



Arizona Department of Agriculture

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Notice of Meeting and Agenda for the Task Force on the Regulation of Structural Pest Management

The Task Force on the Regulation of Structural Pest Management (OPM Task Force) gives notice that it will hold a meeting open to the public on Wednesday, October 17, 2012 beginning at 9:30 a.m. in room 206 of the Arizona Department of Agriculture, 1688 W Adams Street, Phoenix. Members of the OPM Task Force will attend either in person or by telephone conference call. The Task Force may vote to hold an executive session for the purpose of obtaining legal advice on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

The agenda for the meeting is as follows:

- 1) Roll Call – Jack Peterson, Chairman & OPM Acting Director
- 2) Current Status of the Office of Pest Management and coordination with the Department of Agriculture, including:
 - a) Listserv Signup – <http://listsrv.azda.gov/> - Jack Peterson
 - b) Budget
 - c) Changes, updates or other items out of the ordinary
- 3) Review and discussion of overall draft statutory and regulatory language that is prepared to come to final recommendations. <http://www.azda.gov/OPM/OPMHandouts.html> Handouts – Release 8/15/2012 - latest change summary follows at the end of this agenda or is posted on 10/11/2012.
 - a) The topics of greatest discussion during the Task Force meetings fell into the following broad categories:
 - i) Termite Action Reporting Form - continuation with \$2 fee.
 - ii) Qualifying Party – continuation and burden reduction in qualifications to obtain and broaden.
 - iii) Criminal background investigations – not being required or done by the state.
 - iv) Business names – Office of Pest Management no longer involved.
 - v) Pesticide use reporting for the protection of groundwater.
 - vi) Golf course regulation – under the Arizona Department of Agriculture except commercial
 - vii) Devices – listing of items not regulated
 - viii) Political subdivisions – requiring a qualifying party.
 - ix) Others of interest to committee or recommended by audience
- 4) Discussion of Legislative Report – additions, deletions, changes
- 5) Next steps –
 - a) Discussion of legislative process and TF members desires and goals
 - i) TF availability during session

- 6) Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3) on any matter listed on the agenda
- 7) Call to the Public (2 minute limit per speaker)
 - i) This is the time for the public to comment on items relating to the Task Force's purpose and discussions held or wished to be discussed in the future. Members of the Task Force may not discuss items that are not specifically identified on the agenda. Therefore, in response to public comments made on issues that are not listed on the agenda, the Task Force is limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date.
- 8) Set Next Meeting Date and Topic Discussion (if needed)
- 9) Adjourn

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Anna Villa at (602) 542-4315 (voice), or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this 11th day of October, 2012

§ ~~32-2301.~~ 32-2302. Definitions

2. "BRANCH SUPERVISOR" MEANS A CERTIFIED APPLICATOR WORKING AT OR FROM A BRANCH OFFICE WHO IS RESPONSIBLE FOR ENSURING THE TRAINING, EQUIPPING AND SUPERVISION OF ALL APPLICATORS OF THE BRANCH OFFICE.

~~13.~~ 16. "Immediate supervision" means use of a pesticide by an employee INDIVIDUAL acting under the instructions, control and responsibility of a ~~licensed~~ CERTIFIED applicator who is within the direct line of sight or within hearing distance of the employee INDIVIDUAL and who is available for consultation or assistance at the time and place the pesticide is used.

20. "NEW-CONSTRUCTION TREATMENT" MEANS A TREATMENT THAT PROTECTS ALL CELLULOSE COMPONENTS OF A STRUCTURE FROM SUBTERRANEAN TERMITES AND IS PERFORMED AFTER A PERMANENT CONCRETE SLAB FOUNDATION IS INSTALLED OR FOOTINGS AND SUPPORTS FOR A RAISED FOUNDATION ARE INSTALLED, BUT BEFORE THE STRUCTURE OR A FINAL GRADE TREATMENT IS COMPLETED.

27. "POST-CONSTRUCTION TREATMENT" MEANS A TREATMENT TO CONTROL WOOD-DESTROYING INSECTS IN OR AROUND AN EXISTING STRUCTURE PERFORMED AFTER ALL SOIL DISTURBANCE ASSOCIATED WITH CONSTRUCTION IS COMPLETE AND AFTER AN APPLICATOR HAS COMPLETED AN INSPECTION OF THE STRUCTURE AND A TREATMENT PROPOSAL UNDER SECTION 32-2323(A) & (B).

§ 32-2304. Powers and duties

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

~~3. Notify the business licensee, applicator and qualifying party in writing of any complaint against~~ INQUIRY INTO POSSIBLE VIOLATIONS BY the business licensee, APPLICATOR OR 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.~~ INQUIRY IF THE DIRECTOR ANTICIPATES AN ENFORCEMENT ACTION. IF IN THE COURSE OF THE INVESTIGATION THE OFFICE IDENTIFIES ANY ALLEGED VIOLATIONS BY A DIFFERENT BUSINESS LICENSEE, APPLICATOR OR QUALIFYING PARTY, THE DIRECTOR SHALL NOTIFY THE ADDITIONAL ALLEGED VIOLATOR BY THE CLOSE OF BUSINESS ON THE TENTH BUSINESS DAY AFTER THE DAY ON WHICH THE DIRECTOR INITIATED THE NEW INQUIRY.

~~D.~~ B. The ~~acting~~ director may:

21. REQUIRE A BUSINESS LICENSEE TO PRODUCE RECORDS FOR THE PURPOSE OF VERIFYING THAT AN INDIVIDUAL IS AN APPLICATOR OF THE BUSINESS LICENSEE.

~~G.~~ C. ~~In the enforcement of this article, the acting~~ THE 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~~ PROPERTY, INCLUDING SERVICE VEHICLES, on which pesticides are located or are reasonably believed to be located to be used for purposes related to pest management OR ANY OFFICE OF A BUSINESS ENGAGED IN PEST MANAGEMENT. The owner, managing agent or occupant of the property OR OFFICE shall permit entry for the purpose of inspecting and investigating conditions relating to the use, storage, application and disposal of ~~pesticides.~~ PESTICIDES, INCLUDING WORKER SAFETY MATERIALS, AND RECORDS PERTAINING TO PEST MANAGEMENT. IF A PERSON REFUSES TO ADMIT THE DIRECTOR OR AN AGENT IN ACCORDANCE WITH THIS SUBSECTION, THE DIRECTOR MAY OBTAIN A WARRANT FROM A COURT OF COMPETENT JURISDICTION. IF A LICENSED PERSON REFUSES TO ADMIT THE DIRECTOR OR AN AGENT IN ACCORDANCE WITH THIS SUBSECTION DURING REGULAR BUSINESS HOURS, THE DIRECTOR MAY ALSO IMPOSE DISCIPLINARY ACTION ON THE PERSON.

§ 32-2306. Pest Management Advisory Committee

A. A PEST MANAGEMENT ADVISORY COMMITTEE IS ESTABLISHED CONSISTING OF FIVE MEMBERS APPOINTED BY THE DIRECTOR. THE MEMBERS SHALL BE APPOINTED AS FOLLOWS:

1. THREE INDUSTRY MEMBERS WHO ARE BUSINESS LICENSEES OR QUALIFYING PARTIES AND WHO HAVE A MINIMUM OF FIVE YEARS OF PEST MANAGEMENT EXPERIENCE. AT LEAST ONE INDUSTRY MEMBER SHALL BE A BUSINESS LICENSEE WHO HAS FIVE OR FEWER APPLICATORS AND AT LEAST ONE INDUSTRY MEMBER SHALL BE FROM OUTSIDE OF MARICOPA AND PIMA COUNTIES.

§ 32-2311, 32-2315. Persons not required to be licensed; civil penalties; definition License exemptions

B. AN INDIVIDUAL IS NOT REQUIRED TO HAVE A SEPARATE BUSINESS LICENSE TO ENGAGE IN THE BUSINESS OF PEST MANAGEMENT ON BEHALF OF A BUSINESS LICENSEE OR AS AN EMPLOYEE OF A POLITICAL SUBDIVISION.

§ 32-2316. Political subdivisions; exemptions

D. THE FOLLOWING INDIVIDUALS ARE EXEMPT FROM THE CERTIFICATION REQUIREMENTS:

3. VOLUNTEERS OF POLITICAL SUBDIVISIONS WHILE APPLYING 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 CERTIFIED APPLICATOR. THIS EXEMPTION DOES NOT APPLY TO VOLUNTEERS OF POLITICAL SUBDIVISIONS WHO:

(c) USE STERILANTS.

§ 32-2317. Landscapers; records; civil penalties

E. IF A PERSON IS NOT EXEMPT FROM LICENSURE AND REGISTRATION BUT USES AN HERBICIDE FOR THE PURPOSE OF WEED MANAGEMENT, THE DIRECTOR MAY:

§ 32-2317 32-2318. Fees

A. The acting director shall establish and collect APPLICATION AND RENEWAL 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 PER YEAR:

8. APPLICATOR REGISTRATION, ONE HUNDRED DOLLARS PER APPLICATOR.

§ 32-2307, 32-2321. Notification of pesticide Pesticide applications to schools and child care facilities; notification; exemptions; definitions

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

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).

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

E. A treatment proposal shall be prepared by a licensed CERTIFIED applicator ~~or qualifying party~~ who has received at least five hours of instruction from ~~the office or~~ an in-house education program of a THE business licensee on the subject of wood-destroying insect ORGANISM 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. **THE INSTRUCTION REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.**

§ 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 CERTIFIED in the ~~categories of management~~ CATEGORY of wood-destroying insects and ORGANISM MANAGEMENT OR 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 THE 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. **THE INSTRUCTION REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.**

§ ~~32-2325~~ 32-2331. Unlawful acts

B. THE FOLLOWING NONEXCLUSIVE ACTS ARE GROUNDS FOR DISCIPLINARY ACTION:

17. FAILURE TO PERMIT THE DIRECTOR OR ANY DULY AUTHORIZED AGENT TO PROMPTLY INSPECT RECORDS PERTAINING TO PEST MANAGEMENT LOCATED AT AN OFFICE OF A BUSINESS LICENSEE WHEN AN EMPLOYEE **OR OWNER** OF THE BUSINESS LICENSEE IS PRESENT AT THE BUSINESS OFFICE AND HAS ACCESS TO THOSE RECORDS.

§ ~~32-2324~~ 32-2332. Disciplinary action; grounds; procedure; judicial review

C. Except as provided in section ~~32-2329~~, 41-1092.11, the ~~acting~~ director may ~~proceed~~ TAKE DISCIPLINARY ACTION against a business licensee pursuant to subsection A, ~~paragraphs 1 through 5~~ A of this section only if, ~~after an opportunity for a hearing, it has been shown that~~ IF any of the following ~~applies~~: APPLY:

1. The business licensee has committed a prior violation of the same type, including any violation by any **employee** APPLICATOR of the business licensee.

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** APPLICATORS.

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

G. THE DIRECTOR MAY SUMMARILY SUSPEND A LICENSE WHILE THERE IS A PENDING CRIMINAL CHARGE AGAINST THE LICENSEE FOR A **FELONY OR A MISDEMEANOR** INVOLVING MORAL TURPITUDE.

§ 32-2335. Business license; principals

A. THE OFFICE SHALL DENY AN APPLICATION FOR A NEW BUSINESS LICENSE OR TO RENEW AN EXISTING BUSINESS LICENSE IF A PRINCIPAL OF THE APPLICANT WAS ALSO A PRINCIPAL OF ANOTHER BUSINESS THAT

CURRENTLY OWES PAST DUE TERMITE ACTION REGISTRATION FORM FEES, OWES CIVIL PENALTIES TO THE OFFICE, HAS ITS LICENSE SUSPENDED, OR HAS HAD ITS BUSINESS LICENSE REVOKED WITHIN THE LAST FIVE YEARS AND WAS A PRINCIPAL AT THE TIME THE FEES BECAME DUE OR THE ACTS RESULTING IN DISCIPLINARY ACTION OCCURRED.

Session Laws

Sec. X5. Delayed enforcement of registered qualifying parties of political subdivisions

The Office of Pest Management shall not take disciplinary action against a political subdivision for a failure to comply with section 32-2316, subsection (A), paragraph (2) prior to January 1, 2015.

R4-29-101. Definitions

“MSDS” means material safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

“SDS” means safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

*“New-construction treatment” means a termite treatment that ~~complies with standards in the Commission’s statutes and this Chapter~~, protects all cellulose components of a structure from **subterranean termites, termites** and is performed after a permanent concrete slab foundation is installed or ~~after~~ footings and supports for a raised foundation are ~~installed~~ **installed**, but before the structure or a final grade treatment is completed.*

*“Post-construction treatment” means a treatment that ~~complies with standards in the Commission’s statutes and this Chapter~~ to control ~~subterranean termites or other wood-destroying insects in~~ **or around** an existing structure, and is structure performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under A.R.S. § 32-2323(A) and (B).*

R4-29-105, R4-29-103. Fees; Charges; Exemption

B. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically **when OPM allows electronic submission.**

D. A business licensee shall pay the following TARF fees:

- 1. Electronic submissions, \$2;**
- 4. Electronic supplemental WDIIR submissions, \$0;**

R4-29-203. Obtaining an Applicator License Certification

B. An applicator shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. **A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:**

- 1. Murder involving the death of a law enforcement officer.**
- 2. An offense described in A.R.S. § 13-2308.01 related to terrorism.**
- 3. A sexual offense against a minor, including luring a minor for sexual exploitation, that is a class 3 or higher felony.**

R4-29-204. Obtaining a Qualifying Party License Qualified Applicator Certification

C. Experience. An applicant shall possess one of the following qualifications:

- 1. Certification as an applicator for 24 months within the **ten** years preceding the application in the category applied for.**
- 2. Certification as an applicator for 12 months within the **ten** years preceding the application and either:**
 - a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or**
 - b. A Bachelor’s degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.**

3. Twenty four months of experience in the business of pest management, in another State where licensure was not required, within the ten years preceding application directly related to the category applied for.

E. A QA shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:

1. Murder involving the death of a law enforcement officer.

2. An offense described in A.R.S. § 13-2308.01 related to terrorism.

3. A sexual offense against a minor, including luring a minor for sexual exploitation, that is a class 3 or higher felony.

~~R4-29-212.~~ R4-29-210. Certification Broadening an Applicator or Qualifying Party License

A. To broaden an applicator license, the licensed applicator certification, the applicant shall:

1. Submit to the Commission the license application form described in R4-29-203 and indicate on the form the category in which broadening is sought.

~~R4-29-216.~~ R4-29-214. Requirements for Approval of Continuing Education Approval

~~D.C.~~ The provider of an approved continuing education course shall:

4. Notify OPM in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.

~~R4-29-306.~~ R4-29-302. Storing and Disposing of Pesticides and Devices

J. An applicator shall not store a fumigant within a residential structure residence, office or cab of a vehicle.

~~R4-29-305.~~ R4-29-308. Performing Wood-destroying Insect Control Management

B. An applicator shall not perform wood-destroying insect control organism management until the business licensee or political subdivision that employs the applicator ensures that:

1. A wood-destroying insect inspection is performed under R4-29-303 R4-29-307 by a licensed certified applicator qualified meeting the training requirement under A.R.S. § 32-2323(E),

~~R4-29-608.~~ R4-29-309. Providing Termite Treatment Retreatments

~~C.B.~~ A business licensee that provides a termite treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.

~~D.C.~~ If subterranean termites occur in or on a residential or commercial structure within five three years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within five three years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to category B2 or B8 wood-destroying insect treatment.

~~E.D.~~ If subterranean termites occur a third time on the exterior of a one or two unit residential structure within five three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.

1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;

2. For the purpose of this subsection and subsection (F): (E):

a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;

b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and

c. A third occurrence means evidence of **subterranean termites** exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.

F.E. If **subterranean termites** occur a third time on the interior of a one or two unit residential structure within ~~five~~ **three** years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where **termite** activity originates and that is livable or a garage.

H.G. If a business licensee goes to a structure to perform a re-treatment under subsection (C) or (D) ~~or (E)~~ or a post-construction treatment under subsection ~~(F)~~ (E) and determines there is no evidence of **subterranean termites**, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.

R4-29-404. Branch Supervisors

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the **applicators**.

R4-29-609, R4-29-503. Business Licensee and Political Subdivision Recordkeeping and Retention

B. A business licensee or political subdivision shall maintain the records as follows:

10. WDIIRs completed under subsection (C), ~~five~~ **three** years. ~~The business licensee shall consecutively number the WDIIRs and:~~
 - a. ~~Maintain them in consecutive order; or~~
 - b. ~~Maintain them in a different order and maintain a list of the WDIIRs in consecutive order that includes the date of the inspection and the heading under which each WDIIR is filed; and~~

Golf Course Rule Changes

Title 3. Agriculture
Chapter 3. Department of Agriculture
Environmental Services Division

R3-3-208. Applicator Certification; Examination; Fee; Renewal

F.H. Renewal.

3. CEU requirements.
 - c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's ~~private~~ **private, golf**, or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.
 - d. The Department shall not renew an aquatic certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's golf applicator certification under this subsection and completes three additional CEUs per year of the renewal period. **The three additional CEUs per year may also be used to simultaneously satisfy the three additional CEUs per year requirement in subsection (H)(3)(c).**