

# NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

## NOTICE OF FINAL EXEMPT RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 29. OFFICE OF PEST MANAGEMENT

*Editor's Note: The following Notice of Final Exempt Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the next of the executive order on page 742.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 17, 2013.*

[R14-35]

#### PREAMBLE

- 1. Articles, Parts, or Sections Affected (as applicable)**

<u>Articles, Parts, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-29-102	Amend
R4-29-103	Amend
R4-29-104	Amend
R4-29-201	Amend
R4-29-306	Amend
R4-29-308	Amend
R4-29-501	Amend
R4-29-505	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific), and the statute or session law authorizing the exemption:**

Authorizing statute(s): A.R.S. §§ 32-2304(A)(1),(9),(10), 32-2312(B), 32-2317, and 32-2331(B).  
Implementing statute(s): A.R.S. §§ 32-2304(A)(1),(9),(10), 32-2312(B), 32-2317, and 32-2331(B).  
Statute or session law authorizing the exemption: Laws 2013, Ch. 125, § 37.
- 3. The effective date of the rules and the agency's reason it selected the effective date:**

These rules are effective February 7, 2014. Laws 2013, Ch. 125 authorizes exempt rulemaking for one year, which allows the Office of Pest Management to quickly make revisions to the rules adopted September 13, 2013 in order to correct any issues that are found during the actual implementation of the rules. The amendments in this rulemaking are for this purpose; therefore, the Office of Pest Management wants these changes to take place immediately.
- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

Notice of Exempt Rulemaking: 19 A.A.R. 2967, October 4, 2013.
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jack Peterson  
Address: 1688 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 542-3575  
E-mail: jpeterson@azda.gov
- 6. An agency's justification and reason why rules should be made, amended, repealed or renumbered to include an explanation about the rulemaking:**

Laws 2011, Ch. 20, § 6 required the Director of the Arizona Department of Agriculture (ADA) 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

Notices of Exempt Rulemaking

and (4) statutory changes necessary to accomplish the future structural pest management program. Between August 2011 and October 2012, the Task Force and its subcommittees held over eighteen public meetings to review the laws and regulations governing structural pest management and to develop proposed statutes and rules. The Task Force developed the proposed statutes and rules on parallel paths to help ensure appropriate regulatory oversight. The proposed Office of Pest Management (OPM) statutes covered general authorities, similar to ADA's statutes. The corresponding rules provided detail and clarity to the proposed statutory provisions.

The Task Force submitted its recommendations for changing OPM's statutes and rules to the Governor, the President of the Senate, and the Speaker of the House in November 2012. Although the Task Force knew that the Legislature was only responsible for changing statutes, it wanted to make the Legislature aware of its recommended rule changes as well so that the Legislature would be aware of the overall effect of the recommended statutory changes. The Task Force's recommendations on statutory changes became SB1290 (2013) and SB1143 (2013), albeit with a few changes made by the Legislature. Both bills passed and were signed into law. *See* Laws 2013, Ch. 125 & Laws 2013, Ch. 64.

On September 13, 2013, the Office of Pest Management adopted in substantial part the rules recommended by the Task Force, as submitted to the Governor, President of the Senate, and Speaker of the House in November 2012, with respect to Laws 2013, Ch. 125. OPM noted at that time:

One of the things evident from the Task Force meetings is that reform brings about a host of consequences, all of which will not be fully realized without some experience. OPM expects that reform, including this rulemaking, will remain a work-in-progress with further fine tuning and more dialogue with stakeholders.

Now that these rules have been in effect for a few months, OPM has discovered some issues that need to be addressed or clarified.

This rulemaking amends R4-29-102 to clarify the scope of the industrial and institutional, wood-destroying organism treatment, and right-of-way categories. In particular, the amendment makes clear that the industrial and institutional category includes the treatment of health related pests (e.g., rodents, flies, bees, mosquitoes) anywhere other than water. This is consistent with the scope of the former general pest category. The amendment also makes clear that people certified in the industrial and institutional category can treat insects in water, including mosquito larvae, if only using pesticide briquettes. The amendment to the wood-destroying organism treatment category is for clarity. The amendment to the ornamental and turf category excludes turf areas covered by the right-of-way category. The amendment to the right-of-way category makes clear that the category does not include the use of fumigants and also excludes treatment of ornamental trees, shrubs and flowers.

This rulemaking amends R4-29-103 by making the business license for federal entities cost nothing. Political subdivisions are exempt from a business license, but political subdivisions only relate to state agencies. OPM does not believe that federal agencies should have to obtain a business license, but federal agencies are not exempt from the business license requirement probably because the Task Force discussions never considered the impact on federal agencies. Accordingly, OPM believes that charging no fee for this license is appropriate. The rule uses the phrase federal entity instead of federal agency to include federally run organizations that might not be considered an agency, such as a military base.

This rulemaking amends R4-29-104 with respect to membership from outside of Maricopa and Pima Counties. OPM has already found it difficult to fill this position, so the rule is being amended to make the qualifications for this position more flexible.

This rulemaking amends R4-29-201 to add another pesticide use that does not require licensure. Some home improvement materials are sold at retail with a pesticide incorporated in them. These materials include insulation, caulk and paint. OPM does not believe the use of these home improvement materials should require pesticide certification or an OPM business license.

This rulemaking amends R4-29-306(A)(4) to change "category of service" to "purpose of service" to be consistent with R4-29-501(B)(4).

This rulemaking amends R4-29-308 to remove the cross-reference to R4-29-307, which was confusing by wrongly suggesting a wood-destroying insect inspection report was needed before treating termites—an inspection is required, a wood-destroying insect inspection report (WDIIR) is not.

The rulemaking amends R4-29-501(B)(6) so that the EPA registration number is required for restricted use pesticides instead of all pesticides. Nevertheless, certain other rules continue to require EPA registration number recording and reporting for some non-restricted use pesticides. *See* R4-29-503(D)(5)(d)-(e) and R4-29-505.

This rulemaking amends the definition of soil-applied pesticide in R4-29-505. The reference to excluding pesticides applied "at or above grade" is being replaced with applied "to soil that will be promptly covered with concrete." By promptly, OPM means within a few days.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

Notices of Exempt Rulemaking

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

Not applicable.

**9. The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking is exempt from the requirement to prepare an economic, small business and consumer impact statement.

**10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**

Not applicable.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

There is not a public comment period associated with this exempt rulemaking. OPM does note, however, that since September 13, 2013, OPM has received general feedback from industry members about issues that have prompted this rulemaking. OPM received some written comments from stakeholders regarding the definition of soil-applied in R4-29-505. One stakeholder said an OPM Task Force subcommittee intended termite pre-treatments to be exempt, but not final grade treatments or other pest control. Another stakeholder made a similar comment. The first referenced stakeholder also defined at grade to be at dirt level, with below grade meaning digging into the surface. A third stakeholder suggested a time-frame for pouring the concrete or the use of the term promptly. OPM believes these amendments address the concerns and thoughts raised by the industry members.

The Pest Management Advisory Committee also had the opportunity to comment on these amendments at the Committee's March 6, 2014 meeting. With respect to the amendment to R4-29-201(E)(5), Kirk Smith raised the point that some pest control companies use paint in man holes to manage cockroaches and expressed concern about that use being exempted. OPM responded that the exemption relates to "home improvement articles" and that painting a man hole to manage cockroaches is not a home improvement use and therefore not exempt. Several Committee members expressed concern over how mosquitoes are covered by the certification categories in R4-29-102, particularly expressing that the industrial and institutional category should be able to do even more mosquito treatment than even this rulemaking allows. The Committee decided to discuss the issue of mosquito treatment again at a future meeting to come up with a more specific proposal for that issue. OPM responds that this rulemaking expands what the industrial and institutional category can do with respect to mosquitoes and recognizes that more expansion may be appropriate once further consideration is given to the issue. A majority of the Committee voted in favor of this rulemaking package.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

None other than noted under subparts a and b of this item.

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The OPM rules generally require a permit for pesticide applicators, qualifying parties, businesses engaged in pest management, branch offices, and branch supervisors. The permits for businesses, branch offices, and branch supervisors are general permits. The permits for pesticide applicators and qualifying parties are not general permits, but are granted by pesticide category according to examinations passed by the individuals. Federal law (40 CFR 171.4) requires pesticide applicators to pass category specific examinations. Therefore, OPM cannot issue a permit to a pesticide applicator for all categories unless the applicator passes every category specific examination. In addition, there is a fee for each category examination and, under a general permit, applicators would be required to pay the fee for every examination even if the applicators do not desire to go into business in every category. Permits for qualifying parties are tied to the categories in which the person has applicator certification, which is why a general permit is not feasible for qualifying parties either.

**b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

There is no federal law corresponding to the rules in this rulemaking.

**c. Whether a person submitted an analysis to the agency that compares the impact of the rules on the competitiveness of business in this state to the impact on business in other states:**

No

**13. A list of any incorporated by reference material and its location in the rules:**

None

**14. Whether the rules were previously made, amended, repealed or renumbered as emergency rules. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

No

**15. The full text of the rules follows:**

Notices of Exempt Rulemaking

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. OFFICE OF PEST MANAGEMENT

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

- R4-29-102. Certification Categories; Scope
- R4-29-103. Fees; Charges; Exemption
- R4-29-104. Pest Management Advisory Committee

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

Section

- R4-29-201. Activities that Require a License; Exemptions

ARTICLE 3. PEST MANAGEMENT

Section

- R4-29-306. Providing Notice to Customers
- R4-29-308. Performing Wood-destroying Insect Management

ARTICLE 5. RECORDKEEPING AND REPORTING

Section

- R4-29-501. Applicator Recordkeeping
- R4-29-505. Groundwater Protection List Reporting

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

**R4-29-102. Certification Categories; Scope**

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or about adjacent to a residential or other structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found other than in water; and pest management of insects (in all life stages) in water limited to using pesticide briquettes; but excluding anti-microbial pest management, management and fungi inspection, or pest management covered by another certification category.
2. Wood-destroying organism management.
  - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and ~~managing treating for~~ wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
  - b. No change
3. Ornamental and turf: pest management, including weeds, in the maintenance of turf not covered by the right-of-way category and ornamental trees, shrubs, and flowers, and turf by a means other than use of a fumigant.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.
5. No change
6. No change
7. No change

**R4-29-103. Fees; Charges; Exemption**

- A. A person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  2. No change
    - a. No change

Notices of Exempt Rulemaking

- b. No change
- c. No change
- d. No change
- 3. For a business:
  - a. Business license, \$300.
  - b. Business license for federal entity, \$0.
  - ~~b-c.~~ Applicator registration, \$25 per applicator.
- 4. No change
  - a. No change
  - b. No change
  - c. No change
- B.** No change
- C.** No change
- D.** No change
  - 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 4. No change
  - 5. No change
- E.** No change
- F.** No change
- G.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- H.** No change
- I.** No change

**R4-29-104. Pest Management Advisory Committee**

- A.** No change
- B.** The members shall meet the following qualifications:
  - 1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
    - a. At least one of these three members shall be a business licensee who has five or fewer applicators and at least one of these three members shall be from outside of Maricopa and Pima Counties.
    - b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
  - 2. No change
  - 3. No change
- C.** No change
- D.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- E.** No change

**ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION**

**R4-29-201. Activities that Require a License; Exemptions**

- A.** No change
  - 1. No change
  - 2. No change
  - 3. No change

Notices of Exempt Rulemaking

- B. No change
- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
  - 4. No change
  - 5. No change
- D. No change
- E. Exemptions. A person is not required to be licensed who:
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
  - 3. No change
  - 4. No change
  - 5. Only uses, applies or installs home improvement articles, such as insulation, caulk and paint, that are pre-incorporated with a pesticide.

ARTICLE 3. PEST MANAGEMENT

**R4-29-306. Providing Notice to Customers**

- A. Immediately following an application, the applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the:
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. Target pest or ~~category~~ purpose of service;
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
- B. No change
- C. No change

**R4-29-308. Performing Wood-destroying Insect Management**

- A. No change
- B. An applicator shall not perform wood-destroying insect management until the business licensee or political subdivision that employs the applicator ensures that:
  - 1. A wood-destroying insect inspection is performed ~~under R4-29-307~~ by a certified applicator meeting the training requirement under A.R.S. § 32-2332(E),
  - 2. No change
  - 3. No change
- C. No change
- D. No change
  - 1. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
      - vi. No change

Notices of Exempt Rulemaking

- vii. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
  - 4. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
  - 5. No change
  - 6. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
    - i. No change
    - j. No change
    - k. No change
    - l. No change
    - m. No change
    - n. No change
    - o. No change
    - p. No change
  - 7. No change
  - 8. No change
- E.** No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- F.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- G.** No change
- H.** No change
- I.** No change
  - 1. No change
  - 2. No change

**ARTICLE 5. RECORDKEEPING AND REPORTING**

**R4-29-501. Applicator Recordkeeping**

- A. No change
- B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. EPA registration number of any restricted use pesticide applied;
  - 7. No change
  - 8. No change
- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- D. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
- E. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
    - i. No change
    - j. No change
    - k. No change
    - l. No change
    - m. No change
    - n. No change
    - o. No change
    - p. No change
- F. No change

**R4-29-505. Groundwater Protection List Reporting**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change

Notices of Exempt Rulemaking

- B. For the purposes of this Section, "soil-applied pesticide" means a pesticide intended for application to or injection into the soil or for which the label requires or recommends that the application be followed within seventy-two hours by irrigation. Soil-applied pesticides include pesticides applied for final grade treatment, post-construction exterior trench or rod treatment, or pre-emergent weed control, but exclude pesticides applied ~~at or above grade or~~ within the stem wall or footer of a structure or to soil that will be promptly covered with concrete.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 19. ALCOHOL, DOG AND HORSE RACING, LOTTERY AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

Editor's Note: The following Notice of Final Exempt Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the next of the executive order on page 742.)

[R14-29]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**  
R19-2-205 Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**  
Authorizing statute: A.R.S. § 5-104(A)(2), Laws 2011, Ch. 35, § 10(B)  
Implementing statute: A.R.S. §§ 5-104(F), 5-104(R), 5-113.01, 5-230
- 3. The effective date of the rule and the agency's reason it selected the effective date:**  
March 1, 2014
- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**  
None
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: William J. Walsh  
Address: Department of Racing  
1110 W. Washington St., Ste. 260  
Phoenix, AZ 85007  
Telephone: (602) 264-1725  
Fax: (602) 364-1703  
E-mail: bwalsh@azracing.gov  
Web site: www.azracing.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**  
The Department of Racing is initiating this exempt rulemaking to comply with the requirement that the Department collect fees in an amount to support the Department's mission under the requirements of Laws 2011, Ch. 35, § 10(B).
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 9. The summary of the economic, small business, and consumer impact, if applicable:**  
The rules, developed because of legislative action to remove the agency from the general fund, require industry stakeholders to fully fund the operations of the Department in FY 2013 and years thereafter.
- 10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking,**

Notices of Exempt Rulemaking

**and the final rulemaking package (if applicable):**

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

None have been received.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

None submitted

**13. A list of any incorporated by reference material and its location in the rule:**

None

**14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

Not applicable

**15. The full text of the rules follows:**

**TITLE 19. ALCOHOL, DOG AND HORSE RACING, LOTTERY AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

**ARTICLE 2. RACING REGULATION FUND**

Section

R19-2-205. Regulatory Wagering Assessment of Pari-Mutuel Pools

**ARTICLE 2. RACING REGULATION FUND**

**R19-2-205. Regulatory Wagering Assessment of Pari-Mutuel Pools**

**A.** No change

**B.** The racing regulation assessment for each racing meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wager types shall be ~~0.75~~ 0.60 per cent beginning ~~January 1, 2013~~ March 1, 2014.

**C.** No change

**D.** No change