

TITLE 3. AGRICULTURE
CHAPTER 1. DEPARTMENT OF AGRICULTURE
ADMINISTRATION

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ARTICLE 1. GENERAL PROVISIONS

R3-1-101. Definitions

In addition to the definitions in A.R.S. § 41-1001, the following terms apply to this Chapter:

“Administrative Law Judge” means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.

“Department” means the Arizona Department of Agriculture.

“Director” means the Director of the Arizona Department of Agriculture.

“License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes. A.R.S. § 41-1001.

“Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. A.R.S. § 41-1001.

“Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency. A.R.S. § 41-1001.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-102. Computation of Time

The Department shall compute a period of time for action required in a Department rule or order, as follows:

1. The day of the act, event, or default from which the designated period of time begins to run shall not be included;
2. The last day of the period shall be included unless it is a Saturday, Sunday, or Arizona legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Arizona legal holiday; and
3. If the period of time allowed is 10 days or less, intermediate Saturdays, Sundays, and Arizona legal holidays are not included.

Historical Note

Adopted effective October 14, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-103. Licensing; Testing

A. For a license for which an applicant is required to pass an examination, the Department may limit the amount of time the applicant is allowed to complete the licensing examination. In determining whether and to what extent the time-frame for an examination will be limited, the Department shall consider the following:

1. The number of questions on the examination;
2. The difficulty and content of the questions;
3. And if available, historical data on the average amount of time taken to complete the examination.

B. An applicant seeking an accommodation under the American’s with Disabilities Act to the manner in which an examination is

administered shall make a written request to the Department at the time the applicant schedules the examination. The Department may require the applicant to provide medical documentation to confirm the need for the requested accommodation.

- C. The Department shall review the request for accommodation and decide this request on a case-by-case basis.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

R3-1-201. Adjudicative Proceedings Before the Department

The Department shall use the uniform administrative appeals procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-202. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-203. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-204. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-205. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-206. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-207. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-208. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-209. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-210. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-211. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-212. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-213. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-214. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-215. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-216. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-217. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-218. Rehearing or Review of Decision; Basis

- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Director shall grant a rehearing or review of an administrative law judge's decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law.
 2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.

3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Department, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 4. Excessive or insufficient sanction.
- C. The Director may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-219. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING**R3-1-301. Rulemaking Record**

A person may review an official rulemaking record at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. The Department shall provide a copy of a record according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-302. Petition to Make, Amend, or Repeal a Rule

- A. A person requesting the Department to adopt, amend, or repeal a rule, as prescribed in A.R.S. § 41-1033, shall file a petition with the Director. A petition shall contain:
1. The name, address, and signature of the person submitting the petition;
 2. For the making of a new rule, the specific language of the proposed rule;
 3. For the amendment of a current rule, the Section number, title, and language of the current rule with changes identified by drawing a line through language to be deleted and underlining proposed language;
 4. For the repeal of a current rule, the Section number and title of the rule;
 5. A statement describing why the rule should be made, amended, or repealed; and
 6. The date the petition is signed.
- B. A person may submit additional information in support of a petition, including:
1. Statistical data or other study, clearly referencing any attached exhibit;
 2. Identification of a person that would be affected and how the person would be affected; and
 3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or any written comments received from the public.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-303. Written Comment; Proposed Rulemaking

A person shall direct written comment on a proposed rule to the person identified by the Department in a rulemaking notice published in the Arizona Administrative Register as responsible for accepting written comment.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-304. Oral Proceeding; Proposed Rulemaking

A presiding officer shall perform the following acts on behalf of the Department when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:

1. Request that each attendee register by name and representative capacity, if applicable, on a form provided by the Department;
2. Require that an attendee intending to speak provide the following information on a form obtained from the Department:
 - a. Name and representative capacity, if applicable;
 - b. Position with regard to the proposed rule; and
 - c. Approximate length of time needed to present comment;
3. Open the oral proceeding by identifying the rule to be considered, the purpose of the proceeding, and the agenda for the proceeding;
4. Allow a statement by a Department representative to explain the background and general content of the proposed rule;
5. Allow public comment limited to a reasonable amount of time for each speaker, without permitting undue repetition, or extensive reading of written comments or exhibits into the record;
6. Allow the Department to present additional information after public comments are received;
7. Allow a person to respond to the Department's supplemental presentation;
8. Accept written comments and exhibits on behalf of the Department; and
9. Make closing remarks that include the location where written comments are received by the Department and the date and time the rulemaking record will close.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-305. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-306. Written Criticism of a Current Rule

- A. A person may file a written criticism of a current rule with the Department at any time.
- B. A criticism shall clearly identify the rule addressed and describe with specificity the person's concern regarding the rule.

- C. The Department shall acknowledge receipt of a criticism within 20 days and shall retain the criticism in the Department's files for review under A.R.S. § 41-1056.
- D. A criticism is not a petition as prescribed in R3-1-302.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-307. Petition for Review of a Practice or Policy

A person may petition the Director to review a practice or substantive policy statement, as prescribed in A.R.S. § 41-1033, that the petitioner alleges to constitute a rule. The petition shall contain:

- 1. The name, address, and signature of the petitioner;

- 2. The representative capacity of the petitioner, if applicable;
- 3. The practice or substantive policy statement at issue, identified by Department division, number, title, date, or concise description;
- 4. A statement describing with specificity why the petitioner alleges the practice or substantive policy statement constitutes a rule; and
- 5. The date the petition is signed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).