ARIZONA DEPARTMENT OF AGRICULTURE OFFICE OF PEST MANAGEMENT **AGENCY GUIDANCE DOCUMENT** Devices	GD 13-01 POLICY NO. SIGNATURE Sept. 13, 2013 DATE

1. BACKGROUND

Laws 2011, ch. 20, § 6 required the Director of the Arizona Department of Agriculture to appoint a nine member task force to study the regulation of structural pest management in Arizona, specifically as it related to the following four items: (1) a review of all laws and regulations governing structural pest management in this state, (2) a review of possible organizational configurations within ADA for structural pest management regulation, (3) a review of personnel and funding issues relating to the administration of structural pest management regulation within ADA and (4) statutory changes necessary to accomplish the future structural pest management program. The task force and its subcommittees met 18 times between August 2011 and October 2012. In November 2012, the task force's final recommendations for changing OPM's statutes and rules were submitted to the Governor, the President of the Senate, and the Speaker of the House. These recommendations were adopted by the Legislature in substantial part and signed into law in 2013. *See* Laws 2013, ch. 125.

2. GUIDANCE ON KEY OPM STATUTES & RULES ON DEVICES

"Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling or mitigating any pest or other form of plant or animal life. A.R.S. § 32-2301(10).

The use of a device "for the purpose of eliminating, exterminating, controlling or preventing infestations" is considered engaging in the "business of pest management." A.R.S. § 32-2301(4).

Similarly, "pest management services" includes "the use of devices not exempt by section 32-2304, subsection B, paragraph 18 for the purpose of eliminating, exterminating, controlling or preventing infestations." A.R.S. § 32-2301(24). In addition, OPM has the authority to monitor compliance by a person with OPM's statutes and rules while the person is providing pest management services. A.R.S. § 32-2304(D).

Normally, a person needs a business license and a qualifying party to engage in the business of pest management. A.R.S. §§ 32-2313(A) & 32-2314(A); *see also* A.R.S. § 32-2325(A)(1)-(2); A.A.C. R4-29-201(A)-(B). Additionally, an applicator for a business licensee or political subdivision needs certification to provide pest management services. A.R.S. § 32-2311.01(C) (political subdivisions); A.A.C. R4-29-201(C) (businesses). In other words, a person using a "device" must generally comply with the licensing, certification, and registration requirements of OPM's statutes and rules.

However, the director has authority to "designate by rule devices that are exempt from the licensure, certification and registration requirements." A.R.S. § 32-2304(B)(18); *see also* A.R.S. § 32-2311(A)(6) (licensing and registration do not apply to a person using a device covered by A.R.S. § 32-2304(B)(18)). Pursuant to this authority, the director has established A.A.C. R4-29-304, which provides:

A. The following devices are not subject to the licensure and registration requirements of this Chapter or the OPM's statutes:
   1. Physical barriers used to remove or prevent infestation by pests;
   2. Equipment used for the physical removal of pests or the habitat of pests;
   3. Mechanical equipment used for the physical removal of weeds and other vegetation;
   4. Mechanical traps used without a pesticide;
   5. Installation equipment used for home improvement or modifications;
   6. Raptors used to control or relocate other birds; and
   7. Fire arms.

B. An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase "Not a licensed pest control company" in all written and oral advertisements.

Some examples of the devices covered by rule 304(A) are screens, garden hoes, shovels, rakes, bird spikes, tweezers, and caulking.

The effect of A.R.S. § 32-2304(B)(18) and rule 304(A) is that an individual does not need to be certified or registered as an applicator, be supervised by a qualifying party, or have a business license in order to use a device listed in rule 304(A). As a result, this individual does not have to pass an OPM exam or pay licensing fees.

This does not mean, however, that this same individual is free from following OPM's other statutes and rules. This individual is still subject to OPM monitoring under A.R.S. § 32-2304(D). This individual also cannot misuse a device listed in rule 304(A). *See* A.A.C. R4-29-301(B)(1)-(2) (requiring use, handling, storage, and disposal of devices and wearing of PPE according to the label). Moreover, rule 304(B) requires this individual to include the phrase "Not a licensed pest control company" in the individual's advertisements. If the individual violates OPM's statutes or rules, OPM may impose a civil penalty against the individual and seek injunctive relief. *See* A.R.S. §§ 32-2321(A)(5), 32-2325(B)(1) & 32-2327.

Importantly, rule 304 has perhaps no practical application to applicators who use pesticides or devices not covered by rule 304 in addition to using devices covered by rule 304. To use pesticides or devices not covered by rule 304, the applicator will need to be certified (except for the first 90 days) and registered, supervised by a qualifying party, and working for a business licensee or political subdivision.

There may be individuals whose work is entirely covered by rule 304(A), but who do not wish to state "Not a licensed pest control company" in advertisements as required by rule 304(B). Those individuals may go through the same licensing requirements that other companies do in order to become a licensed pest control company, complete with a qualifying party and certified and registered applicators.