

## Comparison of OPM and ADA Statutory Authorities

OPM	ADA
<p><b>32-2304. Powers and duties</b>  A. The acting director is responsible for administering this chapter and shall:</p>	
<p>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.</p>	<p>The director shall adopt rules to regulate pesticides which shall include provisions to:</p> <ol style="list-style-type: none"> <li>1. Administer and implement this article.</li> <li>2. Prescribe measures to control, monitor, inspect and govern pesticide use.</li> <li>3. Prohibit or restrict pesticide use.</li> <li>4. Restrict the areas in which pesticide use may occur.</li> <li>5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements and meet financial responsibility standards.</li> </ol> <p>3-363(1)-(4)</p>
<p>2. Administer and enforce this chapter and rules adopted pursuant to this chapter.</p>	<p>A. The director is responsible for administering this article  3-362</p>
<p>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 <b>tenth business day</b> after the day on which the acting director <b>initiated the complaint</b></p>	<p>[Different authority]  B. Within <b>five days</b> after the inspection the director shall inform any alleged violator in writing if the director <b>anticipates an enforcement action</b>.  3-364</p>
<p>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.</p>	<p>[Slightly different authority]  5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.  3-107(A)</p>
<p>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</p>	

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<p>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.</p>	
<p>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:</p> <ul style="list-style-type: none"> <li>(a) The name of the individual who performed the work.</li> <li>(b) The address or location of the work or project.</li> <li>(c) The name of the pest management company.</li> <li>(d) The name of the qualifying party.</li> <li>(e) The applicator license numbers.</li> <li>(f) The nature and date of the work performed.</li> <li>(g) Any other information that is required by rule.</li> </ul>	
<p>7. Establish offices it deems necessary to carry out the purposes of this chapter.</p>	<p>7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary. 3-107(A)</p>
<p>8. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.</p>	<p>10. Employ staff and terminate employment for cause as provided by title 41, chapter 4, article 5. 3-107(A)</p>
<p>9. Investigate violations of this chapter and rules adopted pursuant to this chapter.</p>	<p>A. The director is responsible for administering this article and shall:</p> <ul style="list-style-type: none"> <li>1. Conduct investigations, on complaint and on his own initiative, regarding violations of this article and compile information necessary to administer this article.</li> </ul> <p>3-362</p>
<p>10. Oversee the approval, content and method of delivery of continuing education courses.</p>	<p>[Slightly different authority]</p> <p>5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have ... have adequate training, including continuing education requirements ....</p> <p>3-363</p>
<p>11. Deny a license to any person who has had a license revoked for a period of five years from the</p>	

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time of revocation.	
12. License applicators, qualifying parties and businesses in accordance with this chapter and rules adopted pursuant to this chapter.	9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years. 3-363 (subsection 10 sets out the license types and fees)
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.	[Slightly different authority] 5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have ... have adequate training, including continuing education requirements .... 3-363
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.	[Most of this covered by public records law; it may help to be able to charge for educational materials]
C. The acting director shall administer and enforce this chapter and the rules adopted pursuant to this chapter.	A. The director is responsible for administering this article 3-362 [OPM section repeats (A)(2)]
<b>D. The acting director may:</b>	
1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the acting director's jurisdiction.	5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

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	3-107(A)
<p>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.</p>	
<p>3. Enter into intergovernmental agreements</p>	<p>4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency. 3-107(A) B. The director may enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this article. 3-362(B)</p>
<p>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.</p>	
<p>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.</p>	
<p>6. On a showing of good cause by the business licensee, excuse a failure to timely comply with a records request.</p>	
<p>7. Issue advisory notices for de minimis violations.</p>	<p>D. If the director following an inspection or investigation determines that a de minimis violation occurred, the director shall issue a notice of de minimis violation and maintain a record of the violation for three years. A person receiving a notice of de minimis violation may request a hearing pursuant to title 41, chapter 6, article 10. 3-368</p>
<p>8. Require inspectors to be licensed applicators in all</p>	

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<p>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.</p>	
<p>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.</p>	<p>A. The director is responsible for administering this article and shall:  1. Conduct investigations, on complaint and on his own initiative, regarding violations of this article and compile information necessary to administer this article.  3-362  [OPM section very similar to (A)(9)]</p>
<p>10. Pursuant to section 32-2329, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.</p>	<p>[Not needed – in Title 41]  If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.  41-1092.11(B)</p>
<p>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.</p>	
<p>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.</p>	
<p>13. Refer all cases for formal hearing to the office of administrative hearings.</p>	<p>[Not needed]</p>
<p>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.</p>	

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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.	[Not needed]
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.	[Not needed]
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.	2. Take timely action necessary to enforce this article against violators including seeking injunctive relief and other penalties and sanctions authorized by this article. 3-362(A)
21. Approve proposed consent orders.	[Not needed]
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.	



## **Rules R4-29-**

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