

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. ~~STRUCTURAL PEST CONTROL COMMISSION~~ OFFICE OF PEST MANAGEMENT

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per the Governor's Regulatory Review Plan memoranda, issued January 22, 2009 and its continuations on April 30, June 29, and October 16, 2009. (See a copy of the memoranda in this issue on page 1861 through 1863.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 21, 2009.

[R09-103]

PREAMBLE

- 1. Sections Affected**
R4-29-105
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-2304(A)(1)
Implementing statute: A.R.S. §§ 32-2304(E) and 32-2317
- 3. The effective date of the rules:**
October 15, 2009

Under A.R.S. § 41-1032(A)(1), the Office respectfully requests an immediate effective date for this rulemaking to enable it to continue to perform its statutory responsibility to protect the public health and safety. During the FY2008 legislative session, the legislature swept \$554,900 from the Pest Management Fund. The sweep coupled with a decrease in funds collected resulting from the current economic down-turn in the housing industry means the Office will close FY2009 with only \$330,000 in its Fund. The Governor's Office of Strategic Planning and Budgeting estimates that the Office will be in deficit by September 2009 and without a fee increase, will close FY2010 with a deficit exceeding \$650,000.
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Ellis Jones, Acting Director
Address: Office of Pest Management
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258
Telephone: (602) 255-3664
Fax: (602) 255-1281
E-mail: ejones@sb.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Office is increasing certain fees that licensees pay to obtain or renew a license. It is also increasing the fee that a licensee submits when filing a termite action report form (TARF). The increase in fees is necessitated by a fund sweep that the legislature put into the state's 2009 budget. At the beginning of FY2009, the Office had \$1,854,034

and anticipated collecting approximately \$1,372,968 from fees for a total of \$3,227,002. This would have been sufficient to cover the Office's appropriation of \$2,774,300. However, the legislature swept \$554,900 from the fund. The amount swept plus the amount appropriated exceeds the amount available.

The economic condition of the Office has been aggravated by the current economic down-turn in the housing industry. The Office has collected less this year than was predicted. As a result, the Governor's Office of Strategic Planning and Budgeting estimates that the Office will be in deficit by September 2009 and, without a fee increase, will end FY2010 with a deficit exceeding \$650,000.

The Office expects the fee increases to generate approximately \$980,000 annually. Ten percent of the fee increases goes to the state's general fund.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

The increased fees will have a direct economic impact on licensees. However, the increased fees will benefit licensees by enabling the Office to continue to fulfill its statutory responsibility to protect the public's health and safety. The increased fees are a cost of doing business that probably will be passed to consumers of pest management services. Because the Office contributes 10 percent of the fees collected to the state's general fund, the rulemaking will increase state revenue.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

10. Incorporations by reference and their location in the rules:

None

11. An explanation of the situation justifying the rule's making as an emergency rule:

This rulemaking increases certain fees that licensees pay to obtain or renew a license. It also increases the fee that a licensee submits when filing a termite action report form (TARF). The increase in fees is necessitated by a fund sweep that the legislature put into the state's 2009 budget and by a decrease in fees collected resulting from the current economic down-turn in the housing industry.

The Office of Pest Management has found that it is necessary to enact the fee increase as an emergency measure so the Office can continue to fulfill its statutory responsibility to protect the health and safety of the public.

Without an emergency fee increase, the Office will be in deficit by September 2009 and will end FY2010 more than \$650,000 in deficit. The Office has already initiated the regular rulemaking process but because of the notice and comment provisions of A.R.S. §§ 41-1022 and 41-1023, the time required under A.R.S. § 41-1052 for obtaining Council's approval of a rulemaking, and the delay required under A.R.S. § 41-1032 for a rule to become effective, the regular rulemaking process cannot be completed in time to offset the pending deficit in the Pest Management Fund.

The need for emergency enactment of the fee increases does not result from the Office's delay or inaction. The Office has attempted to enact the fee increase through the regular rulemaking process. However, as the process was nearing completion, the Governor imposed a moratorium on all agency rulemaking that made it necessary to discontinue completing the process (See published rulemaking notices at 14 A.A.R. 4343, November 21, 2008, and 14 A.A.R. 4510, December 12, 2008).

12. The date of the Attorney General's approval of the emergency rule:

October 15, 2009

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. STRUCTURAL PEST CONTROL COMMISSION OFFICE OF PEST MANAGEMENT

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

R4-29-105. Fees; Charges; Exemption

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-105. Fees; Charges; Exemption

- A. Under the authority provided by A.R.S. § 32-2317, the ~~Commission~~ Acting Director establishes and shall collect the following fees:
1. For an applicator:
 - a. License application, \$30;
 - b. License broadening application, \$10;
 - e. ~~License renewal application, active or inactive status, online, \$20;~~
 - ~~d.c.~~ License renewal application, active or inactive status, ~~on paper, \$25;~~ and
 - ~~e.d.~~ Duplicate license, \$20.
 2. For a qualifying party:
 - a. License application, \$150;
 - b. License broadening application, \$50;
 - e. ~~License renewal during active status, online, \$120;~~
 - ~~d.c.~~ License renewal during active status, ~~on paper, \$125~~ \$150;
 - e. ~~License renewal during inactive status, online, \$20;~~
 - ~~f.d.~~ License renewal during inactive status, ~~on paper, \$25;~~
 - ~~g.e.~~ Change from inactive to active status, \$125;
 - ~~h.f.~~ Temporary qualifying party license application, \$25;
 - ~~i.g.~~ Temporary qualifying party license renewal application, \$25; and
 - ~~j.h.~~ Duplicate license, \$20.
 3. For a business:
 - a. License application, ~~\$75~~ \$100;
 - b. ~~License renewal application, online, \$70;~~
 - ~~e.b.~~ License renewal application, ~~on paper, \$75~~ \$100;
 - ~~d.c.~~ Branch office registration application, ~~\$35~~ \$50;
 - ~~e.d.~~ Branch office registration renewal application, ~~\$35~~ \$50; and
 - ~~f.e.~~ Duplicate license, \$20.
- B. Under the authority provided by A.R.S. § ~~32-2304(A)(21)~~ 32-2304(A)(13), the ~~Commission~~ Acting Director establishes and shall collect a penalty that is double the license renewal fee for any license that is not renewed timely. The penalty is in addition to the license renewal fee.
- C. If the ~~Commission~~ Acting Director administers the examination required under A.R.S. § 32-2312(C) or 32-2314(C), the ~~Commission~~ Acting Director shall charge \$50 to cover the cost of providing this service. If the ~~Commission~~ Acting Director enters into a contract with an examination service or testing vendor, an applicant shall pay to the examination service or testing vendor the examination cost established in the contract.
- D. Under the authority provided by A.R.S. § ~~32-2304(C)~~ 32-2304(E), the ~~Commission~~ Acting Director establishes and shall collect a fee of \$8 for each electronic TARF submittal, and \$15 for each hard-copy TARF submittal required to be submitted under this Chapter. There is no fee for submitting a TARF pertaining to a final-grade treatment, contingent it is filed with 30 days of the treatment.
- E. Under the authority provided by A.R.S. § ~~32-2304(C)~~ 32-2304(E), the ~~Commission~~ Acting Director establishes and shall collect a penalty of ~~\$8~~ \$16 for a TARF that is filed ~~within 180 days after it is due and a penalty of \$16 for a TARF that is filed more than 180~~ 30 days after it is due. The penalty is in addition to the TARF filing fee under subsection (D). The penalty in this subsection applies to an untimely TARF pertaining to a final-grade treatment.
- F. Any payment to the ~~Commission~~ Office may be made by cash, credit or debit card, money order, or cashier's, certified, business, or personal check. If payment is made by money order or check, the payer shall make the money order or check payable to the ~~Structural Pest Control Commission~~ Office of Pest Management. If payment is made by business or personal check, payment is not credited until the check clears the bank. The ~~Commission~~ Office does not prorate fees. Fees are not refundable unless A.R.S. § 41-1077 applies. The ~~Commission~~ Office may refuse all forms of payment other than cash, cashier's check, or money order from a person that issued an insufficient-funds payment to the ~~Commission~~ Office.
- G. An employee of the ~~Commission~~ Office or the Arizona Department of Agriculture who applies for or holds a ~~Commission-issued~~ Office-issued license is exempt from the fees in subsections (A) through (C).
- H. The ~~Commission~~ Acting Director shall reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service.