) Public health pests.
 - (ii) Aquatic pests.
 - (iii) Household pests.
 - (iv) Wood-destroying insects.
 - (v) Pests, including weeds, existing around structures, in ornamental shrubs and trees, on golf courses, along rights-of-way or in lawns and cemeteries.
 - (vi) Fungi.
 - (b) Making written or oral inspection reports, recommendations, estimates or bids with respect to infestations.
 - (c) The application of pesticides or the making of contracts or submitting of bids for the application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.
5. "De minimis violation" means a violation that, although undesirable, has no direct or immediate relationship to safety, health or property damage.
6. "Department" means the Arizona department of administration.
7. "Device" means any mechanical, pesticide or electrical apparatus used in conjunction with, in place of or to supplement, disperse or dispense pesticides.
8. "Direct supervision" means use of a pesticide under the instructions, control and responsibility of a licensed applicator who is available if needed for consultation or assistance even though the licensed applicator is not physically present at the time and place the pesticide is used.
9. "Director" means the director of the Arizona department of administration.
10. "Final grade treatment" means establishment of vertical barriers at the exterior of foundation walls in stem wall construction or at the exterior of grade beams in monolithic construction.
11. "Fungi inspection report" means a written inspection report on a form approved by the office.

12. "Household pests" means pests, other than wood-destroying insects, that invade households or other structures, including rodents, vermin and insects.
13. "Immediate supervision" means use of a pesticide by an employee acting under the instructions, control and responsibility of a licensed applicator who is within the direct line of sight or within hearing distance of the employee and who is available for consultation or assistance at the time and place the pesticide is used.
14. "Initial termite corrective treatment" means the first treatment of any kind performed by a licensee after a treatment made prior to or during construction, excluding a treatment performed under warranty by a licensee who has performed the treatment prior to or during construction.
15. "Inquiry" means information from the public or agency staff of possible violations of this chapter, or rules adopted pursuant to this chapter.
16. "Integrated pest management" means a sustainable approach to managing pests that combines biological, cultural, physical and pesticide tools in a way that minimizes economic, health and environmental risks.
17. "License" means an approval granted by the office to act as an applicator or qualifying party or to operate a business of structural pest control in this state.
18. "Licensed applicator" means a person who is licensed by the office to apply pesticides in accordance with this chapter.
19. "Office" means the office of pest management established by section 32-2302.
20. "Other structures" includes railroad cars, boats, docks, motor vehicles or airplanes and their contents.
21. "Pest management" means the management of public health pests, aquatic pests, household pests, wood-destroying insects, fungi or other pests, including weeds, that exist near or around structures, in ornamental shrubs and trees, on golf courses, along rights-of-way or in lawns or cemeteries and all pesticide application that could be harmful to public health or the environment. Pest management does not include pesticide applications used directly in the commercial production of crops and animals if those applications are governed by the Arizona department of agriculture pursuant to title 3, chapter 2, articles 6 and 6.1.
22. "Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents, predatory animals or any form of plant or animal life that is a pest and may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.
23. "Prior violation" means any violation for which disciplinary action was taken within a five-year period prior to the date of the violation for which current disciplinary action is sought.
24. "Qualifying party" means an individual who is licensed by the office to ensure the supervision and training of all employees of a business licensee in the business of structural pest control.
25. "Weed" means any plant that grows where it is not wanted.

26. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the acting director that is prepared in connection with the sale or refinancing of real property whether or not the report is used as part of the transaction.

27. "Wood-destroying insects" means insects that attack, damage or destroy wood or wood-derivative products.

32-2302. Office of pest management; acting director

A. The office of pest management is established.

B. The director of the department of administration shall appoint an acting director of the office who has administrative experience and experience in pest management.

32-2304. Powers and duties

A. The acting director is responsible for administering this chapter and shall:

1. Adopt rules that are necessary or proper for the administration of this chapter, including administrative provisions, education requirements, health and safety provisions and provisions for the use, storage and application of pesticides and devices used in structural pest control.

2. Administer and enforce this chapter and rules adopted pursuant to this chapter.

3. Notify the business licensee, applicator and qualifying party in writing of any complaint against the business licensee, qualifying party or employee of the business licensee by the close of business on the tenth business day after the day on which the acting director initiated the complaint.

4. Issue subpoenas for the taking of depositions, the production of documents and things and the entry on land for inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation on the property relevant to the complaint.

5. Conduct or contract to conduct applicator license and qualifying party license tests at locations throughout this state. If the acting director contracts for these tests, the contracts may provide for specific examination fees or a reasonable range of fees determined by the acting director to be paid directly to the contractor by the applicant. The acting director shall make all efforts to contract with private parties to electronically administer the applicator and qualifying party license tests.

6. Maintain a computer system for the benefit and protection of the public that includes the following information on termite treatments that are done before or during construction, initial termite corrective projects, preventative termite treatments and wood-destroying insect inspection reports:

(a) The name of the individual who performed the work.

(b) The address or location of the work or project.

(c) The name of the pest management company.

(d) The name of the qualifying party.

(e) The applicator license numbers.

(f) The nature and date of the work performed.

(g) Any other information that is required by rule.

7. Establish offices it deems necessary to carry out the purposes of this chapter.
 8. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.
 9. Investigate violations of this chapter and rules adopted pursuant to this chapter.
 10. Oversee the approval, content and method of delivery of continuing education courses.
 11. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.
 12. License applicators, qualifying parties and businesses in accordance with this chapter and rules adopted pursuant to this chapter.
 13. Require the payment of a penalty for any late license renewal.
 14. Require either completion of the continuing education requirement or successful completion of the license examination for failure to renew a license on time.
 15. Suspend a license if a licensee fails to renew the license within thirty calendar days after the renewal date.
 16. Refuse to issue a business license in a name that is not registered with the secretary of state or filed with the Arizona corporation commission.
 17. Adopt a wood-destroying insect inspection report form for use by business licensees.
- B. The acting director may charge to the holder of a business license the actual cost of providing mailed copies of rules, forms or policies that are proposed for adoption and for educational materials.
- C. The acting director shall administer and enforce this chapter and the rules adopted pursuant to this chapter.
- D. The acting director may:
1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the acting director's jurisdiction.
 2. Require a person who seeks a license pursuant to this chapter to submit to the office a full set of fingerprints and the fees required by section 41-1750. The acting director shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
 3. Enter into intergovernmental agreements.
 4. With at least twenty-four hours' notice, request specific records from a business licensee, qualifying party or applicator at the person's place of business during normal business hours.
 5. Deny or revoke a license based on the information in the application or information that the acting director receives from the criminal background check.
 6. On a showing of good cause by the business licensee, excuse a failure to timely comply with a records request.
 7. Issue advisory notices for de minimis violations.
 8. Require inspectors to be licensed applicators in all categories within their scope of work during their probationary period. Inspectors shall attend and complete an investigative training class that is

prescribed by the acting director.

9. Investigate alleged violations of all applicable federal and state statutes, rules or orders or alleged violations of any condition imposed in connection with a license.

10. Pursuant to section 32-2329, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

11. Issue a corrective work order requiring a licensee to remedy deficiencies in treatment or to comply with this chapter or any rules adopted pursuant to this chapter before or after a formal hearing.

12. Do at least one of the following in relation to unlicensed pest management business operations:

(a) Issue a cease and desist order requiring an unlicensed pest management business to immediately cease operations.

(b) Except as provided in section 32-2311, subsection D, impose on an unlicensed pest management business a civil penalty of not more than one thousand dollars for the first occurrence and not more than two thousand dollars for the second or subsequent occurrence.

13. Refer all cases for formal hearing to the office of administrative hearings.

14. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.

15. Issue a renewable and revocable temporary qualifying party license to a licensed applicator who is a representative of a business licensee if the qualifying party becomes disassociated with the business licensee.

16. Provide and conduct classes to train applicators and qualifying parties in preparation for license tests. The acting director may assess a fee for each class. The acting director may contract with a commercial enterprise or an accredited institution to conduct the class.

17. Provide and conduct continuing education classes quarterly. The acting director may assess a fee for each credit hour. The acting director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of office staff.

18. Appoint an employee of the office to conduct an informal settlement conference with a licensee against whom an inquiry is received or a complaint is filed.

19. Prepare a consent order only after either an informal settlement conference is conducted pursuant to section 32-2321 or a formal hearing is conducted pursuant to title 41, chapter 6, article 10.

20. Apply to the appropriate court, through the attorney general or county attorney, for an order enjoining any act or practice that constitutes a violation of this chapter or any rule adopted pursuant to this chapter.

21. Approve proposed consent orders.

E. Each completed form for a termite treatment that is done before or during construction, initial termite corrective treatment project or wood-destroying insect inspection report shall be accompanied by a fee. The initial fee is eight dollars. The acting director may:

1. Adjust the fee upward or downward to a level that is calculated to produce sufficient revenue to

carry out the functions prescribed under this section.

2. Establish tiered fees according to the means of submission to encourage electronic submission of the termite action registration form.

3. Assess a penalty of not to exceed one hundred dollars per form for failing to submit the required form or fee, or both, within thirty calendar days.

F. Subject to the limitations of section 41-2544, the acting director may enter into agreements for the purpose of enabling the office to accept payment for fees imposed under this chapter by alternative payment methods, including credit cards, charge cards, debit cards and electronic funds transfers. Before the monies are transferred to the acting director pursuant to section 32-2305, the person collecting the fees shall deduct any amount charged or withheld by a company providing the alternative payment method under an agreement with the office.

G. In the enforcement of this article, the acting director or any duly authorized agents may enter with the authority of a warrant issued by a court of competent jurisdiction at reasonable times on any private or public property on which pesticides are located or are reasonably believed to be located to be used for purposes related to pest management. The owner, managing agent or occupant of the property shall permit entry for the purpose of inspecting and investigating conditions relating to the use, storage, application and disposal of pesticides.

32-2305. Pest management fund; exemption

A. A pest management fund is established.

B. Pursuant to sections 35-146 and 35-147, the acting director shall deposit ten per cent of all fees in the state general fund and deposit the remaining ninety per cent in the pest management fund. All monies collected from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the pest management fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

32-2306. Annual and informational reports

A. On or before September 30 of each year, the acting director shall submit a report regarding the number and types of termite treatments as maintained pursuant to section 32-2304, subsection E. The information shall be categorized according to the general type of treatment used, including pesticide, bait, mechanical, temperature and other methods of treatment. If pesticide treatment is used, the report shall include the active ingredient or trade name of the pesticide used.

B. The acting director shall submit copies of the report to the speaker of the house of representatives, the president of the senate, the governor, the secretary of state and the director of the Arizona state library, archives and public records.

C. If a buyer of real property makes a request to the acting director, the acting director shall make available to the buyer an information report listing all termite treatments reported for the property. The wood-destroying insect inspection report shall state that a buyer may obtain the information

report from the acting director.

32-2307. Notification of pesticide applications to schools and child care facilities; exemptions; definitions

A. A business licensee or licensed applicator shall notify a school or a child care facility at least seventy-two hours in advance of any pesticide application in order to permit the school to comply with section 15-152 and the child care facility to comply with section 36-898. The seventy-two hour advance notice shall include the date and time the application is to occur. The seventy-two hour advance notice shall also include the brand name, concentration, rate of application, pesticide label and material safety data sheet and any use restrictions required by the pesticide label. Only an individual holding an applicator license may make pesticide applications at schools and child care facilities.

B. Immediately prior to application of a pesticide a business licensee or licensed applicator shall provide the school or child care facility with a written preapplication notification containing the following information:

1. The brand name, concentration and rate of application and any use restrictions required by the label of the herbicide or specific pesticide.
2. The area or areas where the pesticide is to be applied.
3. The date and time the application is to occur.
4. The pesticide label and the material safety data sheet.

C. The pesticide label and material safety data sheet may be used in place of the information required pursuant to subsections A and B of this section if all of the information required by those subsections is already contained on the label or material safety data sheet.

D. The following pesticide applications are exempt from the notification requirement prescribed in subsections A and B of this section:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control, provided that oral notification is attempted at least seventy-two hours before the application, when possible, to the school office or child care facility office with a statement of the pest problem, treatment procedure, area to be treated and approximate time of the application.
2. Emergency applications of a pesticide that has a toxicity category of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to control harmful pests that pose an immediate threat to the public health. Under the circumstances described in this paragraph or paragraph 1 of this subsection, the business licensee or licensed applicator shall do all of the following:
 - (a) Notify the school office or child care facility office before the application with a statement of the pest problem, treatment procedure, area to be treated and approximate time of application.
 - (b) Immediately after the application has been completed, notify the school office or the child care facility office of the name of the pesticide applied, the formulation, the strength and dosage and the date and time of application and provide the pesticide label.
 - (c) Post the treated area immediately after the application. The posting shall be at least eight and

one-half inches by eleven inches and shall include the name of the pesticide, the registration number issued by the United States environmental protection agency, the date and time of application and the name and telephone number of the business licensee and licensed applicator. A copy of the posting shall also be placed at the main entrance to the school or child care facility. The posting and the copy of the posting shall remain in place for at least forty-eight hours after the application.

3. Disinfectants or swimming pool chemicals.

4. Block, gel or paste-type bait that is a toxicity category III or IV formulation of insecticide pursuant to 40 Code of Federal Regulations section 156.62 and that is either of the following:

(a) Secured in an enclosed, tamper-resistant bait station and placed in an area that is inaccessible to children.

(b) Applied to a crack or crevice inaccessible to children.

5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area inaccessible to children.

6. Personal repellants.

7. Any pesticide exempt from regulation by the United States environmental protection agency pursuant to the federal insecticide, fungicide and rodenticide act (7 United States Code section 136w).

E. The provisions of this chapter shall regulate and determine all requirements regarding licenses, fees, testing, education, and all other requirements regarding the business of pest control for persons licensed pursuant to this chapter.

F. For the purposes of this section:

1. "Child care facility" means a facility regulated pursuant to title 36, chapter 7.1.

2. "Pesticides" does not include nonrestricted use disinfectants, sanitizers or deodorizers.

3. "School" means an educational institution that provides instruction in prekindergarten programs, kindergarten programs or any of grades one through twelve.

32-2308. Joint responsibility for supervised persons

A. A business licensee, qualifying party or applicator may be held jointly responsible for the acts or omissions of another person who is under the supervision of the business licensee, qualifying party or applicator if the supervising licensee fails to properly train, equip or supervise the other person or fails to maintain records of proper training, equipping or supervising.

B. Failure to timely and fully respond to requests by the acting director for information relating to training, equipping and supervising is a prima facie showing of a failure to properly train, equip or supervise. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the acting director.

32-2311. Persons not required to be licensed; civil penalties; definition

A. This chapter does not apply to:

1. Persons licensed or certified pursuant to title 3, chapter 2, article 6.
 2. Persons applying pesticides on property that they own and occupy.
 3. Authorized representatives of any educational institution engaged in research in the study of pest management or a state agency engaged in research or the study of pest management.
 4. Employees of political subdivisions or their designated agents while performing emergency response or rescue services.
 5. Persons using a nonrestricted, ready to use disinfectant, sanitizer or deodorizer.
 6. Except as provided in section 32-2307, persons who are conducting lawn, garden, shrub or tree maintenance and who apply herbicides for the purpose of weed management. This exemption does not apply to:
 - (a) The use of herbicides that are labeled with the words "restricted use" or "danger" and that are not commercially available to the general public.
 - (b) The use of sterilants.
 - (c) Persons who offer weed management as their primary service.
 - (d) Persons who use application equipment that holds more than eight gallons of total mixed liquid herbicide.
 - (e) Persons who use more than twenty-five pounds of a nonliquid herbicide.
 - (f) Persons who do not follow label and labeling directions.
 7. A utility and the utility's employees if pest management services are needed for an employee's health and safety in order for the employee to continue performing work tasks.
 8. Except as provided in section 32-2307, volunteers of political subdivisions who apply herbicides for the purpose of the eradication and control of noxious weeds as defined in section 3-201 and who are under the immediate supervision of a licensed applicator. This exemption does not apply to:
 - (a) The use of herbicides that are labeled with the words "restricted use" or "danger" and that are not commercially available to the general public.
 - (b) The use of sterilants.
 - (c) Volunteers of political subdivisions who use application equipment that holds more than eight gallons of total mixed liquid herbicide.
 - (d) Volunteers of political subdivisions who use more than twenty-five pounds of a nonliquid herbicide.
 - (e) Volunteers of political subdivisions who do not follow label and labeling directions.
 - (f) Volunteers of political subdivisions who have not completed an office of pest management approved herbicide application training program conducted by the political subdivision.
- B. An employee of a political subdivision who engages in pest management:
1. Is not required to be licensed under section 32-2313 or 32-2314.
 2. Must be licensed as an applicator under section 32-2312, except as provided by subsection A, paragraph 4 of this section.
- C. A person who is exempt pursuant to subsection A, paragraph 6 of this section shall provide

treatment records to each customer on application of herbicides for the purpose of weed management and shall retain records containing the same information provided to customers. For the purposes of this subsection, treatment records shall include all of the following:

1. The address of the location of the herbicide application.
2. The date of the herbicide application.
3. The trade name or common name of the herbicide applied.

D. If a person is exempt pursuant to subsection A, paragraph 6 of this section but does not comply with subsection C of this section or if a person is not licensed under this chapter and the person is not exempt pursuant to subsection A, paragraph 6 of this section as a result of doing something prescribed in subsection A, paragraph 6, subdivisions (a) through (f) of this section, the acting director shall:

1. On a first violation, issue a written notice of correction that contains a warning and a copy of this section and that provides full notice of the exemption requirements.
2. On a second violation, impose a civil penalty of not more than two hundred fifty dollars.
3. On a third or any subsequent violation, impose a civil penalty of not more than five hundred dollars.

E. Volunteers of political subdivisions who are not working under the immediate supervision of a licensed applicator may be subject to section 32-2304, subsection D, paragraph 12.

F. For the purposes of this section, "volunteers of political subdivisions" means persons who work without compensation other than reimbursement of actual expenses incurred or disbursement of meals or other incidental benefits.

32-2312. Applicator licenses; application; categories; renewal; inactive licenses

A. An application for an applicator license shall be in a form prescribed by the acting director and accompanied by the prescribed fee. The application shall set forth whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, when and where it was committed and the disposition of the conviction.

B. An applicant may apply for a license in any one or a combination of the following categories:

1. General and public health pest management, excluding management of wood-destroying insects, wood-destroying insect inspection, antimicrobial pest management, fungi inspection, right-of-way and weed management, fumigation, aquatic pest management and turf and ornamental horticulture pest management.
2. Management of wood-destroying insects.
3. Right-of-way and weed management.
4. Fumigation.
5. Turf and ornamental horticulture pest management.
6. Antimicrobial pest management.
7. Fungi inspection.
8. Wood-destroying insect inspection.

9. Aquatic pest management.

10. Other categories or subcategories based on practice in the industry and established by rule.

C. An applicator shall pass an examination, given under the direction of the acting director, with a score of at least seventy-five per cent for each category in which the applicator is seeking licensure.

D. An applicator shall be of good moral character. A felony conviction may demonstrate a lack of good moral character.

E. Except as provided in subsection F of this section, each employee of a business licensee applying pesticides shall be licensed in all applicable categories within ninety calendar days after employment.

F. An unlicensed employee of a business licensee applying pesticides, other than for the treatment of termites, shall work under the direct supervision of a licensed applicator at all times.

G. An unlicensed employee of a business licensee applying pesticides for the treatment of termites shall work under the immediate supervision of a licensed applicator at all times. Only one unlicensed employee at a time may be immediately supervised by a licensed applicator.

H. A licensed applicator desiring to work in a category for which the applicator is not licensed shall become licensed in the category within thirty calendar days after beginning work.

I. Except as provided in section 32-4301, each applicator license shall be renewed by submitting a form prescribed by the acting director and paying the prescribed fee.

J. An applicator may apply to the acting director for inactive license status. To reactivate an inactive license that has been inactive for one year or less, an applicator shall apply to the acting director. To reactivate an inactive license that has been inactive for more than one year, an applicator shall apply to the acting director and shall either successfully complete the applicator license examination or, within twelve months preceding application for reactivation, complete continuing education as required pursuant to section 32-2319.

32-2313. Business license; renewal; financial security; definition

A. A person who wishes to engage in the business of pest management shall first obtain a business license from the office as provided in this article. A person who is not exempt under this article and who advertises for, solicits or holds himself out as willing to engage in the business of pest management is presumed to be in the business of pest management.

B. An application for a business license shall:

1. Be in a form prescribed by the acting director.

2. Be accompanied by the prescribed fee.

3. Include the name and address of the qualifying party and written documentation of how the qualifying party will be active in the day-to-day management of the business licensee.

4. List all owners with more than a ten per cent ownership interest in the company, all corporate officers and members of the board of directors.

C. A business licensee shall register each primary and branch office with the acting director before it opens for business.

D. An applicant shall furnish the following to the acting director:

1. Proof of financial responsibility consisting of either a deposit of money, liability insurance, self-insured retention, a surety bond or a certified check protecting persons who may suffer legal damages as a result of the operations of the applicant. The acting director shall not accept a bond or a liability insurance policy unless issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state. The amount of the deposit, insurance, self-insured retention or bond shall be at least five hundred thousand dollars and shall be maintained at not less than that amount at all times during the licensing period. The license of a business licensee whose financial security falls below the minimum five hundred thousand dollars shall be suspended by the acting director and shall remain suspended until the security meets the minimum financial security requirement. The financial security need only cover those particular operations in which the licensee is engaged at any time. If the financial security is in the form of liability insurance or a surety bond, the licensee shall furnish the acting director with a certificate of coverage that indicates the coverages and endorsements required by this subsection on a form prescribed by the acting director.
2. Either of the following if the business licensee performs termite treatments:
 - (a) Proof of a surety bond in the amount of one hundred thousand dollars per business license for actual damages, including reasonable costs of collection suffered by persons as a result of termite damage due to negligent treatment.
 - (b) Proof of a liability insurance policy rider in the amount of one hundred thousand dollars per business license that covers termite damage due to negligent treatment.
3. If the business licensee provides wood-destroying insect inspection reports or fungi inspection reports, proof of a surety bond or a liability insurance policy rider in the amount of one hundred thousand dollars per business license for actual damages plus reasonable costs of collection suffered by persons as a result of errors and omissions contained in the reports.
4. If an insurance policy provides for a deductible, the deductible amount shall not exceed one per cent of the total financial security for each occurrence. If the deductible amount is in excess of one per cent of the total financial security for each occurrence, the business licensee shall provide other security as provided in this subsection or other evidence of financial security for the excess deductible amount.
5. If the financial security is in the form of liability insurance, a licensee shall maintain a coverage endorsement for pesticides and herbicides, fumigation, care, custody and control, rights-of-way, wood-destroying insect inspection report errors and omissions, fungi inspection report errors and omissions and pollution transit for its applicable license categories.
- E. If the proof of financial security on file with the office expires, the business license is automatically suspended until a current certificate of insurance or proof of financial responsibility is furnished to the acting director.
- F. Except as provided in section 32-4301, each business licensee shall renew the business license and each office registration on or before the expiration date of the license by filing renewal forms prescribed by the acting director and paying the prescribed renewal fees. If a business licensee fails

to renew the business license as required by this subsection, the licensee shall not engage in the business of pest management.

G. Each branch office of a business licensee shall be supervised by a licensed applicator or qualifying party who is licensed in all categories in which the branch office operates.

H. For the purposes of this section, "financial security" means liability insurance, a deposit of cash or certified monies, a surety bond or other equivalent item.

32-2314. Qualifying party; license; examination; inactive status; temporary license

A. An application for a qualifying party license shall be in a form prescribed by the acting director and accompanied by the prescribed fee. The application shall set forth whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, when and where it was committed and the disposition of the conviction.

B. A qualifying party may apply for a license in any one or a combination of the following categories:

1. General and public health pest management, excluding management of wood-destroying insects, wood-destroying insect inspection, antimicrobial pest management, fungi inspection, right-of-way and weed management, fumigation, aquatic pest management and turf and ornamental horticulture pest management.
2. Management of wood-destroying insects.
3. Right-of-way and weed management.
4. Fumigation.
5. Turf and ornamental horticulture pest management.
6. Antimicrobial pest management.
7. Fungi inspection.
8. Wood-destroying insect inspection.
9. Aquatic pest management.
10. Other categories or subcategories based on practice in the industry and established by rule.

C. An applicant for qualifying party licensure shall:

1. Pass an examination, given under the direction of the acting director, with a score of seventy-five per cent or more.
2. Present evidence satisfactory to the acting director that the person has sufficient education or experience in the use of or supervising the use of a pesticide covered by each category for which the person is applying as demonstrated by having had within five years immediately preceding application either:
 - (a) Three thousand verifiable hours of practical experience in the business of pest management.
 - (b) Two thousand verifiable hours of practical field experience in the business of pest management and have successfully completed at least twelve semester hours or its equivalent in entomology, the eradication or management of weeds, general horticulture, plant pathology or any combination of these subjects directly related to each category for which the person is applying.

3. Be of good moral character. A felony conviction may demonstrate a lack of good moral character.

D. The examination shall test the qualifying party's knowledge of pests and the use, storage and application of pesticides and other devices used in the eradication of pests within the category for which the person is applying.

E. A qualifying party shall have an inactive qualifying party license status if the qualifying party is not currently acting as a qualifying party for a business licensee. To reactivate an inactive license that has been inactive for one year or less, a qualifying party shall apply to the acting director to qualify a business license. To reactivate an inactive license that has been inactive for more than one year, a qualifying party shall apply to the acting director to qualify a business license and shall either successfully complete the license examination or, within twelve months preceding application for reactivation, complete continuing education as required pursuant to section 32-2319.

F. If the acting director issues a renewable and revocable temporary qualifying party license pursuant to section 32-2304, the temporary qualifying party license is valid for sixty calendar days and may be renewed only on approval of the acting director if good cause is established for delay in the procurement of a qualifying party license. Under the temporary qualifying party license, a business licensee shall otherwise fully comply with the requirements of this chapter and rules adopted pursuant to this chapter.

G. A person acting as a qualifying party shall:

1. Be active in the management of the business licensee by being present at the business office location each month to review pesticide use, storage and disposal and by ensuring the supervision and training of the employees of the business.

2. During normal business hours, be readily available to the licensed applicators and employees of the business licensee.

H. A qualifying party shall renew a qualifying party license by submitting a form prescribed by the acting director and a fee prescribed by section 32-2317. A qualifying party shall furnish to the acting director proof of completion of continuing education as prescribed by section 32-2319. Successful completion of the qualifying party license examination for each category may be substituted for the continuing education requirement. Continuing education hours used for renewal of a qualifying party's applicator license may be used for the qualifying party's license renewal.

32-2317. Fees

A. The acting director shall establish and collect fees that may include service charges allowed pursuant to section 32-2304 for persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers, but that may not exceed the following amounts:

1. Qualifying party license application fee, one hundred fifty dollars.

2. Qualifying party license renewal fee, one hundred fifty dollars.

3. Qualifying party license renewal fee, inactive status, twenty-five dollars.

4. Temporary qualifying party license application fee, twenty-five dollars.
5. Business license application fee, one hundred dollars.
6. Business license renewal fee, one hundred dollars.
7. Branch office registration application fee, fifty dollars.
8. Branch office registration renewal fee, fifty dollars.
9. Late renewal penalty fee, double the prescribed renewal fee.
10. Qualifying party license status change, inactive to active, one hundred twenty-five dollars.
11. Applicator license application, thirty dollars.
12. Applicator license annual renewal, twenty-five dollars.
13. Duplicate license identification card, ten dollars.

B. The office may charge and collect additional fees for services that the acting director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of rendering the services.

32-2319. Continuing education

A. In order to satisfy continuing education requirements, a licensee shall verify attendance at programs of instruction that are overseen and approved by the acting director and that are designed to augment the proficiency of the licensed applicator or qualifying party relating to pest management.

B. If one individual holds both an applicator license and a qualifying party license, the completion of a minimum of six hours of continuing education in the preceding year for the applicator license satisfies the continuing education requirements for both the applicator license and qualifying party license.

32-2321. Disciplinary action; grounds; procedure; judicial review

A. After an opportunity for a formal hearing or pursuant to a consent order, the acting director may take any of the following disciplinary actions, in combination or alternatively:

1. Revoke a license.
2. Suspend a license.
3. Refuse to renew a license.
4. Impose probation requirements that require a business licensee, licensed applicator or qualifying party to comply with one or more specific provisions of this chapter or rules adopted pursuant to this chapter and that require reporting by or monitoring of the business licensee, licensed applicator or qualifying party.
5. Impose a civil penalty in an amount of not more than one thousand dollars for each violation except for grounds prescribed in subsection B, paragraphs 8 and 9 of this section.
6. Require a qualifying party to report to the acting director the qualifying party's role in the management of a business license.
7. Issue an administrative warning.

B. The following acts are grounds for disciplinary action:

1. Violating this chapter, rules adopted pursuant to this chapter or a written order of the acting director.
 2. Making false or fraudulent records or reports.
 3. Misrepresenting a material fact in obtaining a license.
 4. Applying pesticides in a manner that is inconsistent with the label requirements of the pesticide or that may cause undue harm to the public.
 5. Misuse of a pesticide if the misuse is due to training received or not received or lack of appropriate supervision. Proper training includes training to read and understand the label and labeling and to understand the proper use of application equipment. Proper supervision includes oversight of applicators to ensure general compliance with the label, labeling and all applicable laws.
 6. Authorizing, directing or abetting the publication, advertisement, distribution or circulation of any false statement or material misrepresentation concerning a business of pest management.
 7. Conviction of a felony or misdemeanor arising from or in connection with a license issued pursuant to this chapter after issuance of the license.
 8. Conviction of a felony.
 9. Having had a license, or the equivalent, to apply pesticides or engage in the business of pest management suspended or revoked in another jurisdiction for cause.
 10. Making a fraudulent statement or an intentional material misrepresentation in connection with a wood treatment proposal or a wood-destroying insect inspection report.
 11. Three or more de minimis violations of this chapter or rules adopted under this chapter.
 12. Failure to provide the acting director with a current certificate of insurance or proof of financial responsibility.
 13. Failure to establish a complete vertical barrier at the exterior of foundation walls in stem wall construction or exterior of grade beams in monolithic construction within twelve months of the original treatment made before or during construction.
 14. Immediately supervising more than one unlicensed applicator at a time.
 15. Failure to make and maintain true and accurate records of treatments performed, including those performed under warranty or guarantee, for at least three years from date of treatment except any record of a termite treatment, a wood-destroying insect inspection report or a fungi inspection report, which shall be made and maintained for at least five years from the date of treatment or inspection.
 16. Failure to make treatment records available within three business days on request of the property owner, the property owner's authorized agent or a representative of the office.
- C. Except as provided in section 32-2329, the acting director may proceed against a business licensee pursuant to subsection A, paragraphs 1 through 5 of this section only if, after an opportunity for a hearing, it has been shown that any of the following applies:
1. The business licensee has committed a prior violation of the same type, including any violation by any employee of the business licensee.
 2. The business licensee failed to follow a written order of the acting director directing it to correct a deficiency or problem within the time specified.

3. The business licensee has knowingly assumed operations for a business licensee whose license has been revoked and during the first three years after revocation allows the former licensee to play an active role in company policy, decisions, sales or supervision of employees.
4. The business licensee is convicted of a felony.
5. The business licensee is determined by the acting director to have committed a violation in connection with a treatment before or during construction.
6. The business licensee changes its name or majority ownership of the business and fails to:
 - (a) Report to the acting director within thirty calendar days the status of all warranties issued by the licensee.
 - (b) Notify within thirty calendar days all persons who hold warranties issued by the licensee regarding the change.
7. The business licensee fails to provide written notice immediately following a pest management treatment in or around residential structures of four or fewer units to the person requesting the treatment or to the person's designated agent. The notice shall include the specific pesticide by trade name used in the treatment.
8. The business licensee performing pest management treatments on an ongoing basis to locations other than residential structures of four or fewer units fails to provide written notice to the person who requested the treatments or the person's designated agent. Notice shall be given before the first application of the pesticide and when new or additional pesticides are used or immediately after each treatment.
9. If the treatments are performed in the interior of residential units, the licensee fails to leave a notice in the interior of each treated unit immediately after each treatment. The notice shall include the pesticide by trade name and any other information as required by the pesticide label or local ordinance.
10. A statement of precaution does not accompany each notification of treatment required in paragraphs 7, 8 and 9 of this subsection. Each statement of precaution shall be printed conspicuously, in not less than eight point type, and shall include the words:
Warning--pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated or aerated. For more information contact [business license name and business license number] at [telephone number].
11. The business licensee fails within thirty calendar days after completion of a termite treatment that is done before or during construction, an initial termite corrective treatment project or a wood-destroying insect inspection report to file with the office, in a form approved by the acting director, all data required by the acting director. The data shall include:
 - (a) The name of the individual who performed the work.
 - (b) The address or location of the work or project.
 - (c) The type and the date of the work.
 - (d) The name of the business licensee.
 - (e) The name of the qualifying party.

(f) The applicator's license number.

(g) Any other information required by rule.

12. The business licensee, within twelve months after completion of a termite treatment that is done before or during construction, fails either to file a supplemental termite action report in a form provided by the acting director that indicates the completion of the final grade treatment or to report in writing why the treatment has not been completed and when it will be completed.

D. Nothing in subsection C, paragraph 3 of this section shall be deemed to prohibit a business licensee from directly purchasing accounts from a licensee whose license has been revoked if the purchase is made within such time after the revocation as the acting director by rule may establish.

E. Before taking any action pursuant to this section, the acting director shall notify in writing interested persons and the licensee before the date of the hearing pursuant to title 41, chapter 6, article 10 either personally or by certified mail at the last address known to the office. The written notice shall contain the nature of the charge or charges against the licensee and the time and place of the hearing on the charges.

F. A license may be suspended without a hearing as prescribed in section 32-2329 or if its holder fails within thirty calendar days to:

1. Pay renewal fees.

2. Pay civil penalties.

3. Demonstrate the completion of required continuing education.

G. The holder of a license suspended under subsection F of this section must apply to the acting director for reinstatement.

H. Licenses suspended under subsection F of this section are automatically revoked without a hearing after one year of suspension. Licenses revoked under this section are not subject to section 32-2304, subsection A, paragraph 11.

I. All complaints shall be in writing.

J. If the acting director appoints an employee of the office to conduct an informal settlement conference with the complaining party pursuant to section 32-2304, the purpose of the informal settlement conference is to reach agreement as to the disposition of all or a portion of the complaint, including any agreement providing for repairing or rectifying the conditions specified in the complaint. The settlement conference shall be conducted informally and the rules of evidence do not apply. The settlement conference shall not be recorded. Participants in the settlement conference may ask questions of the complainant and may review any materials or reports compiled by the office with respect to the complaint.

K. If the office prepares a consent order pursuant to section 32-2304, after either an informal settlement conference conducted pursuant to subsection J of this section or a formal hearing by the office conducted pursuant to title 41, chapter 6, article 10, the consent order shall only set forth the general nature of the inquiry or complaint, the specific action to be taken by the licensee or business licensee, the penalty, if any, and the time for compliance, if any, for any corrective action to be taken.

L. Except as provided in section 41-1092.08, subsection H, final decisions of the acting director are

subject to judicial review pursuant to title 12, chapter 7, article 6.

M. The acting director shall consider only an inquiry received or complaint filed within five years after the date of the alleged act or omission.

N. The acting director may issue an advisory notice stating de minimis violations of statutes or rules that carry no penalty, unless the person subject to this chapter wilfully and repeatedly violates the statute or rule. For wilful and repeated violations, the acting director may take disciplinary action against the person for a violation.

O. If the office finds a violation or the office enters into a consent agreement, the office:

1. Shall not delete the record of the complaint for at least five years following the filing of the complaint.

2. Shall include information from the inquiry in the record of complaint. If no violation is found, the information from the inquiry shall be deleted.

P. Only this chapter applies to, regulates and determines all requirements regarding licensure, licensure fees, testing and education related to pest management in this state. Only this chapter applies to, regulates and determines all requirements regarding the business of pest management, including the application or notification of use or disposal of pesticides for pest management in this state.

Q. For purposes of filing or submitting all documents or fees required under this chapter, service is considered complete if postmarked on the proper date and delivered by first class mail or a higher class.

32-2323. Wood-destroying insects; treatment proposal; registration form; fee

A. A business licensee shall not commence work on a contract or sign, issue or deliver any documents expressing an opinion or making a statement relating to the presence or absence of wood-destroying insects in a structure until an inspection is made.

B. Only an applicator or qualifying party licensed in the categories of wood-destroying insect management and wood-destroying insect inspection shall prepare a treatment proposal on a form approved by the acting director and shall deliver a copy of the treatment proposal to the person requesting the proposal, or the person's designated agent, before beginning treatment. The treatment proposal shall include the following information:

1. The address of the property to be treated.

2. A statement describing that the work is preventative or corrective.

3. A statement describing the evidence of infestation or damage.

4. A diagrammatic description showing the nature and location of evidence of infestation or damage, or both, if applicable.

5. A statement describing the treatment or repair method, including the name of the pesticide, agent or device to be used and a diagrammatic description showing where the treatment or repair will be rendered.

6. The price for the work.

7. The terms for the service agreement provided by the business licensee.
 8. The signature and license number of the person who made the inspection of the structure to be treated.
- C. A licensee shall also give to the person requesting a proposal a written recommendation that verifies a particular problem and, in addition to the licensee's recommendation for treatment, shall advise the person of alternative treatments and methods, including integrated pest management methods to alleviate the problem.
- D. A treatment proposal shall not be in the same form or be construed as a wood-destroying insect inspection report. A treatment proposal that does not identify infestation by wood-destroying insects is not a binding statement as to the presence or absence of wood-destroying insects.
- E. A treatment proposal shall be prepared by a licensed applicator or qualifying party who has received at least five hours of instruction from the office or an in-house education program of a business licensee on the subject of wood-destroying insect inspections. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the acting director's request.
- F. If a business licensee performs a treatment pursuant to a treatment proposal, the business licensee shall maintain for five years a record of the treatment and the name and quantity of the pesticide used.
- G. Within thirty calendar days after completion of a termite treatment or on the next business day after the thirty calendar days, a business licensee shall file with the office in a form or format approved by the acting director a complete and accurate termite action registration form and a fee as prescribed by the acting director. The termite action registration form shall include information prescribed in section 32-2321, subsection C, paragraph 11 and this section. This subsection only applies to the following:
1. Any treatments done before or during construction, including final grade treatments.
 2. The first preventative or corrective termite treatment by a business licensee to a site. If the business licensee who performed this termite treatment performed the before or during construction treatment at the same site and filed a termite action report form with the office documenting the before or during construction treatment, the business licensee is exempt from this paragraph.
 3. A wood-destroying insect inspection report.

32-2324. Wood-destroying insect inspection reports

A. Wood-destroying insect inspection reports may only be completed by an applicator or qualifying party who is licensed in the categories of management of wood-destroying insects and wood-destroying insect inspection and who has received at least five hours of instruction from the office or the former structural pest control commission or an in-house education program of a business licensee on the subject of wood-destroying insect inspection reports. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the acting director's request.

B. Wood-destroying insect inspection reports shall be on file in the office of the business licensee within seven calendar days after the completion of an inspection. The business licensee shall retain a copy of all completed wood-destroying insect inspection reports for five years and make the reports available on the acting director's request.

C. Wood-destroying insect inspection reports are evidence of the existence or absence of wood-destroying insects that were visible and accessible to an inspector on the date the inspection was made. A business licensee remains responsible for the accuracy of the inspection and the report as evidence of the presence or absence of infestation on the date of inspection, except that a wood-destroying insect inspection report shall not be construed as a guarantee as to the presence or absence of wood-destroying insects in a structure after the date of inspection.

32-2324.01. Fungi inspection reports

A. Fungi inspection reports may only be completed by a licensed applicator or qualifying party who is licensed in the fungi category and who has received at least eight hours of instruction from the office or the former structural pest control commission or an in-house education program of a business licensee on the subject of fungi inspection and inspection reports. An examination on the instruction is not required. The business licensee shall keep a record of the completion of the training and shall make the record available on the acting director's request.

B. Fungi inspection reports shall be on file in the office of the business licensee within seven calendar days after the completion of an inspection. The business licensee shall retain a copy of all completed fungi inspection reports for five years and make the reports available on the acting director's request.

C. Fungi inspection reports are evidence of the existence or absence of fungi that was visible and accessible to an inspector on the date the inspection was made. A business licensee remains responsible for the accuracy of the inspection and the report as evidence of the presence or absence of fungi on the date of inspection, except that a fungi inspection report shall not be construed as a guarantee as to the presence or absence of fungi in a structure after the date of inspection.

D. The acting director shall approve a fungi inspection report form for use in fungi inspections.

32-2325. Unlawful acts

A person shall not:

1. Engage in the business of pest management without holding a business license issued pursuant to this chapter.
2. Engage in the business of pest management in any category without a qualifying party licensed in that category.
3. Operate a branch office without employing a licensed applicator or qualifying party under whose direct supervision pesticide applications are made out of that office.
4. Apply pesticides in any category other than the control of wood-destroying insects unless the person is an applicator or qualifying party licensed in that category pursuant to this chapter or applies

the pesticides under the direct supervision of an applicator or qualifying party licensed in that category pursuant to this chapter.

5. Apply pesticides for the management of wood-destroying insects unless both of the following apply:

(a) The person is an applicator or qualifying party licensed in that category pursuant to this chapter or the person applies the pesticides under the immediate supervision of a licensed applicator.

(b) The person has received at least five hours of instruction from the office or the former structural pest control commission or an in-house education program of a business licensee on the subject of management of wood-destroying insects that is appropriate for the specific type of application performed. An examination on the instruction is not required. A business licensee shall keep a record of completion of the training and shall make it available on the acting director's request.

6. Make recommendations regarding pest management unless the person is a licensed applicator or qualifying party.

7. Deny to an authorized inspector the right to be present on a jobsite in connection with a contemporaneous pest management treatment for the purpose of taking samples, including pesticide samples and soil samples.

32-2327. Injunctive relief

In addition to all other remedies, the acting director, either through the attorney general or the county attorney, may apply to the appropriate court for an order enjoining any act or practice that appears to constitute a violation of this chapter or rules adopted pursuant to this chapter. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond.

32-2329. Summary suspension

The acting director may summarily suspend, without a formal hearing, any license issued pursuant to this chapter if the acting director considers it to be necessary to protect the health, safety and welfare of the public.

