

# Arizona Revised Statute

## Chapter 22 – Structural Pest Management Regulation

### Article 1 - 4

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## **ARTICLE 1. GENERAL PROVISIONS**

### **§ 32-2301. Definitions**

In this chapter, unless the context otherwise requires:

1. "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, information pertaining to the business of pest management is given or pesticides are stored or disposed of.
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.
3. "Business license" means a license that is issued pursuant to this chapter or rules adopted pursuant to this chapter to a person and that entitles that person and the person's employees to engage in the business of pest management.
4. "Business of pest management" means engaging in, offering to engage in, advertising for, soliciting or performing pest management, including any of the following:
  - (a) Identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations.
  - (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. "Certified applicator" means an individual who is licensed by the office to provide pest management services in accordance with this chapter.
6. "Certified qualified applicator" means a certified applicator who is eligible to act as a qualifying party.
7. "Child care facility" means a facility regulated pursuant to title 36, chapter 7.1.
8. "De minimis violation" means a violation that, although undesirable, has no direct or immediate relationship to safety, health or property damage.
9. "Department" means the Arizona department of agriculture.
10. "Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life.
11. "Direct supervision" means the use of a pesticide under the instructions, control and responsibility of a certified applicator who is available if needed for consultation or assistance even though the certified applicator is not physically present at the time and place the pesticide is used.
12. "Director" means the director of the Arizona department of agriculture.
13. "Final grade treatment" means the establishment of a complete vertical barrier at the exterior of foundation walls in stem wall or monolithic construction.
14. "Financial security" means liability insurance, a deposit of cash or certified monies, a surety bond or an irrevocable and unconditional letter of credit from an Arizona or federally chartered financial institution.
15. "Household pests" means pests, other than wood-destroying organisms, that invade households or other structures, including rodents, vermin and insects.
16. "Immediate supervision" means the use of a pesticide by an individual acting under the instructions, control and responsibility of a certified applicator who is within the direct line of sight or within hearing distance of the individual and who is available for consultation or assistance at the time and place the pesticide is used.
17. "Initial corrective treatment" means the first postconstruction treatment of any kind performed by a licensee, excluding a treatment performed under warranty by a licensee who has performed the pretreatment or new-construction treatment.
18. "Inquiry" means an initial investigation of possible violations of this chapter or rules adopted pursuant to this chapter based on information received from the public or office staff.

19. "Integrated pest management" means a sustainable approach to managing pests that combines biological, cultural, physical and chemical tools in a way that minimizes economic, health and environmental risks.
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.
21. "Office" means the office of pest management established by section 32-2303.
22. "Other structures" includes railroad cars, boats, docks, motor vehicles or airplanes and their contents.
23. "Pest management":
- (a) Means the management of health-related pests, aquatic pests, household pests, wood-destroying organisms, or other pests, including weeds that exist in, near or around structures, in ornamental shrubs and trees, along rights-of-way or in lawns or cemeteries and all pesticide applications that could be harmful to public health or the environment.
- (b) Includes the management by persons for hire of health-related pests, aquatic pests, household pests, wood-destroying organisms or other pests, including weeds that exist on golf courses.
- (c) Does not include pesticide applications used directly in the commercial production of crops and animals or used not for hire on golf courses.
24. "Pest management services" means identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations, making written or oral inspection reports or recommendations with respect to infestations and the application of pesticides or the use of devices not exempt by section 32-2304, subsection B, paragraph 18, for the purpose of eliminating, exterminating, controlling or preventing infestations.
25. "Pesticide" means any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents, predatory animals or any form of plant or animal life that is, or that the director may declare to be, a pest and that may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.
26. "Political subdivision" means a state agency, county, city, town, municipal corporation or school district or a special district formed pursuant to title 48.
27. "Postconstruction treatment" means a treatment to control wood-destroying organisms 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 32-2332, subsections A and B.
28. "Pretreatment" means a termite treatment that protects all cellulose components of a structure from subterranean termites, is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation and that establishes thorough and complete horizontal and vertical treated barriers.
29. "Prior violation" means any violation for which disciplinary action was taken within a five-year period before the date of the violation for which current disciplinary action is sought.
30. "Qualifying party" means a certified qualified applicator registered with the office as the individual responsible for ensuring the training, equipping and supervision of all applicators of a business licensee or school district.
31. "School" means any public or nonpublic institution, other than a child's home, established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve and that qualifies as a school pursuant to section 15-802.
32. "Service vehicle" means a motor vehicle, including a trailer attached to the motor vehicle that is used to transport equipment or pesticides for the business of pest management.
33. "Sterilant" means a product that is designed for killing all live vegetation and preventing all vegetation growth for twelve or more months.
34. "Weed" means any plant that grows where it is not wanted.

35. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the 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.

36. "Wood-destroying organisms" means organisms that attack, damage or destroy wood or wood-derivative products, but does not include birds or mammals.

**§ 32-2302. Applicability of chapter; state preemption**

A. This chapter applies to pest management. This chapter does not apply to pesticide applications used directly in the commercial production of crops and animals or used, if not for hire, on golf courses.

B. The regulation of pest management is of statewide concern. The regulation of pest management pursuant to this chapter is not subject to further regulation by a county, city, town or other political subdivision of this state.

**§ 32-2303. Office of pest management; management and administrative services**

A. The office of pest management is established.

B. The department shall provide, through an interagency agreement, necessary management and administrative services to the office in conducting its activities including:

1. Providing financial and accounting services including issuing checks, paying bills approved by the office, preparing budgets, and any other activities required by the office.
2. Receiving monies authorized under this chapter for deposit, pursuant to sections 35-146 and 35-147, in the appropriate funds.
3. Managing the office's information technology systems.
4. Receiving mail and other communications for the office.
5. Rulemaking, preparing reports for the governor's regulatory review council and preparing regulatory agendas.
6. Providing human resources services, including employee relations, staffing and recruitment, classification and compensation advice and personnel policy assistance.
7. Providing other services requested by the office and approved by the department.

C. The office shall reimburse the department for necessary management and administrative services, including the director's services, rendered for the benefit of the office from the monies received under this chapter in an amount agreed on by the office and department.

**§ 32-2304. Powers and duties**

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

1. Adopt rules that are necessary or proper to administer and implement this chapter, including rules that may be more stringent than a corresponding federal law for:

- (a) Administrative provisions.
- (b) Licensure, certification and registration requirements and qualifications, including training and education requirements and financial security standards.
- (c) Health and safety provisions.
- (d) Duties and responsibilities.
- (e) Recordkeeping and production of records requirements.
- (f) Licensee inspection and treatment reports requirements.

(g) Disciplinary action provisions.

(h) Equipment provisions.

(i) Advertising requirements.

(j) The use, storage and application of pesticides and devices used in pest management.

2. Notify the business licensee, applicator and qualifying party in writing of any inquiry into possible violations by the business licensee, applicator or qualifying party by the close of business on the tenth business day after the day on which the director initiated the 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.

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

4. Maintain a computer system for the benefit and protection of the public that includes the following information on pretreatments, new-construction treatments, final grade treatments initial corrective 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.

5. Establish offices the director deems necessary to carry out the purposes of this chapter.

6. Subject to title 41, chapter 4, article 4, employ personnel the director deems necessary to carry out the purposes of this chapter and designate their duties.

7. Oversee the approval, content and method of delivery of continuing education courses.

8. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.

9. License applicators and qualified applicators and license businesses in accordance with this chapter and rules adopted pursuant to this chapter.

10. Register qualifying parties, branch supervisors and branch offices in accordance with this chapter and rules adopted pursuant to this chapter.

11. Require the payment of a penalty for any late license renewal.

12. 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.

13. Adopt a wood-destroying insect inspection report form for use by business licensees.

B. The director may:

1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the director's jurisdiction.

2. 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 an inquiry or complaint.

3. Contract and enter into interagency and intergovernmental agreements with any private party or public agency.
  4. With at least twenty-four hours' notice, unless there may be an immediate risk to health or safety, require a business licensee, qualifying party or applicator to produce specific records. On a showing of good cause by the business licensee, qualifying party or applicator, the director may excuse a failure to timely comply.
  5. Deny or revoke a license based on the information in the application.
  6. Issue advisory notices for de minimis violations.
  7. Investigate alleged violations of this chapter, rules adopted pursuant to this chapter, consent agreements, orders and any condition imposed in connection with a license.
  8. Require the public to provide notices regarding alleged violations in writing.
  9. Pursuant to section 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.
  10. Issue a corrective work order requiring a business licensee or applicator 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.
  11. Do at least one of the following in relation to unlicensed pest management business operations, unless the operations do not require licensure:
    - (a) Issue a cease and desist order requiring the business to immediately cease operations.
    - (b) Impose on the owner of the 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.
  12. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.
  13. Register a certified applicator who is a representative of a business licensee as a temporary qualifying party if the qualifying party becomes disassociated with the business licensee.
  14. Provide and conduct classes to train individuals in preparation for certified applicator and certified qualified applicator tests. The director may assess a fee for each class. The director may contract with a commercial enterprise or an accredited institution to conduct the class.
  15. Provide and conduct continuing education classes quarterly. The director may assess a fee for each credit hour. The director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of office staff.
  16. 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.
  17. Enter into consent agreements and issue consent orders.
  18. Designate by rule devices that are exempt from the licensure, certification and registration requirements of this chapter.
  19. Charge a person for providing copies of rules, forms or policies proposed for adoption and for educational materials.
  20. Require a business licensee or qualifying party to register with the office or otherwise identify all of the licensed and unlicensed applicators of the business or supervised by the qualifying party.
  21. Require a business licensee to produce records for the purpose of verifying that an individual is an applicator of the business licensee.
  22. Charge a handling fee in addition to the transaction amount for any transaction that could have been completed electronically and was not.
  23. Deny or refuse to renew a license of a person who owes unpaid fees or civil penalties to the office.
- C. The director or any duly authorized agents may enter any private or public property, including a service vehicle, 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, including worker safety materials and records pertaining to pest management. If a person refuses to admit the director or the authorized agent in accordance with this subsection, the director may obtain a warrant from a court of competent jurisdiction. If a licensed or certified person refuses to admit the director or an authorized agent in accordance with this subsection during regular business hours, the director may impose disciplinary action on the person.

D. The director or any duly authorized agents may monitor compliance by a person with this Chapter and rules adopted pursuant to this Chapter while the person is providing pest management services.

#### **§ 32-2305. Pest management fund; exemption**

A. The pest management fund is established for the exclusive purpose of implementing, continuing and supporting the office and its objectives as established by this chapter.

B. Pursuant to sections 35-146 and 35-147, the 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. Pest management advisory committee; members**

The director shall establish by rule a pest management advisory committee to assist and make recommendations to the director regarding the administration and implementation of this chapter. The director shall appoint five members to the committee, including one public member.

#### **§ 32-2307. Pesticide applications at schools and child care facilities; notifications; exemptions**

A. Only a certified applicator may apply pesticides at a school or child care facility.

B. A business licensee or certified 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.

C. Immediately before application of a pesticide, a business licensee or certified 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.

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

E. The following pesticide applications are exempt from the notification requirement prescribed by subsections B and C 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 certified 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 certified 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 that is 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 that is inaccessible to children.

6. Personal repellants.

7. Nonrestricted use sanitizers and deodorizers.



## **ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE**

### **§ 32-2311. License and registration exemptions**

A. The provisions of this chapter requiring licensure and registration do not apply to:

1. Persons applying nonrestricted use pesticides on residential property that they own and occupy or that they own and that is not occupied.
2. 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.
3. Persons using a nonrestricted, ready to use disinfectant, sanitizer or deodorizer.
4. 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.
5. Persons using an over-the-counter anti-microbial to treat a swimming pool.
6. Persons using a device that is exempt pursuant to section 32-2304, subsection B, paragraph 18.
7. Persons who are exempt pursuant to section 32-2318 or 32-2319.

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.

C. The director by rule may exempt from sections 32-2313 and 32-2314 a certified applicator who performs inspections but does not make recommendations, estimates, bids or contracts for treatment or use pesticides or devices for pest management and may prescribe alternative requirements and conditions.

#### **§ 32-2311.01. Political subdivisions; exemptions; definition**

A. A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements:

1. Is not required to be licensed under section 32-2313.
2. Must provide the department with the name and telephone number of the primary contact person or persons responsible for responding to department inquiries or concerns regarding compliance with this chapter. The primary contact person or persons at a minimum shall demonstrate to the department:
  - (a) Where the records are retained.
  - (b) Where the personal protective equipment is located.
  - (c) Where the pesticides are stored.
  - (d) That all applicators are properly certified.

b. A school district is exempt from subsection a, paragraph 2 of this section, but shall have a qualifying party who is registered in the appropriate categories.

C. An employee of a political subdivision who provides pest management services must be a certified applicator except as provided by subsection D of this section.

D. The following individuals are exempt from the certification requirements of this chapter:

1. An employee of a political subdivision who applied pesticides for the political subdivision for the first time no more than ninety days before certification. This exemption does not apply to an employee who applies pesticides at a school or child care facility.
2. An employee of a political subdivision or designated agent while performing emergency response or rescue services.
3. A volunteer of a political subdivision while applying herbicides for the purpose of the eradication and control of noxious weeds as defined in section 3-201 and who is under the immediate supervision of a certified applicator. This exemption does not apply to a volunteer of a political subdivision who:

- (a) Applies herbicides at a school or child care facility.
- (b) Uses herbicides that are labeled with the words "restricted use" or "danger."
- (c) Uses sterilants.
- (d) Uses application equipment that holds more than four gallons of total mixed liquid herbicide.
- (e) Has not completed an herbicide application training program conducted by the political subdivision and approved by the office.

E. For the purposes of this section, "volunteer" means persons who works without compensation other than reimbursement of actual expenses incurred or disbursement of meals or other incidental benefits.

## **Session Law**

### **Sec. 38. Delayed enforcement; registered qualifying parties of school districts**

The office of pest management shall not take disciplinary action against a school district for a failure to comply with section 32-2311.01, subsection (B), Arizona Revised Statutes, as added by this act, before January 1, 2015.

### **§ 32-2311.02. Landscapers; records; civil penalties**

A. The provisions of this chapter requiring licensure, and registration do not apply to a person who conducts lawn, garden, shrub or tree maintenance and who applies herbicides for the purpose of weed management, except as otherwise provided in this section.

B. Notwithstanding subsection A, the licensure, certification and registration requirements of this chapter apply to a person who:

1. Uses herbicides that are labeled with the words "restricted use" or "danger".
2. Uses sterilants or preemergent herbicides.
3. Offers weed management as the person's primary service or advertises weed management services.
4. Uses application equipment that collectively holds more than four gallons of total mixed liquid herbicide at an address or project on the same day.
5. Uses more than twenty-five pounds of a nonliquid herbicide at an address or project on the same day.
6. Uses or is part of a crew of two or more herbicide applicators at an address or project on the same day.
7. Uses an herbicide at a school or child care facility.
8. Uses an herbicide at an address or project without performing lawn, garden, shrub or tree maintenance at that address or project on the same day.

C. A person who is exempt from licensure, certification and registration pursuant to 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 at least six months after the date of the treatment. For the purposes of this subsection, treatment records must include 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.
4. The amount of herbicide applied.
5. The name of the individual who performed the treatment.

D. If a person is exempt from licensure, certification and registration pursuant to subsection A of this section but does not comply with subsection C of this section, the director shall:

1. On a first violation, issue a written notice of correction that contains a warning and a copy of this section.
2. On a second violation, impose a civil penalty of at least fifty dollars.
3. On a third or any subsequent violation, impose a civil penalty of not more than one thousand dollars.

E. If a person is not exempt from licensure, certification and registration but uses an herbicide for the purpose of weed management, the director may:

1. Issue a cease and desist order and an administrative warning.
2. On a first violation, impose a civil penalty of not more than one thousand dollars.
3. On a second or any subsequent violation, impose a civil penalty of not more than two thousand dollars.

**§ 32-2312. Applicator certification; categories**

A. An application for applicator certification shall be in a form prescribed by the director and be accompanied by the prescribed fee.

B. An individual may apply for certification as an applicator or qualified applicator in any one or a combination of the following categories:

1. Industrial, institutional, structural and health related pest management.
2. Wood-destroying organism management.
3. Ornamental and turf pest management.
4. Right-of-way pest management.
5. Aquatic pest management.
6. Fumigation.
7. Other categories or subcategories established by rule.

**§ 32-2313. Business license; financial security**

A. A person who engages in the business of pest management shall obtain a valid business license from the office. A person who is not exempt under this chapter and who advertises for, solicits or claims to be willing to engage in the business of pest management is presumed to be engaging in the business of pest management.

B. An application for an original or a renewal business license shall:

1. Be in a form and include the information prescribed by the director.
2. Be accompanied by the prescribed fee.
3. Include the following proof of financial security:

(a) Either a deposit of money, liability insurance, self-insured retention, a surety bond or a certified check protecting persons who may suffer bodily injury or property damage as a result of the operations of the applicant. The director shall not accept a bond or a liability insurance policy unless it is 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 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 director with a certificate of coverage that indicates the coverages and endorsements required by this subsection on a form prescribed by the director.

(b) Either of the following if the business licensee performs termite treatments:

(i) 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.

(ii) 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.

(c) If the business licensee provides wood-destroying insect 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.

C. 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 section or other evidence of financial security for the excess deductible amount.

D. 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 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 director.

#### **§ 32-2314. Qualifying party; registration**

A. A person shall not engage in the business of pest management in any category without a qualifying party registered in that category.

B. To be a qualifying party, an individual must:

1. Be a certified qualified applicator.

2. Register as a qualifying party with the office using a form and including the information prescribed by the director.

#### **§ 32-2315. Branch office; branch supervisor**

A. A business licensee shall register each branch office with the director before the branch office opens for business.

B. Each branch office shall be supervised by a registered branch supervisor.

#### **§ 32-2317. Fees**

A. The director shall establish by rule and collect application and renewal fees for the following:

1. A business license.

2. A branch office registration.

3. A branch supervisor registration.

4. A qualifying party registration.

5. A temporary qualifying party registration.

6. Temporary qualifying party renewal registration.

7. Applicator certification.

8. A qualified applicator certification.

9. An applicator registration.

10. A duplicate license.

B. The director may charge and collect late fees in addition to the fees listed in subsection A of this section.

C. The director may establish tiered fees for business licenses.

D. The director may charge and collect additional fees for services that the 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.

## ARTICLE 3. REGULATION

### § 32-2321. Disciplinary action; grounds; procedure

A. If the director finds that a person has violated this chapter, a rule adopted pursuant to this chapter or a written order of the director, the director may issue a notice of violation and a cease and desist order to the person and, after an opportunity for a hearing, take any of the following disciplinary actions, in combination or alternatively:

1. Revoke a license or registration.
2. Suspend a license or registration.
3. Refuse to renew a license or registration.
4. Impose probation requirements that require a person 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 person.
5. Impose a civil penalty in an amount of not more than one thousand dollars for each violation except for grounds prescribed in section 32-2325, subsection B, paragraphs 8 and 9.
6. Require a qualifying party to report to the director the qualifying party's role in the management of a business license.
7. Require an individual to take supplemental continuing education within a time period set by the director.

B. Instead of taking disciplinary action for a violation pursuant to subsection A of this section, the director may issue an administrative warning.

C. Except as provided in section 41-1092.11, the director may take disciplinary action against a business licensee pursuant to subsection A of this section only if any of the following applies:

1. The business licensee has committed a prior violation of the same type, including any violation by any applicator of the business licensee.
2. The business licensee failed to follow a written order of the 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 applicators.
4. The business licensee is convicted of a felony.
5. The business licensee is determined by the director to have committed a violation in connection with a pretreatment, new-construction treatment or final grade treatment.
6. The business licensee uses applicators to provide pest management services that are not registered pursuant to the requirements established under section 32-2304, subsection B, paragraph 20.
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 pretreatment, a new-construction treatment, a final grade treatment, an initial termite corrective treatment project or a wood-destroying insect inspection report to file with the office, in a form approved by the director, the termite action report form and prescribed fee.

12. The business licensee, within twelve months after completion of a termite pretreatment or new-construction treatment, fails either to file a supplemental termite action report in a form provided by the 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.

13. The business licensee's applicator applies a pesticide that causes harm to the public, the environment or a non-target animal.

14. The business licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or the rules adopted pursuant to this chapter.

15. The business licensee engages in the business of pest management while the business license is suspended.

D. The director shall only commence an inquiry only within five years after the date of the alleged act or omission.

E. The 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 director may take disciplinary action against the person for a violation.

F. The license of a person who does not renew the license and who has been advised in writing that an investigation or complaint is pending at the time the license is due to expire or terminate does not expire or terminate until the investigation or complaint is resolved. The license is suspended on the date it would otherwise expire or terminate until the licensee renews the license or the investigation or complaint is resolved.

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.

### **§ 32-2323. Joint responsibility**

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

### **§ 32-2324. Civil penalties; suspension**

A. The office may suspend a license, certification or registration without a hearing if the licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or rules adopted pursuant to this chapter.

B. A licensee whose license is suspended under subsection A of this section must apply to the director for reinstatement.

C. A license, certification or registration suspended under subsection A of this section shall be revoked without a hearing after one year of suspension. Revocations under this subsection are not subject to section 32-2304, subsection A, paragraph 8.

D. The office shall not renew a license, certification or registration or broaden a certification until the person suspended under subsection A of this section is reinstated.

**§ 32-2325. Unlawful acts**

**A. A person shall not:**

1. Engage in the business of pest management without a business license issued pursuant to this chapter, unless the person is otherwise exempt pursuant to this chapter.
2. Engage in the business of pest management in any category without a qualifying party who is registered in that category.
3. Operate a branch office without a registered branch supervisor under whose direct supervision pesticide applications are made out of that office.
4. Apply pesticides in any category other than wood-destroying organism management or fumigation unless the person is an applicator certified in that category or applies the pesticides under the direct supervision of an applicator certified in that category.
5. Apply pesticides in the category of wood-destroying organism management, aquatic pest management or fumigation unless the person is an applicator certified in that category or the person applies the pesticides under the immediate supervision of an applicator certified in that category.
6. Make recommendations regarding pest management unless the person is a certified applicator.
7. Deny to an authorized inspector the right to be present on a jobsite in connection with a contemporaneous pest management treatment, including for the purpose of taking pesticide samples and soil samples.

**B. The following nonexclusive acts are grounds for disciplinary action:**

1. Violating this chapter, rules adopted pursuant to this chapter or a written order of the 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 and labeling of the pesticide or that may cause harm to the public, the environment or non-target animals.
5. Misusing a pesticide if the misuse is due to the failure of the person to properly train or supervise. 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 and 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. Engaging in the business of pest management or providing pest management services under a suspended license.
8. Being convicted of a felony, a misdemeanor arising from or in connection with a license issued pursuant to this chapter after issuance of the license or a misdemeanor involving moral turpitude.
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. Having three or more de minimis violations of this chapter or rules adopted under this chapter.
12. Failing to provide the director with a current certificate of insurance or proof of financial responsibility.
13. Failing to provide a proper final grade treatment within twelve months after the original pretreatment or new-construction treatment.
14. Providing immediate supervision of more uncertified applicators at a time than is authorized by rule.



15. Failing to make and maintain true and accurate records of treatments performed or wood-destroying insect inspection reports, including those performed under warranty or guarantee, for at least three years after the date of treatment or inspection.
16. Failing to make treatment records on request of the property owner or the property owner's authorized agent within three business days.
17. Failing 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 the owner of the business licensee is present at the business office and has access to those records.
18. Failing to timely produce specific records requested pursuant to section 32-2304, subsection B, paragraph 4.
19. Violating the terms of a consent agreement or written order of the director.

**§ 32-2326. Business license; principals; definition**

A. the office shall deny an application for a new business license or a renewal of 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 or has had its business license suspended or 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.

B. For the purposes of this section, “principal” means a person who owns at least a ten percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

**§ 32-2327. Injunctive relief**

In addition to all other remedies, the 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.

## **ARTICLE 4. WOOD-DESTROYING ORGANISMS**

### **§ 32-2331. Termite action report form; exemption**

A. Within thirty calendar days after completion of a pretreatment, a new-construction treatment, a final grade treatment, an initial corrective treatment or a wood-destroying insect inspection report, a business licensee or certified applicator shall file with the office in a form approved by the director a termite action report form and the prescribed fee.

B. The termite action report form shall include:

1. The address or location of the work or project.
2. The type and the date of the work.
3. The name of the business licensee.
4. Any other information required by rule.

C. The director may:

1. Adjust the fee upward or downward to a level that is calculated to produce sufficient revenue to carry out the functions of wood destroying organism regulation.
2. Establish tiered fees according to the means of submission to encourage electronic submission of the termite action report form.
3. Assess a penalty of not more than one hundred dollars per form for failing to submit the required form or fee, or both, within thirty calendar days.

D. If the business licensee who performs an initial corrective treatment performed the pretreatment or new-construction treatment at the same site and filed a termite action report form with the office documenting the pretreatment or new-construction treatment, the business licensee is exempt from this section with respect to the initial corrective treatment.

### **§ 32-2332. Wood-destroying organisms; treatment proposal**

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 organisms in a structure until an inspection is made.

B. Only an applicator certified in the category of wood-destroying organism management shall prepare a treatment proposal on a form approved by the director. The applicator shall deliver a copy of the treatment proposal to the person requesting the proposal or treatment, 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 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 certified applicator shall also give to the person requesting a proposal or treatment a written recommendation that verifies a particular problem and, in addition to the certified applicator'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 organisms is not a binding statement as to the presence or absence of wood-destroying organisms.

E. A treatment proposal shall be prepared by a certified applicator who has received at least five hours of instruction from an in-house education program of the business licensee on the subject of wood-destroying organisms 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 director's request. The instruction requirement does not apply to certified qualified applicators.

F. If a business licensee performs a treatment pursuant to a treatment proposal, the business licensee shall maintain for three years a record of the treatment and the name and quantity of the pesticide used.

G. This section does not apply to the application of pesticides directly to structural components of wood or wood products, which are not part of an existing structure normally habitable by persons, to prevent or manage wood degradation by wood-destroying organisms.

### **§ 32-2333. Wood-destroying insect inspection reports**

A. Wood-destroying insect inspection reports may be completed only by an applicator who is certified in the category of wood-destroying organism management and who has received at least five hours of instruction from an in-house education program of 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 director's request. The instruction requirement does not apply to certified qualified applicators.

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 three years and make the reports available on the director's request.

C. Wood-destroying insect inspection reports are evidence of both the existence or absence of wood-destroying insects and conditions conducive to wood-destroying insects that were visible and accessible to an inspector at the time 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 and conditions conducive to 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 or conditions conducive to wood-destroying insects in a structure after the date of inspection.

D. If a certified applicator is exempt from the business license requirement with respect to wood-destroying insect inspections by rules established by the director, the certified applicator shall fulfill the responsibilities placed on business licensees in this section.

E. A person shall not complete a wood-destroying insect inspection report for a property that the person owns or occupies.