ARTICLE 1
SAMPLING AND LABORATORY CERTIFICATION

INFORMATION THAT IS IDENTICAL
FOR ALL RULES UNLESS OTHERWISE STATED

1. **Statutory authority**
   
   General: A.R.S. § 3-107(A)(1)
   
   Specific: A.R.S. § 3-147

3. **Analysis of effectiveness in achieving the objective**

   The stated objectives of the rules are effectively met.

4. **Consistency**

   These rules are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   
   A.R.S. §§ 3-141 through 3-149
   
   3 A.A.C. 5

5. **Agency enforcement policy**

   The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

   With the exception of rule 103, the rules are clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.
8. **Economic, small business, and consumer impact comparison**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared. The Department has certified the same five laboratories for the past several years and the fee for certification (and recertification) has remained constant.

The rules in this article were effective and last revised on the following dates:

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9. **Analysis submitted by another person**

None

10. **Completion of course of action from prior review**

With the exception of R3-5-105, the Department did not propose any changes to these rules during the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules, with the proposed changes identified in this report, impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

None of these rules were adopted after July 29, 2010.
14. **Proposed course of action**

With the exception of R3-5-103, the Department proposes to maintain the rules as is.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-5-101. Definitions**

2. **Objective**

   This rule sets out the definitions used for specific terms in this Article.

**R3-5-102. Certification; Renewal; Termination**

1. **Statutory authority**

   Specific: A.R.S. § 3-146.

2. **Objective**

   This rule prescribes the procedures to apply for and renew certification to perform agricultural laboratory services, as well as the procedures for a certification holder to terminate the certification.

**R3-5-103. Agricultural Laboratory Services**

2. **Objective**

   This rule prescribes the laboratory services for which a person can seek certification.

6. **Clarity, conciseness, and understandability**

   This rule is partially clear, concise and understandable. The rule lists categories of agricultural laboratory services. But certification is based on a specific service tied to a specific analyte for a specific substance, not on a category of services. For example, one service is testing for aflatoxin in cottonseed. Aflatoxin testing in raw milk is a separate service and requires a separate certification. The rule is not clear on this point.

14. **Proposed course of action**

   The Department plans to amend this rule to clarify that certification is based on a specific service and not on a category of services. The Department plans to amend the rule within 24 months of the end of the Governor’s moratoriums on rulemaking. The current
moratorium ends December 2014, so the Department presently sets December 2016 as the proposed date of completion. The Department has identified a 24-month window because the Department has many rules that need revision, and once open rulemaking is allowed again, the Department will have to prioritize which rules get amended first.

**R3-5-104. Fees**

1. **Statutory authority**
   
   Specific: A.R.S. § 3-146.

2. **Objective**
   
   This rule sets the fee for initial certification and renewal.

**R3-5-105. Laboratory Requirements**

2. **Objective**
   
   This rule requires certified laboratories to maintain certain documentation for a specific period of time, maintain a quality assurance manual with specific contents, ensure the accurate calibration of testing equipment, follow OSHA standards, and dispose of hazardous waste as provided in federal law.

10. **Completion of course of action from prior review**

   The Department proposed to update the two federal regulations incorporated by reference in subsection (F). Due to the Governor’s rulemaking moratorium, the Department did not complete this proposed change.

14. **Proposed course of action**

   The Department has not received any complaints or requests from customers about using the version of the federal regulations currently incorporated in the rules, so the Department now plans to maintain the rule as is.

**R3-5-106. Testing Procedures**

2. **Objective**

   This rule requires that certified laboratories use standardized testing procedures either developed by or approved by the Department.
R3-5-107. Proficiency Testing Program

2. **Objective**

   This rule requires all applicants for certification to participate in a proficiency testing program to demonstrate their ability to provide credible test results for the agricultural service and to submit a corrective action plan to correct deficiencies.

R3-5-110. Referee Laboratory

2. **Objective**

   This rule prescribes use of a referee laboratory if the results from two certified labs are different or an individual or state agency contests the results from a certified lab that it contracts for service.

R3-5-111. Certification Expiration; Laboratory Relocation

2. **Objective**

   This rule makes clear that laboratory certification is good for a physical location and that if a laboratory facility moves a new certification is required.

R3-5-112. Licensing Time-frames

1. **Statutory authority**

   Specific: A.R.S. § 41-1073.

2. **Objective**

   This rule establishes overall time-frames within which the Department shall issue or deny a license under this article.

4. **Consistency**

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 41-1072 through 41-1079

**Table 1.** Time-frames (Calendar Days)

1. **Statutory authority**

   Specific: A.R.S. § 41-1073.
2. **Objective**

   This table, referenced in R3-5-112, lists the total number of days provided to the Department for administrative completeness reviews and substantive reviews within which the Department shall issue or deny a license.

4. **Consistency**

   List of statutes or rules used in determining consistency:
   
   A.R.S. §§ 41-1072 through 41-1079
ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

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ARTICLE 2
ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Statutory authority

   General: A.R.S. § 3-584(C).
   Specific: A.R.S. § 3-584(C).

3. Analysis of effectiveness in achieving the objective

   The stated objectives of the rules are effectively met.

4. Consistency

   These rules are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-581 through 3-594.

5. Agency enforcement policy

   The Council enforces the rules as written.

7. Written criticisms

   The Council has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

   The economic impact of the rules has not differed significantly from that projected in the
   last economic impact statements prepared. The Council does note that $80,000 in collected
   assessments was lost to a legislative sweep in May 2008.
The Council’s assessment on grain sold has remained at $0.40 per ton since the last five year review. The following is a history of Council funds distributed through grant awards over the past several years:

- FY07 $29,500
- FY08 $34,328
- FY09 $57,814
- FY10 $44,733
- FY11 $74,182
- FY12 $62,340

The rules in this article were effective and last revised on the following dates:

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9. **Analysis submitted by another person**

None

10. **Completion of course of action from prior review**

The Council proposed to change references to the Council to AGRPC, defined as the Arizona Grain Research and Promotion Council. The Council made this change for all the rules in the article. See 14 A.A.R. 3661, September 26, 2008.

11. **Determination that rule imposes least burden and costs**

The Council believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

There is no corresponding federal law. These rules are based only on state law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

None of these rules were adopted after July 29, 2010.
14. **Proposed course of action**

The Council proposes to maintain the rules as is.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-9-201. Definitions**

2. **Objective**

This rule sets out the definitions used for specific terms in this Article.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise and understandable.

10. **Completion of course of action from prior review**

The Council completed the course of action proposed in the prior review.

**R3-9-202. Fees; Grain Assessment and Refund**

1. **Statutory authority**

Specific: A.R.S. § 3-592.

2. **Objective**

This rule establishes the assessment on commercially sold grain and prescribes a procedure for obtaining a refund.

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise and understandable. Subsection (C)(2) says a refund will be authorized if the person requesting the refund complies with subsection (B)(1). In reality, the person must also make a proper request under subsection (C)(1) to get a refund, so the rule is unclear to the extent it can be read to require a refund where there is compliance with subsection (B)(1) but not subsection (C)(1). Nevertheless, it should be obvious that (C)(1) applies to refund requests. Subsection (C) is titled “Refund” and subsection (C)(1) begins “A producer may request a refund … and shall provide the following information ….” The reason subsection (B)(1) is called out specifically in subsection (C)(2) is because of the possibility that a producer pays an assessment to the first purchaser, but the first purchaser fails to submit the assessment to the Council. In that case, as described in subsection (C)(2), the producer is not entitled to a refund from the Council because the Council doesn’t have any of the producer’s money.
10. Completion of course of action from prior review

The Council partially completed the course of action proposed in the prior review. See 14 A.A.R. 3661, September 26, 2008. The Council did not add a requirement to subsection (B) to have the producer’s signature or amend subsection (C)(2) to require compliance with subsections (B) and (C)(1). The Council has determined that requiring the producer’s signature is not necessary and that subsection (C)(2) is sufficiently clear as is.

R3-9-203. Hearings

2. Objective

This rule prescribes the procedures for governing hearings and the procedures for handling requests for rehearing or review.

4. Consistency

List of additional statutes used in determining consistency:
A.R.S. §§ 41-1092 through 41-1092.12

6. Clarity, conciseness, and understandability

The rule is clear, concise and understandable.

10. Completion of course of action from prior review

The Council partially completed the course of action proposed in the prior review. The Council did not add an additional basis for granting a request for rehearing: error in the admission or rejection of evidence or other errors of law occurring at the hearing. The Council has never had an administrative hearing, let alone a request for rehearing, so the Council does not believe the addition of another basis for rehearing is necessary. In addition, existing subsections (C)(1) and (C)(3)(a) could likely be used to address evidentiary errors and errors of law.

R3-9-204. Records

1. Statutory authority

Specific: A.R.S. § 3-586.

2. Objective

This rule prescribes the time and place where the Council’s records may be inspected, as required by A.R.S. § 3-586.
6. **Clarity, conciseness, and understandability**

   The rule is clear, concise and understandable.

10. **Completion of course of action from prior review**

   The Council completed the course of action proposed in the prior review.

R3-9-205. Grants

2. **Objective**

   This rule establishes the procedures for applying for and awarding grants funded by the Council.

4. **Consistency**

   List of additional statutes used in determining consistency:
   
   A.R.S. § 41-2706(B)(6)

6. **Clarity, conciseness, and understandability**

   The rule is mostly clear, concise and understandable. Subsection (B)(1) refers to the “article” when it only needs to refer to the “section.” Nevertheless, the word “article” is technically still accurate.

10. **Completion of course of action from prior review**

   The Council partially completed the course of action proposed in the prior review. The Council did not amend subsection (B)(1) to change “Article” to “Section.” The Council believes this word change is not significant enough to require amendment.
ARIZONA DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION

2013 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 3
Articles 7-11

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PESTICIDE

INFORMATION THAT IS IDENTICAL

1. Statutory authority


Specific: A.R.S. § 3-343.

3. Analysis of effectiveness in achieving the objective

Rules 701, 703 and 704 are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. 3-341 et seq.

5. Agency enforcement policy

The Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

Rules 701, 702 and 704 are clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

With the exception of rule 702, the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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9. **Analysis submitted by another person**

None.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law. Rules 701, 702 and 704 have no corresponding federal law. Rule 703 refers to the need to follow “the Act,” which is 7 U.S.C. § 136 et seq., and is not more stringent than the Act.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rules 701, 703 and 704 were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

**INFORMATION THAT IS NOT IDENTICAL**

R3-3-701. **Definitions**

2. **Objective**

The objective of this rule is to set forth the definitions of particular terms used within Article 7.

10. **Completion of course of action from prior review**

The Department proposed to reorder the defined terms alphabetically and to add a reference to A.R.S. § 3-341(5) in the definition of “official sample” to clarify that the reference to Associate Director means the Associate Director of the Environmental Services Division. These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.
14. **Proposed course of action**

The Department proposes to reorder the defined terms alphabetically. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-702. Pesticide Registration; Fee**

1. **Statutory authority**

Specific: A.R.S. § 3-351.

2. **Objective**

The objective of this rule is to implement A.R.S. § 3-351 by setting forth the requirements for registering a pesticide, including the applicable fee.

3. **Analysis of effectiveness in achieving the objective**

This rule is mostly effective in achieving the stated objective. The Department believes the rule would be more effective by referring to ADEQ’s data submission requirements. See A.R.S. § 49-302.

8. **Economic, small business, and consumer impact comparison**

In fiscal years 2009 through 2012, the Department raised the fee for pesticide registration from $100 to $110 under authority from the Legislature. The fee has now returned to $100. During the time the fee was $110, the Department received approximately $489,210 in additional revenue, an average of $122,302 per year.

10. **Completion of course of action from prior review**

The Department did not propose any changes during the previous review.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

This rule is in compliance with A.R.S. § 41-1037.

14. **Proposed course of action**

The Department proposes to change the requirement to provide two pesticide labels during initial registration to one pesticide label during each registration and renewal, to remove the requirement to provide a social security number or tax identification number, to remove the subsection referring to expired, temporary fee increases, and to add a subsection notifying applicants of the existing requirement to satisfy ADEQ’s data submission requirements.
The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-703. General Provisions**

2. **Objective**

The objective of this rule is to provide additional requirements regarding discontinued pesticides found in the channels of trade, requirements regarding analyzing pesticide samples and allowed deviations, and requirements regarding repackaging and relabeling pesticides for resale.

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise and understandable. The rule would be clearer by referring to FIFRA, which is defined, instead of to “the Act,” which is not defined.

10. **Completion of course of action from prior review**

The Department proposed to make grammatical changes to the rule. The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to change the reference to “the Act” in subsection (C) to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR 156-157 for greater clarity. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-704. Labels**

2. **Objective**

The objective of this rule is to require pesticide registrants to submit two new labels after every revision, allow the Department to request a new label if the label on file is three years old, and set out the allowed deviations from label claims for active ingredients.

10. **Completion of course of action from prior review**

The Department proposed to designate the existing allowed deviations table as new subsection (C). The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.
14. **Proposed course of action**

The Department proposes to reduce the requirement to provide two labels to just one label when the label is revised and to eliminate the requirement in subsection (B) to provide a new copy of the label when requested by the Associate Director. Rather than retaining the authority to request a new label every three years, the proposed change to rule 702 to require a label submission with each renewal registration will provide the Department with a new label every one or two years. The Department also proposes to designate the existing allowed deviations table as new subsection (C). In footnote 4 at the end of the table, the Department proposes to replace “States” with “The Department.”
ARTICLE 8
FERTILIZER MATERIALS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**


   Specific: A.R.S. § 3-264(B)(2).

3. **Analysis of effectiveness in achieving the objective**

   The rules in this Article are effective in achieving the stated objective.

4. **Consistency**

   The rules in this Article are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. § 3-261 et seq.

5. **Agency enforcement policy**

   The Department enforces the rules in this Article as written.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   For rules 801 and 804, the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

   The rules in this article were effective and last revised on the following dates:

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9. **Analysis submitted by another person**

None.

11. **Determination that rule imposes least burden and costs**

The Department believes that rules 801-803 impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law, as there is not a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rules 801 and 804 were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 802 uses a general permit and is therefore in compliance with A.R.S. § 41-1037. Rule 803 does not require a permit.

### INFORMATION THAT IS NOT IDENTICAL

R3-3-801. **Definitions**

2. **Objective**

The objective of this rule is to set forth the definition of “official publication” as used within Article 8.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise and understandable.

10. **Completion of course of action from prior review**

The Department proposed to update the incorporated material from the 1999 version to the 2008 version. This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to update the incorporated material to the most recent version. At the same time, the Department plans to indicate in the rule that the incorporated material is available for inspection at the Department; because the material is copyright protected,
the Department cannot provide copies itself. The Department plans to complete the proposed actions within twenty four months of the end of rulemaking moratoriums.

**R3-3-802. Licensure; Specialty Fertilizer Registration; Fees**

2. **Objective**

   The objective of this rule is to set forth the requirements for applying for a commercial fertilizer license or for specialty fertilizer registration. The rule also contains a temporary fee decrease for specialty fertilizer registration.

6. **Clarity, conciseness, and understandability**

   The rule is mostly clear, concise and understandable. The rule could benefit from minor grammatical and wording changes and the removal of repetitive subsection (A)(1).

8. **Economic, small business, and consumer impact comparison**

   In fiscal year 2011, the Department lowered the fee for specialty fertilizer registration from $50 to $40 under authority from the Legislature. The fee has now returned to $50. During the time the fee was $40, the Department received approximately $34,000 less than it would have otherwise during the year.

10. **Completion of course of action from prior review**

   The Department proposed to make minor grammatical and wording changes and to remove repetitive subsection (A)(1). These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

   The Department continues to propose to make minor grammatical and wording changes, to remove repetitive subsection (A)(1), and to remove the expired fee decrease in subsection (D). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-803. Tonnage Reports; Inspection Fee**

2. **Objective**

   The objective of this rule is to set forth the inspection fee for commercial fertilizers, an exemption from providing a quarterly tonnage report, the requirement to pay past due inspection fees and penalties before licensure, information to include in quarterly statements, and how to submit estimated annual tonnage reports.
6. **Clarity, conciseness, and understandability**

The rule is partially clear, concise and understandable. In subsection (A)(2), the rule wrongly cites the inapplicable A.R.S. § 3-2009 instead of the correct § 3-272.

8. **Economic, small business, and consumer impact comparison**

In fiscal year 2011, the Department lowered the fee for fertilizer inspections from $0.25 per ton to $0.10 per ton under authority from the Legislature. The fee has now returned to $0.25. The Department collected $68,520 in inspection fees during fiscal year 2011 as compared to $97,529 in fiscal year 2010 and $97,052 in fiscal year 2012, which suggests that during the time the fee was $0.10, the Department received approximately $28,770 less than it would have otherwise during the year.

10. **Completion of course of action from prior review**

The Department proposed to make a few grammatical changes to subsection (A) and to correct the reference in subsection (A)(2) from A.R.S. § 3-2009 to § 3-272. These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department continues to propose to make grammatical changes to subsections (A)(2) and (B)(2) and to correct the reference in subsection (A)(2) from A.R.S. § 3-2009 to § 3-272, remove the expired fee decrease in subsection (C), and simplify subsection (B)(1) by referring to the identical requirements in subsection (A)(3)(b) rather than repeating them. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-804. General Provisions**

2. **Objective**

The objective of this rule is to prescribe fertilizer labeling requirements, establish how to calculate deficiencies in the amount of guaranteed nutrients, and prescribe requirements for labeling leased fertilizer material storage containers.

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise and understandable. The rule would be more concise by shortening subsection (D) to eliminate the incorporation by reference language since that language is already in rule 801.
10. **Completion of course of action from prior review**

The Department proposed to shorten subsection (D) to eliminate the incorporation by reference language since that language is already in rule 801. This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

11. **Determination that rule imposes least burden and costs**

The Department believes that this rule will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective once the proposed changes to the rule are made.

14. **Proposed course of action**

The Department proposes to add a new subsection (A)(1)(d) to require that the guaranteed nutrient value be listed on labels in accordance with the Official Publication. The Official Publication lists the order in which nutrients must appear on a label and the minimum concentration of each nutrient that can be guaranteed. The Department also proposes to make subsections (A)(6) and (D) more specific by referring specifically to the Official Fertilizer Definitions and Fertilizer Rule 6 respectively in the Official Publication instead of just the Official Publication generically. Finally, the Department continues to propose to shorten subsection (D) to eliminate the incorporation by reference language since that language is already in rule 801. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

The second subsection (C) in rule 804 is an error by the Secretary of State. This subsection belongs at the end of rule 803 only (where it is also located). There is nothing in the historical note of rule 804 that shows an amendment that could possibly have language relating to fiscal year 2011, which is what the subsection in question does. This is because no rulemaking ever added this extra subsection (C) to rule 804. The Department has recently requested the Secretary of State to correct this publishing error.
ARTICLE 9
COMMERCIAL FEED

INFORMATION THAT IS IDENTICAL

1. Statutory authority


Specific: A.R.S. § 3-2603(B).

3. Analysis of effectiveness in achieving the objective

The rules in this Article are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-2601 et seq.

5. Agency enforcement policy

The Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

Rules 906 and 913 are clear, concise and understandable. Rules 901-905 are mostly clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

Except for rule 903, the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
</tr>
</thead>
<tbody>
<tr>
<td>R3-3-901</td>
<td>November 3, 1999</td>
<td>--</td>
</tr>
<tr>
<td>R3-3-902</td>
<td>November 3, 1999</td>
<td>--</td>
</tr>
</tbody>
</table>
9. **Analysis submitted by another person**

None.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law, as there is not a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

These rules were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-3-901. Definitions**

2. **Objective**

The objective of this rule is to set forth the definitions of particular terms used within Article 9.

6. **Clarity, conciseness, and understandability**

The Department believes the introductory sentence can be simplified and thus be made more concise.
10. **Completion of course of action from prior review**

The Department proposed to simplify the introductory sentence and to update the incorporated material from the 1999 version to the 2008 version. These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to simplify the introductory sentence and to update the incorporated material to the most recent version. At the same time, the Department plans to indicate in the rule that the incorporated material is available for inspection at the Department; because the material is copyright protected, the Department cannot provide copies itself. The Department plans to complete the proposed actions within twenty four months of the end of rulemaking moratoriums.

**R3-3-902. Licensure; Fee; Ammoniation**

2. **Objective**

The objective of this rule is to prescribe the requirements for applying for a commercial feed license and require a person who ammoniates feed for sale to obtain a commercial feed license.

6. **Clarity, conciseness, and understandability**

The Department believes the rule can be more concise without affecting understandability by removing the reference to A.R.S. § 3-2609.

10. **Completion of course of action from prior review**

The Department proposed to move the placement of A.R.S. § 3-2609 within subsection (A) and to change the word “facsimile” to “fax.” These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to remove the reference to A.R.S. § 3-2609, move the description of the fee to new subsection (A)(3), change the word “facsimile” to “fax,” and limit the requirement to provide a social security number to individuals who apply for a license. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-903.  Tonnage Reports; Inspection Fee

2.  **Objective**

The objective of this rule is to prescribe the inspection fee for commercial feed, an exemption from providing a quarterly tonnage report, the requirement to pay past due inspection fees and penalties before licensure, the information to include in quarterly tonnage report statements, and how to submit estimated annual tonnage reports.

6.  **Clarity, conciseness, and understandability**

Subsection (A)(3) could be more concise by removing duplicative language in subsections (A)(3)(a)(ii)-(iv) and (A)(3)(b)(i)-(iii).

8.  **Economic, small business, and consumer impact comparison**

At the time of the last economic, small business, and consumer impact statement in 1998, the Department had a feed fund balance of $582,451 and a four year average of 862,134 reported tons of feed subject to the inspection fee. The Department projected that the fund balance would be reduced over time with the then newly lowered fee. The fund balance had decreased to about $146,326 by the end of fiscal year 2012. However, the tons reported over the past five fiscal years have ranged from approximately 1,200,000 tons to 1,600,000 tons, a significant increase from the figures reported 15 years ago.

10.  **Completion of course of action from prior review**

The Department did not propose any changes during the prior review.

14.  **Proposed course of action**

The Department proposes to clarify subsections (A)(2) and (B)(2) and to simplify subsection (A)(3) by removing duplicative language. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-904.  Milk and Milk Products Decharacterized for Use as Commercial Feed

2.  **Objective**

The objective of this rule is to prescribe the requirements for selling milk or milk products for commercial feed, including decharacterizing the milk or milk product, placing certain warnings on the labels, and not selling them where food is sold for human consumption.
6. **Clarity, conciseness, and understandability**

The Department believes the rule would be more clear and concise by simplifying the language in subsection (A)(3)(b) and rephrasing subsection (C).

10. **Completion of course of action from prior review**

The Department proposed to simplify the language in subsection (A)(3)(b). This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department continues to propose simplifying the language in subsection (A)(3)(b) and proposes to rephrase subsection (C) for clarity. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-905. **Labeling; Precautionary Statements**

2. **Objective**

The objective of this rule is to set forth requirements regarding labeling commercial feed, including that labeling and guarantees must be in compliance with the Official Publication and inclusion of directions for use and precautionary statements.

6. **Clarity, conciseness, and understandability**

The Department believes the rule can be made more concise by removing the incorporation by reference language from subsection (B)(1) as it is already included in rule 901.

10. **Completion of course of action from prior review**

The Department proposed to remove the incorporation by reference language from subsection (B)(1) as it is already included in rule 901. This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department continues to propose removing the incorporation by reference language from subsection (B)(1) as it is already included in rule 901 and also proposes to make minor formatting changes to the rule. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-906. Non-protein Nitrogen

2. **Objective**

   The objective of this rule is to establish acceptable amounts of non-protein nitrogen products used in commercial feed and require labels with directions for use and precautionary statements in certain instances.

10. **Completion of course of action from prior review**

    The Department did not propose any changes during the prior review.

14. **Proposed course of action**

    The Department proposes to maintain the rule as is.

R3-3-910. Drug and Feed Additives

2. **Objective**

   The objective of this rule is to establish that a distributor of commercial feed using certain additives, including drugs, may be required to demonstrate the safety and efficacy of the commercial feed and to prescribe methods for establishing the safety and efficacy of the feed.

6. **Clarity, conciseness, and understandability**

   This rule is partially clear, concise and understandable. The rule suffers from excessive use of the passive voice, repetitive phrases, and incomplete sentences.

10. **Completion of course of action from prior review**

    The Department proposed to remove the incorporation by reference language from subsections (B)(1) and (B)(2) as they are already included in rule 901. The Department also proposed to rephrase subsection (A)(1). These changes did not occur due to the moratoriums on rulemaking imposed by the Governor's Office.

14. **Proposed course of action**

    The Department continues to propose removing the incorporation by reference language from subsections (B)(1) and (B)(2) as they are already included in rule 901 and also proposes to rephrase subsections (A) and (B)(1). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-913. Sampling Methods

2. Objective

The objective of this rule is to establish requirements for sampling commercial feed and whole cottonseed.

10. Completion of course of action from prior review

The Department proposed to update the document incorporated by reference from the 1997 version to the 2007 version. This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. Proposed course of action

The Department continues to propose updating the document incorporated by reference to the most recent version. At the same time, the Department plans to indicate in the rule that the incorporated material is available for inspection at the Department; because the material is copyright protected, the Department cannot provide copies itself. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARTICLE 10
AGRICULTURAL SAFETY

INFORMATION THAT IS IDENTICAL

1. Statutory authority


Specific: A.R.S. §§ 3-3106 & 3-3108.

3. Analysis of effectiveness in achieving the objective

The rules in this Article, except for rule 1010, are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-3101 et seq.
40 CFR 170

5. Agency enforcement policy

The Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

Rules 1002, 1004 and 1005 are clear, concise and understandable. Rules 1001, 1006, 1008 and 1012 are mostly clear, concise and understandable. Rules 1003, 1007, 1009, 1010 and 1011 are partially clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:
Rule | Effective Date | Last Revision
---|---|---
R3-3-1001 | July 13, 1989 | October 8, 1998
R3-3-1002 | October 8, 1998 | March 6, 2004
R3-3-1003 | March 3, 1995 | March 6, 2004
R3-3-1004 | July 13, 1989 | October 8, 1998
R3-3-1005 | October 8, 1998 | --
R3-3-1006 | October 8, 1998 | --
R3-3-1007 | October 8, 1998 | --
R3-3-1008 | October 8, 1998 | --
R3-3-1009 | October 8, 1998 | --
R3-3-1010 | October 8, 1998 | --
R3-3-1011 | October 8, 1998 | --
R3-3-1012 | March 6, 2004 | --

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not propose any changes to rules 1004, 1005, 1008 or 1011 during the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules, other than rule 1002, impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules, with the exception of rule 1003, are not more stringent than a corresponding federal law. Rules 1002, 1003 and 1004 correspond to 40 CFR 170. The remaining rules in this Article do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

These rules were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.
R3-3-1001. Definitions

2. **Objective**

   The objective of this rule is to set forth the definitions of particular terms used within Article 10.

6. **Clarity, conciseness, and understandability**

   The rule could be more clear and concise by removing unnecessary definitions and rephrasing other definitions.

10. **Completion of course of action from prior review**

   The Department proposed minor, insubstantial clarifications. The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

   The Department proposes to remove the definitions for “consultation” and “gravity based penalty,” rephrase the definitions of “early entry” and “worker,” and remove several unnecessary commas. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1002. Agricultural Safety

2. **Objective**

   The objective of this rule is to incorporate by reference the federal work protection standards related to pesticide use.

10. **Completion of course of action from prior review**

   The Department proposed to update the incorporated by reference material from the 2002 version to the 2007 version. The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

11. **Determination that rule imposes least burden and costs**

   The Department believes that this rule will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective once the proposed changes to the rule are made.
14. **Proposed course of action**

The Department still proposes to update the incorporated by reference material to the most current version. The Department also proposes to add a provision preventing retaliation against an employee who attempts to notify the Department of a possible violation. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-1003. Pesticide Safety Training**

2. **Objective**

The objective of this rule is to prescribe the training requirements for handlers and workers, the employer’s duty to provide or verify training, and the requirements for becoming a trainer.

6. **Clarity, conciseness, and understandability**

The individual sentences of the rule are clear and understandable, but the overall construction of the rule is not always easy to follow. The rule also lists the exemptions before the requirements, when it would be clearer to present the exemptions after the requirements.

10. **Completion of course of action from prior review**

The Department proposed minor, insubstantial clarifications. The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

12. **Determination that rule is not more stringent than corresponding federal law**

Portions of this rule are more stringent than 40 CFR 170.130 and 170.230. This rule requires handler training to be renewed at least every three years, while federal law provides five. This rule also requires the employer to document that employees have received pesticide safety information and requires that the pesticide training be solely about pesticides. This rule also requires trainers to maintain a record of Worker Protection Standard training certificates handed out and requires that training certificates actually be handed out. Finally, this rule contains more strict rules about qualifying as a trainer.

The Department believes it has authority to make this rule, which pertains to pesticide safety training, more stringent than federal law under A.R.S. §§ 3-3106 and 3-3108 because the Department is precluded from making rules more stringent than federal law with respect to products (see A.R.S. § 3-3108(B)), but there is no similar restriction with respect to training.
14. **Proposed course of action**

The Department proposes substantial changes to this rule in order to make it clearer and easier to follow, while eliminating duplicative language. This will include reordering subsections (A) and (B), rephrasing and reordering the language in the rule generally to put a focus on clearly setting out when training is required, and moving the details of WPS training verification cards to a new Recordkeeping subsection. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1004. **Notification Requirements for Farm Labor Contractors**

2. **Objective**

The objective of this rule is to require agricultural establishments to notify farm labor contractors about the central posting location and restrictions on entering treated areas and to require farm labor contractors to pass that information along to their workers.

14. **Proposed course of action**

The Department proposes to maintain the rule as is.

R3-3-1005. **Container Used For Mixing or Applying Pesticides**

2. **Objective**

The objective of this rule is to prescribe the requirements of containers used for applying pesticides and to require handlers to ensure that pesticides do not spill when being mixed or back-siphon into the water supply.

14. **Proposed course of action**

The Department proposes to maintain the rule as is.

R3-3-1006. **Agricultural Emergency**

2. **Objective**

The objective of this rule is to establish the procedures for growers to request the Department to declare an agricultural emergency, which would have the effect of allowing early entry into an area where pesticides were applied, and the Department’s responsibilities in responding to such a request.
6. **Clarity, conciseness, and understandability**

The Department believes subsection (B)(2) would be slightly more clear by adding the phrase “if a grower or requesting party submits written evidence that includes the information in (B)(1).”

10. **Completion of course of action from prior review**

The Department proposed to preface subsection (B)(2) with the phrase “if a grower or requesting party submits written evidence that includes the information in (B)(1).” The change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department still proposes to preface subsection (B)(2) with the phrase “if a grower or requesting party submits written evidence that includes the information in (B)(1).” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-1007. Violations and Civil Penalties**

2. **Objective**

The objective of this rule is to set forth civil penalty calculations for violations of Article 10.

6. **Clarity, conciseness, and understandability**

Subsection (C)(3) refers to “this Section” when the correct reference is rule 1003. Subsection (F) creates uncertainty as to whether the Director has to engage in settlement decisions before assessing a penalty under A.R.S. § 3-3114.

10. **Completion of course of action from prior review**

The Department proposed to eliminate subsection (F). The change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department still proposes to eliminate subsection (F). The Department also proposes to clarify subsection (C)(3) so that it refers to the training provisions of rule 1003 and so that it refers to persons purportedly trained rather than persons trained. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-1008. Penalty Adjustments

2. **Objective**

The objective of this rule is to prescribe bases for reducing a civil penalty and the corresponding amount of the reduction.

6. **Clarity, conciseness, and understandability**

The Department believes the rule needs some minor grammatical corrections. For example, in subsections (A)(1) and (A)(2), the verb “is” should be “are.” Also, in step 1 under subsection (B), “concerns” should be “concern.” Finally, subsection (A)(3) would be a little clearer by changing “in assessing a penalty” to “to decrease the penalty.”

14. **Proposed course of action**

The Department proposes to make some minor grammatical corrections. For example, in subsections (A)(1) and (A)(2), the verb “is” should be “are.” Also, in step 1 under subsection (B), “concerns” should be “concern.” Finally, subsection (A)(3) would be a little clearer by changing “in assessing a penalty” to “to decrease the penalty.” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1009. Failure to Abate

2. **Objective**

The objective of this rule is to prescribe the circumstances under which a person can receive a civil penalty for failure to comply with an abatement order and to describe how the abatement period is delayed when a person appeals a citation.

6. **Clarity, conciseness, and understandability**

The rule refers to A.R.S. § 3-3116, which has been repealed. The rule also refers to a “notice of contest” instead of a request for hearing.

10. **Completion of course of action from prior review**

The Department proposed to rephrase portions of this rule for greater clarity and to remove the reference to repealed A.R.S. § 3-3116. The change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to completely rephrase and reorder this rule and to eliminate the reference to repealed A.R.S. § 3-3116 as shown below. The proposed revisions follow
A.R.S. §§ 3-3110(A)(2), 3-3112(B) & 3-3112(D) and serve to clarify key provisions of the law rather than to substantively change the law. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

A. The Director shall include in a citation for an alleged violation of this Article a reasonable time to abate the violation.

B. When a cited person timely files a request for hearing to contest a violation, the abatement period does not begin to run until the entry of a final order as long as the request for hearing was initiated in good faith and not solely for delay or avoidance of penalties. If a person contests only the amount of the proposed penalty, the person shall correct the violation within the originally prescribed abatement period.

C. If the Director has reason to believe the cited person has failed to correct the violation within the abatement period, the Director shall notify the person by mail of the failure, the proposed penalty, and the right to request a hearing.

D. On a showing by a cited person of a good faith effort to comply with the abatement requirements of a citation and that the abatement has not been completed because of factors beyond the person's reasonable control, the Department shall issue an order affirming or modifying the abatement requirements in the citation after an opportunity for a hearing.

R3-3-1010. Calculation of Additional Penalties For Unabated Violations

2. Objective

The objective of this rule is to prescribe how the Department calculates additional penalties for failure to timely abate a violation.

3. Analysis of effectiveness in achieving the objective

This rule is partially effective in achieving the stated objective. While the rule provides some guidance for calculating a penalty, such as no more than $1,000 a day and consideration of good faith efforts to correct the violation, the rule could more effectively provide direction on how much the penalty should be within the $1,000 limit.

6. Clarity, conciseness, and understandability

Subsection (A) refers to subsection (C), but there is no subsection (C). Also, the rule is somewhat confusing on how to actually calculate additional penalties.
10. **Completion of course of action from prior review**

The Department proposed to correct the reference in subsection (A) from the non-existent subsection (C) to the correct subsection (B) and to rephrase subsection (B) in minor, insubstantial ways. These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

The Department proposes to completely rephrase and clarify this rule as shown below. In particular, the proposed changes will specifically identify how the additional daily penalty will be calculated: using the penalty structure set out in R3-3-1007 and R3-3-1008. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

A. If the Director has reason to believe the cited person has failed to correct a serious or nonserious violation within the abatement period, the Director shall assess additional civil penalties on the cited person as follows:

1. The Director shall use R3-3-1007 and R3-3-1008 to calculate an additional daily penalty for each unabated violation.
2. The additional daily penalty shall neither be less than the original penalty for the cited violation nor exceed $1,000 per day per violation.
3. The additional daily penalty shall be multiplied by the number of calendar days the violation has continued unabated beyond the abatement period.

B. Notwithstanding subsection (A), the Director may reduce or eliminate the additional penalty based on:

1. The extent that the violation has been abated.
2. The cited person's good faith effort in correcting the violation, and
3. Whether the abatement has not been completed because of factors beyond the cited person's reasonable control.

R3-3-1011. **Repeated or Willful Violations**

2. **Objective**

The objective of this rule is to describe how the Department calculates penalties for repeated or willful violations.
6. **Clarity, conciseness, and understandability**

The rule repetitively repeats the phrase, “the maximum allowed by A.R.S. § 3-3113(A).”
Also, the penalty associated with a repeated violation covered by subsection (A)(4) is not clear as written.

14. **Proposed course of action**

The Department proposes to simplify and clarify this rule as shown below. The Department proposes to remove all the references to “the maximum allowed by A.R.S. § 3-3113(A)” and replace them with a single reference to not exceeding $10,000. The Department proposes to maintain the substance of subsection (A), but to insert a new sentence that better introduces subsections (A)(1)-(5), such as “The penalty for a repeated violation shall be calculated as follows: ….” The Department proposes to simplify subsection (A)(4) by using the term de minimis violation. Finally, the Department proposes to insert a reference to rule 1007(D) into subsection (B) and a reference to using the base adjustment factors in rule 1008 to reduce a penalty into subsection (C). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

A. The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last three years from the date of notice. The penalty for a repeated violation shall be calculated as follows:

1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).

2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven times if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).

3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. § 3-3113(A).

4. A penalty for a repeated de minimis violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article. shall be calculated as a nonserious violation under this Article.
5. If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. § 3-3113(A).

B. The Assistant Director may adjust the gravity-based base penalty listed in R3-3-1007(D) by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. § 3-3113(A).

C. The Assistant Director shall not use the base adjustment factors in R3-3-1008 to reduce the penalty for any serious or nonserious willfully repeated violation.

D. Repeated violations are based on prior violations occurring within the previous three years.

E. The penalty for a repeated or willful violation shall not exceed ten thousand dollars.

R3-3-1012. Citation; Posting

2. Objective

The objective of this rule is to require an employer to post a citation for three days or until the violation is abated.

6. Clarity, conciseness, and understandability

The rule would be more clear and concise by changing “prescribed at” to “as required under” and by removing the phrase “time period.”

10. Completion of course of action from prior review

The Department proposed to change “prescribed at” to “as required under” and to remove the phrase “time period.” The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. Proposed course of action

The Department still proposes to change “prescribed at” to “as required under” and to remove the phrase “time period.” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARTICLE 11
ARIZONA NATIVE PLANTS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**


   Specific: A.R.S. §§ 3-903(B), 3-904(C), 3-905(C), 3-906(D), 3-908(E), 3-910(B), 3-911(C), 3-912 & 3-913.

3. **Analysis of effectiveness in achieving the objective**

   Rules 1101-1103 and 1109 are effective in achieving their objectives. Rules 1104-1108, 1110 and Appendix A are only partially effective in achieving their objectives.

4. **Consistency**

   With the exception of rules 1103, 1105 and 1107, the rules in this Article are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. § 3-901 et seq.

5. **Agency enforcement policy**

   With the exception of rules 1103, 1104, 1105 and 1107, the Department enforces the rules in this Article as written.

6. **Clarity, conciseness, and understandability**

   With the exception of rules 1101, 1103, 1108 and Appendix A, the rules in this Article are clear, concise and understandable. Rules 1108 and Appendix A are mostly clear, concise and understandable. Rules 1101 and 1103 are partially clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.
For fiscal years 2011, 2012 and 2013 respectively, the Department received $75,902, $87,976, and $81,113 from native plant fees for permits, tags, and seals. This includes $37,896 in fiscal year 2013 from saguaro tag fees.

The rules in this article were effective and last revised on the following dates:

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<td>Appendix A</td>
<td>July 6, 1993</td>
<td>May 3, 2008</td>
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</tbody>
</table>

9. **Analysis submitted by another person**

   None.

10. **Completion of course of action from prior review**

    The Department revised all of the rules in this Article in 2008. It is assumed that all changes proposed in the prior review were either incorporated in the 2008 revisions or dropped as unnecessary.

11. **Determination that rule imposes least burden and costs**

    The Department believes these rules, except rules 1108 and 1110 and Appendix A, impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

    These rules are not more stringent than a corresponding federal law, as there is not a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

    These rules were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.
INFORMATION THAT IS NOT IDENTICAL

R3-3-1101. Definitions

2. Objective

The objective of this rule is to set forth the definitions of particular terms used within Article 11.

6. Clarity, conciseness, and understandability

The rule is partially clear, concise and understandable. It contains unnecessary definitions and several definitions could be more clear and precise.

14. Proposed course of action

The Department proposes to amend this rule by (i) eliminating the unnecessary definitions for agent, Department, landowner, noncommercial salvage permit, permittee, scientific permit and wood receipt; (ii) adding new useful definitions for endangered species act, harvest restricted native plant, highly safeguarded native plant, import movement permit, salvage assessed native plant, salvage restricted native plant and wood permit; and (iii) clarifying the definitions of harvest restricted native plant permit, original growing site, protected native plant, protected native plant tag, salvage restricted native plant permit, securely tie, and small native plant. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1102. Protected Native Plant Destruction by a Private Landowner

2. Objective

The objective of this rule is to prescribe the requirements for a landowner to give the Department notice before destroying a protected native plant and describe what information must be in the notice so that the Department can notify salvage operators who may wish to preserve the plant.

14. Proposed course of action

The Department proposes to move all native plant fees into a single rule, including the fee referenced in subsection (C) of this rule. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

2. Objective

The objective of this rule is to set forth the requirements for a state agency intending to move or destroy protected native plants to give the Department notice and dispose of the plants using a method identified in the rule.

4. Consistency

This rule is not fully consistent with A.R.S. § 3-905. Subsection (C) of the statute refers to disposing or salvaging under permit to other government agencies or nonprofit organizations, while the rule (subsection (A)(4)) says no permit is required for that action. The rule is consistent with other pertinent statutes.

List of statutes or rules used in determining consistency:
A.R.S. § 3-901 et seq.

5. Agency enforcement policy

The Department mostly enforces the rules in this Article as written. The Department enforces subsection (A)(2) as if it said “same state agency” instead of just “state.”

6. Clarity, conciseness, and understandability

The rule is partially clear, concise and understandable. Subsection (A) requires an agency to notify the Department per A.R.S. § 3-905, while it would be more clear to set out the applicable requirements of A.R.S. § 3-905 in the rule, including the 60 day notice requirement. Subsection (A)(2) refers to the “state” when it would be more clear to say the “same state agency.”

14. Proposed course of action

The Department proposes several changes to this rule. The Department plans to incorporate language in subsection (A) from A.R.S. § 3-905(A) that refers to more than ¼ acre of land and 60 days notice rather than just referring to the statute. The Department also plans to incorporate language in subsection (B) from A.R.S. § 3-905(B) that makes that part of the rule consistent with the statute. The Department also proposes to rephrase subsections (A)(1)-(5) to remove the use of the passive voice. Finally, the Department proposes to change subsection (A)(4) to require a noncommercial salvage permit, which would make the rule consistent with A.R.S. § 3-905(C). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees

2. **Objective**

The objective of this rule is to establish the application requirements for obtaining a permit to collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants, as well as permit fees, tag fees, and harvesting fees. The rule also sets out the term of salvage assessed native plant permits and tags.

3. **Analysis of effectiveness in achieving the objective**

The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit: rules 1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required.

5. **Agency enforcement policy**

The Department enforces this rule as written except that it does not require an applicant to provide a social security number or tax identification number.

14. **Proposed course of action**

The Department proposes to redo this rule. The Department proposes to move subsections (B) and (F) into a rule focusing on permit application requirements and permit terms. The Department proposes to move subsections (C)-(E) into a rule focusing on fees. The Department proposes to use this rule 1104 to detail what kinds of permits are available, when a permit is required, and when a permit is not required. The Department also plans to incorporate the requirement in A.R.S. § 3-909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

2. **Objective**

The objective of this rule is to describe the purpose of a scientific permit and noncommercial salvage permit and to set out the requirements for obtaining each of those permits.
3. **Analysis of effectiveness in achieving the objective**

The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit: rules 1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required. The Department also believes that noncommercial salvage permits should be available for more than just highly safeguarded native plants.

4. **Consistency**

This rule is mostly consistent with A.R.S. § 3-906. Subsection (C) of the statute refers to limitations on issuing permits for highly safeguarded native plants that are not presently included in the rule. The rule is consistent with other pertinent statutes.

List of statutes or rules used in determining consistency:
A.R.S. § 3-901 et seq.

5. **Agency enforcement policy**

The Department enforces this rule as written except that it does not require an applicant to provide a social security number or tax identification number.

14. **Proposed course of action**

The Department proposes several changes to this rule. The Department proposes to combine and rephrase subsections (A)(1) and (B)(1). The Department proposes to move subsections (A)(2), (A)(4), (B)(2) and (B)(4) into a rule focusing on permit application requirements and permit terms. The Department also proposes to add language to subsections (A)(3) and (B)(3) from A.R.S. § 3-906(C) related to permit requirements for highly safeguarded native plants. Finally, the Department proposes to add a subsection to make clear that plants covered by a scientific or noncommercial salvage permit cannot be sold. The Department proposes to use this rule 1104 to detail what kinds of permits are available, when a permit is required, and when a permit is not required. The Department also plans to incorporate the requirement in A.R.S. § 3-909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-1106. Protected Native Plant Survey; Fee

2. Objective

The objective of this rule is to describe what information the Department will provide when requested to perform a native plant survey and what expenses are included in the fee for performing the survey.

3. Analysis of effectiveness in achieving the objective

The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit: rules 1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required. The Department believes that the fees described in subsection (B) this rule would be more effective if in a rule dedicated to fees. Also, subsection (A) of this rule only addresses the duties of the Department, which is not necessary to have in rule.

14. Proposed course of action

The Department proposes to move subsection (B) to a rule dedicated to fees. The Department also proposes to delete subsection (A). These two changes will result in a repeal of the rule. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-1107. Movement Permits; Tags, Seals, and Cord Use

2. Objective

The objective of this rule is prescribe the circumstances when a movement permit is needed and how to obtain one, to set out the plant seals that are needed when moving a plant under a movement permit, and to describe how to attach tags, seals and cords to native plants.

3. Analysis of effectiveness in achieving the objective

The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit: rules 1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required.
4. **Consistency**

This rule is partially consistent with the native plant statutes. This rule requires a “Movement Permit” for plants previously transplanted from their original growing site. The native plant statutes, however, do not provide for a movement permit, nor do they require a permit to move, sell or destroy plants previously transplanted.

List of statutes or rules used in determining consistency:
A.R.S. § 3-901 et seq.

5. **Agency enforcement policy**

This rule requires a “Movement Permit” for plants previously transplanted from their original growing site. The native plant statutes, however, do not require a permit to move, sell or destroy plants previously transplanted. Accordingly, the Department does not require a person to obtain a movement permit to move, sell or destroy plants previously transplanted, but does allow a person to voluntarily obtain a permit for that purpose.

14. **Proposed course of action**

The Department proposes to remove subsection (A). The Department proposes to incorporate subsection (B) into a rule describing salvage restricted permits because that is the proper type of permit for saguaro cacti. The Department proposes to incorporate subsection (C) into a rule describing import permits because that is the proper type of permit referred to. Finally, the Department proposes to move subsections (D) and (E) into a rule dedicated to tags and seals with respect to all types of native plant permits and to revise the portion about how to obtain an import permit. These proposals leave nothing in this rule, which will accordingly be repealed. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants**

2. **Objective**

The objective of this rule is set out the requirements for holders of salvage assessed and harvest restricted native plant permits to keep transaction records and provide those records to the Department.

3. **Analysis of effectiveness in achieving the objective**

The Department believes this rule is only partially effective. The transaction record for salvage assessed plants does not include the place the plant came from or the place it was transplanted. This information would allow the Department to better trace permitted plant movements and identify illegal plant movements.
6. **Clarity, conciseness, and understandability**

This rule is mostly clear, concise and understandable. The rule mistakenly refers to salvage restricted plants in subsection (A)(1) instead of salvage assessed plants. The heading to subsection (A) and the rule as a whole point out that the rule applies to salvage assessed plants.

11. **Determination that rule imposes least burden and costs**

The Department believes that this rule will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective once the proposed changes to the rule are made.

14. **Proposed course of action**

The Department proposes to change the reference to salvage restricted to salvage assessed. The Department also proposes to add to the recordkeeping requirements that the permittee must note the location where the plant was taken from and where it was replanted. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-1109. Arizona Native Plant Law Education**

2. **Objective**

The objective of this rule is to set out the fees for attending a seminar or training course on Arizona native plant law offered by the Department.

14. **Proposed course of action**

The Department proposes to move subsection (B) to a rule dedicated to fees. The Department also proposes to remove subsection (A) because it is unnecessary. These two changes will result in a repeal of the rule. Finally, the Department feels that the fee needs to be raised from $10 to $50. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-1110. Permit Denial**

2. **Objective**

The objective of this rule is to establish that a person who is denied a permit may request an administrative hearing.
3. **Analysis of effectiveness in achieving the objective**

Title 41 provides the right referred to in this rule. There is no need to repeat that right here.

11. **Determination that rule imposes least burden and costs**

The Department believes that this rule will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective once the proposed change to the rule is made.

14. **Proposed course of action**

The Department proposes to make this rule more useful by using it to state that a permit may be denied to a person who fails to keep or provide reports required by this Article. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**Appendix A. Protected Native Plants by Category**

2. **Objective**

The objective of this Appendix is simply to distinguish protected native plants by the categories of highly safeguarded, salvage restricted, salvage assessed, and harvest restricted.

3. **Analysis of effectiveness in achieving the objective**

This rule is mostly effective in achieving the objective. It would be more effective if subsection (A) specified that highly safeguarded plants include plants covered by the Endangered Species Act, as described in A.R.S. § 3-903(B)(1).

6. **Clarity, conciseness, and understandability**

This rule is mostly clear, concise and understandable. The Department believes subsection (A) would be clearer by removing the cross-reference to rule 1105 and replacing it with a specific reference to scientific and noncommercial salvage permits.

11. **Determination that rule imposes least burden and costs**

The Department believes that this rule will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective once the proposed changes to the rules are made.
14. **Proposed course of action**

The Department proposes to amend Appendix A, subsection A in three respects. First, the Department will rephrase the opening paragraph so that a cross reference to rule 1105 is not necessary. Second, the Department plans to make clear that highly safeguarded plants include plants covered by the Endangered Species Act as described in A.R.S. § 3-903(B)(1). Third, the Department plans to remove crested saguaros from the list of highly safeguarded plants where the saguaro is not in its original growing site. This change deals with the situation where a salvager is in possession of a non-crested saguaro that then crests because, at that point, the salvager is not allowed to sell the plant anymore. Under this proposal, a salvager in the described situation would be able to sell the plant. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARIZONA DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION

2014 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 3
Articles 1-5

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ARTICLE 1
GENERAL PROVISIONS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**


3. **Analysis of effectiveness in achieving the objective**

   The rules in this Article are effective in achieving the stated objective.

4. **Consistency**

   The rules in this Article are consistent with statutes and other rules.

5. **Agency enforcement policy**

   The Department enforces rules 101 and 102 as written.

6. **Clarity, conciseness, and understandability**

   Rules 101 and Table 1 are mostly clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

   The rules in this article were effective and last revised on the following dates:

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<td>October 8, 1998</td>
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<tr>
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<td>September 16, 2013</td>
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1 The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.

Title 3, Chapter 3, Articles 1-5: 2014 Five-year Review Report
9. **Analysis submitted by another person**

None.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

The rules in this Article do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rule 101 and Table 1 were amended after July 29, 2010, but neither requires a permit. Rule 102 was not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-3-101. Definitions**

1. **Statutory authority**

Specific: A.R.S. §§ 3-343 & 3-363; Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

This rule sets forth the definitions of particular terms used within Articles 1-5.

4. **Consistency**

List of statutes or rules used in determining consistency:
- A.R.S. § 3-341 et seq.
- A.R.S. § 3-361 et seq.
- 3 A.A.C. 3, Articles 1-5

6. **Clarity, conciseness, and understandability**

The definitions of agricultural aircraft pilot, commercial applicator, private applicator, and pest control advisor unnecessarily contain the word “licensed” or “certified” since the rules separately require those persons to be licensed. See A.A.C. R3-3-204, R3-3-207 and R3-3-208. The definitions for certified applicator, child care facility, custom applicator,
restricted use pesticide, school, and service container also could use minor, technical corrections. Additionally, it would be useful to add an abbreviation for the Federal Aviation Administration, and remove the unused abbreviation for the Federal Food, Drug and Cosmetic Act. Finally, periods should be added to the end of several definitions.

10. **Completion of course of action from prior review**

The Department proposed to clarify the definitions of child care facility, LD₅₀, school, and service container, update the references to the Structural Pest Control Commission to the Office of Pest Management, and remove the reference to FFDCA. Most of these changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office. The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management to the Department and allowed the Department to conduct exempt rulemaking to implement that change.

14. **Proposed course of action**

The Department proposes to remove "licensed" and "certified" from the definitions of agricultural aircraft pilot, commercial applicator, private applicator, and pest control advisor since the rules separately require those persons to be licensed. See A.R.S. §§ 3-204 and 3-208. The Department also proposes to clarify the definitions for certified applicator, child care facility, custom applicator, LD₅₀, restricted use pesticide, school, and service container. The Department proposes to add an abbreviation for the Federal Aviation Administration and remove the unused abbreviation for the Federal Food, Drug and Cosmetic Act. Finally, the Department proposes to add periods to the end of several definitions where they are missing. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-102. Licensing Time-frames**

1. **Statutory authority**

   Specific: A.R.S. § 41-1073.

2. **Objective**

   This rule sets forth the general provisions for administrative completeness and substantive reviews of license or permit applications related to pesticides, commercial feed, fertilizers, agricultural safety, and native plants.

4. **Consistency**

   List of statutes or rules used in determining consistency:
   A.R.S. § 41-1072 et seq.
6. **Clarity, conciseness, and understandability**

   This rule is clear, concise and understandable.

10. **Completion of course of action from prior review**

   The Department did not propose any changes during the previous review.

14. **Proposed course of action**

   The Department proposes to maintain the rule as is.

**Table 1. Time-frames (Calendar Days)**

1. **Statutory authority**

   Specific: A.R.S. § 41-1073; Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

   This rule prescribes specific time-frames for processing applications for licenses and permits issued under this chapter.

4. **Consistency**

   List of statutes or rules used in determining consistency:
   
   A.R.S. § 41-1072 et seq.

5. **Agency enforcement policy**

   The Department mostly enforces this Table as written. The Table lacks a time-frame for a permit for non-commercial salvage of native plants. All other native plant permits have identical time-frames, so the Department applies those time-frames to the non-commercial salvage permit.

6. **Clarity, conciseness, and understandability**

   The Table would be clearer if it referred to the rule numbers for each license type. Also, the time frame for private fumigation certification is unnecessary because it is simply a form of private applicator certification, which already has a time-frame.

10. **Completion of course of action from prior review**

   The Department proposed to add a time-frame for non-commercial salvage of native plants. The changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.
14. Proposed course of action

The Department proposes to eliminate the time frame for private fumigation certification because it is simply a form of private applicator certification, which already has a time-frame. The Department also proposes to add a new time-frame for a permit for non-commercial salvage of native plants that is identical to the time-frame for all other native plant permits. Finally, the Department is updating the several references in the time-frame table to include rule numbers. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARTICLE 2
PERMITS, LICENSES, AND CERTIFICATION

INFORMATION THAT IS IDENTICAL

1. Statutory authority


Specific: A.R.S. § 3-363.

3. Analysis of effectiveness in achieving the objective

With the exception of rule 212, the rules in this Article are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
   A.R.S. § 3-361 et seq.

5. Agency enforcement policy

The Department enforces rules 201-209, 212 and Appendix A in this Article as written.

6. Clarity, conciseness, and understandability

Rules 201, 207, 208, 209, and 212 and Appendix A are clear, concise and understandable. Rules 203, 204, 205, 206, 210, and 211 are mostly clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.
In FY2012, the Department administered the following number of licensing exams:

<table>
<thead>
<tr>
<th>Type</th>
<th># Given</th>
<th># Passed</th>
<th>Passing Rate</th>
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<tbody>
<tr>
<td>Commercial Applicator</td>
<td>133</td>
<td>101</td>
<td>76%</td>
</tr>
<tr>
<td>Custom Applicator</td>
<td>3</td>
<td>1</td>
<td>33%</td>
</tr>
<tr>
<td>Pest Control Advisor</td>
<td>41</td>
<td>19</td>
<td>46%</td>
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<tr>
<td>Private Applicator</td>
<td>108</td>
<td>80</td>
<td>74%</td>
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</table>

The decrease in Pest Control Advisor exams administered is consistent with the raising of educational requirements that occurred at the time of the last preparation of an economic impact statement for that rule.

In FY2012, the Department issued the following licenses:

- Grower Permits: 1162
- Pesticide Sellers: 133
- Agricultural Aircraft Pilots: 46
- Custom Applicators: 49
- Equipment Tags: 465
- Pest Control Advisors: 206
- Certified Applicators: 850

At the time of the preparation of the last economic impact statement in 2004, the Department anticipated a $9,000 drop in revenue from a rule change that would require fewer businesses to get a $100 pesticide seller license. Compared to FY2003, the Department issued 81 less pesticide seller permits in FY2012 resulting in a revenue difference of $8,100.

The rules in this article were effective and last revised on the following dates:

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<th>Rule</th>
<th>Effective Date</th>
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<tr>
<td>R3-3-201</td>
<td>November 20, 1987</td>
<td>September 16, 2013²</td>
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<td>R3-3-202</td>
<td>March 6, 2004</td>
<td>September 16, 2013</td>
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² The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.
9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

For rules 201, 202, 206, 207, 209, and 211, the Department did not propose any changes during the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

Except for rules 202, 208, 212 and Appendix A, these rules do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rules 203-206, 209-212, and Appendix A were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

14. **Proposed course of action**

The Department proposes to maintain rules 207 and 209 as is.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-3-201. Regulated Grower Permit; Fee**

1. **Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

This rule prescribes the requirements for obtaining a regulated grower permit, as well as application requirements, fees, and terms of validity.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rules 201 uses a general permit in compliance with A.R.S. § 41-1037.
14. **Proposed course of action**

The Department proposes to add the commonly used acronym for this permit to the rule: PGP. PGP is short for pesticide grower permit. The Department also proposes to change the requirement to provide a social security or employer’s identification number to just social security numbers for individuals. See A.R.S. § 25-320(P). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-202. Core Examination**

1. **Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

This rule sets forth the requirements for taking and passing the core examination, as well as subjects covered in the examination.

6. **Clarity, conciseness, and understandability**

The rule is partially clear, concise and understandable. It is confusing to list agricultural aircraft pilot as a category requiring a core exam because a commercial applicator's certification is required to obtain an agricultural aircraft pilot's license and the core exam is taken as part of the commercial applicator certification. There is not a separate core exam that pilots take in addition to the core exam for commercial applicator certification. The rule also does not make clear that the core exam for custom applicators is different from the core exam for pest control advisors, which is different from the core exam for certified applicators.

12. **Determination that rule is not more stringent than corresponding federal law**

Certification of applicators who use restricted use pesticides, which rule 202 relates to in part, is subject to 40 CFR 171, particularly 40 CFR 171.4 & 171.5. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.7. The standards of certification in the State plan must “conform and be at least equal to those prescribed” in 40 CFR 171.4(a) & 171.5(a). See also 40 CFR 171.7(c)(1)(i)(C) & (e)(1)(ii)(B). For commercial applicators, that means passing a written core examination and written category and subcategory specific examinations; rule 202 requires the core examination. For private applicators, that means demonstrating competency in the certification standards by a method adopted by the State, which could be by written exam, oral exam, or another approved method. Arizona’s approved State plan calls for demonstrating competency by written exam, and that is what rule 202 requires. Accordingly, rule 202 is not more stringent than a corresponding federal law.
13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rule 202 was amended in September 2013, but it does not require a permit.

14. **Proposed course of action**

The Department continues to propose to make minor grammatical and wording changes, to remove repetitive subsection (A)(1), and to remove the expired fee decrease in subsection (D). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

The Department proposes to substantially amend rule 202 for more clarity and conciseness. The Department proposes to remove agricultural aircraft pilot as a category requiring a core exam because a commercial applicator's certification is required to obtain an agricultural aircraft pilot's license, a core exam is taken as part of the commercial applicator certification, and there is not a separate core exam that pilots take in addition to the core exam for commercial applicator certification. The Department also proposes to make the rule clearly set out that there are three different core exams, each with different subjects tested, and to list the subjects that pertain to each exam. The Department proposes to reduce the number of opportunities to retake the exam from three to two. The Department proposes to put into the rule a Department policy that grants reciprocity on the core exam requirement to individuals who have passed the certification exam administered by the Office of Pest Management and who hold a current OPM applicator license. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-203. Seller Permit; Responsible Individual**

2. **Objective**

This rule sets forth the requirement to obtain a seller permit, the information needed on the application and the application fee, the permit term, and the need to designate a responsible individual for each location where restricted use pesticides are sold.

6. **Clarity, conciseness, and understandability**

The phrase “pesticide for an agricultural purpose” does not match the language used in the definition of seller, which refers to “other type of pesticide intended to be used for an agricultural purpose.”

10. **Completion of course of action from prior review**

The Department proposed to change the phrase “pesticide for an agricultural purpose” to “other type of pesticide intended to be used for an agricultural purpose.” This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.
14. **Proposed course of action**

The Department proposes to add the acronym for a seller’s permit to the rule: PSP. The Department also proposes to change the phrase “pesticide for an agricultural purpose” to “other type of pesticide intended to be used for an agricultural purpose.” The Department also proposes to add that a seller must designate a new responsible individual if the current responsible individual fails to satisfy the requirements of subsection (F)(2)(b) and to add the details needed to designate a responsible individual. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-204. **Agricultural Aircraft Pilot License; Examination; Fee; Renewal**

2. **Objective**

This rule sets forth the qualifications for obtaining an agricultural aircraft pilot license, the application and examination requirements, the license fee, the terms of validity, and the renewal requirements.

6. **Clarity, conciseness, and understandability**

The phrase commercial pilot’s certificate is not defined.

10. **Completion of course of action from prior review**

The Department proposed to rephrase the reference to the commercial pilot certificate to commercial agricultural aircraft operator’s certificate and to add a reference to the federal regulation pertaining to that certificate. These changes did not occur because they would not be correct. A commercial agricultural aircraft operator’s certificate under federal regulations (see 14 CFR 137) is a license held by a business, whereas this rule’s agricultural aircraft pilot license is a license held by an individual.

14. **Proposed course of action**

The Department proposes to add the acronym for an agricultural aircraft pilot license to the rule: AAP. The Department proposes to remove the redundancy in the language appearing in both subsections A and B requiring a licensee to have commercial applicator certification. The Department also proposes to reduce the number of opportunities to retake the exam from three to two. The Department also proposes some general rephrasing throughout the rule and to remove the reference to the core examination, consistent with the proposed changes to rule 202. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
R3-3-205. Custom Applicator License; Examination; Fee; Renewal

2. **Objective**

   This rule sets forth the conditions for obtaining a custom applicator license, the application requirements, the license fee, the term of the license, the examination requirements, and the renewal requirements.

6. **Clarity, conciseness, and understandability**

   Subsections (B)(3) and (B)(7) do not need a cross reference to subsection (C) because the cross reference adds nothing useful and the rule is more concise without it.

10. **Completion of course of action from prior review**

   The Department proposed to reorder some language in subsection (C)(3) and add a reference to 14 CFR 137.19. These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

   The Department proposes to add to the application requirements a contact person for the business. The Department proposes to remove the taxpayer identification number and instead require a social security number only if the applicant is an individual. The Department also proposes to reduce the number of opportunities to retake the exam from three to two. The Department also proposes some general rephrasing throughout the rule, including adding a reference to 14 CFR 137 to subsection (C)(3). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-206. Tag; Fee

2. **Objective**

   This rule sets forth when an equipment tag is needed, how to display the tag, the tag application requirements, the fee, the term, and the requirements related to transferring a tag.

6. **Clarity, conciseness, and understandability**

   The Department believes the rule could more clearly indicate that it applies to custom application equipment only.
14. **Proposed course of action**

The Department proposes to change the name of the rule to Custom Application Equipment Tag; Fee. The Department proposes to clarify throughout that the rule that the rule only applies to the equipment of custom applicators. The Department proposes to require a contact person on the application. In subsection (F), the Department proposes to replace the references to “licensed piece of equipment” with “equipment with a valid tag.” Finally, the Department proposes to add that a temporary loan of equipment does not require the custom applicator to notify the Department if the custom applicator keeps a written record of the transfer. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-207. **Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption**

2. **Objective**

This rule sets forth the requirement to obtain a PCA license, the application requirements, the testing requirements, the educational prerequisites, the fee, the term of the license, the renewal requirements, and the exemptions from licensure.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rule requires PCAs to be licensed. A general permit (i.e. license) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires PCA licensure must pass a core exam and a category specific exam, such as weed control or nematode control. There are seven categories of licensure. Under a general permit, an applicant would have to pass the core exam and all seven category specific tests whereas now a PCA license can be issued by passing one category specific exam.

14. **Proposed course of action**


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

1. **Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.
2. **Objective**

This rule sets forth when certification is required, how to apply to certification, the special requirements for fumigation certification, the fee, the term of the certification, the examination requirements, certification categories, and renewal requirements.

10. **Completion of course of action from prior review**

The Department proposed minor additions to subsections (C)(4)(b) and (G)(1)(a) for extra clarity. The Department substantially revised this rule in 2012, including moving a revised subsection (C)(4)(b) to subsection (F)(3)(c) and revising (G)(1)(a).

12. **Determination that rule is not more stringent than corresponding federal law**

Certification of applicators who use restricted use pesticides, which rule 208 relates to in part, is subject to 40 CFR 171, particularly 40 CFR 171.4 & 171.5. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.7. The standards of certification in the State plan must “conform and be at least equal to those prescribed” in 40 CFR 171.4(a) & 171.5(a). See also 40 CFR 171.7(e)(1)(i)(C) & (e)(1)(ii)(B). For commercial applicators, that means passing a written core examination and written category and subcategory specific examinations; this is what rule 208 requires. For private applicators, that means demonstrating competency in the certification standards by a method adopted by the State, which could be by written exam, oral exam, or another approved method. Arizona’s approved State plan calls for demonstrating competency by written exam, and that is what rule 208 requires.

The Department administers two written exams for private applicators: a general exam for all private applicators and a separate fumigation exam only for applicators who wish to use fumigants. Both exams test the applicant’s knowledge in the same five areas identified in 40 CFR 171.5(a)(1)-(5), with the difference between the exams being that the general exam covers pesticides other than fumigants and the fumigation exam is specific to fumigants. Thus, the knowledge required by the private applicator exams conforms to federal law.

State plans must also include “provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.” 40 CFR 171.8(a)(2). The continuing education requirements in rule 208 serve this purpose. See also A.R.S. § 3-363(5) (specifically authorizing the Department to adopt continuing education requirements).

Accordingly, rule 208 is not more stringent than a corresponding federal law.
13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

This rule does not use a general permit. The rule contains the requirement for pesticide applicators to obtain certification. A general permit (i.e. certification) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires applicator certification must pass a core exam. A person who desires commercial applicator certification must additionally pass a category specific exam, such as agricultural pest control or seed treatment. “For example, practical knowledge of drift problems should be required of agricultural applicators but not of seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques.” 40 CFR 171.4(c). There are eight categories of commercial certification plus a separate exam for private fumigation certification. Under a general permit, an applicant would have to pass the core exam, the fumigation exam, and all eight category specific tests (see 40 CFR 171.4 (requiring category specific exams)), whereas now private applicator certification does not require passing any category specific test or the fumigation exam and commercial applicator certification can be issued by passing one category specific exam.

14. **Proposed course of action**

The Department proposes to reduce the number of opportunities to retake the exam from three to two. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-209. **License and Fee Exemptions**

2. **Objective**

This rule sets forth exemptions from the requirement to have an Article 2 license, permit, or certification from the Department and, in the case of government employees who act as PCAs and apply restricted use pesticides, exemption from the fee for a PCA license or commercial applicator certification.

R3-3-210. **Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification**

2. **Objective**

This rule sets forth grounds for suspending or revoking a license, permit or certification issued under Article 2 and notes the applicable hearing rights.

5. **Agency enforcement policy**

A.R.S. § 41-1092.11(B) only requires an opportunity for a hearing before suspending or revoking a license, whereas this rule suggests that the Department only has authority to
suspended or revoke a license after a hearing. The Department follows the statute in providing an opportunity for a hearing before suspending or revoking a license, which the rule itself does not actually prohibit.

6. **Clarity, conciseness, and understandability**

   The rule would be more concise by replacing the phrase “has the authority to” with “may” and removing the phrase “in engaging.”

10. **Completion of course of action from prior review**

   The Department proposed removing the phrase “in engaging.” This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

14. **Proposed course of action**

   The Department proposes to replace the phrase “has the authority to” with “may,” insert the phrase “opportunity for an” before “administrative hearing,” remove the phrase “in engaging,” and add as grounds for denial or disciplinary action the failure to pay fines, penalties and fees. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

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**R3-3-211. CEU Course Approval; Subject Approval**

2. **Objective**

   This rule sets forth the submission requirements to have a course approved for CEU credit, allows the Department to adjust the allowable CEU credits if the course varies significantly from that approved by the Department, sets out the approved topics of instruction, and provides that 1 hour of credit results from 50 minutes of instruction.

5. **Agency enforcement policy**

   The Department mostly enforces this rule as written. Rule 208(F)(1) was amended in 2012, so the cross-reference to that rule is no longer valid. The Department enforces that part of this rule as though former rule 208(F)(1) were still in effect.

6. **Clarity, conciseness, and understandability**

   Subsection (B)(1) points to rule 208(F)(1), but rule 208(F)(1) has since been amended so that this cross-reference no longer makes sense. The clearest and most concise approach would be to cite directly to Appendix A, subsection (A), which is what former rule 208(F)(1) did.
14. **Proposed course of action**

The Department proposes to change the reference in subsection (B)(1) from rule 208(F)(1) to Appendix A, subsection (A). Former rule 208(F)(1) also pointed to Appendix A, subsection (A). The Department plans to complete the proposed action within twenty-four months of the end of rulemaking moratoriums.

**R3-3-212. Experimental Use Permit**

2. **Objective**

The objective of this rule is to identify who needs an experimental use permit and what a person needs to do to obtain one.

3. **Analysis of effectiveness in achieving the objective**

This rule is only partially effective in achieving its objective. The rule specifically addresses what a person needs to do if the person is exempt from the need to obtain a federal experimental use permit. This rule does not address, however, what a person needs to do who is not exempt from having a federal experimental use permit. Instead, those requirements are encapsulated in rule 303 only, which creates some confusion since a state-issued experimental use permit is still needed and that is what this rule is supposed to cover.

10. **Completion of course of action from prior review**

The Department proposed only to drop the word “pesticide” out of “small scale pesticide testing.” This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office.

12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds to 7 USC 136c and 40 CFR 172. This rule is not more stringent than the corresponding federal law.

14. **Proposed course of action**

The Department proposes to revamp this rule in conjunction with rule 303 related to experimental pesticide use. The Department proposes to have this rule set out the requirements to obtain an Arizona experimental use permit (see A.R.S. § 3-350.01) and rule 303 describe the duties applicable to persons who are using an experimental use permit. Thus, the Department proposes that rule 212 clarify who needs to obtain a state experimental use permit and what information needs to be provided. The Department proposes to take much of that information from rule 303, subsection (A). The revised rule may look something like the draft language that follows. The Department plans to
complete the proposed actions within twenty four months of the end of rulemaking moratoriums.

R3-3-212. Experimental Use Permit

A. Small scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:

1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(c), and

2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.

B. A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.

A. Definitions

1. "For the purpose of experimentation" means for research or testing purposes, including research or testing performed in order to accumulate information necessary to register under Section 3 of FIFRA and the regulations thereunder a pesticide not currently registered or a registered pesticide for a use not previously approved in the registration of the pesticide.

2. "Research agency" means any organization engaged in research pertaining to the use of pesticides, including for the purpose of experimentation.

3. "Structural pest management application" means a pesticide application covered by A.R.S. Title 32, Chapter 22.

B. A research agency or educational institution may use a pesticide that is not federally registered or use a federally registered pesticide for a use not previously approved in the registration of the pesticide for the purpose of experimentation under a valid experimental use permit issued by the Department, except that a permit is not required if the testing will only occur on the grounds of a college or university agricultural center or campus or a research agency owned research facility.

C. An applicant for an experimental use permit shall provide the following information to the Department:

1. A copy of the EPA-approved experimental use permit issued pursuant to Section 5 of FIFRA or, for applicants exempt from the requirement of a federal experimental use permit under 40 CFR 172.3, a statement of which federal exemption applies and an affidavit certifying that the experimental use will be in compliance with the applicable exemption;

2. Name, address, e-mail address, and daytime telephone number of the person supervising the experimental use application;

3. Name, address, e-mail address, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest management application, that are involved in the application of the experimental use pesticide;
4. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest management application;
5. The crop and acreage to be treated, or the number of structures if it is a structural pest management application;
6. Total amount of active ingredient to be applied in this state;
7. Application rate of formulation per acre;
8. Method of application;
9. Name, address, e-mail address, and telephone number of the applicator applying the pesticide;
10. Time period during which the application will be made; and
11. Any special experimental use permit conditions imposed by the EPA.

Appendix A. Testing Categories

2. Objective

This rule details the type of knowledge required for applicator certification, including category specific knowledge for commercial applicator certification.

10. Completion of course of action from prior review

The Department proposed to correct the reference to the CFR in subsection (B). The Department completed this change in 2009.

12. Determination that rule is not more stringent than corresponding federal law

The testing categories in this rule correspond to 40 CFR 171.4 and 40 CFR 171.5. This rule is not more stringent than the federal law.

14. Proposed course of action

The Department proposes to simplify the citations to the CFR in subsections (A), (B) and (C) to 40 CFR 171.4(b), 171.4(c) & 171.5(a). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARTICLE 3
PESTICIDE USE, SALES, AND EQUIPMENT

INFORMATION THAT IS IDENTICAL

1. Statutory authority

Specific: A.R.S. § 3-363.

3. Analysis of effectiveness in achieving the objective

The rules in this Article are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-361 et seq.

5. Agency enforcement policy

With the exception of rules 301 and 305, the Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

Rules 302, 303, 306, 308, 309, and 310 are clear, concise and understandable. Rules 301, 304, 305, and 307 are mostly clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not propose any changes during the prior review to rules 302, 306, 307, 308, 309 and 310.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

Rules 304-306 and 310 have no corresponding federal law and are therefore not more stringent than a corresponding federal law. Rules 308 and 309 have no corresponding federal law, as far as the Department has been able to determine after a search, and are therefore not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

With the exception of rule 305, the rules in this Article were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 305 does not require a permit.

14. **Proposed course of action**

The Department proposes to maintain rules 302, 306, 308, 309 and 310 as is.

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3 The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.
R3-3-301. General

2. Objective

The purposes of this rule are to (i) require people to follow the pesticide labeling in using a pesticide while allowing certain actions not prohibited by the labeling, (ii) require pesticides to be registered with limited exceptions, (iii) prohibit direct releases and drift that causes any unreasonable effect, (iv) impose duties on regulated growers to keep people and livestock outside of the application area during the application and not harvest or allow livestock to graze in the field until permitted by the labeling, (v) limit people involved in government sponsored emergency pest control to apply the pesticide to the application site, (vi) instruct pilots to fly crosswind and at the downwind side of the field, (vii) limit application of highly toxic pesticides, and (viii) allow application to buffer zones.

5. Agency enforcement policy

The Department mostly enforces the rules as written. The exception listed in subsection (C)(3) does not accurately reflect experimental use exemptions; it is too narrow. A person may use a pesticide under a state-issued experimental use permit without EPA registration outside of a college or company-owned research facility. Also, experiments at a college or company-owned research facility are exempt from the experimental use permit and registration requirements. See R3-3-212. A person may also use a pesticide without EPA registration if the person has a federal experimental use permit or if the use is exempt from the need to have a federal experimental use permit. See 40 CFR 172.3. The Department enforces subsection (C)(3) as described here, which is in accordance with state and federal law.

6. Clarity, conciseness, and understandability

Subsection F refers twice to “field,” but some regulated growers don’t have fields, such as nurseries and greenhouses. Accordingly, the rule would be more clear by replacing the word “field” with “area.”

10. Completion of course of action from prior review

The Department proposed to change the word “field” to “area” in subsection (F) and to change the work “permitted” to “prescribed” in subsection (J). These changes did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office. The Department also believes the earlier proposed change to subsection (J) would not have any meaningful difference and is not necessary.
12. **Determination that rule is not more stringent than corresponding federal law**

Subsection (A) of this rule corresponds to 7 USC 136j(a)(2)(G) and 7 USC 136(ee). Subsection (A) is not more stringent than the corresponding federal law.

The requirement in subsection (B) for EPA registration of a pesticide and the exception under subsection (C)(3) for experimental use permits correspond to 7 USC 136c and 40 CFR 172. As described in item #5 above, the exception in subsection (C)(3) does not accurately reflect experimental use exemptions; it is too narrow because there are some instances that a person can lawfully use an experimental use pesticide without an experimental use permit and without federal registration. See 40 CFR 172.3. The Department already enforces this rule in accordance with the accurate federal experimental use exemptions and plans to correct the language of the rule to accurately reflect the experimental use exemptions to registration. Accordingly, although these subsections are currently written in a fashion that would require federal registration even when federal law does not require federal registration, the Department enforces this rule in a way that is not more stringent than federal law.

The Department is unaware of any federal laws that correspond to the remaining subsections of this rule.

14. **Proposed course of action**

The Department proposes to change the word “field” to “area” in subsection (F). The Department also plans to revise subsection (C) to allow a person to use a pesticide without EPA registration of the pesticide (i) under a state-issued experimental use permit outside of a college or company-owned research facility and (ii) under experiments at a college or company-owned research facility without an experimental use permit. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-302. **Form 1080; Requirement for Written Recommendation**

2. **Objective**

The purposes of this rule are to set forth the requirements for preparing a Form 1080 before pesticide applications by a custom applicator, the requirement to follow the directions in the Form 1080 unless it conflicts with the pesticide label, the requirement to notify a regulated grower of the application date, and the requirement to verifying the Form 1080 after a pesticide application.

12. **Determination that rule is not more stringent than corresponding federal law**

Recordkeeping by certified applicators who use restricted use pesticides, which rule 302 relates to in part, is subject to 40 CFR 171.7(b)(1)(iii)(E). This federal rule requires State plans, which must be approved by the EPA, to include provisions requiring certified...
commercial applicators to keep and maintain records related to pesticide use. Arizona’s State Plan has been approved by EPA. Accordingly, this part of rule 302 is not more stringent than a corresponding federal law. In addition, there is no corresponding federal law for the remaining portions of rule 302.

R3-3-303. Experimental Use

2. Objective

The purpose of this rule is to describe information that a person must provide to the Department before using an experimental use pesticide and to require that the pesticide be used as approved by the Department.

10. Completion of course of action from prior review

The Department proposed to rephrase “an experimental use pesticide” in subsection (D) to “a pesticide applied under an experimental use permit.” The Department did not complete this action due to the Governor’s moratoriums on rulemaking and the lack of importance of this proposed change.

12. Determination that rule is not more stringent than corresponding federal law

This rule corresponds to 7 USC 136c and 40 CFR 172. This rule is not more stringent than the corresponding federal law.

14. Proposed course of action

The Department proposes to revamp this rule in conjunction with rule 212 related to experimental use permits. The Department proposes to have rule 212 set out the requirements to obtain an Arizona experimental use permit and this rule describe the duties applicable to persons who are going to use an experimental use pesticide. As part of these changes, the Department proposes to move the substance of rule 212(B) to subsection (E) of this rule. The revised rule may look something like the draft language that follows. The Department plans to complete the proposed actions within twenty four months of the end of rulemaking moratoriums.

R3-3-303. Experimental Use

A. A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:

1. A copy of the EPA-approved experimental use permit, as required by Section 5 of FIFRA;
2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;
3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;
4. Total amount of active ingredient to be applied in this state;
5. Rate of formulation applied per unit of measure;
6. Method of application;
7. Time period during which the application will be made; and
8. Any special experimental use permit condition as determined by the Department or by the EPA.

B. If any information provided under subsection (A) changes, the person supervising the pesticide application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.

C. A. At least 24 hours before the application of an experimental use pesticide, the person supervising technical individual the application shall provide the Department with the following information:
   1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;
   2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest control application as defined in A.R.S. § 32-2301(20);
   3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide;
   and
   4. Date and time of the intended application. Exact time, date and location of the intended application by calling and leaving a message on the pesticide hotline answering machine: 1-800-423-8876; and
   5. A change in any information provided under R3-3-212(C).

B. If the information in subsection (A) is given verbally, the person supervising the pesticide application shall provide the Department with written confirmation within 15 days.

C. The person supervising the application shall notify the Department within 24 hours if a federal experimental use permit is amended or extended and provide written confirmation of the amendment or extension within 5 days.

D. An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

E. A person involved in an experimental use pesticide application shall comply with R3-3-302 as applicable.

F. This section does not apply to experimental use pesticide applications exempted from the permit requirement under R3-3-212(B).
R3-3-304. Pesticide Management Areas; Criteria for Designation

1. **Statutory authority**

   Specific: A.R.S. § 3-366(A)

2. **Objective**

   The purpose of this rule is to set out the criteria for designating a pesticide management area.

6. **Clarity, conciseness, and understandability**

   The phrase “complained about under subsection (B)(4)” within subsection (B)(3) is unnecessary because the cross reference adds nothing useful and the rule is more concise without it.

10. **Completion of course of action from prior review**

    The Department proposed to move subsection (B)(3) to after subsection (B)(4). This change did not occur due to the moratoriums on rulemaking imposed by the Governor’s Office and because of the extremely low importance of the change.

14. **Proposed course of action**

    The Department proposes to leave subsection (B)(3) where it is at and remove the unnecessary phrased “complained about under subsection (B)(4).” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-305. Pesticide Sales

1. **Statutory authority**

   Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

   The purpose of this rule is to ensure that restricted use pesticides and agricultural use pesticides are only sold to someone authorized to use the pesticide.

5. **Agency enforcement policy**

   The Department mostly enforces this rule as written. The Department notes that the rule inadvertently fails to allow for sales to other licensed sellers. This was not the intent of the rule, and the Department allows sellers to sell to other licensed sellers.
6. **Clarity, conciseness, and understandability**

The Department believes the rule would be slightly clearer with some rephrasing as described under item 14.

10. **Completion of course of action from prior review**

The Department proposed to rephrase “pesticide for an agricultural purpose” to “pesticide intended to be used for an agricultural purpose,” to update the references to the Structural Pest Control Commission to the Office of Pest Management, and to rephrase “employed” in subsection (C) to “that a seller employs.” The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management to the Department and allowed the Department to conduct exempt rulemaking to implement that change. The Department has not been able to rephrase the agricultural purpose and employed language due to the Governor’s moratoriums on rulemakings.

14. **Proposed course of action**

The Department proposes to (i) rephrase “A seller shall not” to “A seller shall only”; (ii) rephrase “pesticide for an agricultural purpose” to “pesticide intended to be used for an agricultural purpose”; (iii) remove the phrase “without determining that the pesticide will be used by”; (iv) reorganize subsections (A)(1) and (A)(2) so that (A)(1) focuses on applicators and (A)(2) focuses on regulated growers; (v) add that the pesticides may be sold to another permitted seller; and (vi) rephrase “employed” in subsection (C) to “that a seller employs.” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons**

2. **Objective**

The purpose of this rule is to ensure that any person purchasing restricted use pesticides without applicator certification has proof that the restricted use pesticide will be applied by a certified applicator or under the supervision of a certified applicator.

**R3-3-307. Aircraft and Agricultural Aircraft Pilots**

2. **Objective**

The purpose of this rule is to set out, in regards to the use of aircraft to apply pesticides, the licensing requirements for the aircraft and for the pilot.
6. **Clarity, conciseness, and understandability**

Federal Aviation Administration can be shortened to FAA. Also, a person must have a valid commercial applicator certification to have a valid agricultural aircraft pilot license, so the listing of both in subsection (B) is unnecessary.

12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with 40 CFR 171.4 (commercial certification requirement) and 14 CFR 137.19 (pilot license requirement). This rule is not more stringent than the corresponding federal laws.

14. **Proposed course of action**

The Department proposes to change “Federal Aviation Administration” to “FAA” and to replace “and a valid commercial applicator certification” with “issued under R3-3-204.” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal**

2. **Objective**

The purpose of this rule is to ensure that pesticides are stored in a secure location, that pesticides are not discharged into the environment contrary to label directions and the law, that pesticide containers are not confused with food containers; that pesticide service containers are labeled with key information about the pesticide; and that pesticides in containers do not become a hazard to people, animals, or property.

**R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers**

2. **Objective**

The purpose of this rule is to allow pesticide containers whose label allows for recycling or reconditioning to be sent for recycling or reconditioning provided that the container is kept in a secure, inaccessible for use, location until shipping for recycling or reconditioning.

**R3-3-310. Fumigation Use**

2. **Objective**

The purpose of this rule is to require that a fumigant be used by a certified person or under the person’s immediate supervision and to provide for warning signs during fumigation use where the fumigant label does not specify warning requirements.
ARTICLE 4
RECORDKEEPING AND REPORTING

INFORMATION THAT IS IDENTICAL

1. Statutory authority

Specific: A.R.S. § 3-363.

3. Analysis of effectiveness in achieving the objective

The rules in this Article are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-361 et seq.

5. Agency enforcement policy

The Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

With the exception of rule 401, these rules are clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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<tr>
<td>R3-3-401</td>
<td>November 20, 1987</td>
<td>September 16, 2013</td>
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4 The latest revision was by exempt rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last revision requiring an economic impact statement occurred in March 2004.
9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

With the exception of rule 401, the Department did not propose any changes during the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

Rules 401 and 403 have no corresponding federal law and are therefore not more stringent than a corresponding federal law. Rule 405 has no corresponding federal law, as far as the Department has been able to determine after a search, and is therefore not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rules 403, 404 and 405 were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rules 401 and 402 do not require a permit.

14. **Proposed course of action**

With the exception of rule 401, the Department proposes to maintain the rules as they are.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-3-401. Pesticide Seller Records**

1. **Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.
2. **Objective**

The objective of this rule is to require sellers to keep records of agricultural use and restricted use pesticide sales, including information about the purchaser, the applicable permit numbers, and the date and quantity sold.

6. **Clarity, conciseness, and understandability**

This rule is mostly clear, concise and understandable. The rule would be more concise by combining subsections (A) and (B), with would also allow for the removal of the first sentence of subsection (B). The rule would also be slightly more clear by rephrasing “sold for an agricultural purpose” to “intended to be used for an agricultural purpose” to use language consistent with the definition of seller.

10. **Completion of course of action from prior review**

The Department proposed to rephrase “sold for an agricultural purpose” to “intended to be used for an agricultural purpose” and to update references from the Structural Pest Control Commission to the Office of Pest Management. The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management to the Department and allowed the Department to conduct exempt rulemaking to implement that change. The Department has not been able to rephrase the agricultural purpose language due to the Governor’s moratoriums on rulemakings.

14. **Proposed course of action**

The Department proposes to combine subsections (A) and (B), move the last sentence of current subsection (A) to its own subsection, and rephrase “sold for an agricultural purpose” to “intended to be used for an agricultural purpose.” The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-402. **Private Applicator Records; Restricted Use Pesticide**

1. **Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

The objective of this rule is to require private pesticide applicators and golf pesticide applicators to keep records of their use of restricted use pesticides, emergency use pesticides, and experimental use pesticides.
12. **Determination that rule is not more stringent than corresponding federal law**

   Recordkeeping by private applicators under this rule corresponds to 7 CFR 110.3. Under 7 CFR 110.3(h), States can place recordkeeping requirements on private applicators that are comparable to the State’s recordkeeping requirements for commercial applicators. Rule 402 falls into this category. Compare R3-3-302 & R3-3-404(A). Accordingly, rule 402 is not more stringent than federal law.

**R3-3-403. Bulk Release Report**

2. **Objective**

   The objective of this rule is to require applicators to immediately notify the Department of Agriculture, and as applicable the Department of Public Safety, of any bulk release of pesticides and to provide a written report to the Department of Agriculture of the details of the release and clean up.

**R3-3-404. Form 1080; Reports to the Department**

2. **Objective**

   The objective of this rule is to require custom pesticide applicators and regulated growers to provide reports of their pesticide use to the Department on a form called a 1080, to set when the 1080s are due, and to set a retention period of custom applicators to keep copies of the 1080s.

4. **Consistency**

   List of additional rules used in determining consistency:
   A.A.C. R18-6-101(8) & R18-6-303.

12. **Determination that rule is not more stringent than corresponding federal law**

   Reporting and recordkeeping retention by certified applicators who use restricted use pesticides, which rule 404 relates to in part, is subject to 40 CFR 171.7(b)(1)(iii)(E). This federal rule requires State plans, which must be approved by the EPA, to include provisions requiring certified commercial applicators to keep and maintain records related to pesticide use for at least two years and to make those records available to State officials. Arizona’s State plan has been approved by EPA. Accordingly, this part of rule 404 is not more stringent than a corresponding federal law. In addition, there is no corresponding federal law for the remaining portions of rule 404.
R3-3-405. Disposal Records; Agricultural Pesticide Concentrate

2. Objective

The objective of this rule is to require applicators to report to the Department the amount of agricultural use pesticide concentrate disposed of and the date, method and location of the disposal.
ARTICLE 5
NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**
   
   
   Specific: A.R.S. § 3-363.
   
3. **Analysis of effectiveness in achieving the objective**
   
   With the exception of rule 502, the rules are effective in achieving their objectives.
   
4. **Consistency**
   
   The rules in this Article are consistent with statutes and other rules.
   
   List of statutes or rules used in determining consistency:
   
   A.R.S. § 3-361 et seq.
   
5. **Agency enforcement policy**
   
   The Department enforces rules 501 and 503-505 as written.
   
6. **Clarity, conciseness, and understandability**
   
   Rules 501, 504 and 505 are clear, concise and understandable. Rules 503 and 506 are mostly clear, concise and understandable. Rules 502 is partially clear, concise and understandable.
   
7. **Written criticisms**
   
   The Department has not received any written criticisms of these rules within the last 5 years.
   
8. **Economic, small business, and consumer impact comparison**
   
   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.
   
   In federal fiscal year 2013, the Department issued 11 pesticide use citations and 22 warning letters. The total assessed penalties over that period were $4,430. The Department’s pesticide use investigations break down into the following categories:
Drift/Overspray      9
Operating with a valid license  1
Illegal sales          1
Label violations      13
Recordkeeping        4
Container disposal and storage 9
Miscellaneous       6

The rules in this article were effective and last revised on the following dates:

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9. Analysis submitted by another person

None.

10. Completion of course of action from prior review

With the exception of rule 503, the Department did not propose any changes to the rules during the prior review.

11. Determination that rule imposes least burden and costs

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. Determination that rule is not more stringent than corresponding federal law

These rules do not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

With the exception of rule 502, these rules were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 502 does not require a permit.

5 The latest revision was by exempt rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last revision requiring an economic impact statement occurred in March 2004.
14. **Proposed course of action**

The Department proposes to maintain rules 501, 504 and 505 as is.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-3-501.  Serious Violations**

2. **Objective**

   The objective of this rule is to list examples of pesticide violations considered serious violations as defined by A.R.S. § 3-361(9).

**R3-3-502.  Nonserious Violations**

1. **Statutory authority**

   Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

   The objective of this rule is to list examples of pesticide violations considered nonserious violations as defined by A.R.S. § 3-361(4).

3. **Analysis of effectiveness in achieving the objective**

   The rule is mostly effective in achieving its objective. The Department believes the rule would be more effective with the addition of a few violations. The Department believes it would be useful to list as a nonserious violation using a restricted use pesticide without being certified or acting under the direct supervision of a certified person and using a fumigant without being fumigation certified or acting under the supervision of a person with fumigation certification. Subsection (G)(3) should be expanded to cover the supervision of restricted use pesticides as well.

5. **Agency enforcement policy**

   This rule is mostly enforced as written. Subsection (A)(7) refers to pesticides not registered with EPA. Pesticides covered by an experimental use permit do not have to be registered with EPA, and it is not a violation to use an experimental use permit that is not EPA registered. Subsection (B)(2) refers to not providing pesticides to a regulated grower without a permit, but this is only enforced with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose. See R3-3-201(A) & R3-3-305(A). Subsection (F)(1) suffers from the same issue as subsection (B)(2) and is enforced in the same way.
6. **Clarity, conciseness, and understandability**

This rule is partially clear, concise and understandable. The opening paragraph of subsection (A) merely repeats the definition of nonserious violation found at A.R.S. § 3-361(4) and its presence in subsection (A) makes it appear that it only pertains to subsection (A) instead of the entire rule. Subsection (B)(8) refers to providing pesticides to an unauthorized person, but that can only happen with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose, so the rule would be clearer if it said that. Subsection (E)(3) refers to a custom applicator (which is a business) needing valid commercial applicator certification, when it’s a person who needs the commercial applicator certification not the business. The intent of subsection (E)(3) is to say a custom applicator (business) needs to have a person who has commercial applicator certification. Subsection (F)(2) is similarly unclear – it refers to a regulated grower (business) being a certified applicator, when it would be clearer to say a regulated grower needs to use a certified applicator.

14. **Proposed course of action**

The Department proposes several amendments to this rule. The Department proposes to (i) eliminate the opening paragraph of subsection (A), (ii) clarify in subsection (A)(7) that a pesticide needs to be EPA-registered, be covered by an experimental use permit or be exempt from an experimental use permit, (iii) add a violation for using a restricted use pesticide without certification or under the supervision of a certified person, (iv) add a violation for using a fumigant without fumigation certification or under the supervision of a certified person, (v) clarify that subsection (B)(2) only pertains to restricted use and agricultural use pesticides, (vi) clarify that subsection (B)(8) only pertains to agricultural use pesticides and restricted use pesticides, (vii) clarify subsection (E)(3) so that it refers to having a person certified by the Department make or supervise applications, (viii) change subsection (F)(1) so that it only applies to agricultural use pesticides, (ix) clarify subsection (F)(2) so that it refers to a regulated grower using a certified applicator, and (x) add to subsection (G)(3) that a certified applicator shall not use or supervise the use of a restricted use pesticide without certification in the applicable category. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

R3-3-503. **De minimis Violations**

2. **Objective**

The objective of this rule is to list examples of pesticide violations considered de minimis violations as defined by A.R.S. § 3-361(2).

6. **Clarity, conciseness, and understandability**

In subsection (A)(2), the term seller’s representative is not defined. In subsection (F), the phrase “from among those listed in subsections (A) through (E)” is not necessary.
10. **Completion of course of action from prior review**

The Department proposed to change the reference in subsection (A)(2) from “the seller’s representatives” to “any salespeople or PCA that the seller employs for the purpose of selling pesticides in the state.” The Department did not complete this change due to the Governor’s moratoriums on rulemakings.

14. **Proposed course of action**

The Department proposes to change the reference in subsection (A)(2) from “seller’s representatives” to “any salesperson or PCA that the seller employs for the purpose of selling pesticides in the state.” The Department also plans to drop the phrase “from among those listed in subsections (A) through (E)” in subsection (F). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.

**R3-3-504. Mitigation**

2. **Objective**

The objective of this rule is to set out circumstances under which a serious violation will be treated as a nonserious violation and a nonserious violation will be treated as a de minimis violation.

**R3-3-505. Unlisted Violations**

2. **Objective**

The objective of this rule is to explain how a violation level will be determined for violations of law that are not specifically listed in rules 501, 502 and 503.

**R3-3-506. Penalty and Fine Point System**

2. **Objective**

The objective of this rule is to explain how civil penalties will be calculated for pesticide violations.

5. **Agency enforcement policy**

This rule is mostly enforced as written. The opening paragraph of subsection (A) refers to a judge assessing points or the Associate Director assessing points when entering a settlement after an informal settlement conference, but fails to speak about assessing points before a hearing is requested. In practice, when the Department finds a violation, the Associate Director assesses points and notifies the respondent of the opportunity to contest
the matter. If the respondent requests a hearing, then the judge affirms, modifies or rejects the points assessed by the Associate Director.

6. **Clarity, conciseness, and understandability**

The distinction in subsection (A)(3) between “Knowing” and “Willfully” is unclear because both refer to knowledge of the prohibitions or restrictions when all licensed people are supposed to have knowledge of the prohibitions and restrictions. It would be more clear if Knowing referred knowledge of the safety, health or property damage risk (if there is no direct relationship to safety, health or property damage, then it is a de minimis violation and no points are assessed) and Willfully referred to knowledge or belief that the conduct would violate a law but the person did the conduct anyway.

14. **Proposed course of action**

The Department proposes to amend subsection (A) to accurately reflect when points are assessed and to amend subsection (C) to clarify the definitions Knowing and Willfully. The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums.
ARIZONA CITRUS RESEARCH COUNCIL

2014 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 9, Article 5

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ARTICLE 5
ARIZONA CITRUS RESEARCH COUNCIL

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**

   General: A.R.S. § 3-468.02(C)(9).

3. **Analysis of effectiveness in achieving the objective**

   The rules in this Article are effective in achieving the stated objective.

4. **Consistency**

   The rules in this Article are consistent with statutes and other rules.

   List of additional statutes used in determining consistency:
   A.R.S. §§ 3-468 through 3-468.08

5. **Agency enforcement policy**

   The Council enforces the rules in this Article as written.

6. **Clarity, conciseness, and understandability**

   Except for rule 506, the rules in this Article are clear, concise and understandable.

7. **Written criticisms**

   The Council has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

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<td>R3-9-506</td>
<td>March 11, 2006</td>
<td>November 8, 2008</td>
</tr>
</tbody>
</table>
The Council received assessments in the amount of $31,462, $20,972, and $29,541 in fiscal years 2011 through 2013 respectively. In 2008, the Legislature swept $40,000 from the Council’s funds. As a result, the Council began committing its grant funds toward multiyear projects and had no new grant applications in fiscal years 2012 or 2013. In fiscal years 2011 and 2014, the Council awarded $18,521 and $9,913 in grants respectively.

9. **Analysis submitted by another person**

   None.

10. **Completion of course of action from prior review**

    The Council proposed to replace all references to “Council” with “ACRC.” This change was not completed due to the Governor’s moratoriums on rulemaking. In addition, the change is not necessary.

11. **Determination that rule imposes least burden and costs**

    The Council believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

    There is no corresponding federal law for the rules in this Article. Accordingly, these rules are not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

    The rules in this Article were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. In addition, none of the rules in this Article require a permit.

14. **Proposed course of action**

    The Council proposes to maintain the rules in this Article as is.
INFORMATION THAT IS NOT IDENTICAL

R3-9-501. Definitions

2. Objective

This rule provides a definition so that rule 505 is clear.

R3-9-502. Elections

1. Statutory authority

Specific: A.R.S. § 3-468.02(A)(2).

2. Objective

The objective of this rule is to set out the procedures for electing Council officers.

R3-9-503. Hearings

1. Statutory authority

Specific: A.R.S. § 41-1001.01(A)(12).

2. Objective

This rule prescribes the procedures for governing hearings and the procedures for handling requests for rehearing or review.

4. Consistency

List of additional statutes used in determining consistency:
A.R.S. §§ 41-1001.01(A)(12) & 41-1092 through 41-1092.12

10. Completion of course of action from prior review

The Council also proposed to add another basis for a rehearing—error in the admission or rejection of evidence of other errors of law occurring at the hearing—to parallel Rule of Civil Procedure 59(a). This change was not completed due to the Governor’s moratoriums on rulemaking. In addition, there are three reasons why this change is not necessary. First, the Council has never had a hearing, so there is little reason to add an additional basis for a rehearing, which are rare. According to OAH reports, the rehearing rate in general is approximately 1%. Second, the Council believes the idea to match Rule 59(a) came from A.R.S. § 41-1062(B), but this statute does not apply to the Council. See A.R.S. § 41-1067. Third, existing subsections (C)(1) and (C)(3)(a) could likely be used to address evidentiary errors and errors of law.
R3-9-504. Annual Report

1. **Statutory authority**
   
   General: A.R.S. § 3-468.02(A)(5).

2. **Objective**
   
   This rule prescribes a due date for the annual report required by statute.

R3-9-505. Records

1. **Statutory authority**
   
   General: A.R.S. § 3-468.02(A)(4).

2. **Objective**
   
   This rule prescribes the time and place where the Council’s records may be inspected.

4. **Consistency**
   
   List of additional statutes used in determining consistency: A.R.S. § 39-121 et seq.

R3-9-506. Grants

1. **Statutory authority**
   
   General: A.R.S. § 3-468.02(C)(5).

2. **Objective**
   
   This rule establishes the procedures for applying for and awarding grants funded by the Council.

4. **Consistency**
   
   List of additional statutes used in determining consistency: 
   A.R.S. § 41-2706(B)(6)

6. **Clarity, conciseness, and understandability**
   
   The rule is mostly clear, concise and understandable. Subsection (B)(1) refers to the “article” when it only needs to refer to the “section.” Nevertheless, the word “article” is technically still accurate. The Council believes this word change is not significant enough to require amendment.
ARIZONA DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

2014 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 4
Articles 1-5 & 9

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ARTICLE 1
GENERAL PROVISIONS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**
   

3. **Analysis of effectiveness in achieving the objective**
   
   The rules in this Article are effective in achieving the stated objective.

4. **Consistency**
   
   The rules in this Article are consistent with statutes and other rules.

5. **Agency enforcement policy**
   
   The Department enforces the rules in this Article as written.

6. **Clarity, conciseness, and understandability**
   
   The rules in this Article are clear, concise and understandable.

7. **Written criticisms**
   
   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**
   
   For Rule 102 and Table 1, in the last economic impact statement, the Department reported issuing 13,453 licenses requiring time-frames in 1997 at an estimated annual cost of administration of $17,084.21. Recently, the Department only issued 1,776 licenses with time-frames, with a corresponding drop in estimated administration costs.

   The rules in this article were effective and last revised on the following dates:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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<tbody>
<tr>
<td>R3-4-101</td>
<td>January 6, 1994</td>
<td>January 4, 2014</td>
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<td>R3-4-102</td>
<td>October 8, 1998</td>
<td>--</td>
</tr>
<tr>
<td>Table 1</td>
<td>October 8, 1998</td>
<td>January 4, 2014</td>
</tr>
</tbody>
</table>
9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not propose any changes to rule 102 or Table 1 during the previous review.

11. **Determination that rule imposes least burden and costs**

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules in this Article do not require a permit, so A.R.S. § 41-1037 does not apply.

14. **Proposed course of action**

The Department proposes to maintain the rules in this Article as is.

**INFORMATION THAT IS NOT IDENTICAL**

R3-4-101. **Definitions**

1. **Statutory authority**

Specific: A.R.S. §§ 3-201.01, 3-202, 3-205.02, 3-208, 3-211 & 3-217.

2. **Objective**

This rule sets forth the definitions of particular terms used within this Chapter.

4. **Consistency**

List of statutes or rules used in determining consistency:
A.R.S. § 3-201 et seq.; A.R.S. § 3-231 et seq.; A.R.S. § 3-441 et seq.; A.R.S. § 3-481 et seq.
3 A.A.C. 4
8. **Economic, small business, and consumer impact comparison**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

10. **Completion of course of action from prior review**

The Department proposed to delete definitions that are not used in the Chapter. The Department significantly amended the definitions in this rule effective January 2014. The Department also proposed to move the definition of reshipment to rule 244. Rule 244 has not been amended, so that definition was not moved.

R3-4-102. **Licensing Time-frames**

1. **Statutory authority**

Specific: A.R.S. § 41-1073.

2. **Objective**

This rule sets forth the general provisions for administrative completeness and substantive reviews of license or permit applications.

4. **Consistency**

List of statutes or rules used in determining consistency:
A.R.S. § 41-1072 et seq.

**Table 1. Time-frames (Calendar Days)**

1. **Statutory authority**

Specific: A.R.S. § 41-1073.

2. **Objective**

This rule prescribes specific time-frames for processing applications for licenses and permits issued under this chapter.

4. **Consistency**

List of statutes or rules used in determining consistency:
A.R.S. § 41-1072 et seq.
3 A.A.C. 4
10. **Completion of course of action from prior review**

The Department updated Table 1. in the 2013 rulemaking to address the clarity, consistency, and enforcement issues from the previous five year review.
ARTICLE 2
QUARANTINE

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**


   Specific: A.R.S. § 3-202 and, with the exception of rules 204 and 244, A.R.S. § 3-211.

3. **Analysis of effectiveness in achieving the objective**

   With the exception of rules 202, 234, 241, 244, 245 and 246, the rules in this Article are effective in achieving the stated objective.

   Rules 202, 234, 241, 244, 245 and 246 would be more effective with the completion of the proposed changes to these rules.

4. **Consistency**

   The rules in this Article are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-201 et seq.
   - 3 A.A.C. 4, Article 2

5. **Agency enforcement policy**

   For rules 201, 204, 218 and 233, the Department enforces the rules in this Article as written.

   For rules 202, 219, 220, 226, 228, 229, 231, 234, 238, 239, 240, 241, 242, 245, 246, and 248 state budget cuts and restrictions have impacted the enforceability of the rules. As a result of these budgetary measures, the Department has been forced to close the state’s ports of entry, prior to the last five year review. These ports acted as the first line of defense in the Department’s efforts to prevent the introduction of the invasive or harmful pests for which the rules were made.

6. **Clarity, conciseness, and understandability**

   Rules 201, 204, 218, 231, 233, 234, 239, 246 and 248 are clear, concise and understandable.

   Rules 219, 220, 226, 228, 229, 238, 240, 241 and 242 are mostly clear, concise and understandable.
Rules 202, 244, and 245 are partially clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

As a general matter, the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared. The Department notes that its inspection stations at the Arizona ports-of-entry have now been closed. As a result, some commodities coming into the state that would have been rejected in the past are not being inspected and thus not being rejected. The closure of the ports has lessened the economic impact on the Department and likely on businesses for now. If a pest were to enter the state due to closure of the ports and then spread, there is the potential for a negative impact on businesses from lost production and new quarantine regulations.

The rules in this article were effective and last revised on the following dates:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
</tr>
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<tbody>
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<td>R3-4-201</td>
<td>January 4, 2014</td>
<td>--</td>
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<td>R3-4-202</td>
<td>July 15, 1999</td>
<td>January 4, 2014</td>
</tr>
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<td>R3-4-204</td>
<td>May 7, 1993</td>
<td>January 4, 2014</td>
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<td>R3-4-218</td>
<td>August 16, 1990</td>
<td>January 4, 2014</td>
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<td>April 11, 1991</td>
<td>October 2, 2004</td>
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<td>R3-4-220</td>
<td>June 14, 1990</td>
<td>December 4, 2006</td>
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<td>R3-4-226</td>
<td>July 13, 1989</td>
<td>December 4, 2006</td>
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<td>R3-4-228</td>
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<td>October 2, 2004</td>
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<td>R3-4-229</td>
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<td>December 8, 1999</td>
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<td>R3-4-231</td>
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<td>December 8, 1999</td>
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<td>R3-4-233</td>
<td>December 2, 1998</td>
<td>December 6, 2008</td>
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<td>R3-4-234</td>
<td>September 24, 2001</td>
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<td>R3-4-238</td>
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<td>R3-4-239</td>
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<td>R3-4-240</td>
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<td>R3-4-242</td>
<td>July 15, 1999</td>
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<td>R3-4-244</td>
<td>July 10, 1995</td>
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<td>R3-4-246</td>
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<td>August 2, 2003</td>
</tr>
<tr>
<td>R3-4-248</td>
<td></td>
<td>November 8, 2001</td>
</tr>
</tbody>
</table>
9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

For rules 204 and 218, the Department completed the changes discussed in the prior review by rulemaking effective January 4, 2014.

For rules 231 and 248 changes in other rules and policies made the proposed changes unnecessary.

The Department did not complete the course of action proposed in the prior review for rules 201, 202, 219, 220, 226, 228, 229, 234, 238, 239, 240, 241, 242, 244, 245, and 246. The primary reason for the lack of completion was due to the restrictions in the Governor’s rulemaking moratoriums or the proposed changes did not meet the criteria for an exempt rule making.

11. **Determination that rule imposes least burden and costs**

Except for rules 201, 204, 218, and 233, the Department believes that the rules in this Article will impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective with the completion of the proposed changes.

The Department believes that the rules 201, 204, 218, and 233 impose the least burden and costs to persons regulated by the rules necessary to achieve their respective regulatory objectives where otherwise introduction of a dangerous plant pest or disease could have an impact on plant health and commerce.

12. **Determination that rule is not more stringent than corresponding federal law**

Except for rules 204, 218, 239, 245 and 248 these rules do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Except for rules 204 and 218, the remaining rules in this Article either do not require a permit or were not adopted or amended after July 29, 2010, which means the general permit analysis under A.R.S § 41-1056 (A)(11) is not required for these rules.
14. **Proposed course of action**

The Department proposes to maintain rules 201, 204, 218 and 233 as is.

The Department plans to submit a rulemaking to the Council to amend rules 219, 220, 226, 228, 229, 231, 234, 238, 239, 240, 241, 242, 244, 245, 246, and 248 within two years of December 2014.
R3-4-201. Definitions

2. **Objective**

The objective of this rule is to define terms used in Article 2.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

Rule 201 was adopted after July 29, 2010, but it does not require a permit.

R3-4-202. Transportation and Packaging (Re-numbered from R3-4-201 January 2013)

2. **Objective**

The objective of this rule, formerly rule 201 during the previous five year review, is to generally set out the agricultural commodities that require inspection upon arrival in Arizona and the requirements for common and private carriers, consignees, and postmasters when shipping agricultural commodities into the state to safeguard agriculture, food and the environment from the risks associated with the entry, establishment and spread of plant pests, diseases and noxious weeds through high risk commodity pathways.

3. **Analysis of effectiveness in achieving the objective**

The rule is partially effective in achieving the stated objective. The rule explains what a carrier needs to do when entering the state at a port-of-entry where inspections are performed and where no inspections are performed. Due to budget cuts, inspections are no longer performed at any port-of-entry rendering those references in the rule ineffective.

5. **Agency enforcement policy**

The closure of the ports of entry has forced the Department to modify its enforcement of this rule. Subsection (A) of the rule calls for inspection of all commodities shipped into the state, but that no longer occurs. Subsections (B) and (C) are still valid, but the Department is unable to verify compliance with these subsections in many cases because not all imports are inspected. Subsection (D)(1) is no longer enforced because the purpose was to require shipments to go through an open port of entry. Several parts of subsection (D) require a shipment to be held until inspected, but the Department does not have the resources to inspect all shipments; therefore, the Department releases some shipments from this requirement based on pest risk and available resources to perform inspections. The Department conducts inspections at distribution facilities, bulk mail facilities, wholesale and retail locations for regulatory compliance with commodities shipped into the state.

6. **Clarity, conciseness, and understandability**
The Department believes it may be confusing to the public to have a rule that discusses inspections at ports of entry when no such inspections are occurring. Otherwise, the Department believes the rule is clear, concise and understandable.

10. **Completion of course of action from prior review**

The Department proposed to revise this rule (Rule 201 at the time) to account for the closure of the ports. The Department received permission from the Governor’s Office to proceed with rulemaking on this and other rules in 2012. During this process, the Department determined that more discussion with industry was needed to get this rule right and moved ahead with rulemaking on other rules that were higher priority. The Department is still working on developing amendments to this rule.

11. **Determination that rule imposes least burden and costs**

The Department is still working on an inspection and importation approval system that will appropriately achieve the underlying regulatory objective without port-of-entry inspections. Once proposed rule changes are made the rule will impose the least burden and cost.

14. **Proposed course of action**

The Department plans to submit a rulemaking, to address the items stated above, to the Council to amend rule 202 by December 31, 2015

**R3-4-204. Boll Weevil and Pink Bollworm Pests: Interior Quarantine**

1. **Statutory authority**

Specific: A.R.S. § 3-208.

2. **Objective**

The objective of this rule establishes a cotton pest control program by detailing requirements for processing cotton gin trash, limiting movement of covered cotton commodities, and establishing cultural practices corresponding to each of the state’s cultural zones for the prevention and treatment of boll weevil and pink bollworm infestations within the state.

12. **Determination that rule is not more stringent than corresponding federal law**

While the rule refers to a federal treatment manual for fumigation (USDA-APHIS-PPQ Treatment Manual, T301) to mirror the treatment requirements, the rule is not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**
This rule was revised after July 29, 2010. Rule 204 refers to permits and other authorizations to move regulated commodities and appliances. The permits and authorizations all qualify as general permits, except the “limited permit”, which is defined in A.A.C. § R3-4-201. A limited permit is a onetime authorization to move a regulated commodity or appliance to a specific place and under certain allowable conditions outside of the restrictions in section (D), as approved by the Director. A limited permit is used where a person has not complied with the requirements of a general permit or a general permit would not sufficiently protect the State from the infestation or spread of regulated pests. A.R.S. § 41-1037 (A)(3).

R3-4-218. Boll Weevil and Pink Bollworm Pests: Exterior Quarantine

2. Objective

The objective of this rule establishes an area under quarantine for cotton boll weevil and pink bollworm pest to protect Arizona cotton growers. Lists covered cotton commodities and other host commodities, with restrictions and guidelines for permits and certificates to allow the shipment of an otherwise prohibited product.

12. Determination that rule is not more stringent than corresponding federal law

Federal law, namely 7 CFR 301.52 et seq., is applicable to the interstate movement of commodities and appliances from areas quarantined for pink bollworm and therefore would apply to commodities and appliances entering Arizona. Since 7 CFR 301.52 is specific to the Pink bollworm, Rule 218, which similarly addresses this pest issue, includes additional pests and host plants but is not more stringent than federal law for the commodity and pest regulated by federal law.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

Rules 218 was revised after July 29, 2010. This rule refers to permits and other authorizations to import or move regulated commodities and appliances. The permits and authorizations all qualify as general permit and complies with A.R.S. § 41-1037.

R3-4-219. Citrus Fruit Surface Pest

2. Objective

The objective of this rule establishes an area under quarantine, the citrus fruit commodities covered, and conditions for admission of covered commodities into the state and for movement of fruit originating outside of Arizona to protect the citrus industry in Arizona from citrus pests.
6. **Clarity, conciseness, and understandability**

The Department would like to be more clear that the rule pertains to “shipping or transporting” a commodity or appliance and not just “shipping” a commodity or appliance so it is not perceived that this rule pertains only to commercial shipments. The Department would also like to be more clear that this rule pertains to “harvested fresh fruit” where the rule states “fresh fruit”, which could be attached to imported nursery stock covered in rule 220. The Department would like to reorder the listed pests by common name instead of scientific name so the list is generally more understandable to the general public.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-220. Citrus Nursery Stock Pests**

2. **Objective**

The objective of this rule lists the pests and diseases covered and the area under quarantine, the citrus nursery stock commodities covered and, conditions for admission of citrus nursery stock into Arizona and interstate movement, and approved treatments to safeguard citrus trees from unwanted pests.

6. **Clarity, conciseness, and understandability**

The Department would like to be more clear that the rule pertains to “shipping or transporting” a commodity or appliance and not just “shipping” a commodity or appliance so it is not perceived that this rule pertains only to commercial shipments. The Department would like to reorder the listed pests by common name instead of scientific name so the list is generally more understandable to the general public.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
R3-4-226. Scale Insect Pests

2. **Objective**

The objective of this rule lists the pests covered and the area under quarantine, the nursery stock commodities covered, conditions for admission of nursery stock into Arizona and intrastate movement, and approved treatments to prevent the infestation of unwanted pests.

6. **Clarity, conciseness, and understandability**

In several places, the rule says: “pests listed in subsection (A)” when just “pests” would be sufficient because “pests” is defined in the rule. Also, subsection (D) refers to a certificate without explaining who would issue the certificate.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-228. European Corn Borer

2. **Objective**

The objective of this rule is to establish a quarantine against corn commodities and related hosts from entering the state that may be infested with the european corn borer that could pose a threat to the health and exportability of Arizona corn commodities.

6. **Clarity, conciseness, and understandability**

The Department proposes to incorporate quarantine compliance certificate, newly defined in rule 201, to change the language in subsection (E)(2) from “shall” to “may,” and to change the acceptable treatments listed in subsection (F) to any treatment with a chemical to kill the pest within five days before shipment and verification that the commodity is free of live european corn borers.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
R3-4-229. Nut Tree Pests

2. **Objective**

   The objective of this rule is to establish a quarantine against nut tree commodities and associated appliances from entering the state that may be infested with a nut tree pest that could cause harm to the health and exportability of Arizona commodities.

6. **Clarity, conciseness, and understandability**

   The rule incorrectly refers to R3-4-102 instead of R3-4-101 and the disease name of “brooming” should be correctly referred to as “Bunch Disease”

10. **Completion of course of action from prior review**

   The Department proposed to change the reference to R3-4-102 to the correct citation R3-4-101 but did not complete the action due to the restrictions in the moratorium on rulemaking.

14. **Proposed course of action**

   The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-231. Nut Pests

2. **Objective**

   The objective of this rule is to establish a quarantine against tree nut commodities and associated appliances from entering the state that may be infested with a pest that could have economic impacts to Arizona’s tree nut growers if the pest were to establish.

6. **Clarity, conciseness, and understandability**

   The rule incorrectly refers to R3-4-102 instead of R3-4-101. The Department also proposes to clarify in subsection (D) that only one method of treatment, listed in subsection (E), is required.

10. **Completion of course of action from prior review**

   The Department proposed amending subsection (D)(1) to state that treatments in subsections (E)(1) and (2) are acceptable for importation with a certificate. It appears that subsection (D)(1) already does this, therefore this change was not necessary and was not completed.
14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-233. **Lettuce Mosaic Virus**

1. **Statutory authority**

   Specific: A.R.S. § 3-208.

2. **Objective**

   The objective of this rule is to establish restrictions on the entry into Arizona and movement of lettuce seed and transplants as well as to require disking of lettuce fields after harvest to protect industry from the lettuce mosaic virus.

8. **Economic, small business, and consumer impact comparison**

   In 2008, it was anticipated that there would be 38,000 acres of lettuce produced at a value of $300,000,000. Data collected shows that there were actually 59,400 acres produced at a value of $373,292,000 in 2008 and that there were 63,100 acres produced at a value of $828,690,000 in 2011.

R3-4-234. **Nematode Pests**

2. **Objective**

   The objective of this rule is to establish a quarantine against nursery stock commodities and other horticultural commodities that contain soil from entering the state that may be infested with certain nematode pests that could significantly harm nursery stock and other horticultural commodities.

3. **Analysis of effectiveness in achieving the objective**

   The Department intends to amend subsection (A) to add other A-rated nematodes, and to include criteria for indoor holding areas in subsection (E)(3) to make the rule more effective in safeguarding from dangerous nematode plant pests.

10. **Completion of course of action from prior review**

    The Department proposed amending subsection (A) to add other A-rated nematodes and to include criteria for indoor holding areas in subsection (E)(3). This did not occur due to the
Governor’s moratoriums on rulemakings and the Department did not see the changes as a critical component to maintain pest freedom from most high risk nematode pests.

14.  Proposed course of action

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-238.  Whitefly Pests

2.  Objective

The objective of this rule is to establish a quarantine against nursery stock commodities entering the state that may be infested with certain whitefly pests and to establish conditions for entry to protect nursery stock and other horticultural commodities.

6.  Clarity, conciseness, and understandability

The Department proposes several changes to this rule for clarity. First, the Department proposes to change the scientific name of the cloudy-winged whitefly and remove the woolly whitefly. Second, the Department plans to rephrase “commodities covered” to “regulated commodities” to give the rule the same visual appearance as other quarantine rules. Third, the Department plans to combine subsections (D)(1) and (D)(2)(a). Fourth, the Department plans to remove the repetitive references to “pests listed in subsection (A)” in favor of simply “pests.” Fifth, the Department plans to eliminate subsection (E) because it is already covered by statute and subsection (E) requires a person to look back at the statute anyway.

14.  Proposed course of action

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-239.  Imported Fire Ants

2.  Objective

The objective of this rule is to establish a quarantine against nursery stock and other commodities that contain soil or were in contact with soil from entering the state that may be infested with fire ants and to establish conditions for entry to protect health and the
6. **Clarity, conciseness, and understandability**

So it is understood what areas are under quarantine for the imported fire ant, the Department proposes to update the incorporated reference to 7 CFR 301.81-3, 68 FR 5794, February 5, 2003, to the most recent edition, revised January 1, 2014 that defines the areas under quarantine.

12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with 7 CFR 301.81-3 to mirror the areas under quarantine for the imported fire ant. The rule requires regulated commodities be held for inspection, but it is not more stringent than that federal law.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-240. **Apple Maggot and Plum Curculio**

2. **Objective**

The objective of this rule is to establish a quarantine against host fruit commodities entering the state that may be infested with the apple maggot or plum curculio and to establish conditions for entry to protect agriculture and the environment from a dangerous plant pest.

6. **Clarity, conciseness, and understandability**

The Department proposes to rephrase portions of the rule to incorporate the newly defined term “quarantine compliance certificate” (see rule 201). The Department also proposes to renumber subsection (D)(2) as a new subsection (E) entitled “Exemption.”

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
R3-4-241. Lethal Yellowing of Palms

2. **Objective**

The objective of this rule is to establish a quarantine against palm tree commodities entering the state that may be infested with vectors for the lethal yellowing of palms and to establish conditions for entry to protect agriculture and the environment from a dangerous pest of palm trees.

3. **Analysis of effectiveness in achieving the objective**

The Department also proposes to expand the rule to include other diseases that pose a risk to palms, including Texas Phoenix palm decline, South American palm weevil and red ring disease of palms to make the rule more effective in protecting against palm tree pests.

6. **Clarity, conciseness, and understandability**

Four of the plant names in subsection (C) are slightly misspelled that needs to be changed for clarity.

10. **Completion of course of action from prior review**

The Department proposed to correct the misspelled plant names in subsection (C) but was unable due to the restrictions in the rulemaking moratorium.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-242. Brown Citrus Aphid

2. **Objective**

The objective of this rule is to establish a quarantine against nursery stock commodities entering the state that may be infested with the brown citrus aphid, a vector of the citrus disease Citrus Tristeza Virus (CTV), and to establish conditions for entry.

6. **Clarity, conciseness, and understandability**

The Department proposes to rephrase portions of subsection (C)(2) to incorporate the newly defined term “quarantine compliance certificate” (see rule 201). The Department also proposes to alter the formatting of the rule to make it look like other rules in this Article, such as having a Definitions subsection and referring to regulated commodities.
instead of commodities covered.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-244. Regulated and Restricted Noxious Weeds**

1. **Statutory authority**

Specific: A.R.S. § 3-208.

2. **Objective**

The objective of this rule is to prevent further infestation or contamination by noxious weeds already in the state.

3. **Analysis of effectiveness in achieving the objective**

The rule is partially effective in achieving the stated objective. The Department is mandated to quarantine and require treatment for any contaminated commodity, habitat or area infested. Due to lack of resources the Department can no longer achieve this level of control.

5. **Agency enforcement policy**

The rule states that restricted weeds shall be quarantined. See subsections (A)(4) & (E). Due to budgetary and resource restraints, the Department no longer automatically quarantines all restricted weeds, particularly with respect to residential property and non-agricultural land.

6. **Clarity, conciseness, and understandability**

This rule refers to regulated noxious weeds and restricted noxious weeds already in the state. The Department may quarantine regulated weeds and shall quarantine restricted weeds. The similarity between the two names as well as the similarity with rule 245 (prohibited weeds) can make it difficult to differentiate between the three noxious weed types. In addition, there are two locations where the rule says regulated weeds may be quarantined and restricted weeds shall be quarantined, when only one of each is needed. See subsections (A)(3), (A)(4), (D) & (E). The Department would prefer to combine the rules 244 and 245 for clarity.

10. **Completion of course of action from prior review**
The Department proposed to re-evaluate this rule to make it more understandable and to make the list of intrastate regulated weeds the same as the list of federally regulated weeds in 7 CFR 360. This action was not completed because Department resources were limited in pursuing an exempt rule making.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-245. Prohibited Noxious Weeds**

2. **Objective**

The objective of this rule is to establish a quarantine against commodities entering the state that may be infested with noxious weeds and to establish conditions for entry to prevent the infestation and spread of a noxious weed in agriculture and the environment.

3. **Analysis of effectiveness in achieving the objective**

The Department is currently reevaluating its noxious weed rules to make them more understandable and consistent with federal regulations, thereby making them more effective.

6. **Clarity, conciseness, and understandability**

This rule refers to prohibited noxious weeds coming into the state, while rule 244 refers to regulated noxious weeds and restricted noxious weeds already in the state. The similarity between this rule and rule 244 (regulated and restricted weeds) can make it difficult to differentiate between the three noxious weed types. In addition, the use of “habitat” in the rule is confusing because habitat is defined in rule 244, and in this rule, as an area “within Arizona” when the objective of the rule is to quarantine commodities entering the state that may be infested with noxious weeds.

10. **Completion of course of action from prior review**

The Department proposed to re-evaluate this rule to make it more understandable and to make the list of intrastate regulated weeds to include the list of federally regulated weeds in 7 CFR 360. This action was not completed because agency resources were limited in pursuing an exempt rule making.
12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with 7 CFR 360 by identifying corresponding Federal Noxious weeds and mirroring those weeds in Rule 245 that are important to the Department for enforcement but not imposing additional enforcement requirements. The rule is not more stringent than the federal law.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-246. Caribbean Fruit Fly**

2. **Objective**

The objective of this rule is to establish a quarantine against fruit and nursery stock commodities entering the state that may be infested with the caribbean fruit fly and to establish conditions for entry.

3. **Analysis of effectiveness in achieving the objective**

To be more effective in achieving the objective of the rule, the Department proposes to replace the specific treatment option in subsection (D)(1) with a reference to the treatment options in the current USDA Treatment Manual found at [http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf). The Department also proposes to allow an option for entry without treatment if the commodity originates from a certified Caribbean fruit fly free area.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-248. Japanese beetle**

2. **Objective**

The objective of this rule is to establish a quarantine against nursery stock commodities and commodities with soil from entering the state that may be infested with the Japanese beetle, a dangerous and invasive plant pest, and to establish conditions for entry by incorporating the US Domestic Japanese Beetle Harmonization Plan, revised September 5, 2000.
5. **Agency enforcement policy**

The Department would have better enforceability of the rule by updating the reference to the US Domestic Japanese Beetle Harmonization Plan, revised June 6, 2013. Because the ports of entry have closed, the Department proposes to eliminate the now unnecessary subsection (E)(2)(b)(iv).

10. **Completion of course of action from prior review**

The Department proposed to amend subsection (C) to provide further exemptions to the list of host commodities, including bare root plants. This action was not completed because the National Japanese Beetle Harmonization Plan was updated to include the previous recommended changes.

12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with the US Domestic Japanese Beetle Harmonization Plan and 7 CFR § 301.48 that defines restrictions and guidelines for the interstate movement of a regulated commodity. Rule 248 mirrors these regulations for consistency between state and federal regulators but the rule is not more stringent than federal law.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
ARTICLE 3
NURSERY CERTIFICATION PROGRAM

R3-4-301. Nursery Certification

1. **Statutory authority**


   Specific: A.R.S. §§ 3-201.01(A)(5) & 3-217.

2. **Objective**

   The purpose of this rule is to establish a nursery certification program, which includes general and special nursery stock inspection certification and fees.

3. **Analysis of effectiveness in achieving the objective**

   The rule is effective in achieving the stated objective.

4. **Consistency**

   The rules in this Article are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-201 et seq.

5. **Agency enforcement policy**

   The Department enforces the rule as written.

6. **Clarity, conciseness, and understandability**

   The rule is clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of the rule within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   Beginning in fiscal year 2011, the Department increased the fee for general nursery stock certification from $50 to $250 and increased the single shipment certification fee from $50 to $50 plus $10 per additional lot. These fee increases were accomplished through exempt rulemaking, (found in Volume 19, Issue 41 October 11, 2013 of the Arizona Administrative Register) so no economic impact statement has been prepared with respect
to those increases.

In fiscal year 2010, before the fee increases, the Department received $31,296.71 in fees under this program. In fiscal year 2011, with the fee increases in place, the Department received $73,419.16, of which $38,090 was attributably directly to the increases. The Department received $68,802.89 and $63,478.44 in fiscal years 2012 and 2013 respectively for this program, though the Department cannot precisely say how much of the revenue was directly attributable to the fee increases for those years.

The fee increases were implemented through legislation that allowed for a one year increase in fees. Each year, for the past several years, similar legislation has passed allowing the Department to keep up these fee increases for one more year at a time. The current fee increase will end at the end of this fiscal year unless the Legislature again authorizes the fees to continue.

9. **Analysis submitted by another person**

   None.

10. **Completion of course of action from prior review**

    The Department did not propose any changes to the rule.

11. **Determination that rule imposes least burden and costs**

    The Department believes the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

    The rule has no corresponding federal law and is therefore not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

    The rule complies with A.R.S. § 41-1037. Although not required to operate a nursery in Arizona, the certification issued by the Department does meet the description of a general permit for businesses choosing to export nursery stock to other states.

14. **Proposed course of action**

    The Department proposes to maintain the rule as is.
ARTICLE 4
SEEDS

INFORMATION THAT IS IDENTICAL

1. Statutory authority


Specific: A.R.S. § 3-232.

3. Analysis of effectiveness in achieving the objective

The rules in this Article are effective in achieving the stated objective.

4. Consistency

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-231 et seq.
3 A.A.C. 4, Article 4

5. Agency enforcement policy

The Department enforces the rules in this Article as written.

6. Clarity, conciseness, and understandability

With the exception of rules 401, 402, 404, and 406 the rules in this Article are clear, concise and understandable.

Rules 401, 402, 404, and 406 are mostly clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

With the exception of rule 408, the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:
Rule | Effective Date | Last Revision
--- | --- | ---
R3-4-401 | July 10, 1995 | June 2, 2007
R3-4-402 | | June 2, 2007
R3-4-403 | December 21, 1981 | June 2, 2007
R3-4-404 | December 21, 1981 | June 2, 2007
R3-4-405 | December 21, 1981 | July 10, 1995
R3-4-406 | December 21, 1981 | June 2, 2007
R3-4-407 | July 10, 1995 | --
R3-4-408 | July 10, 1995 | July 20, 2011
R3-4-409 | June 2, 2007 | --

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

For rules 405, 407, 408 and 409, the Department did not propose any changes during the prior review.

For rules 401, 402, 404 and 406, the Department did not complete the proposed actions due to the Governor’s moratoriums on rulemaking.

11. **Determination that rule imposes least burden and costs**

The Department believes that rules 405, 407, 408, and 409 currently impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective with the completion of the proposed changes. The remaining rules will impose the least burden and costs once amended consistent with the issues identified in this report.

12. **Determination that rule is not more stringent than corresponding federal law**

Rules 404 and 406 have a corresponding federal law that is used as a reference but the rules are not more stringent. The requirements in 7 CFR 361 relate to seeds imported from another country only and do not apply to this article. Those federal regulations preempt any State laws, so the State’s rules do not apply where 7 CFR 361 is applicable. See 7 CFR 361.2(a) (scope and preemption).

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

With the exception of rule 408, the rules in this Article were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 408 uses general permits and is in compliance with A.R.S. § 41-1037.
14. **Proposed course of action**

For rules 405, 407, 408 and 409, the Department proposes to maintain the rules as they are.
INFORMATION THAT IS NOT IDENTICAL

R3-4-401. Definitions

2. Objective

The objective of this rule is to define terms used in Article 4.

6. Clarity, conciseness, and understandability

The definition of Federal Seed Act is only used in the definition of working sample and the Federal Seed Act definition is so broad that it provides little help. The rule would be more concise and understandable by eliminating the definition of Federal Seed Act and amending the definition of working sample to cite the specific regulations that apply. See 7 CFR 201.45-201.46. The Department proposes to remove the definition of “Federal Seed Act.” The Department also proposes to revise the definition of “working sample” to pinpoint the specific federal regulations that are relevant. These proposed changes will take care of updating the references to federal law.

10. Completion of course of action from prior review

The Department proposed to remove the definition of “coated seed” because that term is not used. This proposal was not completed because it was based on a mistaken premise. Coated seed is referred to in rule 402(C)(4). The Department also proposed to update materials incorporated by reference to the latest version but was not completed due to the restrictions of the rulemaking moratorium.

14. Proposed course of action

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-402. Labeling

1. Statutory authority

Specific: A.R.S. § 3-237.

2. Objective

The objective of this rule is to implement A.R.S. § 3-237 by specifying labeling requirements for seed containers.

6. Clarity, conciseness, and understandability
The heading of subsection (B) refers to “type” even though the subsection itself does not cover type. Also, subsection (F)(5) says, “specified elsewhere in subsection R3-4-404” when it could just say “specified in R3-4-404.”

10. **Completion of course of action from prior review**

The Department proposed to change the heading for subsection (B) from “Kind, variety, or type” to just “Kind or variety” but was unable to due to the restrictions of the rulemaking moratorium.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

R3-4-403. **Noxious Weed Seeds**

2. **Objective**

The objective of this rule is to implement A.R.S. § 3-232(A)(2)(b), which gives the Department authority to adopt a prohibited and restricted noxious weed-seed list.

10. **Completion of course of action from prior review**

The Department indicated that changes to this rule may be appropriate based on changes to rules 244 and 245, which relate to restricted and prohibited weeds. Rules 244 and 245 were not changed, so there was no reason to change this rule.

11. **Determination that rule imposes least burden and costs**

The Department believes that when the changes are made to this rule, after final rulemaking to update rules 244 and 245 is complete, the rule will impose the least burden and costs.

14. **Proposed course of action**

The Department proposes to submit a rulemaking to the council, if necessary, depending upon the effect of changes made to R3-4-244 and R3-4-245, within two years of December 2014, unless the rule moratorium is extended.

R3-4-404. **Germination Standards**

2. **Objective**
The objective of this rule is to establish germination standards for seeds as well as germination related labeling and testing frequency.

6. **Clarity, conciseness, and understandability**

Subsection (A) refers to using the listed germination standard or the standard in 20 CFR 201.31. There are two issues with this reference. First, the reference should be 7 CFR 201.31, not 20 CFR 201.31. The list in 7 CFR 201.31 is identical to the list already printed in subsection (A), unless changes are made to the federal standard. Most states go by the federal standard so we do not want to remove the reference as it could impede interstate shipments by having a higher state standard than the federal standard. So we list and reference them in case they are changed federally. Also, the internet link referenced is invalid and will need to be updated.

10. **Completion of course of action from prior review**

The Department proposed to update the federal regulation incorporated by reference in subsection (A) to the latest version but was unable to due to the restrictions of the rulemaking moratorium.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-405. Seed-certifying Agencies**

2. **Objective**

The objective of this rule is to implement A.R.S. § 3-232(A)(3), which gives the Department authority to designate seed-certifying agencies that it finds qualified to certify agricultural or vegetable seeds as to variety, purity, quality or other related designations.

**R3-4-406. Sampling and Analyzing Seed**

2. **Objective**

The objective of this rule is to implement A.R.S. § 3-232(A)(2), which gives the Department authority to prescribe methods of sampling, inspecting, analyzing, testing and examining seed.

6. **Clarity, conciseness, and understandability**

Incorporated materials will have to be updated to their most recent editions or revisions so the rule is more clear and concise.
10. **Completion of course of action from prior review**

The Department proposed to update the materials incorporated by reference but was unable to due to the restrictions of the rulemaking moratorium.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.

**R3-4-407. Phytosanitary Field Inspection; Fee**

1. **Statutory authority**

Specific: A.R.S. § 3-233.

2. **Objective**

The objective of this rule is to implement A.R.S. § 3-233(A)(7), which gives the Department authority to establish fees to cover the costs of interstate and international exportation inspection activities.

**R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees**

1. **Statutory authority**


2. **Objective**

The objective of this rule is to implement A.R.S. §§ 3-235 and 3-233(B), which pertain to licensing seed dealers and seed labelers, including the establishment of fees.

8. **Economic, small business, and consumer impact comparison**

In fiscal years 2011 and 2012, the Department temporarily reduced the fees in this rule to $0. The Department accomplished this through exempt rulemaking authorized by the following legislation FY 2011- Laws 2010, 7th Special Session, Ch. 7(HB 2007), Sec. 4 and 2nd Regular Session, Ch. 290 (HB 2586), Sec. 1 and FY 2012 – Laws 2011, Ch. 3 (SB 1624), Sec. 6. The fund associated with the fees for this rule had more money than the Department was authorized to spend, so the Department temporarily reduced the fees as a way of lowering the fund balance. The current fees are as stated in the rule.
R3-4-409. Violations and Penalties

1. Statutory authority

Specific: A.R.S. § 3-242.

2. Objective

The objective of this rule is to implement A.R.S. § 3-242, which pertains to assessing civil penalties against people who violate the seed statutes and rules.
ARTICLE 5
COLORED COTTON

R3-4-501. Colored Cotton Production and Processing

1. **Statutory authority**


   Specific: A.R.S. § 3-205.02.

2. **Objective**

   The objective of this rule is to regulate the production of colored cotton to protect the producers of white cotton from the potential contamination of colored cotton fiber and seed contamination or influence.

3. **Analysis of effectiveness in achieving the objective**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-201 et seq.
   - A.A.C. R3-4-101 & R3-4-201 et seq.

5. **Agency enforcement policy**

   The Department would enforce the rule as written. At this time, there are no colored cotton producers in Arizona, so the rule is not being used but the rule is necessary to achieve its objectives should a colored cotton producer emerge.

6. **Clarity, conciseness, and understandability**

   The rule is mostly clear, concise and understandable. The reference to R3-4-102 should be R3-4-101. In addition, the reference to 28 USC 401 through 451 should correctly reference marketing standards under 7 CFR 28.401 through 28.451. And the penalty assessment statute is incorrectly referenced as A.R.S. § 205.02 and should be 3-205.02.

7. **Written criticisms**

   The Department has not received any written criticisms of the rule within the last 5 years.
8. **Economic, small business, and consumer impact comparison**

The economic impact of the rule has not differed significantly from that projected in the last economic impact statement prepared.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department proposed to update the federal regulations that are incorporated by reference and to correct the references to R3-4-102 and 28 USC 401 to R3-4-101 and 7 CFR 28.401 respectively. This did not occur due to the restrictions listed in the Governor’s moratoriums on rulemakings.

11. **Determination that rule imposes least burden and costs**

The Department believes this rule would impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective if the above changes were made.

12. **Determination that rule is not more stringent than corresponding federal law**

While this rule references cotton marketing standards for cotton producers, 7 CFR 28.401 through 28.451, to define what is considered “colored cotton” this rule does not have a corresponding federal law similar to the restrictions in 501.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

This rule was not adopted or amended after July 29, 2010, which means the general permit analysis under A.R.S § 41.1056 (A)(11) is not required for this rule.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
ARTICLE 9  
BIOTECHNOLOGY

R3-4-901. Genetically Engineered Organisms and Products

1. Statutory authority


   Specific: A.R.S. § 3-211.

2. Objective

   The objective of this rule is to restrict the entry of genetically engineered organisms and products unless authorized for entry under 7 CFR 340.4.

3. Analysis of effectiveness in achieving the objective

   The rule is effective in achieving the objective.

4. Consistency

   The rules in this Article are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. § 3-201 et seq.

5. Agency enforcement policy

   The Department enforces this rule as written.

6. Clarity, conciseness, and understandability

   Subsection (B)(2) of this rule appears to indicate that there are requirements in addition to the federal requirements. This language, however, is misleading. The requirement in subsection (B)(2)(a) that genetically engineered organisms be handled in a manner so that no genetically engineered organism accidentally escapes is part of the federal law as well. See 7 CFR 340.4(b)(12) (requiring a detailed description of the proposed procedures and safeguards which will be used to prevent escape of the organism) & 7 CFR 340.4(f)(7) (permit subject to measures necessary to prevent accidental release of organism). Subsection (B)(2)(b) is nothing more than an indication that all of the Department’s other rules apply as well, where applicable.

7. Written criticisms
The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department proposed to update the incorporated by reference federal regulations. This did not occur due to the Governor’s moratoriums on rulemakings.

11. **Determination that rule imposes least burden and costs**

The Department believes this rule would impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective if the above changes were made.

12. **Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with 7 CFR 340 in part and is not more stringent than that federal law. This rule applies to all genetically engineered organisms or products, including vertebrate animals. The federal law, on the other hand, only applies to genetically engineered organisms that are plant pests and does not include vertebrate animals. Thus, non-plant pests are not covered by the federal law and vertebrate animals that are plant pests are not covered by the federal law either.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

This rule was not adopted or amended after July 29, 2010, which means the general permit analysis under A.R.S § 41.1056 (A)(11) is not required for this rule.

14. **Proposed course of action**

The Department plans to submit a rulemaking to the Council to amend the rule to incorporate the above changes within two years of December 2014, unless the rule moratorium is extended.
Objectives.

R3-9-301, **Ginning and Remittance Forms**, establishes the reporting requirements for cotton gin operators in order to maintain accurate grower information for cotton grown and ginned in Arizona.

R3-9-302, **Non-Bt Cotton Acreage Registration Form**, establishes the reporting requirements for cotton producers who plant non-Bt cotton in order to maintain the appropriate trap density for particular varieties of cotton.

1. **Effectiveness of the Rules in Achieving their Objective.**
   The objective of the rules R3-9-301 and R3-902 is to clarify statutory reporting requirements, in that each of the two reports shall be on forms prescribed by the council. The rules each prescribe the forms used to collect the data required by the council to perform its duties and responsibilities. The rules effectively achieve their objectives.

2. **Written Criticisms.**
   No written criticisms regarding these rules have been received during the last five years.

3. **General Statute Authorizing the Rule.**
   The Council’s general rulemaking authority is A.R.S. § 3-1083.

   The Council’s specific rulemaking authority is A.R.S. § 3-1086(B) and A.R.S. § 3-1086.02.

4. **Consistency of the Rules With State and Federal Statutes and Rules.**
   The rules are consistent with the statutory requirement of A.R.S. § 3-1086(B). There are no federal statutes or regulations with which the Council’s rules must be consistent.

5. **Clarity, Conciseness and Understandability.**
   The rules are clear, concise and understandable.

6. **Economic, Small Business and Consumer Impact.**
There is no significant economic, small business and consumer impact as a result of prescribing reporting forms.

**R3-9-301**, Ginning and Remittance Forms, establishes the reporting requirements for cotton gin operators.

For the 2013 Crop Year, ending approximately October 2013

- 24 cotton gins completed the Ginning and Remittance Form
- 471,684 bales of cotton were reported
- $1,300,724 in revenue was generated on this bale assessment fee

**R3-9-302**, Non-Bt Cotton Acreage Registration Form, establishes the reporting requirements for cotton producers who plant non-Bt cotton.

For the current 2013 Crop Year, no registration forms were received from cotton growers.

7. Analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

There were none.

8. If applicable, that the agency completed the previous five-year review process.

GRRC completed the last five year review in 2009. No action was requested nor taken during that review. The previous five-year-review report was approved by the Council on August 18, 2009.

9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

Destruction of crops by boll weevil used to cost cotton growers millions of dollars each year. Arizona subsequently implemented a Boll Weevil Eradication program eventually eliminating boll weevil from Arizona. It is imperative to maintain current plow down regulations to ensure uniform timing of destruction and plowing under of cotton so that potential pests are unable to migrate from one host crop to the next. Plow down regulations help to ensure that cotton crops are plowed under uniformly and during the same time in order to mitigate the presence of over-wintering destructive insects. The Council believes that the benefits of the rules outweigh the costs.

10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
There are no corresponding federal laws related to these rules.

11. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.**

Since R3-9-301 and R3-9-302 were last amended in 1999 and 2005, respectively, the general permit analysis is not required for these rules.

**Proposed Course of Action.**

The Council approves continuance of all rules with no revisions.

**Enforcement**  GRRC’s R1-6-301(A)(5), addressing enforcement of each rule.; i.e. whether the rules are enforced as written or differently than they’re written, or if there has been any issues with enforcement.

The Council enforces all rules as written, and there have been no issues with enforcement.
ARIZONA DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

2014 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 4
Articles 7 & 8

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INTRODUCTION

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. The Arizona Department of Agriculture report for rules listed under A.A.C. Title 3, Chapter 4, Plant Services Division, Articles 7 & 8 reviews two rules found therein, R3-4-743 and R3-4-816. The following rules in 3 A.A.C. 4, Articles 7 & 8 were not reviewed with the intention for the rules to expire under A.R.S. § 41-1056(E): R3-4-701 through R3-4-742 and R3-4-801 through R3-4-815.

The Citrus, Fruit, and Vegetable Standardization (CFV) rules which are being allowed to expire were implemented as a method of setting minimum quality standards for citrus, fruit, and vegetable products being sold in the state. Originally, the rules benefited the state by providing consistency in the marketplace. However, over time the market voluntarily implemented higher commercial standards for these products rendering the rules unnecessary.

The CFV Advisory Council (Council) advises the Department on issues related to these rules and the corresponding statutes. The Department has a statutory obligation to accept recommendations of the Council when they are “practicable and in the interests of the citrus, fruit and vegetable industry.” A.R.S. § 3-527.02. Over the course of several years the Council has directed the Department away from standardization and grading and towards other methods of industry support, such as food safety programs. When considering the rules in 3 A.A.C. 4, Articles 7 & 8 for five year review the Council voted to let all the rules except for R3-4-743 and R3-4-816 expire. R3-4-743 and R3-4-816 do not set product standards but require shippers to record and report shipment of products. The Department accepted the Council’s recommendation, and only R3-4-743 and R3-4-816 are reviewed in the report.
ARTICLE 7
FRUIT AND VEGETABLE STANDARDIZATION
R3-4-743

1. Statutory authority

General: A.R.S. § 3-107(A)(1)

Specific: A.R.S. § 3-487

2. Objective

The objective of the rule is to prescribe record keeping and reporting requirements for fruit and vegetable shippers. A.R.S. § 3-487(B)(6) authorizes the Director of the Department of Agriculture to prescribe “appropriate reporting and record keeping requirements for shippers.” This rule prescribes the reporting and record keeping requirements for shippers. These requirements allow the Department to collect statistical data to monitor compliance with the assessment statutes in A.R.S. § 3-448 and to provide market information to the Department, other agencies, and the general public.

3. Analysis of effectiveness in achieving the objective

The rule in this Article is effective in achieving the stated objective. A.R.S. § 3-487(B)(6) authorizes the Director of the Department of Agriculture to prescribe “appropriate reporting and record keeping requirements for shippers.” The objective of this rule is to prescribe the reporting and record keeping requirements for shippers. The rule meets the objective by clearly defining the information that must be recorded, the period of time for which records must be kept, and the requirement that records must be kept open for inspection by the Department. Using the requirements in this rule and R3-4-816 the Department was able to collect information on over 70 different types of raw agricultural products that were shipped in the state over the last five years, accounting for an average of 90 million cartons of product per year. The reporting requirements ensure that these shipments are made in conformance with the assessment requirements of A.R.S. § 3-448 and the rest of the A.R.S. Title 3, Chapter 3, Article 4. The data is also used by the Department, other state and federal agencies, and public and private organizations to monitor the overall health and success of the state fruit and vegetable industry. Among other things, the data can be used to study market fluctuations, effects of disease, and food safety outbreaks.

4. Consistency

The rule in this Article is consistent with statutes and other rules. To determine consistency the Department considered, specifically, A.R.S. § 3-487(B)(6) and, generally,

1 A.R.S. § 3-481 defines "Shipper" as “a person who ships, transports, sells or markets fruit or vegetables under the person's registered trademark or label or a person who first markets the fruit or vegetables on behalf of the producer. Shipper does not include a commission merchant.”
A.R.S. § 3-107(A)(1), A.R.S. Title 3, Chapter 3, Article 4, Fruit and Vegetable Standardization, A.R.S. Title 3, Chapter 3, Article 2, Citrus Fruit Standardization, and R3-4-816.

5. **Agency enforcement policy**

The Department enforces the rule in this Article as written. The Department has established a reporting system that makes compliance simple and does not have difficulty enforcing the rule.

6. **Clarity, conciseness, and understandability**

The rule in this Article is clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of the rule within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statement prepared in the last rulemakings for the rule. The last economic impact statement was prepared prior to adoption of the rule in March, 1993 and found that the rule was written to be as simple as possible with the least stringent reporting or compliance requirements possible to meet the requirements of A.R.S. § 3-487, and compliance with the rule “should be at minimal cost; all necessary information should be at hand.”

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not complete the course of action proposed in the prior review for the rule, which was to insert one word for clarity. The Department proposed inserting the word “supervisor’s” before “authorized representative” in subsection B of rule, so that the phrase would require that records “shall at all times be open to the confidential inspection of the supervisor or the [supervisor’s] authorized representative.” The primary reason for the lack of completion of the proposed action was the Governor’s rulemaking moratoriums. The Department purposed to make this change in conjunction with several other changes to the Article upon the expiration of the moratorium. The moratorium did not expire and none of the changes were made. The Department has had no practical issues with the current phrasing and has received no requests for clarification. Since there are no longer any other proposed changes to the Article, the Department does not believe it would be an efficient
use of public resources to undertake a rulemaking procedure solely to add this one word, moratorium or not, and no longer proposes this course of action.

11. Determination that rule imposes least burden and costs

The Department believes the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. A.R.S. § 3-487(B)(6) provides specific guidance for what should be included in the rule. Rather than use the statute as a basis for broad, technical, or detailed reporting, the Department considered commercial practices common among the industry and wrote the rule so that it would have as minimal impact on industry practices as possible while still conforming to the guidance in the statute.

12. Determination that rule is not more stringent than corresponding federal law

The rule does not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

The rule in this Article was not adopted after July 29, 2010.

14. Proposed course of action

The Department proposes to maintain the rule in this Article as is.
1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. § 3-445

2. **Objective**

   The objective of the rule is to prescribe recordkeeping and reporting requirements for citrus fruit shippers. A.R.S. § 3-445(B)(6) authorizes the Director of the Department of Agriculture to prescribe “appropriate reporting and record keeping requirements for shippers.” This rule prescribes the reporting and record keeping requirements for shippers. These requirements allow the Department to collect statistical data to monitor compliance with the assessment statutes in A.R.S. § 3-448 and to provide market information to the Department, other agencies, and the general public.

3. **Analysis of effectiveness in achieving the objective**

   The rule in this Article is effective in achieving the stated objective. A.R.S. § 3-445(B)(6) authorizes the Director of the Department of Agriculture to prescribe “appropriate reporting and record keeping requirements for shippers.” The objective of this rule is to prescribe the reporting and record keeping requirements for shippers. The rule meets the objective by clearly defining the information that must be recorded, the period of time for which records must be kept, and the requirement that records must be kept open for inspection by the Department. Using the requirements in this rule and R3-4-743 the Department was able to collect information on over 70 different types of raw agricultural products that were shipped in the state over the last five years, accounting for an average of 90 million cartons of product per year. The reporting requirements ensure that these shipments are made in conformance with the assessment requirements of A.R.S. § 3-448 and the rest of the A.R.S. Title 3, Chapter 3, Article 2. The data is also used by the Department, other state and federal agencies, and public and private organizations to monitor the overall health and success of the state citrus fruit industry. Among other things, the data can be used to study market fluctuations, effects of disease, and food safety outbreaks.

4. **Consistency**

   The rule in this Article is consistent with statutes and other rules. To determine consistency the Department considered, specifically, A.R.S. § 3-445(B)(6) and, generally,

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2 A.R.S. § 3-441 defines "Shipper" as “a person who ships, transports, sells or markets citrus fruit under the person's registered trademark or label or a person who first markets the citrus fruit on behalf of the producer. Shipper does not include a commission merchant.”
A.R.S. § 3-107(A)(1), A.R.S. Title 3, Chapter 3, Article 2, Citrus Fruit Standardization, A.R.S. Title 3, Chapter 3, Article 4, Fruit and Vegetable Standardization, and R3-4-816.

5. **Agency enforcement policy**

The Department enforces the rule in this Article as written. The Department has established a reporting system that makes compliance simple and does not have difficulty enforcing the rule.

6. **Clarity, conciseness, and understandability**

The rule in this Article is clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of the rule within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statements prepared in the last rulemakings for the rule. The last economic impact statement was prepared prior to adoption of the rule in March, 1993, and found that the rule was written to be as simple as possible with the least stringent reporting or compliance requirements possible to meet the requirements of A.R.S. § 3-445, and compliance with the rule “should be at minimal cost; all necessary information should be at hand.”

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not specifically identify any issue with this rule in the previous review. However, the rule has the same wording as R3-4-743 and would likely have been changed had the proposed course of action in the last report been undertaken. The primary reason for the lack of action was the Governor’s rulemaking moratoriums. The Department has had no practical issues with the current phrasing of the rule and has received no requests for clarification. Since there are no longer any other proposed changes to the Article, the Department does not believe it would be an efficient use of public resources to undertake a rulemaking procedure solely to add the one word clarification described in item 10 on page 4 of this report, and does not propose to do so, regardless of whether the rulemaking moratorium is lifted.

11. **Determination that rule imposes least burden and costs**
The Department believes the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. A.R.S. § 3-445(B)(6) provides specific guidance for what should be included in the rule. Rather than use the statute as a basis for broad, technical, or detailed reporting, the Department considered commercial practices common among the industry and wrote the rule so that it would have as minimal impact on industry practices as possible while still conforming to the guidance in the statute.

12. **Determination that rule is not more stringent than corresponding federal law**

   The rule does not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

   The rule was not adopted after July 29, 2010.

14. **Proposed course of action**

   The Department proposes to maintain the rule in this Article as is.
ARIZONA DEPARTMENT OF AGRICULTURE

2014 FIVE-YEAR REVIEW REPORT

TITLE 3. AGRICULTURE

CHAPTER 6. DEPARTMENT OF AGRICULTURE – OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

ARTICLE 1. MARKETING
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Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action, and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The Arizona Department of Agriculture’s report for the rules listed under A.A.C. Title 3, Chapter 6, Office of Commodity Development and Promotion¹ is scheduled to be submitted to GRRC by December 31, 2014. Section II of this document contains the Department's report on these rules.

¹ Article 2 Joint Ventures of this Chapter expired on December 31, 2004. Thus only Article 1 is reviewed.
1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1) and (B)(3)
   Specific: Laws 2014, 2nd Reg. Sess., Ch. 9, § 5; A.R.S. § 3-109.02

2. **Objective**

   R3-6-101: The objective is to establish application requirements and the fee for obtaining a certificate of free sale. A certificate of free sale is available for Arizona agricultural products that are generally and freely sold in domestic channels of trade.

   R3-6-102: The objective is to establish the fees that must be paid to obtain certification documents from the Department stating that regulated commodities and nursery stock meet the entry requirements for domestic shipments.

3. **Analysis of effectiveness in achieving the objective**

   R3-6-101:

   The rule is partially effective in achieving its objective.

   The requirement to provide 3 different invoices is intended to allow the Department to establish that a product is generally and freely sold in the United States, but the Department believes some applicants have submitted invoices that show nothing more than casual sales to relatives or friends. This requirement also fails to specify that at least one invoice demonstrate that the product was manufactured or distributed in Arizona. The Department believes requiring an applicant to provide an Arizona transaction privilege tax number would help establish that the applicant is truly engaged in business in Arizona.

   The Department would also like to be able to require applicants to provide a product label, upon request, particularly for vitamins and supplements.

   The Department also thinks it would be wise to supplement the rule to indicate that certain requests do not qualify for a certificate of free sale to provide certainty to the
public and reduce oral complaints about denied requests. For example, new products that are manufactured just for export do not qualify. Also, certificates will only be issued using the name of the product sold domestically, not a different export name even when the product is the same.

R3-6-102:

The rule is effective in achieving its objective. It was recently amended by 20 A.A.R. 2457, September 5, 2014 to make the fees applicable during the current fiscal year. The fee for state phytosanitary certification is established at $50 plus $10 per additional lot and the fee for federal phytosanitary certification is $50. In addition to the $50 fee for federal phytosanitary certification paid for the benefit of the Department, applicants pay a federal administrative user fee for the federal government as required by federal law. The federal administrative user fee is currently $6 for shippers who use the “Phytosanitary Certificate Issuance and Tracking System” paper applications and $12 for those who do not. See 7 CFR 354.3(g)(3)(i).

4. **Consistency**

R3-6-101:

The rule is mostly consistent with all state and federal statutes and rules. Currently, the rule instructs an applicant to provide a social security number. The requirement was added to ensure compliance with A.R.S. §§ 25-320(P) and 25-502(K) regarding child support. However, a certificate of free sale is not covered by those child support laws, and the Department has no other authority for requiring disclosure of a social security number. So, pursuant to the federal Privacy Act of 1974, the Department cannot mandate disclosure of a social security number in this rule.

The rule is consistent with the Arizona Department of Commerce's authority to issue certificates of free sale. The Department of Agriculture issues certificates for consumable products and the Department of Commerce issues certificates for non-consumable products.

R3-6-102:

The rule is consistent with state and federal statutes and rules. See 7 C.F.R. Part 354. The rule is consistent with other certification programs conducted by the Department which charge similar fees. See 3 A.A.C. Chapter 4.

5. **Agency enforcement policy**

R3-6-101:

The rule is partially enforced as written. A social security number is not required. Also, the Department presently issues duplicate certificates anytime while the original
certificate is in effect (1 year) and not just during the first three months. In addition, the Department does not charge for standard postage. Finally, the Department requires one of the three invoices required by the rule to be from Arizona, although the rule does not specify that.

R3-6-102:

This rule is enforced as written.

6. **Clarity, conciseness, and understandability**

The rules in this Article are clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of the rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

R3-6-101:

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statement prepared with the original adoption of this rule in 1999. The Department is providing a service to any person who sells a consumable product. Fees generated by the rule pay the administrative costs to produce the certificates. The rule does not directly affect employment, consumers, or state revenues.

R3-6-102:

This rule was adopted by exempt rulemaking and no economic impact statement was prepared. The actual economic, small business, and consumer impact of the rule is comparable to that of R3-6-101. These certificates are provided as a service to shippers of plants and plant products. They are issued to meet the entry requirements for domestic shipments of regulated commodities and nursery stock. Many Arizona nursery stock producers/exporters participate in the voluntary Arizona Certified Nursery Program to receive a General Nursery Stock Certification that meets or exceeds the National Plant Board standards of pest freedom and generally satisfies most domestic entry requirements. Some states also require certification for specific pest threats. Fees generated by the rule pay the administrative costs to produce the certificates. The rule does not directly affect employment, consumers, or state revenues.
9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department intended to amend R3-6-101 to address the issues identified above. Due to the rulemaking moratorium the Department never completed the action. The Department did not request an exception to the moratorium.

The Department has not previously reviewed R3-6-102.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules imposes the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The rules establish basic requirements for certifications. The Department that incorporating the proposed changes to R3-6-101 will further reduce the burden of the rule.

R3-6-02 charges a minimal amount to cover the Department’s administrative cost. The applicant for state phytosanitary certification informs the Department how many lots the applicant has, and the Department issues a separate certificate for each lot. Some applicants elect to artificially divide their shipment into several small lots because if the state of import rejects part of a lot, the entire lot is rejected. By designating multiple lots, the shipper can reduce the risk of having its entire shipment rejected. However, shippers’ practice of designating multiple lots for a single shipment creates extra work for the Department in issuing multiple certificates, which is another reason for continuing this fee for another fiscal year.

12. **Determination that rules are not more stringent than corresponding federal law**

R3-6-101 sets out the requirements for a state certificate of free sale. One can also obtain a certificate of free sale from the Food and Drug Administration. Section 801(e)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§321-397 requires the FDA to issue certificates for human drugs and biologics, animal drugs, and devices that either meet the applicable requirements of the Act and may be legally marketed in the United States or may be legally exported under the Act although they may not be legally marketed in the United States. FDA is not required to issue certificates for food, including animal feeds, food and feed additives, and dietary supplements, or cosmetics. However, since foreign governments may require certificates for these types of products, FDA provides the service as resources permit. The requirements under R3-6-101 are not more stringent than the FDA requirements.
For R3-6-102, the corresponding federal administrative user fee is set out in 7 CFR 354.3(g)(3)(i). This rule incorporates the corresponding federal fee by reference and is not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules do not require a permit.

14. **Proposed course of action**

The Department intends to amend R3-6-101 consistent with the issues identified above. The Department does not anticipate requesting an exception to the moratorium. The Department presently anticipates completing rulemaking within one year of the expiration of the rulemaking moratorium.

The Department intends to maintain R3-6-102 as currently written.

**Proposed Changes to R3-6-101**

**R3-6-101. Certificate of Free Sale**

A. Any person manufacturing or distributing a consumable product in Arizona and who wants to sell it domestically or abroad, may apply to the Department for a Certificate of Free Sale. If an applicant is a subsidiary of a corporation, the application will be accepted only from the parent company. The application shall contain:

1. The name, address, telephone, and facsimile number and Arizona transaction privilege tax license number of the company;
2. The printed name and signature of the company's contact person;
3. A list of the consumable products manufactured, distributed, or sold in Arizona for which a certificate is requested by brand name, product name, and flavors or type;
4. The printed name, signature, and social security number of the responsible party [Upon request or For vitamins and supplements], a copy of the products' labels;
5. The country of export, if applicable;
6. The fee prescribed in subsection (B); and
7. Copies of 3 different invoices or bills-of-lading from the 3 months preceding the application showing the products are generally and freely sold in domestic channels of trade, including one demonstrating the products are manufactured or distributed in Arizona, and each containing the buyer's name, address and telephone number; and
8. The purchaser’s telephone number cited on each invoice or bill-of-lading.

B. Fees.

1. Certificate of Free Sale: $25 for each 100 products, plus the cost of postage;
2. Duplicate certificates, if requested within 3 months of the original certificate issue: $1 per page, plus the cost of postage.

C. Certificates will only be issued in English and only for product names used in Arizona.
D. Certificates cannot be issued for any product only sold abroad or for brand new products, including new varieties and flavors, that are not yet generally and freely sold domestically.
ARIZONA DEPARTMENT OF AGRICULTURE

2014 FIVE-YEAR REVIEW REPORT

TITLE 3. AGRICULTURE
CHAPTER 1. DEPARTMENT OF AGRICULTURE – ADMINISTRATION

ARTICLE 1. GENERAL PROVISIONS
ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS
ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING
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Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action, and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The Arizona Department of Agriculture’s report for rules listed under A.A.C. Title 3, Chapter 1, Administration are scheduled to be submitted to GRRC by December 26, 2014. Section II of this document contains the Department's report on these rules.
Arizona Department of Agriculture
Administration
2014 Five-Year Review Report
II. Five-Year Review Report
Title 3. Agriculture
Chapter 1. Administration

1. **Statutory authority**
   General: A.R.S. § 3-107(A)(1)

2. **Objective**
   - R3-1-101: The objective is to establish definitions of terms for the Chapter.
   - R3-1-102: The objective is to lay out how time will be computed when a time period is set out in a rule.
   - R3-1-103: The objectives are to set out standards for determining how long applicants will have to complete a licensing exam and to establish how requests for disability accommodations are to be made.

3. **Analysis of effectiveness in achieving the objective**
   The rules are effective in achieving their objectives. R3-1-101 defines all necessary terms in the chapter. R3-1-102 adequately defines how time under Department rules and orders should be computed laying out when time begins to run, when time ends, and when weekends and holidays should be included. R3-1-103 provides three criteria on which to determine the time-frame for an examination and requires persons seeking an accommodation to submit a written request at the time he or she schedules an exam.

4. **Consistency**
   The rules in this article are consistent with all state and federal statutes and rules, including A.R.S. § 41-1092(1) and Rule 6(a), Arizona Rules of Civil Procedure, 28 C.F.R. Part 35.130(b)(6) and 28 C.F.R. Part 36.309.

5. **Agency enforcement policy**
   All the rules in this Article are enforced as written.

6. **Clarity, conciseness, and understandability**
   The rules in this Article are clear, concise and understandable.
7. **Written criticisms**

The Department has not received any written criticisms of the rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statement prepared in the last rulemaking for these rules in 2004. See EIS: R3-1-101 through R3-1-103 and R3-1-301 through R3-1-307. In fiscal year 2014, the Department administered 497 written examinations.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not propose any action regarding these rules and has taken none.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The rules establish basic administrative procedures and principles that provide the public with notice and consistency regarding agency actions. They provide minimal to no burden on the public.

12. **Determination that rules are not more stringent than corresponding federal law**

28 C.F.R. Part 35.130(b)(6) a public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. 28 C.F.R. Part 36.309 requires entities that offer examinations or courses related to applications, licensing, certification, or credentialing for professional, or trade purposes to offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals. R3-1-103 simply requires someone seeking an accommodation to request one in advance as contemplate by 28 C.F.R. Part 36.309. Therefore, it is not more stringent than the corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules in this Article were not adopted after July 29, 2010.

14. **Proposed course of action**
The Department intends to maintain the rules as currently written.
1. **Statutory authority**

   A.R.S. §§ 3-107(A)(1) and 41-1003

2. **Objective**

   R3-1-201: The objective is to establish the Department will use the Uniform Administrative Appeals Procedures.

   R3-1-218: The objective is to lay out grounds upon which the Director may grant a rehearing of an administrative law judge's decision.

3. **Analysis of effectiveness in achieving the objective**

   The rules are effective in achieving their objectives. R3-1-201 states that formal adjudicative proceedings before the agency shall use the procedures in A.R.S. Title 41, Chapter 6, Article 10. R3-1-218 states the four grounds for which a rehearing shall be granted.

4. **Consistency**

   R3-1-201 is consistent with all state and federal statutes and rules, including A.R.S. § 41-1092 et seq. R3-1-218 is mostly consistent with all state and federal statutes and rules, including A.R.S. § 41-1092.09 and Rule 59(a), Arizona Rules of Civil Procedure. The rule does not contain all the bases for rehearing available in civil actions filed in Arizona Superior Court set out in Rule of Civil Procedure 59(a).

5. **Agency enforcement policy**

   All the rules in this Article are enforced as written.

6. **Clarity, conciseness, and understandability**

   The rules in this Article are clear, concise and understandable.

7. **Written criticisms**
The Department has not received any written criticisms of the rule within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statements prepared in the last rulemakings for each of these rules. *See EIS: R3-1-101 and R3-1-201 through R3-1-219.* The Department has very few hearings with the last one occurring in 2010.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department proposed to supplement R3-1-218 to match Rule 59(a) of the Rules of Civil Procedure. The Department anticipated submitting this amendment to GRRC for approval by August 2011. The Department did not complete the proposed course of action due to the continuation of the rulemaking moratorium. The Department did not request an exception to the moratorium.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. The rules establish basic administrative procedures that provide the public with notice and consistency regarding agency adjudicative proceedings. They provide minimal to no burden on the public.

12. **Determination that rule is not more stringent than corresponding federal law**

The rules do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules in this Article were not adopted after July 29, 2010.

14. **Proposed course of action**

The Department intends to amend to R3-1-218 so that the grounds for rehearing match Rule 59(a) of the Rules of Civil Procedure. The Department does not anticipate requesting an exception to the moratorium. The Department proposes to issue a rulemaking within six months of the expiration of the rulemaking moratorium.
1. **Statutory authority**

R3-1-301: A.R.S. § 3-107(A)(1)

R3-1-302: General: A.R.S. §§ 3-107(A)(1) and 41-1003
Specific: A.R.S. § 41-1033

R3-1-303: A.R.S. §§ 3-107(A)(1) and 41-1003

R3-1-304: General: A.R.S. §§ 3-107(A)(1) and 41-1003
Specific: A.R.S. § 41-1023

R3-1-306: General: A.R.S. §§ 3-107(A)(1) and 41-1003

R3-1-307: General: A.R.S. §§ 3-107(A)(1) and 41-1003
Specific: A.R.S. § 41-1033

2. **Objective**

R1-1-301: The objective is to state when the public may access rulemaking records.

R3-1-302: The objective is to set out the procedure for the public to formally request the Department to make, amend, or repeal a rule.

R3-1-303: The objective is to inform the public who to contact with written comment on proposed rulemakings.

R3-1-304: The objective is to set out the procedure for conducting oral proceedings on proposed rulemakings.

R3-1-306: The objective is to set out a procedure for written criticisms of a rule that are not formal petitions for amendment or repeal.

R3-1-307: The objective is to establish the procedure for the public to request the Department to review a practice or substantive policy statement that may constitute a rule.
3. **Analysis of effectiveness in achieving the objective**

The rules are effective in achieving their objectives.

4. **Consistency**

The rules of this article are consistent with all state and federal statutes and rules, including A.R.S. §§ 41-1023 and 41-1033, which contain corresponding statutory requirements for public participation in rulemaking and petition for a rule or review of practice and policy.

5. **Agency enforcement policy**

All the rules in this Article are enforced as written.

6. **Clarity, conciseness, and understandability**

The rules in this Article are clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of the rule within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statements prepared in the last rulemakings for each of these rules. See EIS: R3-1-101 through R3-1-103 and R3-1-301 through R3-1-307. The Department generally works with agricultural industry representatives in formulating rules, and likely as a result, the Department seldom receives written comments or petitions concerning its rules. The Department had no oral proceedings in 2014.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department did not propose any action regarding these rules and has taken none.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. The rules establish
basic administrative requirements that provide the public with notice and consistency regarding rulemaking procedures. They provide minimal to no burden on the public.

12. **Determination that rule is not more stringent than corresponding federal law**

   The rule do not have a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

   The rules in this Article were not adopted after July 29, 2010.

14. **Proposed course of action**

   The Department intends to maintain the rules as currently written.
TITLE 3. AGRICULTURE
CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS AND COMMISSIONS
ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE
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I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action, and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The Arizona Department of Agriculture’s report for rules listed under A.A.C. Title 3, Chapter 9, Agricultural Councils and Commissions, Article 6. Leafy Greens Food Safety Committee are scheduled to be submitted to GRRC by March 31, 2015. Section II of this document contains the Department's report on these rules.
II. Five-Year Review Report

1. **Statutory authority**

   Authorizing statute: A.R.S. § 3-414(C)(11)
   Implementing statute: A.R.S. § 3-404(B)

2. **Objective**

   **General Objective of the Rules:**

   The Leafy Greens Food Safety Committee administers and enforces the Arizona Leafy Green Products Shipper Marketing Agreement. This marketing agreement requires shippers of leafy green vegetables who are signatories to the agreement to follow best practices with respect to the handling of those products in order to enhance food safety and prevent the outbreak of illnesses stemming from the consumption of leafy green vegetables. Signatories may use the Leafy Green Food Safety Committee’s collective service mark on their product as long as they are in compliance with the best practices incorporated by reference into these rules. The rules in this article incorporate by reference the best practice guidelines, provide the requirements for proper usage of the service mark, and outline the ramifications for violations of the rules.

   **Specific Objectives:**

   R3-9-601: The objective is to establish definitions of terms for the Article.
   R3-9-602: Requires signatories of the marketing agreement to comply with the best practices guidelines, maintain a trace-back system, and be subject to periodic audits. It also requires signatories to only buy or handle leafy green product grown in Arizona from a shipper or producer that meets these same requirements. Finally, it clarifies that if the best practices require a Standard Operating Procedure (SOP) the signatory must have and must follow the SOP.
   R3-9-603: As mentioned above signatories may use the Committee’s service mark to market their products provided they are in compliance with the best management practices adopted by the Committee. This rule is necessary so that the signatories are aware of the requirements for usage of the
service mark, the conduct that can result in loss of ability to use the mark, and the process for and result of the loss of the ability to use the mark.

R3-9-604: Describes the conduct that may result in loss or suspension of a signatory’s privilege to use the service mark, and establishes an enforcement system used to determine length of suspension and requirements for reinstatement in relation to seriousness and type of violation. It also provides signatories with an opportunity for hearing prior to loss of the privilege unless the Committee determines public health, safety, or welfare requires summary suspension.

R3-9-605: Establishes and defines four levels of violations: flagrant violations, major deviations, minor deviations, and minor infractions. This rule is necessary because it provides notice to signatories as to how non-compliance issues will be handled by the Committee and provides the Committee with a clear and effective system for addressing non-compliance.

R3-9-606: Requires signatories who commit a flagrant violation, major deviation, or minor deviation to complete a corrective action plan process, as set forth in the rule. This rule is necessary because these types of non-compliance have a potential food safety consequence that require assurance to the Committee that the issue will be addressed to ensure that there is not a safety concern going forward.

3. **Analysis of effectiveness in achieving the objective**

   The rules are effective in achieving their objectives.

4. **Consistency**

   The rules in this article are consistent with all state and federal statutes and rules, including Ariz. Rev. Stats. Title 3, Chapter 3, Article 1, which sets forth the requirements for establishing and governing marketing agreements of this nature.

5. **Agency enforcement policy**

   All the rules in this Article are enforced as written.

6. **Clarity, conciseness, and understandability**

   The rules in this Article are clear, concise and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of the rules within the last 5
years.

8. **Economic, small business, and consumer impact comparison**

The economic, small business, and consumer impact of the rules is positive. The Arizona leafy greens industry is one of Arizona’s most economically significant agricultural sectors, bringing an estimated $1 billion to the state in the way of jobs and revenues. The marketing agreement and these rules were put in place at the request of Arizona leafy greens industry. Industry members voluntarily sign on and agree to follow the rules. The assessment signatories are charged is calculated on a per unit basis so that smaller businesses pay less. Safe production and handling practices are key to the success of the leafy greens industry. These rules increase the economic welfare of the state by creating commodity specific food safety guidelines, which both increases the quality of products and adds value to them in the marketplace.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

The Department has not previously reviewed these rules.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. Industry requested the marketing agreement and rules be created and has been extensively involved in the development and implementation process. The Leafy Green Food Safety Committee members directly represent signatories to the agreement. The Committee ensures the rules and guidance appropriately reflect common business practices and do not include unnecessary burdens.

12. **Determination that rules are not more stringent than corresponding federal law**

There is no specific federal law that corresponds with these rules. These rules are not more stringent than other similar federal laws related to marketing orders and agreements. See Marketing Agreements and Orders: Fruits, Vegetables, Nuts, 7 C.F.R. Parts 900-999.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules in this Article do not require a permit.
14. **Proposed course of action**

The Department intends to maintain the rules as currently written.
ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

2015 FIVE-YEAR REVIEW REPORT

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL
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Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Arizona Iceberg Lettuce Research Council's rules listed under A.A.C. Title 3, Chapter 9, Article 1 is due January 29, 2016.

The Council did not include a review of R3-9-105. The Council intends for R3-9-105 to expire under A.R.S. § 41-1056(J). The Council reviewed all the other rules in the article.

The Arizona Iceberg Lettuce Research Council's purpose is to authorize or contract for research, development and survey programs concerning varietal development; programs for lettuce pest eradication; programs concerning production, harvesting, handling and hauling from field to market; and any other program, excluding sales or marketing, that it deems to be appropriate. The Council awards grants to fulfill its mission.
II. Information That Is Identical For All Rules

1. Statutory Authority.

   General: A.R.S. § 3-526.02(C)(9)

3. Effectiveness.

   The rules are effective in meeting their respective objectives.


   The rules are consistent with the Arizona Iceberg Lettuce Research Council's statutes: A.R.S. Title 3, Chapter 3, Article 4.2. The Council's rules are also consistent with the rules of the Arizona Citrus Research Council and the Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Articles 2 & 5, though they need not be. The Council is exempt from the grant statutes in A.R.S. Title 41, Chapter 24 pursuant to A.R.S. § 41-2706(B)(4), which is why the Council has adopted its own grant rules. There are no other state and federal statutes and rules to consider.

5. Enforcement.

   The rules are enforced as written.

6. Clarity, Conciseness and Understandability.

   The rules are clear, concise, and understandable.

7. Written Criticisms.

   The Council has not received any written criticisms of the rules.


   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

   From fiscal years 2011 through 2015, the Council received $464,331 in revenue.

   The Council's revenue came from a $0.004 assessment rate in fiscal years 2011 through 2015. Arizona iceberg lettuce producers pay the assessment, with the shippers first marketing the lettuce responsible for collecting that assessment and remitting it to the Council. See A.R.S. § 3-526.04(C).


   No analysis was submitted.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

   There is no federal law that corresponds with these rules.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

   The rules in this Article do not require a permit.
III. Information That Is Different For Each Rule

R3-9-101. Definitions

1. Statutory Authority.
   Specific: A.R.S. § 3-526.02(C)(9)

2. Objective.
   This rule prescribes definitions of terms used in the Council's other rules.

10. Completion of Previous Five-Year Review.
   The Council did not propose any action on this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.
   The definitions do not impose a burden or cost on the public and do make the remaining rules more understandable.

   The Council plans to leave the rule as written.

R3-9-102. Elections

1. Statutory Authority.
   Specific: A.R.S. § 3-526.02(A)(2)

2. Objective.
   This rule sets out when annual officer elections will take place and the length of service.

10. Completion of Previous Five-Year Review.
   The Council proposed to eliminate paragraphs B and C from the rule if it conducted another other rulemakings. No rulemakings were made.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.
   This rule only affects the Council and does not impose a burden or cost on the public.

   The Council does not plan to take any action on this rule.

R3-9-103. Hearings and Rehearings

1. Statutory Authority.
Specific: A.R.S. § 3-526.05

2. **Objective.**

   This rule requires the Council to hold administrative hearings in accordance with the Uniform Administrative Procedures Act and sets out how requests for rehearing will be handled.

10. **Completion of Previous Five-Year Review.**

   The Council proposed to eliminate paragraphs B-D of the rule and replace them with language that allows the Council to use the Arizona Rules of Civil Procedure and related local rules in responding to motions. The Council proposed to revise the rule by December 2014. Because the Council has never had a request for hearing, does not anticipate getting a request for hearing in the near future, does not view this revision as critical, and is subject to strict rulemaking limits ordered by the Governor, the Council did not amend this rule.

11. **Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.**

   This rule follows state law by adopting the Administrative Procedures Act for governing hearings and by taking provisions for the Arizona Rules of Civil Procedure to handle motions for rehearings. Accordingly, this rule imposes the least burden and costs to persons regulated necessary to achieve the underlying regulatory objective.

14. **Proposed Action.**

   The Council does not plan to take any action on this rule.

R3-9-104. **Annual Report**

1. **Statutory Authority.**

   Specific: A.R.S. § 3-526.02(A)(5)

2. **Objective.**

   This rule sets a date by which the Council's annual report must be prepared.

10. **Completion of Previous Five-Year Review.**

   The Council did not propose any action on this rule.

11. **Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.**

   This rule only affects the Council and does not impose a burden or cost on the public.

14. **Proposed Action.**

   The Council believes this rule has worked well and that no change is necessary.
R3-9-106. Grants

1. Statutory Authority.

    Specific: A.R.S. §§ 3-526.02(B) & 3-526.02(C)(5)

2. Objective.

    This rule sets out the procedures for the public to apply for grants and for the Council in awarding grants.

10. Completion of Previous Five-Year Review.

    The Council did not propose any action on this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

    This rule imposes the least burden and costs on persons regulated necessary to achieve the underlying regulatory objective.


    The Council plans to leave the rule as written.
PEST MANAGEMENT DIVISION
FORMERLY
OFFICE OF PEST MANAGEMENT

2016 FIVE-YEAR REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 29. OFFICE OF PEST MANAGEMENT
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Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Pest Management Division (PMD) (formerly Office of Pest Management (OPM)) rules listed under A.A.C. Title 4, Chapter 29 is due May 27, 2016.

The PMD licenses commercial pest control businesses in Arizona and the pesticide applicators and inspectors employed by these companies. It also enforces laws governing pesticide use and storage. Statute designates the Director of the Arizona Department of Agriculture (ADA) as the head of PMD and assigns the Director the authority over and responsibility for enforcing PMD law. Pesticide applications used directly in the commercial production of crops and animals or used not for hire on golf courses are exempt from PMD regulations. The Environmental Services Division of ADA regulates those types of applications.
II. Information That Is Identical For All Rules

1. **Statutory Authority.**

   General: A.R.S. §3-3603(A)(1)\(^1\)

3. **Effectiveness.**

   The rules are effective in meeting their respective objectives.

4. **Consistency.**

   Except as stated herein these rules are consistent with each other and are consistent with PMD statutes: A.R.S. Title 3, Chapter 20.

5. **Enforcement.**

   The rules are enforced as written.

6. **Clarity, Conciseness and Understandability.**

   Except as noted herein, the rules are clear and concise; however, PMD is requesting a rule making to update the department name from Office of Pest Management to Pest Management Division.

7. **Written Criticisms.**

   The Council has not received any written criticisms of the current rules that are in place. However, in 2015, during a rulemaking, PMD received written support from Arizona Pest Professional Organization (AzPPO) when they amended R4-29-103 to reduce licensing fees. AzPPO also expressed appreciation for PMD working with, and including industry in the rulemaking process. Additionally, at an oral proceeding in the 2015 rulemaking, Kevin Etheridge asked for clarification about whether R4-29-308 will apply to warranty service or renewals. PMD responded that the amendments would not affect warranty service or renewals and explained that the amendments to R4-29-308 prevent issuance of a treatment proposal when no on-site inspection has been performed.

8. **Economic, Small Business, and Consumer Impact Comparison.**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared by PMD as part of a rulemaking by GRRC on March 3, 2015.

9. **Analysis Submitted Comparing Rule's Impact.**

   No analysis was submitted.

10. **Completion of Previous Five-Year Review.**

    OPM completed the course of action proposed in the previous report.

11. **Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.**

---

\(^1\) SB 1270 transferred the Office of Pest Management from Title 32 to the Title 3 under the Arizona Department of Agriculture and renamed it the Pest Management Division.
As noted in the previous report much of the burden and costs associated with these regulations is mandated by statute. Furthermore, since the last report, OPM has gone through a series of statutory and rule changes as part of the transition of its authority to the Director of the ADA.

Laws 2011, Ch. 20, § 6 required the Director of the ADA to appoint a nine member task force made up of PMD stakeholders to study the regulation of structural pest management in Arizona. 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 statute and rules. The Task Force developed the proposed statutes and rules on parallel paths to help ensure appropriate regulatory oversight while imposing the least burden and costs to regulated persons.

The Task Force’s recommendations 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. Subsequently, OPM established, by exempt rulemaking procedures, rules to implement the statutory changes. See 19 A.A.R. 2967, October 4, 2013 and 20 A.A.R. 705, March 21, 2014. Finally, OPM conducted a regular rulemaking to make its exempt fee rule permanent, reduce license fees established under the rule, and address practical issues in the rules that have been uncovered during the initial period of their enforcement. 20 A.A.R. 451, March 27, 2015.

SB 1270, 52nd Leg., 2nd Reg. Sess., 2016, signed by the Governor on May 12, 2016, establishes the Division of Pest Management within ADA and transfers certain specified authority, duties and responsibilities originally granted to the OPM to the ADA. The law includes a one year exemption from the rulemaking requirements of the Arizona Administrative Procedure Act. ADA plans to continue to work with its stakeholders and make appropriate changes to its rules.

Due to the long process PMD has undergone over the last five years it believes these rules achieve the regulatory objectives while imposing the least burden and costs to regulated persons.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

Pesticide Programs, 40 C.F.R. §§ 150-180, contains the federal regulations related to pesticide registration, application, and certification of pesticide applicators. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.7. The standards of certification in the State plan must “conform and be at least equal to those prescribed” in 40 CFR 171.4(a) & 171.5(a). See also 40 CFR 171.7(e)(1)(i)(C) & (e)(1)(ii)(B). These rules are in conformance with 40 C.F.R. §§ 150-180 and the approved State plan. Furthermore, A.R.S. § 3-3603 expressly authorizes the Director of ADA to adopt rules that are more stringent than corresponding federal law.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

These rules comply with A.R.S. § 41-1037. R4-29-201 requires a permit. Rules R4-29-102, R4-29-103, R4-29-202, R4-29-203, R4-29-204, R4-29-207, and R4-29-208 set requirements for obtaining permits required by R4-29-201. General permitting is not used because the authorizing statutes prescribe seven categories of certification and distinct licensure requirements for businesses and individuals. See A.R.S. §§ 3-3614, 3-3615, 3-3616, and 3-3617.


PMD has been working with stakeholders in an effort to generate ideas to update the rules to eliminate unnecessary and burdensome rules and clarify the remaining rules. PMD anticipates requesting the Governor’s exemption to the moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.
III. Information That Is Different For Each Rule

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-101. Definitions

2. Objective.

This rule prescribes definitions of terms used in PMD’s other rules.


This rule contains several outdated statutory references related to the transfer to Title 3 which will be corrected in the next rulemaking.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes adding a definition of “advertising weed management” or “advertising pest management” might help to clarify what landscapers are allowed to advertise without violating PMD law. Additionally, an updated definition of “Division” and changing references to OPM to PMD is necessary.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval. Updates to this rule would occur during this rulemaking.

R4-29-102. Certification Categories; Scope

1. Statutory Authority.

Specific: A.R.S. § 3-3614(A).

2. Objective.

Pursuant to A.R.S. § 3-3614, pesticide applicators are not required to be certified to perform all types of pest management services. Instead applicators need only be certified to perform the specific type of service which they provide. This rule provides further clarification on what type of services are included in seven certification categories in statute and establishes one additional category.

R4-29-103. Fees; Charges; Exemption

1. Statutory Authority.

Specific: A.R.S. §§ 3-3603, 3-3614(A), 3-3618, 3-3631(C)

2. Objective.

This rule sets the various fees related to PMD licenses, termite action report forms, and certification examinations, including provisions for late fees, returned checks, and credit cards.

R4-29-104. Pest Management Advisory Committee

1. Statutory Authority.
2. **Objective.**

Pursuant to A.R.S. § 3-3605, this rule establishes and provides a basic framework for the Pest Management Advisory Committee, including the number of members, member qualifications, terms, vacancies, and elections.

4. **Consistency.**

This rule needs to be revised to update the statutory reference and name of the committee.

14. **Proposed Action.**

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval. Updates to this rule would occur during this rulemaking.

4-29-107. **Licensing Time-frames**

1. **Statutory Authority.**

Specific: A.R.S. § 41-1073

2. **Objective.**

This rule prescribes specific time-frames for processing applications for licenses issued under this chapter.

**Table 1. Time-frames (Calendar Days)**

1. **Statutory Authority.**

Specific: A.R.S. § 41-1073

2. **Objective.**

This rule displays the time-frames within which the PMD will act on a license application.

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

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

2. **Objective.**

This rule further describes the three primary kinds of licenses issued under PMD statutes, outlines the relationship among the licenses, and describes entities and activities that are exempt from licensure.

**R4-29-202. Business License**

1. **Statutory Authority.**
Specific: A.R.S. § 3-3615(B)(1)

2. Objective.

This rule prescribes the information that must be submitted to PMD to obtain a business license and contains other provisions relevant to business license holders, including the requirement that a business register a qualifying party, expiration and transferal provisions, and provisions relating to proof of financial security.

3. Effectiveness.

This rule is generally effective in achieving its objective. PMD believes adding a requirement to update PMD if a licensee’s address or other contact information on file changes might increase the effectiveness of this rule and the regulatory scheme generally by ensuring more effective and efficient communication between PMD and licensees.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-203. Applicator Certification

1. Statutory Authority.

Specific: A.R.S. § 3-3615(B)(1)

2. Objective.

This rule prescribes the information that must be submitted to PMD to obtain an applicator license and contains other provisions relevant to applicator license holders, including provisions related to the requirement that an applicant be of good moral character, examination, and expiration and transferal of licenses.

3. Effectiveness.

This rule is generally effective in achieving its objective; however between October 2013, and October 2015, 780 applicants were denied licenses for failure to submit proof of lawful presence. PMD believes amending the rule to require applicants to provide evidence of lawful presence prior to examination may be a more efficient manner to achieve the objective because it could reduce the amount of time spent on applications by both PMD and applicants that are ultimately unapproved due to failure to submit proof of lawful presence.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-204. Qualified Applicator Certification

1. Statutory Authority.
Specific: A.R.S. § 3-3616(B)(1)

2. **Objective.**

   This rule prescribes the information that must be submitted to PMD to obtain qualified applicator certification and contains other provisions relevant to qualified applicators, including required experience, moral character requirements, examination, and expiration and transferal of certification.

R4-29-205. **Qualifying Party Registration; Temporary Qualifying Party Registration**

1. **Statutory Authority.**

   Specific: A.R.S. § 3-3616(B)(2)

2. **Objective.**

   This rule prescribes the information that must be submitted to PMD to register as a qualifying party for a business licensee or school district and contains other provisions relevant to qualifying parties, including the requirement that one be certified in the category in which they register, provisions related to temporary registration, expiration, and transferal of registrations.

R4-29-206. **Branch Office Registration; Branch Supervisor Registration**

1. **Statutory Authority.**

   Specific: A.R.S. § 3-3617

2. **Objective.**

   This rule prescribes the information that must be submitted to PMD to register as a branch office and a branch supervisor and contains other provisions relevant to branch offices and supervisors, including the requirement that the branch office may only do business in the name of the business licensee, the requirement that the branch supervisors may only supervise one physical location, and provisions related to expiration and transferal of registrations.

R4-29-207. **Applicator Registration**

1. **Statutory Authority.**

   Specific: A.R.S. § 3-3603(B)(19)

2. **Objective.**

   This rule requires business licensees and political subdivisions to register all of their applicators, prescribes the information and fees required to complete a registration, requires uncertified applicators to be at least 18 years old, makes the business licensee and the qualifying party both responsible for registering applicators, and establishes a $150 penalty for failing to register.

R4-29-208. **License, Certification and Registration Renewal**
2. **Objective.**

This rule sets forth the requirements for renewal of PMD licenses, including provisions for expired licenses and surrendering a license.

6. **Clarity, Conciseness and Understandability.**

This rule is generally clear, concise and understandable. PMD believes the clarity of the rule could be improved by adding language that clarifies that applicators must have obtained the required about continuing education prior to June 1.

14. **Proposed Action.**

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

**R4-29-209. Change in Business Licensee**

2. **Objective.**

This rule specifies the circumstance under which a business license may be transferred and the procedure for notifying the PMD when a business licensee changes the name or form of the business.

**R4-29-210. Certification Broadening**

1. **Statutory Authority.**

Specific: A.R.S. § 3-3614

2. **Objective.**

The objective of this rule is to specify the procedure for an applicator or qualifying party licensee to become licensed to work in another license category.

**R4-29-211. Certification Examination**

1. **Statutory Authority.**

Specific: A.R.S. § 3-3603(A)(3)

2. **Objective.**

The objective of this rule is to specify the examination requirements for applicator certification and qualified applicator certification.

**R4-29-212. Reciprocity**

2. **Objective.**
This rule allows the Director to waive the examination requirements for individuals licensed to apply pesticides by the Arizona department of Agriculture or another state.

R4-29-213. Political Subdivision Responsible Individual

1. Statutory Authority.

Specific: A.R.S. § 3-3612(A)(2)

2. Objective.

This rule specifies the requirements for political subdivisions to designate individuals responsible for PMD compliance.

R4-29-215. Continuing Education

2. Objective.

This rule specifies the continuing education requirements for certified applicators and qualified applicators the manner in which an individual who holds both applicator and qualifying party licenses may use participation in a continuing education to meet the requirement for both licenses.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes the rule could provide additional clarity and information on these issues if language were added to specify that continuing education teachers and students may only get credit for teaching and attending a course once per cycle. If a teacher re-teaches or a student re-attends a course additional those hours will not be counted towards the continuing education requirements.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-216. Continuing Education Approval

1. Statutory Authority.

Specific: A.R.S. § 3-3603(A)(7)

2. Objective.

This rule specifies the requirements for obtaining PMD’s approval of continuing education courses and the requirements for continuing education providers.

ARTICLE 3. PEST MANAGEMENT

R4-29-301. Using Pesticides and Devices

1. Statutory Authority.
Specific: A.R.S. § 3-3624(B)(4)

2. Objective.

This rule is to clarify actions that constitute grounds for discipline due to misuse of a pesticide or device and actions required to ensure safe use of pesticides and devices.

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

2. Objective.

This rule establishes minimum standards for storing and disposing of pesticides and devices in a manner that protects public health and safety.

R4-29-303. Pesticide and Device Storage Area

2. Objective.

This rule establishes minimum standards for securing pesticides and ensuring the area where they are stored is appropriate for housing pesticides.

R4-29-304. Devices Exempt from Licensure and Registration; Advertising

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(17)

2. Objective.

This rule designates devices that are exempt from the licensure, certification, and registration requirements of PMD and requires unlicensed individuals performing pest management services using said devices to include the statement “Not licensed to apply pesticides” in any advertisements.

R4-29-305. Equipping a Service Vehicle

2. Objective.

This rule protects the health and safety of the public and those engaged in pest management by specifying the manner in which a service vehicle must be equipped.

R4-29-306. Providing Notice to Customers

1. Statutory Authority.

Specific: A.R.S. §§ 3-3606 and 3-3621(C)(7) through (C)(10)

2. Objective.

This rule provides detail regarding the notice that an applicator must provide to a customer of pest management services.
R4-29-307. Performing a Wood-destroying Insect Inspection

1. Statutory Authority.

Specific: A.R.S. § 3-3633

2. Objective.

This rule specifies who may perform a wood-destroying insect inspection; areas required to be inspected for wood-destroying insects; the conditions that are conducive to infestation; when a supplemental inspection is appropriate; that all structures must be noted on the inspection report but not all structures need be inspected; and that a report must be completed and submitted to PMD.

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

1. Statutory Authority.

Specific: A.R.S. §§ 3-3631 and 3-3632

2. Objective.

This rule specifies who may perform wood-destroying insect control and requirements for pretreatment, new-construction treatment, and post-construction treatment of commercial or residential construction.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes replacing the word “treatment” with “drill” in R4-29-308(I) would further clarify the expectation that applicators patch all holes drilled during a pest management service rather than only those injected with pesticide.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-309. Termite Warranties and Retreatments

2. Objective.

This rule specifies requirements for providing warranties for subterranean termite treatments and for performing retreatments when infestations occur after initial pretreatments and new-construction treatments.

R4-29-310. Business Management

1. Statutory Authority.

Specific: A.R.S. § 3-3615
2. **Objective.**
   
   This rule provides additional clarification and requirements for business licensees related to financial responsibility and the display of the business name and license number.

**ARTICLE 4. SUPERVISION**

**R4-29-401. Supervising an Applicator**

1. **Statutory Authority.**
   
   Specific: A.R.S. § 3-3622

2. **Objective.**
   
   This rule clarifies actions that must be performed by qualified parties and business licensees to comply with their responsibility to properly train, equip, and supervise their applicators.

**R4-29-402. Qualifying a Business or School District**

1. **Statutory Authority.**
   
   Specific: A.R.S. §§ 3-3612(B) and 3-3616

2. **Objective.**
   
   This rule requires business licensees and school districts to employ a qualifying party in each category that the business licensee or school district works; generally prohibits a qualifying party from qualifying more than one business or school district; gives the Director discretion to allow a qualifying party to qualify multiple school districts; and prohibits a qualifying party from qualifying a business or school district in a category in which he or she is not registered.

**R4-29-403. Qualifying Party Management**

1. **Statutory Authority.**
   
   Specific: A.R.S. §§ 3-3612(B) and 3-3616

2. **Objective.**
   
   This rule specifies the actions and oversight required of qualifying party to ensure appropriate management of the business or school district’s pest management activities.

**R4-29-404. Branch Supervisors**

1. **Statutory Authority.**
   
   Specific: A.R.S. § 3-3617(B)

2. **Objective.**
This rule requires branch supervisors to perform the management duties of a qualified party at their branch with certain exceptions.

R4-29-405. Supervision of Qualifying Party

1. Statutory Authority.
   Specific: A.R.S. § 3-3616

2. Objective.
   This rule requires business licensees and school districts to provide their qualifying parties with the resources needed to comply with PMD laws.

R4-29-406. Responsible Individuals

1. Statutory Authority.
   Specific: A.R.S. §§ 3-3612(A)

2. Objective.
   This rule establishes compliance expectations for political subdivisions’ responsible individuals.

R4-29-407. Joint Responsibility

1. Statutory Authority.
   Specific: A.R.S. § 3-3622

2. Objective.
   This rule provides additional clarification of the requirement that qualified parties and business properly train, equip, and supervise their applicators.

ARTICLE 5. RECORDKEEPING AND REPORTING

R4-29-501. Applicator Recordkeeping

1. Statutory Authority.
   Specific: A.R.S. § 3-3624(B)(15)

2. Objective.
   This rule establishes minimum standards for the various records that an applicator is required to maintain.

The rules is generally consistent with the other rules in this chapter and with PMD statutes: A.R.S. Title 3, Chapter 20. R4-29-306(A)(2) requires notices to customers to include the “[s]pecific site to which a pesticide was applied.” R4-29-501(A)(2) requires applicators to maintain records including the “[s]pecific site at which a pesticide was applied.” PMD believes it would be more consistent for both rules to state “[s]pecific site to which a pesticide was applied.”

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes amending the rule to state “[s]pecific site to which a pesticide was applied” would improve the clarity of the rule by eliminating any appearance of inconsistency. PMD believes “to” is the better word because the agency expects applicators to be specific in describing where pesticide is applied. For example, a proper record would indicate “north wall of second bedroom,” whereas indicating “house” or “bedroom” would not adequately specify where the application was made.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-502. Qualifying Party Recordkeeping

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(15)

2. Objective.

This rule establishes additional records that a qualifying party is required to maintain regarding the training, supervision, and equipping of applicators.

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

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(15)

2. Objective.

This rule establishes additional records that business licensees and political subdivisions are required to maintain regarding their pest management activities.

R4-29-504. Reporting Incidents and Bulk Releases

2. Objective.

This rule requires business licensees and political subdivisions to notify PMD when pesticide incidents result in death or illness, contamination, or evacuation. Qualified parties are required to notify PMD if the business licensee or School District does not. The rule also requires business licensees and political subdivisions to notify PMD when there is a bulk release of pesticide and to notify the
Department of Public Safety if the release occurs on a public highway or railway. Qualified parties are required to notify PMD if the business licensee or School District does not.

R4-29-505. Groundwater Protection List Reporting

2. Objective.

This rule requires qualified parties and political subdivisions to make quarterly reports of their soil-applied pesticide applications for groundwater protection research.

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

R4-29-601. Inspection of Licensee Records

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(4)

2. Objective.

PMD often requests records from licensees during investigations. This rule clarifies what actions of licensees are required to comply with a request for production of records from PMD.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable; however, PMD believes there could be some conflict between the 24 requirements listed in statute and rule. PMD believes that removing the “within 24 hours” language from the rule would eliminate the conflict.


PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor’s moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-602. Compliance with PMD Monitoring

1. Statutory Authority.

Specific: A.R.S. § 3-3603(D)

2. Objective.

PMD often monitors pesticide applications during investigations. This rule clarifies what actions of licensees are required to comply with a request for a list of future applications from PMD.

R4-29-603. Corrective Work Orders

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(10)
2. Objective.

This rule provides additional detail on the requirements for complying with a corrective work order.

R4-29-604. Disciplinary Action

1. Statutory Authority.

Specific: A.R.S. § 3-3621

2. Objective.

This rule provides notice of factors that the Director may consider when exercising his or her discretion to take disciplinary action against a licensee.

R4-29-605. Consent Agreements

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(17)

2. Objective.

This rule establishes PMD's procedure for entering into a consent agreement with a licensee.

R4-29-606. Penalties

1. Statutory Authority.

Specific: A.R.S. § 3-3621(A)(5)

2. Objective.

This rule establishes the procedure for assessing civil penalties for violations.
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I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Arizona Agricultural Employment Relations Board rules listed under A.A.C. Title 4, Chapter 2 is due December 30, 2016.

The Agricultural Employment Relations Board was re-established to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.
II. Information That Is Identical For All Rules

3. Effectiveness.

The rules are effective in meeting their respective objectives.

5. Enforcement.

The rules are enforced as written.

6. Clarity, Conciseness and Understandability.

The Board believes the rules are clear, concise, and easy to understand.

7. Written Criticisms & Public Comment.

The Board has not received any written criticisms of the current rules that are in place. The board has received verbal comment expressing the importance of these rules. Jim Klinker of the Arizona Farm Bureau, was present at the Boards February 8, 2017 and March 28, 2017 meeting; during public comment, Mr. Klinker explained the history of Agricultural Labor Relation Act and emphasized the importance of these rules. He expressed concern with some of the recommendations made by the GRRC Staff Attorney. Additionally, Shelly Tunis, representing Yuma Fresh Vegetable Association, was present at both meetings and stressed the importance of considering the intent of the Agricultural Labor Relations Act and why it is different from the National Labor Relations Act. She also expressed concern about the recommendations made by the Staff Attorney.


The economic impact of the rules has not differed significantly from that projected in the economic impact statement prepared in 2003, when these rules were last amended. However, it is worth noting that recent reports show that Arizona’s Agricultural industry has grown to over $17 billion rather than the $6.3 billion indicated in the 2003 Economic Impact Statement. While the industry has been fortunate not to have a labor dispute over the past 5 years, the increased value of the industry adds to the importance of having the Agricultural Employment Relations Board in place in the event a labor dispute arises.


No analysis was submitted.

10. Completion of Previous Five-Year Review.

A previous 5 year review was completed in 2012. The previous review did not identify any action to be taken.
11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

The Board believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

The Board’s statutes and rules are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction, See 29 U.S.C.A. § 152(3). The Arizona Legislature authorized the Agricultural Employment Relations Board to cover “persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.” Ariz. Rev. Stat. Ann. § 23-1394. Aside from covering an industry that is specifically excluded by the corresponding Federal Law, these rules are not more stringent than those Federal Laws.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

These rules comply with A.R.S. § 41-1037.


The GRRC Staff Attorney identified some areas which could improve the rule as a whole. Most of these recommendations are minor technical changes that the Board does not believe warrant a formal rulemaking. However, the Board recognizes that R4-2-102(A) implements requirements for using picket signs with the intent of preventing the unfair labor practice of secondary boycotting. These requirements could be viewed as a violation of free speech. The Board intends to continue to research this legal issue to see how best to address this rule. If a rulemaking is necessary, the board intends to review and incorporate the additional changes recommended by the GRRC Staff Attorney.
Information that is different for each Article

Article 1

1. **Statutory authority**

All of the rules are authorized by A.R.S. § 23-1387(B).

In addition, R4-2-102 is authorized by A.R.S. § 23-1385(B)(6), R4-2-103 is authorized by A.R.S. §§ 23-1389 & 23-1390, R4-2-104 is authorized by A.R.S. § 23-1390(C), and R4-2-105 is authorized by A.R.S. §§ 23-1389 & 23-1390.

2. **Objective**

R4-2-101. **Terms, Definitions**

This rule sets forth the definition of particular terms used within Chapter 2.

R4-2-102. ** Strikes**

This rule distinguishes agricultural employers from neutral third parties during a strike, and prohibits secondary boycotts and strikes.

R4-2-103. **Notice of Appearance, Signing of Pleadings and Documents; Filing of Documents**

This rule establishes the procedure for a person to be recognized as representing a party and the process by which documents are deemed filed.

R4-2-104. **Service of Process and Legal Documents**

This rule establishes the procedure for service of process and legal documents.

R4-2-105. **Computation of Time**

This rule prescribes the method to compute periods of time prescribed by this Chapter.

4. **Consistency**

Rules R4-2-101 through R4-2-105 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 23-1381 et seq.
Arizona Rules of Civil Procedure, Rules 5(c)(1), 5.1(a)(1), 6(a) & 11(a)
Information that is different for each Article

Article 2

1. Statutory authority

General: A.R.S. § 23-1387(B).


2. Objective

R4-2-201. Contents of Petition for Election

This rule prescribes the contents of a petition for an election to certify or decertify a labor union.

R4-2-202. Withdrawal of Petition

This rule establishes the procedure to use to withdraw a petition.

R4-2-203. Challenge to Petition; Waiver

This rule prescribes the response of the Board if a challenge is filed. The rule also requires a respondent to file a timely challenge to the petition, or it is deemed waived.

R4-2-204. Investigation of Petition

This rule prescribes the procedure by which the Board investigates a petition to determine if a question of representation exists as well as the confidentiality requirements that apply.

R4-2-205. Time for Submission of Authorizations

This rule prescribes the time for filing authorizations and the timing of when additional authorizations must be signed.

R4-2-206. Form and Content of Authorizations

This rule establishes the form and content of authorizations.

R4-2-207. Validity of Authorizations

This rule establishes the requirements for an authorization to be deemed valid.
R4-2-208. Confidentiality of Authorizations

This rule establishes the confidentiality of authorizations.

R4-2-209. Showing of Interest Computation

This rule regulates which employees are counted when computing a showing of interest for an election to be held.

R4-2-210. Existence of a Question of Representation

This rule establishes the minimum percentage of workers necessary to determine that a question of representation exists.

R4-2-211. Notice of Hearing

This rule requires the Board to issue a Notice of Hearing whenever there is a question of representation following a petition for election. The rule also allows any person to request the Board to be personally notified whenever a Notice of Hearing is issued.

R4-2-212. Intervention by a Subsequent Labor Organization

This rule establishes the procedures for a second labor organization to try to get on an election ballot.

R4-2-213. Peak Employment During Eligibility Period and Election

This rule establishes the criteria for a Hearing Officer to determine if a bargaining unit is at peak and when an election can be held.

R4-2-214. Election Procedures

This rule prescribes voting rights, the use of observers, challenges to ballots, and vote counting.

R4-2-215. Objections to Election

This rule establishes the process by which challenges to the election are brought to the Board and the subsequent duties of the Board.

R4-2-216. Investigation of Objections to Election

This rule details the actions the Board may take as a result of investigating objections to the election, including setting the matter for a hearing.
R4-2-217. Run-off Elections

This rule prescribes the process under which a run-off election is held, and the remedies available upon conclusion of the run-off election.

R4-2-218. Consent-election Agreements

This rule permits an agricultural employer and a union to enter into an agreement setting forth how the election will be held and who will vote.

4. Consistency

Rules R4-2-201 through R4-2-218 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 23-1389
Information that is different for each Article

Article 3

1. **Statutory authority**

   General: A.R.S. § 23-1387(B).


2. **Objective**

   R4-2-301. Unfair Labor Practice Charges

   This rule prescribes who may make an unfair labor practice charge and ability to withdraw the charge.

   R4-2-302. Form and Contents of Charge

   This rule establishes the form and content of an unfair labor practice charge.

   R4-2-303. Investigation of Charge

   This rule instructs the Board to serve a charge on the charged party, instructs the General Counsel to perform a preliminary investigation, lists the General Counsel’s options for proceeding following the preliminary investigation, and makes investigative documents confidential.

   R4-2-304. Complaint

   This rule prescribes the procedures followed by the General Counsel to issue, or withdraw, a formal complaint.

   R4-2-305. Refusal to Issue Complaint

   This rule establishes the right of the General Counsel to refuse to issue or withdraw a complaint, the charging party’s right to request reconsideration of the decision, and the General Counsel’s right to issue or reissue a complaint after refusing to issue or withdrawing it.

4. **Consistency**

   Rules R4-2-301 through R4-2-305 are consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 23-1390 & 23-1391
Information that is different for each Article

Article 4

1. **Statutory authority**

   General: A.R.S. § 23-1387(B).

   Specific: A.R.S. §§ 23-1387(B), 23-1389(C), 23-1390(B) & 41-1092.02(A).

2. **Objective**

   R4-2-401. Hearings

   This rule indicates that the Board will use A.R.S. § 41-1092 et seq. to conduct administrative hearings.

   R4-2-407. Rehearing

   This rule sets out the bases for the Board to grant a rehearing and the procedure for granting a rehearing.

4. **Consistency**

   Rules R4-2-401 and R4-2-407 are consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 41-1092.02(A) & 41-1092.09
   Arizona Rule of Civil Procedure, Rule 59(a)
Overview:

The Agricultural Employment Relations Board was re-established by the Arizona State Legislature in 1993 as a result of Laws 1993, Chapter 139 to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

The Board’s statutes are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction.

The Legislature recognized a balance between agricultural labor and employers was essential and thus created a Board with two labor representatives, two employer representatives, and three public representatives. The mandated balance of the Board precludes dominance by either labor or employers. The creation of the Board also declared that employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and the terms and conditions of employment.

The establishment of the Board recognized that, while the right to strike is a basic right of organized labor, “such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly.” (A.R.S. § 23-1381)

By establishing the Board, the Legislature declared that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest.
Arizona’s agriculture industry was credited in 1993, the most recent year for which statistics are available, as being a $6.3 billion industry. The perishable and seasonal nature of much of Arizona’s agriculture industry makes it incredibly vulnerable to irreparable harm should a strike take place without the oversight of the Board.

A. The Agricultural Employment Relations Board.

The Board will use the rules of the Office of Administrative Hearings (OAH) when holding a hearing at the Board, or may choose to assign a matter to the OAH. The Board will be responsible for the costs incurred for hearings held through the OAH. Based on experience this expense is expected to be negligible.

During the past five years, no hearings have been necessary, and one election was held.

The Board will incur modest expenses related to educating the regulated community on the amendments.

B. Political Subdivision.

The implementation of this rulemaking will directly affect the caseload of the Office of Administrative Hearings, but to a very minimal extent.

C. Businesses Directly Affected By the Rulemaking.

The regulated community the Board serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

D. Private and Public Employment

Private employment in the agriculture industry is protected by the implementation of these rules ensuring labor the right to organize and to be protected from the potential of unfair labor practices.

Public employment is not directly affected by the implementation and enforcement of this rulemaking.
E. *Consumers and the Public.*

Consumers and the public are indirectly affected by the implementation and enforcement of this rulemaking. It is in the best interest of the consumer for food production to be uninterrupted by a prolonged and costly labor dispute. Consumer pricing and the availability of food product is in part dependent upon peaceful labor and management relationships.

F. *State Revenue.*

This rulemaking will have no impact on state revenue.
February 21, 2017

Nicole A. Ong
ADOA-Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong,

Attached is the Department of Agriculture, Weights and Measures Services Division Five-Year-Review Report. As you may be aware, effective July 1, 2016, the Arizona Department of Weights and Measures was transferred to the Department of Agriculture. This Five-Year-Rule report is for the Department of Weights and Measures Title 20, Chapter 2, which is currently under the Department of Agriculture Title 3, Chapter 7.

The Department has reviewed all of the rules except R3-7-605. The Department does not intend for any rules except R3-7-605 to expire under A.R.S. §41-1056(1). This office certifies it is in compliance with A.R.S. §41-1091.

Please contact Michelle Wilson, Associate Director, Weights and Measures Services Division, at (602) 771-4933 or mwilson@azda.gov with any questions or concerns regarding this report.

Sincerely,

Mark W. Killian
Director
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I. Introduction

Under A.R.S.§ 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Weights and Measures Services Division's ("Division") (formerly Department of Weights and Measures) rules listed under A.A.C. Title 3, Chapter 7 is due February 28, 2017.

The Division promotes equity and fairness in Arizona commerce involving weighing or measuring for commercial purposes. This is done by regulating and supporting businesses in a manner that protects both the buyer and sellers interests. The Division also protects air quality through the implementation of two air quality programs: a vapor recovery program at gas stations and a cleaner-burning gasoline (CBG) program. The Division carries out this mission through licensing and testing weighing and measuring devices, maintaining the State standards of weight and measure based Federal standards, and licensing and calibration of service technicians responsible for calibrating the devices. Additionally, we license vapor recovery testers, entities regulated under the CBG program, and conduct inspections to verify that air quality standards are met.

Statute designates the Director of the Arizona Department of Agriculture (ADA) as the head of the Division and designates the Associate Director with authority over and responsibility for enforcing the Division's requirements.
II. Information Identical For All Rules

1. Statutory Authority

All of the rules are generally authorized by A.R.S. § 3-3414(A)(4), which provides the Division with authority to make rules necessary to carry out A.R.S. Title 3, Chapter 19 and reasonable rules to enforce the Chapter. Additional authority is identified under the analysis of the rules below.

3. Effectiveness of the rules

Unless otherwise stated in this report, the Division believes the rules effectively achieve their objectives.

4. Consistency with statutes and other rules

The Division determined that there are some inconsistencies that exist based on recently passed legislation and a few minor inconsistencies, which are noted in the discussion of individual rules. As discussed in more detail in sections 7 and 11, the Division has been working with stakeholders to streamline and update rules, which addresses the inconsistencies identified.

5. Agency enforcement policy

The Division enforces the rules to the extent that they are consistent with the statutes.

6. Clarity, conciseness, and understandability of the rules

The Division determined that except for a few minor inconsistencies, which are noted in the discussion of individual rules, the rules are clear, concise, and understandable.

7. Written criticisms regarding the rules received during the last five years

The Division began holding stakeholder meetings in July 2014 to gain stakeholder feedback to update and streamline the biofuel and general fuel quality rules. In early
2015, prior to the transition of the Department of Weights and Measures to the Department of Agriculture, workshops were held to solicit feedback regarding all rules. Following the transition to the Department of Agriculture, additional workshops were held to further these efforts and to complete this rulemaking effort. While most of the feedback provided centers around technical requirements related to biofuels and fuel quality, there are recommended updates to streamline the hearing process, price posting requirements, weighmaster requirements, and transition to the Department of Agriculture that have been incorporated into statute. The Division has considered the feedback provided and anticipates submittal of a proposed rule to the Secretary of State soon. A copy of the draft rules which are being finalized for submittal to the Secretary of State are included in Appendix A. A copy of written comments received in response to stakeholder workshops are included in Appendix B.

8. Economic, small business, and consumer impact comparison

The Division believes the economic, small business, and consumer impact statement prepared on the last making of each rule was accurate and complete.

2015 Rulemaking (21 A.A.R. 1693)


This rulemaking established the requirements for decommissioning stage II vapor recovery systems at gasoline dispensing sites and requirements for remaining Stage I vapor recovery systems. When this rulemaking was done, the Division estimated there would be a one-time up-front cost to decommission the stage II vapor recovery systems that would be offset in future years due to reduced costs from no longer needing to purchase and maintain the systems. Stage II decommissioning began at gasoline dispensing sites on October 1, 2016. To date, 373 stations have been
decommissioned. There are a total of approximately 1,060 stations that will need to decommission in accordance with the requirements by no later than September 30, 2018.

The Department has found these rules to be clear and effective for implementation of the new decommissioning program and has received comments from the regulated community that the program is working successfully. In the draft proposed rules, we are making one update to match current practices that allows continued flexibility to gasoline station owners that would like to change the year in which they decommission site equipment. This change allows flexibility to station owners to remove equipment sooner or later depending on budgetary needs or remove high-maintenance equipment sooner to avoid additional costs without impacting the overall program or air quality goals.

2013 Rulemaking (19 A.A.R. 3325)

The rules last made in this rulemaking are R20-2-708, R20-2-709, R20-2-718, R20-2-751, and R20-2-752, and Table A.

This rulemaking corrected a minor clerical corrections and a technical correction related to a correlation equation in a test method used by refiners to certify cleaner burning gasoline. When this rulemaking was done, the Division estimated it would have minimal economic impact because refiners were already using the correct equation to comply with federal and state law.

9. Any analysis submitted that compares the rule's impact. 
No analysis has been submitted.

10. The agency's progress toward completing the needed actions identified in the previous SYRR. 
Minor problems with consistency and clarity were identified during the last 5 year rule review. The rules have been clarified during previous rulemakings. 
Additionally, the Division has held several workshops to perform significant updates to
the rules which are anticipated to be done in 2017. These updates will incorporate changes to improve consistency and clarity.

11. A determination that the rule imposes the least burden and costs to regulated persons including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

The Division believes that once the changes indicated in this report are implemented, the rules will impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, which is to protect the public and environment and encourage economic growth.

To protect the public, the Division is required to license commercial devices, public and deputy weighmasters, and registered service agencies and registered service representatives. To obtain a license, it is necessary to comply with the procedures established in rule.

The Division uses inspections and enforcement actions to protect the public and environment. Those subject to the Division's oversight incur the minimal expense of allowing an inspection. Civil penalties can be avoided by complying with required standards.

The rules contain some paperwork requirements. For example, a public or deputy weighmaster is required to maintain weight certificates and those who transfer custody or title to a motor fuel are required to maintain product transfer documents. There are also registration and reporting requirements regarding production, transportation, distribution, and sale of biofuels, which are designed to protect the public and environment. Many of the paperwork required is reported online to make reporting and recordkeeping easier for the regulated community.
The Department has been working with stakeholders to streamline and reduce the regulatory burden on regulated entities. Based on feedback from stakeholders, the Department will be proposing rules to reduce the regulatory burden in several areas. Examples include removing requirements for deputy public weighmasters to take and pass examinations, reduction of biofuel reporting, sampling, and stringent quality control plan approval, allowance of electronic signature and seals on weighmaster weight tickets, modification of enforcement requirements to allow discretion for issuance of reduced civil penalties, and removal of deadline requirements for requesting alternate vapor recovery decommissioning dates.

12. Determination that Rules are not more Stringent than Corresponding Federal Law.

The Division has received a comment from Musket Corporation that portions of R3-7-718 are more stringent than other states. While there is not a corresponding federal law, we are aware that these requirements are stringent and have been working with stakeholders to streamline the requirements while continuing to comply with the statutory requirements in ARS 3-3433(M) and protect consumers. Proposed updates to these rules are included in Appendix A.

In November 2010 and January 2011, the Environmental Protection Agency issued partial waivers allowing the use of gasoline containing 10 to 15 percent by volume of ethanol (commonly referred to as E15). The current rules prohibit the sale of gasoline containing greater than 4.0 weight percent oxygen or 10 volume percent ethanol. In the proposed rulemaking (Appendix A), the Division is removing these limitations and clarifying that E15 may be sold in areas outside of the cleaner-burning gasoline (CBG)-covered area. The CBG covered area will continue to require gasoline containing 10 volume percent ethanol in the winter and no more than 10 volume percent ethanol in the summer as required by the statutes and rules that are part of the federally-enforced State Implementation Plan approved by EPA.

The Division permits and licenses comply with A.R.S. § 41-1037. The only rule which meets this criteria is R3-7-601 (previously R20-2-601), Qualifications; License and Renewal Application Process. This rule’s amendment became effective October 9, 2010 and updated the requirements for third-party registered service agencies (RSA) to obtain a license; however, this is a general permit so it satisfies the requirements of A.R.S. § 41-1037.

14. Proposed action

On April 5, 2017, the Division filed a Notice of Proposed Rulemaking with the Secretary of State’s Office. The rulemaking is intended to update the rules with respect to the transition from the Arizona Department of Weights and Measures to the Department of Agriculture and to streamline and clarify rules as discussed under previous sections and included in Appendix A. The Division intends to finalize this rulemaking by the end of 2017.
III. Information That Is Different For Each Rule

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions
1. Authorization
   This rule is authorized by A.R.S. § 3-3414(A)(4) and addresses all of A.R.S. Title 3, Chapter 19.
2. Objective
   The objective of this rule is to make the rules clear and understandable by defining terms used in rule and statute.

R3-7-102. Metrology Laboratory Testing and Calibration Fees
1. Authorization
   This rule is authorized by A.R.S. § 3-3416(H).
2. Objective
   The objective of this rule is to specify the fees charged by the Division for services provided by the State Metrology Laboratory.

R3-7-103. Licensing and Fees
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3451(B), 3-3452(A), 3-3453(B), and 3-3454(C)(5).
2. Objective
   The objective of this rule is to provide needed detail about enforcement of the fees established in statute for licensing a commercial device, public or deputy weighmaster, registered service agency, or registered service representative.

R3-7-104. Administrative Enforcement Action
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414, 3-3415, and 3-3475.
2. **Objective**
The objective of this rule is to specify standards for progressive enforcement actions taken by the Division for a violation of statute or rule regarding commercial devices, vapor recovery systems, fuel quality and labeling, packaging, price verification and posting, weighmasters, and registered service agencies and representatives.

**R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct**

1. **Authorization**
   This rule is authorized by A.R.S. § 41-1073.

2. **Objective**
The objective of this rule is to specify the maximum time-frames within which the Division will act on a license application.

**R3-7-109. Administrative Hearing Procedures**

1. **Authorization**
   This rule is authorized by A.R.S. § 41-1092 et seq.

2. **Objective**
The objective of this rule is to specify that the Division conducts hearings using the procedures set forth in the Arizona Administrative Procedure Act.

**R3-7-110. Motion for Rehearing or Review**

1. **Authorization**
   This rule is authorized by A.R.S. § 41-1092.09.

2. **Objective**
The objective of this rule is to specify the procedure for making a motion for rehearing or review of a Division decision, the grounds on which the Division will grant a motion, and the procedure the Division uses to act on a motion for rehearing or review.
Table 1.  Time-frames

1.  **Authorization**
   This rule is authorized by A.R.S. § 41-1073.

2.  **Objective**
   The objective of this rule is to set out in table form the maximum time-frames within which the Division acts on a license application and the time an applicant has to respond to a request for additional information.

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201.  Licensing Process

1.  **Authorization**
   This rule is authorized by A.R.S. § 3-3451(B).

2.  **Objective**
   The objective of this rule is to provide detail regarding the statutory requirement that a commercial device be licensed and the information required to be on a license application.

R3-7-203.  Approval, Installation, and Sale of Devices

1.  **Authorization**
   This rule is authorized by A.R.S.§ 3-3413.

2.  **Objective**
   The objective of this rule is to establish the specifications, tolerances, and other technical requirements a commercial device must meet and to provide an exception for commercial devices installed or placed in use before January 1, 1975. The rule also requires that a remanufactured commercial device be marked as remanufactured. All commercial devices used in this state are required to be NTEP (National Type Evaluation Program) or CTEP (California Type Evaluation Program) approved.
R3-7-204. **Livestock and Vehicle Scale Installation**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3413.

2. **Objective**
   The objective of this rule is to set forth the specifications, tolerances, and other technical requirements in Handbook 44 applicable to vehicle and livestock scales and add requirements not specified in Handbook 44.

**ARTICLE 3. PACKAGING, LABELING AND METHOD OF SALE**

R3-7-302. **Handbook 130 and 133**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(7) and (A)(18) and 3-3431.

2. **Objective**
   The objective of this rule is to require a retail seller to comply with the packaging, labeling, and method of sale requirements in Handbook 130 and to require that packaged commodities are weighed, measured, and inspected using sampling and testing procedures in Handbook 133. The rule also requires a retail seller to ensure that the price of each item purchased is displayed to the purchaser at the check-out location. The rule also specifies labeling requirements for nurseries.

**ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING**

R3-7-402. **Price-posting Inspection Procedure and Violation Exceptions**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3414(A)(4), § 3-3431(F)(4).

2. **Objective**
   The objective of this rule is to provide information regarding how the Division chooses sample items for a price-posting inspection and provides guidance regarding what is and is not a price-posting violation.
3. **Consistency with statutes and other rules**

HB 2171, signed by the Governor on May 12, 2016, removed requirements under A.R.S. 3-3431(M) and (N) regarding price posting for packages available for sale only with the assistance of a salesperson at a service counter. This is being addressed in the proposed rulemaking currently underway.

**ARTICLE 5. PUBLIC WEIGHMASTERS**

**R3-7-501. Qualifications; License and Renewal Application Process**

1. **Authorization**
   
   This rule is authorized by A.R.S. § 3-3453.

2. **Objective**
   
   The objective of this rule is to specify the qualifications to be licensed as a public weighmaster or deputy public weighmaster and the procedure for applying for a license or license renewal.

3. **Consistency with statutes and other rules**
   
   HB 2171, signed by the Governor on May 12, 2016, streamlined weighmaster requirements under A.R.S. 3-3453(A)(4) and (D) to allow the agency to waive the examination for Deputy Weighmasters and require training provided by the Public Weighmaster. This is being updated in the proposed rulemaking currently underway as part of our efforts to streamline and modernize the rules.

**R3-7-502. Duties**

1. **Authorization**
   
   This rule is authorized by A.R.S. § 3-3453.

2. **Objective**
   
   The objective of this rule is to specify the duties of a public weighmaster.

**R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action**

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414, 3-3453 and 3-3472.
2. Objective
The objective of this rule is to specify the grounds on which the Division may deny a public weighmaster license or impose discipline on a public weighmaster.

R3-7-504. Scales and Vehicle Weighing
1. Authorization
This rule is authorized by A.R.S. §§ 3-3413, 3-3451, and 3-3453.
2. Objective
The objective of this rule is to describe the manner in which a legal weight determination is made and to indicate that the owner or user of a weighing device is responsible for the accuracy of the device and that device must be licensed by the Division.

R3-7-505. Weight Certificates
1. Authorization
This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3453.
2. Objective
The objective of this rule is to specify the information required on a weight certificate, the procedure for issuing a weight certificate, and the time that a weighmaster is required to maintain a copy of weight certificates issued.

R3-7-506. Seal of Authority
1. Authorization
This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3453.
2. Objective
The objective of this rule is to specify proper use by a public weighmaster of a seal of authority to certify weight certificates.

R3-7-507. Prohibited Acts
1. Authorization
This rule is authorized by A.R.S. § 3-3453.
2. **Objective**
   The objective of this rule is to specify prohibited acts regarding public weighing and weight certificates.

**ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES**

**RJ-7-601. Qualifications; License and Renewal Application Process**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454, and 3-3471.

2. **Objective**
   The objective of this rule is to specify the information that must be provided in an application for a license as a registered service agency (RSA), third-party registered service agency, or registered service representative (RSR). The rule also specifies the examination requirement for licensure as a registered service representative, distinguishes between a RSR no. 1 and no. 2, and specifies the specific materials and knowledge that RSRs must possess.

**RJ-7-602. Duties**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454(H), and 3-3471.

2. **Objective**
   The objective of this rule is to specify the responsibilities of a registered service agency and a registered service representative regarding certifying commercial devices; performing vapor recovery tests; completing, submitting, and retaining placed-in-service reports and associated documents; and using and maintaining testing equipment.

**RJ-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454, and 3-3472.
2. **Objective**
   The objective of this rule is to specify the grounds for denying a license or renewal of a license to a registered service agency or registered service representative. The rule also indicates that disciplinary action may be taken against a registered service representative or registered service agency licensee that is not qualified or that violates statute or rule.

**R3-7-604. Prohibited Acts**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454(A), and 3-3471.

2. **Objective**
   The objective of this rule is to protect the public by reiterating that a license is required to act as a registered service agency or registered service representative and specifying acts that are prohibited for a registered service agency or registered service representative.

**R3-7-701. Definitions**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(4) and (14).

2. **Objective**
   The objective of this rule is to make the rules regarding motor fuels clear and understandable by defining terms used in rule and statute.

3. **Consistency with statutes and other rules**
   HB 2171, signed by the Governor May 12, 2016, updated several fuel-related definitions under A.R.S. 3-3401, including biodiesel, E85, gasoline, and motor fuel. These definitions are being updated in the proposed rulemaking currently underway.
ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-702. Material Incorporated by Reference
1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433(C).
2. **Objective**
   The objective of this rule is to incorporate by reference national standards and test methods for motor fuel and blending components. It also adopts emission models for use in certifying CBG (Cleaner Burning Gasoline).
3. **Consistency with statutes and other rules**
   This rule neglects to include all stage I, some stage II, and some most recent California Air Resources Board Executive Orders. A.R.S. 3-3512(A) and 3-3515(A) allow the use of equipment certified by (CARB) either as of or after March 31, 2001. Since the statute clearly states the approved equipment, this rule is outdated and is proposed for deletion in the proposed rulemaking currently underway.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
1. **Authorization**
   This rule is authorized by A.R.S. § 3-3414(A)(4).
2. **Objective**
   The objective of this rule is to specify that the Division shall return to the owner or operator of a motor fuel dispensing site any motor fuel collected from the site during an inspection.
3. **Consistency with statutes and other rules**
   The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.
R3-7-704. Price and Grade Posting on External Signs

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3431(C) and (J) and 3-3433(B).

2. **Objective**
   The objective of this rule is to protect the public by establishing standards for the price and grade posting on an external sign that the owner or operator is required to have at a motor fuel dispensing site.

3. **Consistency with statutes and other rules**
   The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

R3-7-705. Price, Octane, and Lead Substitute Notification on Dispensers

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(7), 3-3431(C) and (J), and 3-3433(A) and (B).

2. **Objective**
   The objective of this rule is to protect the public by establishing standards for the display of price, octane, and lead-substitute notices that an owner or operator is required to post on a motor fuel dispenser at a motor fuel dispensing site.

3. **Consistency with statutes and other rules**
   The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

R3-7-706. Unattended Retail Dispensers

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3433(B).
2. **Objective**
The objective of this rule is to require the owner or operator of an unstaffed motor fuel dispensing site to conspicuously display information needed to contact the owner or operator.

3. **Consistency with statutes and other rules**
The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

**RJ-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB**

1. **Authorization**
This rule is authorized by A.R.S. § 3-3433(B), (0), and (P).

2. **Objective**
The objective of this rule is to facilitate tracking of the transfer of motor fuel other than Arizona CBG and AZRBOB by establishing information that must appear on the product transfer documents and recordkeeping and to establish recordkeeping requirements.

3. **Consistency with statutes and other rules**
HB 2171, signed by the Governor May 12, 2016, removed requirements under A.R.S. 3-3433(L) for labeling the biodiesel content in diesel fuel if it is five percent or less and modified requirements under A.R.S. 3-3433(P) for the final destination inclusion on product transfer documents. This is being updated in the proposed rulemaking currently underway.

**RJ-7-708. Gasoline Ethanol Blends**

1. **Authorization**
This rule is authorized by A.R.S. §§ 3-3414(D), 3-3491, 3-3492, and 3-3495.
2. **Objective**
The objective of this rule is to establish the maximum amount of ethanol that may be in a gasoline oxygenate blend and standards for oxygenate blends. The rule incorporates the EPA waiver under the Clean Air Act regarding oxygenate.

**RJ-7-709. Retail Oxygenated Fuel Labeling**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3414(A)(16).

2. **Objective**
The objective of this rule is to protect the public by requiring that motor fuel dispensers be labeled with information regarding the amount of oxygenate in the motor fuel dispensed. The rule specifies the size and color of the label as well as information required regarding the oxygenate.

**RJ-7-710. Blending Requirements**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3491.

2. **Objective**
The objective of this rule is to establish a manner in which the owner or operator of a motor fuel dispensing site can blend a non-compliant oxygenated gasoline into compliance.

**RJ-7-711. Alcohol-oxygenated Gasoline Storage Tank Requirements**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3414(A)(4).

2. **Objective**
The objective of this rule is to protect the public by requiring that steps be taken to ensure that water is not in alcohol-oxygenated gasoline including what is required of an owner or operator when water is detected.
RJ-7-712.  Water in Service Station Motor Fuel Storage Tanks

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3433(A) and (B).

2. **Objective**
   
   The objective of this rule is to specify the maximum amount of water that may be present in a motor fuel storage tank when oxygenated gasoline is not present.

3. **Consistency with statutes and other rules**
   
   Both the heading of this Section and the rule text use the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

RJ-7-713.  Motor Fuel Storage Tank Labeling

1. **Authorization**
   
   This rule is authorized by A.R.S. § 3-3414(A)(7).

2. **Objective**
   
   The objective of this rule is to protect the public by requiring the owner or operator of a motor fuel dispensing site to label the content of motor fuel storage tank fill pipes and gasoline vapor return lines accurately. This requirement reduces the potential for putting the wrong fuel in a tank.

3. **Consistency with statutes and other rules**
   
   HB 2171, signed by the Governor May 12, 2016, updated the term "E85" to "Ethanol Flex Fuel" under A.R.S. 3-3401. This is being updated in the proposed rulemaking currently underway.

RJ-7-714.  Requirements for Motor Fuels Other than Arizona CBG

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(D), 3-3433(G) and 3-3495.

2. **Objective**
   
   The objective of this rule is to provide specifications for motor fuel sold outside the CBG-covered area, set forth requirements for certifying the octane of
gasoline, and prohibit the sale of anything that is not motor fuel from a motor fuel storage tank.

RJ-7-715. Motor Fuel Quality Testing Methods and Requirements
1. Authorization
   This rule is authorized by A.R.S. § 3-3414(D).
2. Objective
   The objective of this rule is to specify quality testing methods and requirements for determining motor fuel properties and compliance.

RJ-7-716. Sampling and Access to Records
1. Authorization
   This rule is authorized by A.R.S. § 3-3414(A)(4) and (14).
2. Objective
   The objective of this rule is to specify the source from which the Division will obtain a sample of motor fuel for testing, the time that records regarding producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels must be maintained, and that the Division must be given access to those records.

RJ-7-717. Hold-open Latch Exception
1. Authorization
   This rule is authorized by A.R.S. § 3-3436.
2. Objective
   The objective of this rule is to require that if a nozzle is equipped with a hold-open latch, the hold-open latch must operate according to the manufacturer's specifications.
**RJ-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3433(L).

2. **Objective**
   The objective of this rule is to specify registration, reporting, and quality assurance and quality control requirements for producers and suppliers of biofuels, including E85 and biodiesel and biodiesel blends.

3. **Consistency with statutes and other rules**
   HB 2171, signed by the Governor May 12, 2016, replaced the definition "E85" with "Ethanol Flex Fuel" and updated the ASTM standards applicable to such fuel. This is being updated in the proposed rulemaking currently underway.

**RJ-7-749. Definitions Applicable to Arizona CBG and AZRBOB**

1. **Authorization**
   This rule is authorized by A.R.S. § 3-3414(A)(4).

2. **Objective**
   The objective of this rule is to make the rules clear and understandable by defining terms used in rule and statute regarding Arizona CBG and AZRBOB.

**RJ-7-750. Registration Relating to Arizona CBG or AZRBOB**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3493 and 3-3494.

2. **Objective**
   The objective of this rule is to specify who is required to register with the Division before producing, importing, or obtaining custody of Arizona CBG or AZRBOB, the information that must be supplied with a registration, and the consequence of failing to register.
RJ-7-751. Arizona CBG Requirements

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414(D), 3-3433, 3-3491, and 3-3492.

2. Objective
   The objective of this rule is to specify general fuel property and performance requirements for Arizona CBG, including wintertime requirements, and fuel ethanol specifications. The rule also specifies elections and certifications to be made by a registered supplier and prohibited activities and consequences of failing to comply with standards.

RJ-7-752. General Requirements for Registered Suppliers

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3493 and 3-3494.

2. Objective
   The objective of this rule is to describe the process with which registered suppliers must certify each batch of Arizona CBG and AZRBOB, recordkeeping and records retention, quality assurance and quality control program process, and requirements for comparison of analytical data between in-house and independent laboratories.

RJ-7-753. General Requirements for Pipelines and Third-party Terminals

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. Objective
   The objective of this rule is to describe the responsibilities of a pipeline or third-party terminal when taking custody of Arizona CBG or AZRBOB from a registered supplier, notification protocol for receipt of non-compliant product, and QA/QC requirements.
RJ-7-754. **Downstream Blending Exceptions for Transmix**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. **Objective**
   The objective of this rule is to allow a pipeline or third-party terminal to use transmix by blending it into Arizona CBG or AZRBOB at a concentration not to exceed one-quarter of one percent by volume.

RJ-7-755. **Additional Requirements for AZRBOB and Downstream Oxygenate Blending**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0), 3-3433, 3-3491, and 3-3492.

2. **Objective**
   The objective of this rule is to describe procedures for ensuring that AZRBOB is blended in a manner that complies with the standards for Arizona CBG. Additionally, the rule describes QNQC sampling and testing procedures that registered suppliers and oxygenate blenders are required to use and allows use of a third party to conduct the required sampling and testing.

RJ-7-756. **Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. **Objective**
   The objective of this rule is to establish requirements for blending nonoxygenated blendstock with Arizona CBG.

RJ-7-757. **Product Transfer Documentation; Records Retention**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.
2. **Objective**
   
The objective of this rule is to describe the documentation required when title or custody of Arizona CBG or AZRBOB is transferred from one person to another and the time that documentation must be maintained.

**RJ-7-759. Testing Methodologies**

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. **Objective**
   
The objective of this rule is to specify the analytical methods that a registered supplier or importer must use when certifying that Arizona CBG or AZRBOB meet the required fuel standards.

**Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB**

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. **Objective**
   
The objective of this rule is to set forth in table form the Division-approved test methods for various fuel parameters of Arizona CBG or AZRBOB. The Division has approved as equivalent methods approved by the EPA and CARB.

**RJ-7-760. Compliance Surveys**

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. **Objective**
   
The objective of this rule is to establish procedures that a registered supplier is required to use when conducting and reporting results of VOC and NOx compliance surveys for Arizona CBG or AZRBOB if the registered supplier has elected to average fuel properties.
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

1. **Authorization**
   This rule is authorized by A.R.S.§§ 3-3414(D) and 3-3433.

2. **Objective**
   The objective of this rule is to identify the persons liable when Arizona CBG or AZRBOB is found not to comply with the specified fuel standards and the defenses available to a person that would otherwise be liable for non-compliant Arizona CBG or AZRBOB.

R3-7-762. Penalties

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0), 3-3433, 3-3475, and 3-3476.

2. **Objective**
   The objective of this rule is to prescribe the penalty for violating a rule regarding fuel standards.

**Table 1. Type 1 Arizona CBG Standards**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. **Objective**
   The objective of this rule is to establish standards regarding VOC and NOx emissions and oxygen content of Type 1 Arizona CBG and allow for alternative compliance options.

**Table 2. Type 2 Arizona CBG Standards**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. **Objective**
   The objective of this rule is to establish standards for various fuel properties of Type 2 Arizona CBG and allow for alternative compliance options.
ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

RJ-7-901. Material Incorporated by Reference
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414(A)(4), 3-3514 and 3-3515.
2. Objective
   The objective of this rule is to incorporate by reference materials dealing with gasoline vapor control testing procedures.

RJ-7-902. Exemptions
1. Authorization
   This rule is authorized by A.R.S. § 3-3514 and 3-3515.
2. Objective
   The objective of this rule is to establish criteria and procedures for obtaining an exemption from the requirements regarding gasoline vapor control.

RJ-7-903. Equipment and Installation
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.
2. Objective
   The objective of this rule is to establish standards for vapor recovery systems and components and for installation of the systems and components. The rule allows the Division to reject a vapor recovery system or component based on a specified set of criteria.

RJ-7-904. Application Requirements and Process for Authority to Construct Plan Approval
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515(0).
2. Objective
The objective of this rule is to establish procedures for submitting and obtaining approval of an authority to construct plan application before constructing a site requiring a vapor recovery system or making a major modification to an existing system. The rule also requires that the Division be allowed to conduct a pre-burial inspection and allows a person with an approved authority to construct plan to dispense gasoline for 90 days before final approval if a required inspection is scheduled.

R3-7-905. Initial Inspection and Testing

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3514, and 3-3515.

2. **Objective**
   
   The objective of this rule is to prescribe the time and procedure for initially inspecting and testing a new or modified gasoline dispensing site, including the tests required to be performed during an initial test. The rule also establishes the consequences for failing a required test.

R3-7-906. Fees

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3452, 3-3514(2), and 3-3515(F).

2. **Objective**
   
   The objective of this rule is to establish fees for reviewing and approving an authority to construct plan and conducting pre-burial re-inspection.

R3-7-907. Operation

1. **Authorization**
   
   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.

2. **Objective**
   
   The objective of this rule is to establish standards for installing, maintaining, and operating a stage II vapor recovery system, require daily inspection of the system, and define conditions under which the system must be shut down
R3-7-908. Training and Public Education
1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.
2. **Objective**
   The objective of this rule is to require that all persons operating a gasoline dispensing site using a stage II vapor recovery system have training and that documentation of the training be maintained. The rule also requires that information regarding how to report equipment problems be posted on each gasoline dispenser.

R3-7-909. Recordkeeping and Reporting
1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.
2. **Objective**
   The objective of this rule is to establish recordkeeping requirements regarding daily inspection of and maintenance to a stage II vapor recovery system. The rule also specifies that the owner or operator of a gasoline dispensing site exempt from stage II requirements maintain a log showing monthly throughputs.

R3-7-910. Annual Inspection and Testing
1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3514 and 3-3515.
2. **Objective**
   The objective of this rule is to establish procedures for scheduling and conducting an annual inspection of a vapor recovery system, including the responsibilities of the RSR regarding scheduling. The rule clarifies that if there is a discrepancy between the test results of the RSR and Division, the Division results control.
RJ-7-911. Compliance Inspections
1. Authorization
   This rule is authorized by A.R.S. § 3-3514.
2. Objective
   The objective of this rule is to inform owners and operators that the Division conducts unannounced inspections of vapor recovery systems.

RJ-7-912. Enforcement
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3475, 3-3514, and 3-3515.
2. Objective
   The objective of this rule is to establish the consequences of the Division determining that a vapor recovery system is defective or non-compliant.

RJ-7-913. Stage II Decommissioning
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3515(H) and (I).
2. Objective
   The objective of this rule is to provide the requirements for mandatory decommissioning of stage II vapor recovery equipment, including notification, equipment removal, and testing requirements.

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

RJ-7-1001. Materials Incorporated by Reference
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414(A)(4), 3-3512(E) and 3-3514.
2. Objective
   The objective of this rule is to incorporate by reference materials dealing with stage I gasoline vapor control testing procedures.
R3-7-1002. Exemptions
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.
2. Objective
   The objective of this rule is to establish criteria and procedures for obtaining an exemption from the requirements regarding stage I gasoline vapor control.

RJ-7-1003. Equipment and Installation
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.
2. Objective
   The objective of this rule is to establish standards for vapor recovery systems and components and for installation of the systems and components. The rule allows the Department to reject a vapor recovery system or component based on a specified set of criteria.

RJ-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
1. Authorization
   This rule is authorized by A.R.S. §§ 3-3512(D) and 3-3514.
2. Objective
   The objective of this rule is to establish procedures for submitting and obtaining approval of an authority to construct plan application before constructing a site requiring a stage I vapor recovery system or making a major modification to an existing system. The rule also sets minimum standards for stage I vapor recovery systems and requires that the Department be allowed to conduct a pre-burial inspection. A person with an approved authority to construct plan to dispense gasoline for 90 days before final approval if a required inspection is scheduled.
R3-7-1005. Initial Inspection and Testing

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3512 and 3-3514.

2. Objective
   The objective of this rule is to prescribe the time and procedure for initially inspecting and testing a new or modified gasoline dispensing site, including the tests required to be performed during an initial test. The rule also establishes the consequences for failing a required test.

R3-7-1006. Fee

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3452, 3-3512(E) and 3-3514(2).

2. Objective
   The objective of this rule is to establish fees for reviewing and approving an authority to construct plan.

R3-7-1007. Operation

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective
   The objective of this rule is to establish standards for installing, maintaining, and operating a stage I vapor recovery system, require daily inspection of the system, and define conditions under which the system must be shut down.

RJ-7-1008. Training and Public Education

1. Authorization
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective
   The objective of this rule is to require that all persons operating a gasoline dispensing site using a stage I vapor recovery system have training and that documentation of the training be maintained. The rule also requires that information regarding how to report equipment problems be posted on each gasoline dispenser.
RJ-7-1009. Recordkeeping and Reporting

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. **Objective**
   The objective of this rule is to establish recordkeeping requirements regarding daily inspection of and maintenance for a stage I vapor recovery system. The rule also specifies that the owner or operator of a gasoline dispensing site exempt from stage I requirements maintain a log showing monthly throughputs.

RJ-7-1010. Annual Testing and Inspection

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3512 and 3-3514.

2. **Objective**
   The objective of this rule is to establish procedures for scheduling and conducting an annual inspection of a vapor recovery system, including the responsibilities of the RSR regarding scheduling. The rule clarifies that if there is a discrepancy between the test results of the RSR and Division, the Division results control.

RJ-7-1011. Compliance Inspections and Additional Test Methods

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3514.

2. **Objective**
   The objective of this rule is to inform owners and operators that the Division conducts unannounced inspections of stage I vapor recovery systems.

RJ-7-1012. Enforcement

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3475, 3-3512 and 3-3514.
2. **Objective**
   The objective of this rule is to establish the consequences of the Division determining that a stage I vapor recovery system is defective or non-compliant.

**R3-7-1013. Stage II Vapor Recovery**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3515(H).

2. **Objective**
   Provide requirements for removal of stage II vapor recovery equipment at stations that are identified as having stage II equipment after the deadline for removal of September 30, 2018.

**Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3**

1. **Authorization**
   This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. **Objective**
   The objective of this rule is to provide the testing criteria to be used for determining compliance when performing CARB TP-201.3 tests.
ARIZONA DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

2017 FIVE YEAR REVIEW REPORT

A.A.C. Title 3, Chapter 2

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ARTICLE 1 – GENERAL PROVISIONS

INFORMATION THAT IS IDENTICAL

5. **Enforcement**

The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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<td>May 7, 1997</td>
<td>May 3, 2008</td>
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<td>R3-2-102</td>
<td>October 8, 1998</td>
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</tr>
<tr>
<td>Table 1</td>
<td>October 8, 1998</td>
<td>August 2, 2003</td>
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</table>

9. **Analysis submitted comparing rule’s impact**

None.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**
The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-101. Definitions**

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. §§ 3-1203(B) & 3-1205(A)

2. **Objective**

   The rule sets forth the definition within Chapter 2.

3. **Effectiveness**

   The stated objective of the rule is partially met. Some of the definitions need to be amended or removed.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:

   A.R.S. § 41-1072 et seq.

10. **Completion of course of action from previous five-year review**

    The Department proposed to exempt Article 2 from the definition of “animal.” This change did not occur due to the rulemaking moratorium. The Department now believes it is better not to eliminate the definition of “animal” from this rule but to amend it.

14. **Proposed action**

    The Department proposes to update the definition of “animal”, change the phrase “health certificate” to “certificate of veterinary inspection”, and remove definitions that do not apply to this rule. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-102. Licensing Time-frames**

1. **Statutory authority**
2. **Objective**

The rule provides an explanation of the overall time-frame, the administrative completeness review, and the substantive review for license applications.

3. **Effectiveness**

The rule is effective in achieving the objective.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:

A.R.S. § 41-1072 et seq.

10. **Completion of course of action from previous five-year review**

The Department did not propose changes to this rule during the previous review.

14. **Proposed action**

The Department proposes to maintain the rule as is.

**Table 1. Time-frames (Calendar Days)**

1. **Statutory authority**


   Specific: A.R.S. § 41-1073

2. **Objective**

   The table, referenced in R3-2-102, lists the total number of days provided to the Department for administrative completeness reviews and substantive reviews within which the Department shall issue or deny a license.

3. **Effectiveness**

   The table is partially effective in achieving the objective. Several of the references to authority are incorrect. A few of the listed licenses are not really licenses and should be
removed from the table. A few licenses that should be listed are not.

4. **Consistency**

The table is partially consistent with statute and other rules. All Animal Services Division licenses need to be listed in the table. The licenses also need to reference the correct authority. Additionally, there are some listed licenses that are not actually licenses, which need to be removed from the table.

List of statutes or rules used in determining consistency:

- A.R.S. §§ 3-607, 3-619, 3-665, 3-714, 3-1344, 3-1345, 3-1348, 3-1452, 3-2002, 3-2003, 3-2009, 3-2047, 3-2081, 3-2086, 3-2122, 3-2664, 3-2907, 3-2908, & 41-1073
- A.A.C. rule 203, 810, 1002, 1004, 1005, 1006, 1007

10. **Completion of course of action from previous five-year review**

The Department proposed to eliminate all references to the Administrative Code under the authority column of the table. The Department now feels that the table is clearer with correct references to the rules, and therefore does not wish to make the change proposed 5 years ago.

14. **Proposed action**

The Department proposes to eliminate rule 205 from the table under “Rendering Facility Certification” because the rule is now expired. We would also like to eliminate rule 1008 from the table under “Special Licenses” because the rule has been repealed. The Department plans to file a Notice of Proposed Rulemaking in January 2018.
ARTICLE 2 – MEAT AND POULTRY INSPECTION

INFORMATION THAT IS IDENTICAL

3. **Effectiveness**

The rules are effective in achieving the objectives.

5. **Enforcement**

The Department enforces the rules as written, except for rule 208.

6. **Clarity, conciseness, and understandability**

The rules are clear, concise, and understandable, except for rule 208.

7. **Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

With the exception of rule 203, the economic impact of the rules in this Article has not differed significantly from that projected in the economic impact statement prepared when these rules were last amended.

The rules in this article were effective and last revised on the following dates:

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<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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<td>R3-2-201</td>
<td>August 19, 1983</td>
<td>August 7, 2004</td>
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<td>R3-2-202</td>
<td>August 19, 1983</td>
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<tr>
<td>R3-2-209</td>
<td>May 5, 1999</td>
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</tbody>
</table>

An EIS was not prepared for rules 205 and 207 to our knowledge. Rule 205 is not being used by industry and expired on December 15, 2016. Rule 207 establishes the minimum sanitary requirements for animal food manufacturing plants; denaturing, labeling, and sales requirements so that animal food is not sold for human consumption, and it includes a requirement for vehicle marking. Most of these requirements impose minimal costs on the industry. The manufacturing plant requirements have an initial moderate impact during the
construction of a plant, but a minimal impact with respect to upkeep.

9. **Analysis submitted comparing rule’s impact**

   None.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

   The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

   The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

   The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization. Rule 203 was amended after the July 29, 2010 date, but it does comply with A.R.S. § 41-1037 because they are classified as a general permit.

   **INFORMATION THAT IS NOT IDENTICAL**

   **R3-2-201. Definitions**

   1. **Statutory authority**

      General: A.R.S. § 3-107(A)(1)

      Specific: A.R.S. §§ 3-2046 & 3-2695

   2. **Objective**

      The rule sets forth the definitions used in Article 2.

   4. **Consistency**

      The rule is consistent with statute and other rules.

      List of statutes or rules used in determining consistency:
      A.R.S. Title 3, Chapter 13 & A.R.S. § 3-2695
      A.A.C. R3-2-202 through R3-2-209

   10. **Completion of course of action from previous five-year review**
The Department did not propose any changes to this rule during the prior review.

14. **Proposed action**

The Department proposes to maintain the rule as written.

**R3-2-202. Meat and Poultry Inspection; Slaughtering Standards**

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. §§ 3-2046 & 3-2161

2. **Objective**

   The rule sets out procedures for the inspection and slaughter of livestock and poultry. The federal government requires these procedures to be at least equal to federal law so this rule incorporates those federal laws.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - 9 CFR, Chapter III

10. **Completion of course of action from previous five-year review**

   The Department successfully amended the rule to update the incorporated CFR references from the 2013 version to the 2016 version.

14. **Proposed action**

   The Department proposes to maintain the rule as written for now but will update the incorporated CFR references as necessary to keep current with federal law.

**R3-2-203. Licenses; Registration; Records**

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A)(1); Laws 2016, Chapter 125

   Specific: A.R.S. §§ 3-2002, 3-2003, 3-2046, 3-2050, 3-2051, 3-2081, 3-2161 & 3-2695
2. **Objective**

   The rule sets out the required licenses related to slaughtering livestock and selling or exchanging meat or poultry, how to obtain a license, and recordkeeping requirements. The rule also sets out temporary fee increases for those licenses authorized by recent session laws.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   
   A.R.S. §§ 3-2002, 3-2003, 3-2081 & 3-2122

8. **Economic, small business, and consumer impact comparison**

   In the last few years, the Legislature has authorized the Department to temporarily increase fees via exempt rulemaking. Under this authority, the Department has significantly increased the fees for the licenses described in this rule. Because the increases were accomplished through exempt rulemaking, a formal economic, small business, and consumer impact statement was not required and was not prepared. In fiscal year 2016, the Department brought in approximately $85,000 in additional fee revenue from the fee increases in this rule.

   Apart from the impact of the recent fee increases, the economic impact of this rule has not differed significantly from that projected in the last prepared economic impact statement, which was for the May 5, 1999 rulemaking.

10. **Completion of course of action from previous five-year review**

    The Department proposed to make several changes to this rule that were incorporated during the July 3, 2015 revision.

14. **Proposed action**

    The Department proposes to maintain this rule as is.

**R3-2-204. Official Slaughter Establishment**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-2046 & 3-2051

2. **Objective**
The rule sets out requirements of slaughtering establishments operating under state meat inspection service for maintaining a clean and sanitary condition.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:

A.R.S. § 3-2051

10. **Completion of course of action from previous five-year review**

The Department did not propose any changes to this rule during the prior review.

14. **Proposed action**

The Department proposes to maintain the rule as written.

R3-2-205. Expired December 15, 2016

R3-2-206. Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. §§ 3-1203(B), 3-1205, 3-2081 & 3-2695

2. **Objective**

   The rule describes what can be done with dead animals and dead animal parts that are not for human consumption. In general, it prohibits a person from buying, selling, storing, transporting, receiving, or collecting dead animals or dead animal parts except as specifically allowed by this rule.

4. **Consistency**

   The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:

   A.R.S. §§ 3-2081, 3-2088, 3-2089 & 3-2695

   A.A.C. R3-2-202, R3-2-207, R18-13-310 & R18-13-311

10. **Completion of course of action from previous five-year review**
The Department proposed changes to this rule during the prior review cycle but have revised those changes and have determined the rule is effective and less burdensome as written.

14. **Proposed action**

The Department proposes to maintain the rule as written.

R3-2-207. **Meat from Dead Animals Processed and Decharacterized for Use as Animal Food**

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. § 3-2695

2. **Objective**

   The rule establishes the minimum requirements for animal food manufacturing plants, lists accepted decharacterizing or denaturant agents and procedures for their use, describes labeling requirements to make sure the products are for animal food only, lists businesses that may purchase the product, and prescribes vehicle labeling requirements for transportation of pet food.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-2691 et seq.
   - A.A.C. R3-2-201 through R3-2-206 and R3-2-208 through R3-2-209

10. **Completion of course of action from previous five-year review**

    The Department proposed changes to this rule during the prior review cycle but have revised those changes and have determined the rule is effective and less burdensome as written.

14. **Proposed action**

    The Department proposes to maintain the rule as written.
R3-2-208. Diseased and Injured Animals

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. § 3-2046

2. **Objective**

   The rule sets out the conditions under which diseased animals may be processed, sold, or stored at premises where food is sold or prepared for human consumption. The rule also sets out when injured animals may be slaughtered for human consumption.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-2011, 3-2044, 3-2045, 3-2046, 3-2081, 3-2084, & 3-2085

5. **Enforcement**

   The Department enforces the rule as written with the exception of non-ambulatory bovine slaughter requirements.

6. **Clarity, conciseness, and understandability**

   The rule is mostly clear, concise, and understandable. Federal law, which we must comply with, prohibits the slaughter of non-ambulatory bovine at official and/or exempt slaughter facilities. This rule does not address that prohibition.

10. **Completion of course of action from previous five-year review**

    The Department did not propose any changes to this rule during the previous review.

14. **Proposed action**

    The Department proposes to amend subsection (B)(2) and (B)(3) to add language for the non-ambulatory bovine slaughter prohibition. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-209. Exempt Non-mobile Slaughter Establishments
1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. § 3-2046

2. **Objective**

   The rule sets out requirements of exempt non-mobile slaughtering establishments for maintaining a clean and sanitary condition.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-2011, 3-2046, 3-2048, 3-2050 & 3-2051
   - A.A.C. R3-2-204

10. **Completion of course of action from previous five-year review**

    The Department proposed changes to this rule during the prior review cycle but have revised those changes and have determined the rule is effective and less burdensome as written.

14. **Proposed action**

    The Department proposes to maintain the rule as written.
ARTICLE 3 – FEEDING OF ANIMALS

INFORMATION THAT IS IDENTICAL

3. **Effectiveness**

   The rules are effective in achieving the objectives.

5. **Enforcement**

   The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

   The rules are clear, concise, and understandable.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the economic impact statement prepared in 2002, when these rules were last amended.

   The rules were first promulgated in August 1983 and did not require preparation of an EIS. The EIS prepared during a prior revision in 2002 indicated that the changes to these rules created only a minor expense to the ADA for training.

9. **Analysis submitted comparing rule’s impact**

   None.

10. **Completion of course of action from previous five-year review**

    The Department did not propose any changes to this rule during the previous review.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

    The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**
The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

   The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

14. **Proposed action**

   The Department proposes to maintain the rule as written.

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**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-301. Operation of Beef Cattle Feed Lots**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. § 3-1454

2. **Objective**

   The rule informs feedlot operators that they must comply with A.R.S. § 3-1454(A), A.A.C. R3-2-406, and all other federal, state, and local laws.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-1454
   - A.A.C. R3-2-406

**R3-2-302. Permit to Feed Garbage to Swine; Requirements**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. § 3-2662

2. **Objective**

   The rule describes requirements to obtain and keep a permit to feed garbage to swine.
4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 3-2661 et seq.
ARTICLE 4 – ANIMAL DISEASE PREVENTION AND CONTROL

INFORMATION THAT IS IDENTICAL

5. Enforcement

The Department enforces the rules as written, with the exception of rule 413.

6. Clarity, conciseness, and understandability

The rules are clear, concise, and understandable, except for rules 406 and 412.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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<thead>
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<th>Rule</th>
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9. Analysis submitted comparing rule’s impact

None.

11. Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective
The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

   The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

   The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

   **INFORMATION THAT IS NOT IDENTICAL**

**R3-2-401. Definitions**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B) & 3-1205(A)

2. **Objective**

   The rule sets forth the definition of particular terms used in Article 4.

3. **Effectiveness**

   The rule is partially effective in achieving the objective. Designated feedlot is already defined in R3-2-101 and does not need to be redefined here. Equine infectious anemia would be better defined in R3-2-101 because the phrase pertains to Article 6 as well. The Department also believes the rule would be more effective if the Department defined acronyms for certain disease control organizations referenced in R3-2-402 as well as defined documents published by those organizations.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203 & 3-1207
   - A.A.C. R3-2-101 & R3-2-402 through R3-2-413

10. **Completion of course of action from previous five-year review**
The Department did not amend this rule by removing the definitions for designated feedlot and equine infectious anemia from this rule and defining those terms are in R3-2-101.
The Department did not create definitions for the acronyms OIE and NAHRS, which stand for the Office of International Epizooties and the National Animal Health Reporting System respectively. The Department did not define Foreign Animal Disease in rule R3-2-405.

14. **Proposed action**

The Department plans to redefine Designated Feedlot into three terms: Licensed, Designate, and Restricted Feedlots. The Department plans to change Biologicals to Biologics as mentioned in A.R.S. § 3-1203. The Department plans to remove the reference to Office International des Epizooties. The Department plans to define NAHRS as National Animal Health Reporting System (https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/monitoring-and-surveillance/sa_disease_reporting/ct_disease_list). The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B), 3-1204, 3-1205(A), 11-1002

2. **Objective**

   The rule identifies animal diseases that must be reported to the State Veterinarian and the criteria for reporting those diseases.

3. **Effectiveness**

   The rule is partially effective in achieving the objective. The document incorporated by reference needs to be updated to the current version.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-1203, 3-1204 & 3-1205

10. **Completion of course of action from previous five-year review**
The Department did not update the effective date of the incorporated disease lists, update the diseases specifically listed, or add producers to the list of entities required to report suspicion of a disease on the disease list.

14. **Proposed action**


**R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologicals and Semen**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. § 3-1203(B)

2. **Objective**

   The rule requires any person importing, manufacturing, selling, or distributing biologicals for diagnostic or therapeutic treatment of animals to obtain permission from the State Veterinarian. The rule also restricts the importation of semen from boars to certain states.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. § 3-1203(B) (3)

10. **Completion of course of action from previous five-year review**

    The Department did not eliminate or amend subsection (C) in the previous review.

14. **Proposed action**
The Department proposes to delete subsection (C) because it only pertains to semen from boars in infected Pseudorabies states. Pseudorabies has been eradicated at this time. The Department proposes to delete “Semen” from the rule Title “Importation, Manufacture, Sale, and Distribution of Biologicals and Semen.” The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-405. Depopulation of Animals Infected with a Foreign Disease**

1. **Statutory authority**
   
   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B), 3-1204, 3-1205(A)

2. **Objective**

   The rule requires the immediate disposal of animals infected with a foreign animal disease.

3. **Effectiveness**

   The rule is partially effective in achieving the objective. The rule would be more effective with a definition of foreign animal disease.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   
   A.R.S. §§ 3-1203, 3-1204 & 3-1205

10. **Completion of course of action from previous five-year review**

   The Department did not amend this rule to include a definition of foreign animal disease and to add the word “animal” (foreign animal disease) into the heading.

14. **Proposed action**

   The Department plans to change the title from “Depopulation of Animals Infected with a Foreign Disease” to “Depopulation of Animals Infected with a Foreign Animal Disease”. The Department plans to reference the definition of Foreign Animal Disease as referenced rule 402. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-406. Disease Control; Feedlots**
1. **Statutory authority**

General: A.R.S. § 3-107(A) (1)

Specific: A.R.S. §§ 3-1203(B) & 3-1205(A)

2. **Objective**

The rule addresses the use of restricted feeding pens to quarantine cattle and the requirements of those pens.

3. **Effectiveness**

The rule is effective in achieving the objective.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1205 & 3-1454

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable. The rule would more clear if the word “animals” in (C) (1) were changed to “cattle”.

10. **Completion of course of action from previous five-year review**

The Department did not amend subsection (C) (1) to changing the word “animals” to “cattle”.

14. **Proposed action**

The Department plans to add a Subsection allowing licensed feedlots to have no restriction on cattle movement except under the self-inspection requirements. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to allow designated and restricted feedlots to move only if approved by the Director or State Veterinarian. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-407. **Equine Infectious Anemia**

1. **Statutory authority**
2. **Objective**

The rule addresses the testing of horses for equine infectious anemia and the disposal of animals that test positive for the disease.

3. **Effectiveness**

The rule is effective in achieving the objective.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:

A.R.S. §§ 3-1203 & 3-1205

10. **Completion of course of action from previous five-year review**

The Department did not propose any changes during the previous review.

14. **Proposed action**

The Department proposes to amend the title to “Disease Control; Equine Infectious Anemia”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-408. **Disposition of Livestock Exposed to Rabies**

1. **Statutory authority**

General: A.R.S. § 3-107(A) (1)

Specific: A.R.S. §§ 3-1203(B), 3-1204, 3-1205(A), & 11-1002

2. **Objective**

The rule indicates how to handle livestock that have been bitten by a known or suspected rabid animal.

3. **Effectiveness**

The rule is partially effective in achieving the objective. The document incorporated by
reference needs to be updated to the current version.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, 3-1205 & 11-1002

10. **Completion of course of action from previous five-year review**

The Department did not update the material incorporated by reference.

14. **Proposed action**

The Department proposes to amend this rule by updating the Rabies Compendium to the current version (<http://nasphv.org/Documents/NASPHVRabiesCompendium.pdf>). The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-409. Rabies Vaccines for Animals**

1. **Statutory authority**

General: A.R.S. § 3-107(A) (1)

Specific: A.R.S. §§ 3-1203(B), 3-1204, 3-1205(A), & 11-1002

2. **Objective**

The rule sets out the procedure for vaccinating animals against rabies.

3. **Effectiveness**

The rule is partially effective in achieving the objective. The document incorporated by reference needs to be updated to the current version.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, 3-1205 & 11-1002
10. **Completion of course of action from previous five-year review**

   The Department did not update the material incorporated by reference.

14. **Proposed action**

   The Department proposes to amend this rule by updating the Compendium to the current version (http://nasphv.org/Documents/NASPHVRabiesCompendium.pdf). The Department plans to file a Notice of Proposed Rulemaking in January 2018.

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**R3-2-410. Restricted Swine Feedlots**

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B) & 3-1205(A)

2. **Objective**

   The rule sets out procedures governing restricted swine feedlots and the animals at those feedlots.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203 & 3-1205
   - A.A.C. R3-2-606 & -613

10. **Completion of course of action from previous five-year review**

   The Department maintained the rule as is.

14. **Proposed action**
The Department proposes to delete the rule and incorporating the rule into rule 406 (Disease Control; Feedlots). The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-411. Exhibition Swine

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)
   
   Specific: A.R.S. §§ 3-1203(B) & 3-1205(A)

2. **Objective**

   The rule establishes the documents required for exhibition swine, whether imported from other states or native to Arizona.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statute and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203 & 3-1205
   - A.A.C. R3-2-606 & R3-2-613

10. **Completion of course of action from previous five-year review**

    The Department did not amend this rule to (i) include the requirement from rule 613 that swine imported from a sale in a pseudorabies Stage V state where all swine are from a Stage IV or Stage V state must test negative for pseudorabies after entry, (ii) consolidate subsections (B)(2) and (B)(3), (iii) move subsection (A) to rule 613, (iv) simplify subsection (C)(1)(a), and (v) add the phrase “To obtain a certificate of inspection of exhibition swine” to the beginning of paragraph (C).

14. **Proposed action**
The Department plans to delete this rule and integrate this rule into rule 606. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-412. Exhibition Sheep and Goats

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B), 3-1204, & 3-1205(A)

2. **Objective**

   The rule requires exhibition sheep and goats to be identified in accordance with 9 CFR 79, which is incorporated in rule 614, and imported animals to have a proper health certificate and import permit.

3. **Effectiveness**

   The rule is mostly effective in achieving the objective. Subsection (1)(a) cross-references rule 614 but that rule only refers to 9 CFR 79 instead of the more specific 9 CFR 79.2(a)(2).

4. **Consistency**

   The rule is consistent with statutes and other rules. The reference to 9 CFR 79 should be updated to the latest version for ease of reference, even though the federal regulation has not been revised.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203, 3-1204 & 3-1205
   - A.A.C. R3-2-614

6. **Clarity, conciseness, and understandability**

   The rule is mostly clear, concise, and understandable. The import permit number goes on the health certificate, so it makes more sense to address those two issues together rather than separately. See subsections (1) (a) and (1) (b). The reference to 9 CFR 79.2(a) (2) should also have an effective date. Exhibition swine are now included in self-inspection in rule R3-2-702 and can get seasonal passes in similar manner to sheep and goats.

10. **Completion of course of action from previous five-year review**
The Department did not amend this rule by combining the health certificate and import permit requirements in subsections (1) (a) and (1) (b) into one subsection and separating out the animal identification subsection. The Department also proposed to reference rule 614 in subsection (2).

14. **Proposed action**

The Department proposes to incorporate this rule into rule 606 section for Sheep and Goats. The Department then proposes to amend this rule by combining the health certificate and import permit requirements in subsections (1) (a) and (1) (b) into one subsection and separating out the animal identification subsection. The Department also proposes to reference rules related to identification of all exhibition livestock. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

### R3-2-413. Sheep and Goats; Intrastate Movement

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B), 3-1204, & 3-1205(A)

2. **Objective**

   The rule requires a sheep or goat moving intrastate to be identified to the animal’s flock of birth.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203, 3-1204 & 3-1205

5. **Enforcement**

   The Department enforces the rule as though the Scrapie Eradication Uniform Methods and Rules were already incorporated by reference in order to have consistent state status. Consistent state status is not required, but this status does allow for more free movement of
sheep and goats in interstate commerce.

10. **Completion of course of action from previous five-year review**

The Department did not amend Subsection (C) sets out an effective date for the rule.

14. **Proposed action**

Subsection (C) sets out an effective date for the rule. This effective date is no longer needed so the Department proposes to eliminate it. The Department plans to file a Notice of Proposed Rulemaking in January 2018.
ARTICLE 5 – STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

INFORMATION THAT IS IDENTICAL

1. Statutory authority

General: A.R.S. § 3-107(A) (1)

Specific: A.R.S. §§ 3-1203(B), 3-1204, 3-1205(A), & 3-1741

5. Enforcement

The Department partially enforces the rules as written. The Department enforces the current version of the Uniform Method and Rules and the current related federal regulations, rather than the older version referenced in the rules.

6. Clarity, conciseness, and understandability

The rules are clear, concise and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

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<thead>
<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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<td>March 5, 1997</td>
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<td>R3-2-505</td>
<td>August 7, 2002</td>
<td>--</td>
</tr>
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</table>

9. Analysis submitted comparing rule’s impact

None.

11. Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective

None.
The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-501. Tuberculosis Control and Eradication Procedures**

2. **Objective**

The rule incorporates the documents that identify the procedures for tuberculosis control and eradication in cattle, bison, goats, and some species of Cervidae.

3. **Effectiveness**

The rule is partially effective in achieving the objectives. The documents incorporated by reference need to be updated to the current versions.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, 3-1205, 3-1207 & 3-1741
- A.A.C. R12-4-406

10. **Completion of course of action from previous five-year review**

The Department did not amend this rule by updating the documents incorporated by reference. There is presently a 2005 version of the document incorporated in subsection (A) and a 1999 version of the document incorporated in subsection (C). This change did not occur.

14. **Proposed action**

The Department still proposes to amend this rule by updating the documents incorporated by reference.

R3-2-503. Brucellosis Control and Eradication Procedures

2. **Objective**

The rule incorporates the documents that identify the procedures for brucellosis control and eradication in cattle, bison, swine, and some species of Cervidae.

3. **Effectiveness**

The rule is partially effective in achieving the objectives. The three documents incorporated by reference need to be updated to the current versions: Brucellosis Eradication - Uniform Methods and Rules; Swine Brucellosis Control/Eradication, State-Federal-Industry - Uniform Methods and Rules; and Brucellosis in Cervidae: Uniform Methods and Rules.

4. **Consistency**

The rule is partially consistent with statutes and other rules. Because this rule pertains to a cooperative program with USDA, the Department needs to follow current USDA standards and the documents incorporated by reference have newer versions. See A.R.S. § 3-1207.

List of statutes or rules used in determining consistency:

A.R.S. §§ 3-1203, 3-1205 & 3-1207
A.A.C. R12-4-406

10. **Completion of course of action from previous five-year review**

The Department did not amend this rule by updating the documents incorporated by reference. There is presently a 2005 version of the document incorporated in subsection (A) and a 1999 version of the document incorporated in subsection (C). This change did not occur.

14. **Proposed action**

R3-2-504.  Pseudorabies Procedures for Eradication

2. **Objective**

   The rule incorporates the document that identifies the procedures for pseudorabies control and eradication in swine.

3. **Effectiveness**

   The rule is partially effective in achieving the objective. The document incorporated by reference needs to be updated to the current version.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   
   - A.R.S. §§ 3-1203, 3-1205 & 3-1207
   - A.A.C. R3-2-501 & -503

10. **Completion of course of action from previous five-year review**

    The Department did not amend this rule by updating the documents incorporated by reference. There is presently a 2005 version of the document incorporated in subsection (A) and a 1999 version of the document incorporated in subsection (C). This change did not occur.

14. **Proposed action**


R3-2-505.  Scrapie Procedures for Eradication

2. **Objective**

   The rule identifies the procedures for scrapie control and eradication in sheep and goats.

3. **Effectiveness**

   The rule is partially effective in achieving the objective. The regulations incorporated by reference should be replaced with the most current Uniform Method and Rules document.
4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, 3-1205 & 3-1207
- A.A.C. R3-2-501 & -503

10. **Completion of course of action from previous five-year review**

The Department did not amend this rule by updating the documents incorporated by reference. There is presently a 2005 version of the document incorporated in subsection (A) and a 1999 version of the document incorporated in subsection (C). This change did not occur.

14. **Proposed action**

ARTICLE 6 – HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**

   General: A.R.S. § 3-107(A) (1)

   Specific: A.R.S. §§ 3-1203(B), 3-1204, & 3-1205(A)

3. **Effectiveness**

   The rules are effective in achieving the objectives, except for rule 601.

5. **Enforcement**

   The Department enforces the rules as written, except for rule 602.

6. **Clarity, conciseness, and understandability**

   The rules are clear, concise and understandable, except for rule 610.

   Also, several of the rules in this article refer to “owner or owner’s agent.” The Department believes that referring to just “owner” will have the same meaning and be more concise (see rules 603, 605, 608, 612, 613, 614, 618, 620, 621, and 622).

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared for each of the rules in this Article.

   The rules in this article were effective and last revised on the following dates:

<table>
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<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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<td>August 19, 1983</td>
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</tr>
<tr>
<td>R3-2-605</td>
<td>August 19, 1983</td>
<td>January 1, 2000</td>
</tr>
</tbody>
</table>
9. **Analysis submitted comparing rule's impact**

None.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-601. Definitions**

2. **Objective**

The rule sets forth the definition of particular terms used within Article 6.

3. **Effectiveness**
The rule is partially effective in achieving the objective. The definition of animal is confusing and imprecise. The rule should also include definitions for bovine, non-native cervids, and petting zoo.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-602 through R3-2-620
- A.A.C. R12-4-401 through R12-4-430

10. **Completion of course of action from previous five-year review**

The Department did not amend this rule by revising the definition of “animal” and to include new definitions for “bovine”, “non-native cervid”, and “petting zoo”. This change did not occur.

14. **Proposed action**

The Department plans to delete the definition of “Animal” and refer to definition in R3-2-101. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-602. Importation Requirements**

2. **Objective**

The rule sets forth the general requirements for importing animals into Arizona.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-601 through R3-2-620
- A.A.C. R12-4-401 through R12-4-430

5. **Enforcement**

The Department partially enforces the rule as written. All covered animals need a health
10. **Completion of course of action from previous five-year review**

The Department did not make the following amendments to this rule. First, the Department will eliminate subsections (A) (2) and (B) because they are already covered by rule 611(A). Second, the Department will shorten the remainder of the rule to say, “All animals transported or moved into Arizona must be accompanied by a valid, official health certificate from the state of origin.” Third, the substance of rules 603 and 604 will be moved into this rule. Fourth, this rule will indicate that animals may only be imported in accordance with this general rule and the animal specific rule in this Article and that owners will pay all expenses to quarantine, test, and return animals instead of repeating those points in each rule. *See, e.g.*, R3-2-612(A) (1), -613(A) & -614(A) (1). These changes did not occur.

14. **Proposed action**

The Department proposes to add poultry requirements since A.R.S. § 3-1203 give the Department authority over livestock and poultry industries and diseases.

The Department proposes to make the following amendments to this rule. First, the Department will eliminate subsections (A) (2) and (B) because they are already covered by rule 611(A). Second, the Department will shorten the remainder of the rule to say, “All animals transported or moved into Arizona must be accompanied by a valid, official health certificate from the state of origin.” Third, the substance of rules 603 and 604 will be moved into this rule. Fourth, this rule will indicate that animals may only be imported in accordance with this general rule and the animal specific rule in this Article and that owners will pay all expenses to quarantine, test, and return animals instead of repeating those points in each rule. *See, e.g.*, R3-2-612(A) (1), -613(A) & -614(A) (1). Lastly, the Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-603. Importation of Diseased Animals**

2. **Objective**

The rule sets forth conditions for the importation of an animal that comes from a quarantined area, comes from a lot or herd that shows with an animal showing a suspicious or positive reaction to a disease test, or is affected with or has been recently been exposed to any infectious, contagious, or communicable disease.

4. **Consistency**

The rule is consistent with statutes and other rules.
List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620
A.A.C. R12-4-401 through R12-4-430

10. **Completion of course of action from previous five-year review**

The Department did not move the current rule into rule 602, importation requirements. This change did not occur.

14. **Proposed action**

The Department plans to insert into this rule conditions for the State Veterinarian to authorize entry of diseased or quarantined animals and a provision to make clear that the State Veterinarian may require the quarantine of the imported animal upon arrival.

The Department proposes to add poultry requirements since A.R.S. § 3-1203 give the Department authority over livestock and poultry industries and diseases.

The Department proposes to move the requirements in Section A of rule 603 into rule 406 Designated Feedlots. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-604. Livestock Permit Requirements; Exceptions**

2. **Objective**

The rule requires livestock, other than equines, to have a permit before entry into the state.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-602, -603, -607, -609, & -611

10. **Completion of course of action from previous five-year review**

The Department did not move the contents of this rule into rule 602. This change did not occur because it is no longer needed.

14. **Proposed action**
The Department proposes to maintain the rule as written.

**R3-2-605. Quarantine for Animals Entering Illegally**

2. **Objective**

The rule requires animals that enter Arizona without complying with the entry requirements to be quarantined, returned to the state of origin, go directly to slaughter, or be confined at a designated feedlot. The rule also requires the animal’s owner to pay all expenses associated with this rule.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, 3-1205
- A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not simplify the title of this rule to “import quarantine.” The Department did not move the requirement for animals entering illegally to be quarantined into rule 602 and to let this rule focus on what happens once an animal is subject to that quarantine requirement. Additionally, the Department did not state owners’ obligation to pay the expenses associated with this rule. These changes did not occur.

14. **Proposed action**

The Department proposes to add poultry requirements since A.R.S. § 3-1203 gives the Department authority over livestock and poultry industries and diseases. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018. The prior proposed action is not needed.

**R3-2-606. Health Certificate**

2. **Objective**

The rule establishes the requirements for health certificates.

4. **Consistency**

The rule is consistent with statutes and other rules.
List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not move subsections (A) (4)-(7) into rules 612-615 respectively, move the contents of subsections (C)-(D) to the beginning of the rule, and change the word “renders” in subsection (B) to “render.” The Department did not specify that the health certificate shall contain the permit number, if applicable. These changes did not occur.

14. **Proposed action**

The Department proposes to add poultry requirements since A.R.S. § 3-1203 gives the Department authority over livestock and poultry industries and diseases. The Department also plans to clarify the official identification requirements for exhibition swine as outlined in CFR 9 § 71.19. The Department also plans to add microchips as an acceptable form of descriptive identification for equine. The Department plans to update wording in Section A. #1 from “The Name and address of the shipper and receiver” to read “The name and physical address of the shipper and receiver.” The Department also plans to move Certificate of Veterinary Inspection requirements from specific species to respective requirements under R3-2-612 to R3-2-620 (i.e. R3-2-606 move specific cattle Certificate of Veterinary Inspection requirement to R3-2-612 Importation of Cattle and Bison). The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-607. **Permit Number**

2. **Objective**

The rule establishes how a person may obtain a permit number, when the State Veterinarian may refuse to issue a permit number, the term of a permit number, and the use of a permit number.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous review**
The Department did not make the rule clearer and more consistent with the other rules in this Article by referencing both permits and their associated permit numbers instead of just permits. The Department did not add a requirement to supply, if applicable, the herd numbers identified in rule 612(C) (3) & (G) (1) (a) when applying for a permit. These changes did not occur.

14. **Proposed action**

The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-608. Consignment of Animals**

2. **Objective**

The rule requires most imported animals to be consigned to or placed in the care of an Arizona resident or a business authorized to operate in Arizona.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not propose any changes to this rule during the previous review.

14. **Proposed action**

The Department proposes to maintain the rule as written.

**R3-2-609. Diversions; Prohibitions**

2. **Objective**

The rule prohibits the diversion of animals from the destination listed on the health certificate and permit, if required, without permission from the State Veterinarian.

4. **Consistency**

The rule is consistent with statutes and other rules.
10. **Completion of course of action from previous five-year review**

The Department did not propose any changes to this rule during the previous review.

14. **Proposed action**

The Department proposes to add poultry requirements since A.R.S. § 3-1203 gives the Department authority over the livestock and poultry industries and diseases. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-610. Tests; Official Confirmation**

2. **Objective**

The rule establishes which laboratories may conduct animal testing required by this Article.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable, but would be better served as a definition in R3-2-401 rather than a rule.

10. **Completion of course of action from previous five-year review**

The Department did not propose any changes to this rule during the previous review.

14. **Proposed action**

The Department proposes to move this rule into rule 401 as a definition. The Department plans to file a Notice of Proposed Rulemaking in January 2018.
R3-2-611. Transporter Duties

2. **Objective**

   The rule establishes the duties of a person transporting an animal into Arizona, such as a shipping company.

4. **Consistency**

   The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-602, -603, -604, -606, -607, & -609

10. **Completion of course of action from previous five-year review**

   The Department did not drop the references to a permit number from this rule in connection with amending rule 606 to require the permit number to be placed on the health certificate. The Department did not expand the responsibility in subsection (B) to owners and operators to match subsection (A). Finally, the Department did not update subsection (D) to change the outdated reference to the Arizona Commerce Commission. These changes did not occur.

14. **Proposed action**

   The Department proposes to drop the references to a permit number from this rule in connection with amending rule 606 to require the permit number to be placed on the health certificate. The Department also proposes to expand the responsibility in subsection (B) to owners and operators to match subsection (A). The Department needs to update subsection (D) to change the outdated reference to the Arizona Commerce Commission. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-612. Importation of Cattle and Bison

2. **Objective**

   The rule establishes the requirements for importing cattle and bison.

4. **Consistency**

   The rule is consistent with statutes and other rules.
List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620
9 CFR 79
9 CFR 93.424 - 93.427

10. **Completion of course of action from previous five-year review**

The Department did not move the cattle-specific health certificate requirements in rule 606 to this rule, move the contents of subsection (A) (1) to rule 602, add animals of unknown brucellosis exposure status to subsection (B) (1), add that the test in subsection (C) (2) must be within 30 days of entry, short the rule title to just “cattle and bison” and update the CFR references to the current edition. These changes did not occur.

14. **Proposed action**

The Department plans to incorporate simplified requirements from rule 606 Section 4 into this section. The Department also plans to simplify wording for importation requirements in this rule. The Department also plans to update current CFR reference into this section. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-613. Swine**

2. **Objective**

The rule establishes importation requirements for swine.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-1203, 3-1204, & 3-1205
A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not move the swine-specific health certificate requirements in rule 606 to this rule, move the contents of subsection (A)(1) to rule 602, drop subsection (A)(2) because it is duplicative of other rules, split subsection (C)(1)(d) into two subsections, and to insert language from rule 411(A) that pertains to importation. These changes did not occur.
14. **Proposed action**

The Department plans to incorporate simplified requirements from rule 606 section 5 into this rule. The Department also plans to simplify wording of this rule. The Department also plans to update reference to current CFR. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-614. Sheep and Goats**

2. **Objective**

The rule establishes import requirements for sheep and goats, including Brucella ovis testing.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:

- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not move rule 606(A) (6) into this rule, eliminate current subsection (A) (1), and update the CFR reference to the current year for ease of reference. These changes did not occur.

14. **Proposed action**

The Department plans to incorporate simplified requirements from rule 606 section 6 into this rule. The Department also plans to simplify wording of this rule. The Department also plans to update reference to current CFR. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-615. Equine Importation**

2. **Objective**

The rule establishes import requirements for equines, including testing requirements for equine infectious anemia, and restrictions on equines with fistulous withers or poll evil.
4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-407, R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department proposes to move rule 606(A) (7) into this rule, eliminate current subsection (A) and add a definition of Equine Infectious Anemia to rule 101. These changes did not occur.

14. **Proposed action**

The Department plans to incorporate simplified requirements from rule 606 section 7 into this rule. The Department also plans to simplify wording of this rule. The Department also plans to update reference to current CFR. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-616. **Cats and Dogs**

2. **Objective**

The rule establishes importation requirements for cats and dogs.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-409, R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not amend this rule to add an exemption for cats and dogs under 3 months old. The Department did not update rule 409, which will have a corresponding effect on this rule. These changes did not occur.

14. **Proposed action**

The Department plans to add a Rabies Vaccination exemption for cats and dogs under 3 months old. The Department proposes to change the phrase “health certificate” to
“certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-617. Poultry

2. **Objective**

   The rule establishes importation requirements for poultry.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203, 3-1204, & 3-1205
   - A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

   The Department did not rephrase this rule without changing any of the requirements in order to make it clearer. This change did not occur.

14. **Proposed action**

   The Department plans to update reference to current CFR. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-618. Psittacine Birds

2. **Objective**

   The rule establishes importation requirements for psittacine birds.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203, 3-1204, & 3-1205
   - A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**
The Department did not rephrase this rule to simply list what needs to be in a health certificate, allowing rule 602 to cover the requirement to possess a health certificate. This change did not occur.

14. **Proposed action**

The Department plans to update the reference to the current CFR. The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-620. Zoo Animals**

2. **Objective**

The rule establishes importation requirements for zoo animals.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203, 3-1204, & 3-1205
- A.A.C. R3-2-601 through R3-2-620

10. **Completion of course of action from previous five-year review**

The Department did not eliminate subsection (C). The Department plans to complete the proposed action within twenty four months of the end of rulemaking moratoriums. This change did not occur.

14. **Proposed action**

The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-621. Expired December 15, 2016**

**R3-2-622. Expired December 15, 2016**
ARTICLE 7 – LIVESTOCK INSPECTION

INFORMATION THAT IS IDENTICAL

5. **Enforcement**

   The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

   The rules are clear, concise, and understandable, except for rule 702.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules in this Article has not differed significantly from that projected in the economic impact statement prepared when these rules were last amended.

   The rules in this article were effective and last revised on the following dates:

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<tr>
<th>Rule</th>
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9. **Analysis submitted comparing rule’s impact**

   None.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

   The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

   The rules are not more stringent than federal law.
13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-701. Department Livestock Inspection**

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1); Laws 2016, Chapter 125

   Specific: A.R.S. §§ 3-1203(D) & 3-1332

2. **Objective**

   The rule addresses livestock inspections that are not covered by self-inspection. It also prohibits issuing a self-inspection certificate to someone who has been convicted of a felony within the past 3 years.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203 & 3-1331 *et seq.*
   - A.A.C. R3-2-702 & R3-2-703

10. **Completion of course of action from previous five-year review**

    The previous action of changing “Range Cattle” in R3-2-701(A) was incorrect and needs to stay in this rule.

14. **Proposed action**

    The Department proposes to maintain the rule as written.

**R3-2-702. Livestock Self-Inspection**

1. **Statutory authority**
General: A.R.S. § 3-107(A)(1)
Specific: A.R.S. §§ 3-1203(D)

2. **Objective**

The rule establishes the livestock self-inspection program requirements and procedures.

3. **Effectiveness**

The rule is mostly effective in achieving the objective. The Department believes it would be useful to have clear authority to suspend self-inspection privileges of someone who has been charged with a livestock felony after they have been approved for self-inspection. We would like to add mandatory reporting if the person is arrested and/or convicted of a Title 3 felony after approval of self-inspection privileges.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-1203 & 3-1331 *et seq.*
- A.A.C. R3-2-701 & R3-2-703

6. **Clarity, conciseness, and understandability**

The rule is partially clear, concise, and understandable. The rule needs clarification on felony arrest or convictions related to Title 3.

10. **Completion of course of action from previous five-year review**

The previous action of moving rule 702 to 701 does not apply. “Range Cattle” in R3-2-701(A) was incorrect and needs to stay in this rule.

14. **Proposed action**

The Department believes it would be useful to have clear authority to suspend self-inspection privileges of someone who has been charged with a livestock felony after they have been approved for self-inspection. We would like to add mandatory reporting if a person is arrested and/or convicted of a Title 3 felony after approval of self-inspection privileges. We propose to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.
R3-2-703. Seasonal Self-inspection Certificate

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. §§ 3-1203(D) & 3-1346

2. **Objective**

   The rule establishes a self-inspection program for exhibition cattle, sheep, goats, and swine. It differs from the self-inspection program in rule 702 in that it has a different fee and it may be used for movement over the entire exhibition season rather than just a single movement.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-1203 & 3-1331 *et seq.*
   - A.A.C. R3-2-701 & R3-2-702

10. **Completion of course of action from previous five-year review**

    The prior recommended action was not completed because it is already in R3-2-703(3)(C).

14. **Proposed action**

    The Department proposes to change the phrase “health certificate” to “certificate of veterinary inspection”. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-707. Ownership and Hauling Certificate for Equines; Fees

1. **Statutory authority**

   General: A.R.S. § 3-107(A)(1)

   Specific: A.R.S. §§ 3-1344(B) & 3-1345(B)
2. **Objective**

The rule establishes the fee for an Equine Ownership and Hauling Certificate.

3. **Effectiveness**

The rule is effective in achieving the objective.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:

A.R.S. §§ 3-1344 & 3-1345

10. **Completion of course of action from previous five-year review**

The Department did not propose to change this rule during the previous review.

14. **Proposed action**

The Department proposes to increase the fee because it is not cost effective. In 2015, only 32 hauling certificates were issued, in 2016 only 24 hauling certificates were issued, and only 20 hauling certificates have been issued for the current year. Since so few certificates are now issued, the current fee does not cover the cost to administer the permit. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-708. **Equine Rescue Facility Registration**

1. **Statutory authority**

General: A.R.S. § 3-107(A)(1)

Specific: A.R.S. § 3-1350

2. **Objective**

The rule establishes the requirements for an equine rescue facility to be added to the Department’s equine rescue facility registry.

3. **Effectiveness**

The rule is effective in achieving the objective.
4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-1350

10. **Completion of course of action from previous five-year review**

   The Department did not propose to change this rule during the previous review.

14. **Proposed action**

   The Department proposes to clarify the address for the American Association of Equine Practitioners (AAEP). The address in rule is 4075 Iron Works Pkwy, Lexington, KY 40511, but the address should be 4033 Iron Works Pkwy, Lexington, KY 40511. The Department plans to file a Notice of Proposed Rulemaking in January 2018.
ARTICLE 8 – DAIRY AND DAIRY PRODUCTS CONTROL

INFORMATION THAT IS IDENTICAL

1. Statutory authority

For rules 801 – 804, 806 – 809, and 811:

General: A.R.S. §§ 3-107(A)(1), 3-603(A), 3-605(C), & 3-667

Specific: A.R.S. §§ 3-605(C), 3-611(C), & 3-667

3. Effectiveness

The rule is effective in achieving the objective.

5. Enforcement

The Department enforces the rules as written.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

With the exception of rule 810, the economic impact of the rules in this Article has not differed significantly from that projected in the economic impact statement prepared when these rules were last amended.

The rules in this article were effective and last revised on the following dates:

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<td>R3-2-811</td>
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9. **Analysis submitted comparing rule’s impact**

None.

10. **Completion of course of action from previous five-year review**

The Department did not propose any action in the previous review, except for rule 801.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-801. Definitions**

2. **Objective**

The rule sets out definitions.

4. **Consistency**

The rule is partially consistent with statutes and other rules. The “PMO” definition references the 2013 revision of the federal Pasteurized Milk Ordinance, but there is a 2015 revision. Also, the definition of “3-A Sanitary Standards” and “3-A Accepted Practices” refers to a 2002 publication, when the current publication is dated 2008. The “converted” definition is not needed since it is not used any of the rules.

List of statutes or rules used in determining consistency:

- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-802 through R3-2-810

6. **Clarity, conciseness, and understandability**
The rule is clear, concise, and understandable.

10. **Completion of course of action from previous five-year review**

The Department completed the proposed action from the previous review.

14. **Proposed action**

The Department proposes to update the definitions discussed in item #4 to reflect the most current available versions of the incorporated documents (https://www.fda.gov/downloads/food/guidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM513508.pdf). The Department is exempt from the rulemaking requirements of this title 41, chapter 6 for the purpose of adopting and implementing the federal milk ordinance. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-802. Milk and Milk Product Standards**

2. **Objective**

The rule requires milk and milk products, unless exempt, to meet the standards in the federal Pasteurized Milk Ordinance.

4. **Consistency**

The rule is partially consistent with statutes and other rules. The “PMO” definition references the 2013 revision of the federal Pasteurized Milk Ordinance, but there is a 2015 revision.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 *et seq.*
- A.A.C. R3-2-801 & R3-2-803 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

14. **Proposed action**

The Department proposes to maintain the rule as written.

**R3-2-803. Milk and Milk Products Labeling**

2. **Objective**

The rule sets out labeling requirements for milk and milk products.
4. **Consistency**

The rule is consistent with state statutes and other rules. However, the rule incorporates federal regulations dating back to 2002. The Department believes those regulations should be updated to the current versions.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-801 through R3-2-802 & R3-2-804 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

14. **Proposed action**

The Department proposes to amend this rule to update the references to the Code of Federal Regulations. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-804. **Trade Products**

2. **Objective**

The rule sets out requirements for the advertising, display, labeling, and sale of trade products.

4. **Consistency**

The rule is partially consistent with statutes and other rules. The rule incorporates federal regulations dating back to 2002. The Department believes those regulations should be updated to the current versions. Also, subsection (C)(4) refers to rule 802, but it should cite rule 803 instead.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-801 through R3-2-803 & R3-2-805 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

14. **Proposed action**
The Department proposes to amend this rule to update the references to the Code of Federal Regulations and correct the cross-reference to rule 802. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-805. Grade A Raw Milk For Consumption

1. Statutory authority

   General: A.R.S. §§ 3-107(A)(1), 3-603(A), 3-605(C), & 3-667

   Specific: A.R.S. §§ 3-605(C), 3-611(C), 3-667, 3-1772(B), & 3-1773(B)

2. Objective

   The rule sets out health, sanitation, and labeling requirements for raw milk.

4. Consistency

   The rule is consistent with state statutes and other rules.

   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-601 et seq.; A.R.S. § 3-1772
   A.A.C. R3-2-801 through R3-2-804 & R3-2-806 through R3-2-810

6. Clarity, conciseness, and understandability

   The rule is partially clear, concise, and understandable. Subsection (A) is unclear on brucellosis testing. Cattle must be blood-tested for brucellosis annually. The ring test is only valid for cow milk and is not valid for other species. The ring test applies to the milk itself, not animal as implied by the current language.

12. Determination that rules are not more stringent than corresponding federal law

   The rule is not more stringent than corresponding federal law. In fact, federal law prohibits the sale of raw milk and milk products for consumption to the ultimate consumer (21 CFR § 1240.61).

14. Proposed action

   The Department proposes to amend this rule to make it clearer as described in item #6. The Department proposes to amend this rule to reflect a testing method that applies to other species of animals as described in #6 or establish alternative testing of animals to limit the risk to the consumer. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

R3-2-806. Parlors and Milk Rooms
2. **Objective**

The rule sets out standards for the construction of a parlor or milk room to ensure sanitary requirements.

4. **Consistency**

This rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-801 through R3-2-805 & R3-2-807 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable. Subsection (E)(2)(c) would probably fit better as part of the main paragraph in subsection (E)(2).

14. **Proposed action**

The Department proposes to maintain the rule as written for now as the clarity issue is not serious enough by itself to justify amending the rule.

R3-2-807. **Frozen Dessert Plant and Processing Standards**

2. **Objective**

The rule sets out standards for the construction of frozen dessert plants as well as sanitary standards for processing frozen desserts at those plants.

4. **Consistency**

The rule is mostly consistent with statutes and other rules. Subsection (A)(8)(b)(ii –iii) lists pasteurizing temperatures that are inconsistent with the federal milk ordinance and may not be safe for batch pasteurization.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-801 through R3-2-806 & R3-2-808 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable. Subsection (A)(4)(c)(iv), which includes the requirements for washing and sanitizing facilities, is unclear. Subsection (A)(4)(k), which is the approval of plans, is unclear, and no requirement to submit plans are
specified in the rule. In subsection (A)(5)(a), the word “bacteriologist” should be replaced with “regulatory authority or approved laboratory.” Subsection (A)(6)(c) is unclear with the description of what thermometer is to be used to check the recording thermometer, and the accuracy check of the thermometer should be revised to a higher frequency. Subsection (A)(8)(c) only requires the thermal limit controller be sealed, but this should also include other public health controls of the entire continued flow pasteurizer. Subsection (E) would be more grammatically correct if the word “count” were added after “yeast.”

14. **Proposed action**

The Department proposes to amend this rule to create safer product standards in #4 and #6 and clear up the understandability in #6. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes**

2. **Objective**

The rule sets out additional processing standards for retail establishments that reconstitute frozen desserts from powdered mixes.

4. **Consistency**

The rule is consistent with statute and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 et seq.
- A.A.C. R3-2-801 through R3-2-807 & R3-2-809 through R3-2-810

6. **Clarity, conciseness, and understandability**

The rule is mostly clear, concise, and understandable. The term “sterilization standards” in subsection (1) should be replaced with “sanitation standards” to be scientifically accurate.

14. **Proposed action**

The Department proposes to maintain the rule as written since the clarity issue in item #6 is not serious enough by itself to justify amending the rule.

**R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk**

2. **Objective**

The rule sets out procedures for dairies to exclude medicinal, chemical, and radioactive residues in milk and the Department’s enforcement options.
4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
  - A.R.S. §§ 3-601 *et seq.*
  - A.A.C. R3-2-801 through R3-2-808 & R3-2-811

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

14. **Proposed action**

The Department proposes to maintain the rule as written.

**R3-2-810. License Fees**

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A)(1), 3-603(A), 3-605(C), & 3-667; Laws 2016, Chapter 125

   Specific: A.R.S. §§ 3-607, 3-619(A), & 3-665

2. **Objective**

   The rule sets out temporary fee increases established pursuant to exempt rulemaking.

4. **Consistency**

   The rule is consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-601 *et seq.*
   - A.A.C. R3-2-601 through R3-2-609
   - Laws 2011, Ch. 36, § 6

6. **Clarity, conciseness, and understandability**

   The rule is clear, concise, and understandable.

14. **Proposed action**

   The Department proposes to maintain the rule as written.

**R3-2-811 Dairy Farm Permit**
2. **Objective**

The rule provides the opportunity for a dairy farmer to apply for a voluntary permit, and it enables the milk processor to ship product across state lines.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-601 *et seq.*
- A.A.C. R3-2-801 through R3-2-807 & R3-2-809 through R3-2-810
- Federal Milk Ordinance

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

14. **Proposed action**

The Department proposes to maintain the rule as written.
ARTICLE 9 – EGG AND EGG PRODUCTS CONTROL

INFORMATION THAT IS IDENTICAL

5. Enforcement

The Department enforces the rules as written, except for rule 906.

6. Clarity, conciseness, and understandability

The rules are clear, concise, and understandable.

7. Written criticisms

The Department has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared for each of the rules in this Article, except for rule 907. The original economic impact statement for rule 907 noted the possibility of a substantial impact on any egg importer who would no longer be able to sell eggs in the state as a result of the rule as well as those companies that would have increased sales due to less competition, but the Department is not aware of any company whose egg sales have been directly impacted more than minimally by this new rule.

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An EIS was not prepared at that time rule 904 became effective. That rule only sets quarterly periods and does not have an appreciable economic impact on industry, the public, or government entities.

9. Analysis submitted comparing rule’s impact
None.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

14. **Proposed action**

The Department proposes to maintain the rules as written, except for rules 901 and 906.

**INFORMATION THAT IS NOT IDENTICAL**

**R3-2-901. Definitions**

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A)(1) & 3-710(F)

   Specific: A.R.S. § 3-710(F)

2. **Objective**

   The rule sets out definitions.

3. **Effectiveness**

   The rule is mostly effective in achieving the objective. The Department would like to update the reference to the United Egg Producers Animal Husbandry Guidelines to the 2016 version. Also, the Department would like to create additional definitions for lot consolidation and repackaging eggs at retail that is associated with a new rule.

4. **Consistency**

   This rule is consistent with statutes and other rules, except since A.R.S. § 3-702 has been
repealed, the reference to that statute should be removed from this rule.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-701 et seq.
A.A.C. R3-2-901 through R3-2-908

10. **Completion of course of action from previous five-year review**

This rule was left unchanged since the standards did not change significantly.

14. **Proposed action**

The Department proposes to update the definitions to correct the issues discussed in items #3 - 4 and create the appropriate new rule for lot consolidation and repackaging at retail. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-902. Standards, Grades, and Weight Classes for Shell Eggs**

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A)(1) & 3-710(F)
   Specific: A.R.S. §§ 3-705, 3-706, 3-707, 3-708, & 3-710(F)

2. **Objective**

   The rule sets out standards, grades, and weight classes for shell eggs.

3. **Effectiveness**

   The rule is mostly effective in achieving the objective. The rule incorporates standards from the most current revised USDA standards as of July 20, 2000.

4. **Consistency**

   This rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-701 et seq.
A.A.C. R3-2-901 & R3-2-903 through R3-2-908

10. **Completion of course of action from previous five-year review**

   The Department did not complete the proposed action from the prior review because further review concluded the rule is accurate in its referral to the applicable document.
R3-2-903. Sampling: Schedule and Methods for Evidence

1. Statutory authority
   General: A.R.S. §§ 3-107(A)(1) & 3-710(F)
   Specific: A.R.S. §§ 3-710(F) & 3-712

2. Objective
   The rule sets out egg sampling procedures by inspectors.

3. Effectiveness
   The rule is effective in achieving the objective.

4. Consistency
   This rule is consistent with statutes and other rules.
   List of statutes or rules used in determining consistency:
   A.R.S. §§ 3-701 et seq.
   A.A.C. R3-2-901 through R3-2-902 & R3-2-904 through R3-2-908

10. Completion of course of action from previous five-year review
    The Department did not propose any action during the previous review.

R3-2-904. Quarterly Report Periods

1. Statutory authority
   General: A.R.S. §§ 3-107(A)(1) & 3-710(F)
   Specific: A.R.S. §§ 3-710(F) & 3-716

2. Objective
   The rule sets out reporting periods for reports of sold eggs.

3. Effectiveness
   The rule is effective in achieving the objective.

4. Consistency
The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-701 et seq.
A.A.C. R3-2-901 through R3-2-903 & R3-2-905 through R3-2-908

10. Completion of course of action from previous five-year review

The Department did not propose any action during the previous review.

R3-2-905. Inspection Fee Rate

1. Statutory authority

General: A.R.S. §§ 3-107(A)(1) & 3-710(F)
Specific: A.R.S. §§ 3-710(F) & 3-716

2. Objective

The rule sets out the inspection fee.

3. Effectiveness

The rule is effective in achieving the objective.

4. Consistency

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 3-701 et seq.
A.A.C. R3-2-901 through R3-2-904 & R3-2-906 through R3-2-908

10. Completion of course of action from previous five-year review

The Department completed the course of action proposed during the previous review.

R3-2-906. Violations and Penalties

1. Statutory authority

General: A.R.S. §§ 3-107(A)(1) & 3-710(F)
Specific: A.R.S. §§ 3-710(F) & 3-739
2. **Objective**

   The rule describes prohibited activities that are subject to civil penalties.

3. **Effectiveness**

   The rule is effective in achieving the objective.

4. **Consistency**

   The rule is mostly consistent with statutes and other rules. The reference in subsection (A)(1)(d) to A.R.S. § 3-715(K) is pointless as no exemption exists in that statute. Also, subsection (A)(2)(a) should cite to A.R.S. § 3-701(13) instead of A.R.S. § 3-701(10).

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-701 et seq.
   - A.A.C. R3-2-901 through R3-2-905 & R3-2-907 through R3-2-908

5. **Enforcement**

   For Section C, no monetary civil penalty is issued in excess of a warning.

10. **Completion of course of action from previous five-year review**

    The Department did not propose any action during the previous review.

14. **Proposed action**

    The Department proposes to amend the rule to fix the cross-references noted in item #4 and evaluate the compliance benefit of monetary penalties listed in #5. The Department plans to file a Notice of Proposed Rulemaking in January 2018.

**R3-2-907. Poultry Husbandry; Standards for Production of Eggs**

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A)(1) & 3-710(F)

   Specific: A.R.S. § 3-710(J)

2. **Objective**

   The rule sets out poultry husbandry guidelines and requires eggs sold in Arizona to be from hens raised according to the guidelines.
3. **Effectiveness**

The rule is mostly effective in achieving the objective. The Department would like to update the reference to the United Egg Producers Animal Husbandry Guidelines in rule 901 to the 2016 version. These guidelines are referenced in Sections A and B of this rule.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-701 *et seq.*
- A.A.C. R3-2-901 through R3-2-906 & R3-2-907

10. **Completion of course of action from previous five-year review**

The Department did not propose any action during the previous review.

**R3-2-908. Sanitary Standards; Egg Processing**

1. **Statutory authority**

General: A.R.S. §§ 3-107(A)(1) & 3-710(F)

Specific: A.R.S. § 3-710(I)

2. **Objective**

The rule sets out facility and sanitary operation requirements for eggs.

3. **Effectiveness**

The rule is mostly effective in achieving the objective. The rule incorporates standards from the most current revised 7 CFR Part 56 standards as of March 30, 2008.

4. **Consistency**

The rule is consistent with statutes and other rules.

List of statutes or rules used in determining consistency:
- A.R.S. §§ 3-701 *et seq.*
- A.A.C. R3-2-901 through R3-2-907

10. **Completion of course of action from previous five-year review**

The Department did not propose any action during the previous review.
ARTICLE 10 – AQUACULTURE

INFORMATION THAT IS IDENTICAL

1. **Statutory authority**

   General: A.R.S. §§ 3-107(A) (1) & 3-2903
   Specific: A.R.S. §§ 3-2903, 3-2904, 3-2905, 3-2906, 3-2907, & 3-2908

3. **Effectiveness**

   The rules are effective in achieving the objectives.

4. **Consistency**

   The rules are consistent with statutes and other rules.

   List of statutes or rules used in determining consistency:
   - A.R.S. §§ 3-2901 et seq.
   - A.A.C. R3-2-1001 through R3-2-1010

5. **Enforcement**

   The Department enforces the rules as written.

6. **Clarity, conciseness, and understandability**

   The rules are clear, concise, and understandable, though the Department believes the references to “owner’s agent” in R3-2-1010 are unnecessary.

7. **Written criticisms**

   The Department has not received any written criticisms of these rules within the last 5 years.

8. **Economic, small business, and consumer impact comparison**

   The economic impact of the rules has not differed significantly from that projected in the last economic impact statement prepared for each of the rules in this Article.

   The rules in this article were effective and last revised on the following dates:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Effective Date</th>
<th>Last Revision</th>
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</thead>
<tbody>
<tr>
<td>R3-2-1001</td>
<td>May 3, 1993</td>
<td>--</td>
</tr>
<tr>
<td>R3-2-1002</td>
<td>May 3, 1993</td>
<td>November 9, 2002</td>
</tr>
</tbody>
</table>
9. **Analysis submitted comparing rule’s impact**

None.

10. **Completion of course of action from previous five-year review**

The Department did not propose any action during the previous review.

11. **Least burden and cost to persons regulated necessary to achieve the underlying regulatory objective**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rules are not more stringent than corresponding federal law**

The rules are not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules comply with A.R.S. § 41-1037 because they do not identify criteria for a permit, license, or agency authorization.

14. **Proposed action**

The Department proposes to maintain the rule as written.

**INFORMATION THAT IS NOT IDENTICAL**

2. **Objective**

R3-2-1001. The rule sets out definitions.

R3-2-1002. The rule sets out licensing and inspection fees.

R3-2-1003. The rule sets out general provisions related to licenses and aquaculture disease control.
R3-2-1004. The rule sets out additional information required for licensure and requirements pertaining to the drainage area where the aquaculture facility is located.

R3-2-1005. The rule sets out the requirements for removing an aquatic animal from a fee fishing facility.

R3-2-1006. The rule sets out the requirements to obtain a processor license.

R3-2-1007. The rule sets out requirements for aquaculture transporters.

R3-2-1009. The rule sets out what diseases or causative agents the Department inspects for.

R3-2-1010. The rule sets out requirements for importing aquatic animals.