

ARIZONA DEPARTMENT OF AGRICULTURE

SUBSTANTIVE POLICY STATEMENT

P1-302, Department Inspections

A.R.S. § 41-1091(B) Notice

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

ARIZONA DEPARTMENT OF AGRICULTURE <u>SUBSTANTIVE POLICY STATEMENT</u> Office of the Director DEPARTMENT INSPECTIONS	<u>DIVISION/</u> <u>PROGRAM</u> <u>1</u>
	<u>POLICY</u> <u>302</u>
	 SIGNATURE
	<u>1-11-01</u>
	EFFECTIVE DATE

Supersedes P1-302, dated 11-5-98

1. POLICY

The purpose of this policy is to set forth the protocols to be followed by Arizona Department of Agriculture (ADA) employees who will be conducting inspections. This policy identifies how the ADA inspectors will comply with A.R.S. § 41-1009.

2. AUTHORITY

A.R.S. § 3-107 Organizational and Administrative Powers and Duties of the Director.

A.R.S. § 41-1009 Inspections; applicability

3. RESPONSIBILITY

All ADA employees who conduct inspections, or who manage or supervise inspection activities are responsible for implementing this policy.

4. APPLICABILITY

This policy applies to all instances where an ADA employee will be conducting an inspection for the purpose of determining: (1) compliance with agricultural statutes or rules or (2) compliance with, or eligibility for, a license.

5. EXEMPTIONS

This policy does not apply to criminal investigations or inspections where the ADA employee conducting the inspection has a reasonable suspicion to believe that criminal activity is occurring at the place of the inspection. When an inspector has such a suspicion, the inspector shall document the circumstances that created the suspicion and report it to his or her supervisor either by immediate telephone call or upon return to duty station, unless the inspector is a certified and authorized peace officer in which case the inspector may proceed with the criminal investigation.

This policy is inapplicable to agency activities whose primary purpose is other than determining license eligibility, compliance status or whether an informal or formal enforcement action is

necessary. A list of those agency activities that are not subject to this policy are listed in Attachment A. Exempt activities may be added to the list by the Director.

6. DEFINITIONS

"Administrative enforcement order" means a written directive issued by the Director which orders a regulated person to take certain actions required by law or to cease certain actions prohibited by law.

"Agency action" means taking action based upon an inspection, including but not limited to: (1) notifying the regulated person or authorized representative that no action will result from the inspection; (2) taking informal or formal enforcement action; (3) referring the matter to another agency for appropriate action; or (4) making a licensing decision.

"Authorized representative" means an individual who is employed in a managerial capacity or who has been designated by an officer or manager of the business to represent the regulated person during the inspection.

"Repeated inspections" means the commencement and completion of more than one inspection at the same location for the same regulated person within thirty days and the most recent inspection occurred within the past ninety days.

"Formal enforcement action" means, but is not limited to, issuing an administrative enforcement order, requesting an administrative hearing, offering the opportunity to enter into a consent order, or filing a civil lawsuit seeking civil penalties and/or injunctive relief.

"Informal enforcement action" means but is not limited to, issuing a notice of opportunity to correct, a notice of violation, or status letter.

"Inspection" means a review, investigation, examination or follow-up for the purpose of determining: (1) compliance with agricultural statutes or rules or (2) compliance with, or eligibility for, a license.

"License" means an ADA permit, certificate, approval, registration, or similar permission required by law.

"Regulated person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization or another state agency, who is responsible for ensuring compliance with agricultural statutes, rules or licenses.

"Windshield inspection" means general observations of agricultural activities to determine whether an inspection is necessary without identifying a particular regulated person or location for inspection.

7. PROCEDURE

A. When conducting an inspection the ADA employee shall:

1. Upon arriving at the place where the inspection will occur, show an official ADA photo identification and provide the following information to the regulated person or the authorized representative, if any:

- a. The purpose of the inspection;
 - b. The legal authority for conducting the inspection;
 - c. Any applicable fees that may be charged for the inspection;
 - d. That the regulated person or the authorized representative is entitled to accompany the inspector during the inspection, including being present for any interview, except confidential interviews;
 - e. That if any original documents are taken by an ADA employee during the inspection ADA, if requested, will provide copies of those documents at ADA's expense, to the regulated person or the authorized representative;
 - f. The regulated person or the authorized representative is entitled to a split or duplicate of any sample(s) taken during the inspection unless the split or duplicate of the sample(s) would prohibit the analysis from being conducted or render the analysis inconclusive;
 - g. The regulated person or the authorized representative is entitled to copies of any analysis performed on samples taken during the inspection. ADA will provide such copies at its expense.
2. Provide the regulated person or the authorized representative with a "Notice of Inspection Rights" form (Attachment "B" or similar document), review the document with the regulated person or representative and request that the person/representative sign two copies of the form. One copy will be provided to the regulated person or authorized representative and one copy will be placed in an ADA file.
 3. Before interviewing any person during an inspection, inform the person to be interviewed that the statements made by that person may be included in the inspection report.
 4. Before tape recording an interview with a person, inform the person who is being interviewed that the conversation is being recorded.
 5. If the inspection will be concluded at the time the ADA employee leaves the place where the inspection occurred, the ADA employee will give a copy of the inspection report to the regulated person or authorized representative when leaving the place where the inspection occurred. Otherwise, the ADA employee will give a copy of the inspection report to the authorized representative within thirty working days after the conclusion of the inspection. An inspection is not concluded until there has been sufficient time to evaluate information collected, await and evaluate analytical results of samples taken, conduct additional interviews or make a follow-up inspection. If the report is not delivered to the authorized representative at the time the ADA employees leaves the place where the inspection occurred, then the report must be served by personal delivery or certified mail return receipt requested, or by any other method reasonably calculated to ensure actual receipt of the inspection report by the regulated person by the thirtieth working day, following the conclusion of the inspection.

6. At least once every month, after the commencement of the inspection the ADA employee who conducted the inspection shall provide the regulated person with a written update on the status of any action resulting from an inspection until ADA takes an agency action. The update notification shall be provided as set forth in Attachment "C" or a similar document.
- B. Windshield Inspections: ADA employees are permitted to engage in windshield inspections without following the procedures in paragraph A. When ADA employees observe circumstances during a windshield inspection which justify commencing an inspection, then ADA employees will follow the procedures in paragraph A. If the windshield inspection takes place where no regulated person or authorized representative is present, then before beginning an inspection ADA employees will attempt to contact the regulated person or authorized representative before beginning the inspection and provide the regulated person or authorized representative with an opportunity to be present during the inspection. ADA employees will document the attempts to contact the regulated person or authorized representative and whether the regulated person or authorized representative declined to be present during the inspection.
 - C. Repeated Inspections: ADA employees who are engaged in repeated inspections may conduct inspections without following the procedure in paragraph A, if all of the following conditions are satisfied:
 1. An ADA employee has met within the past twelve months with the regulated person who is subject to the continuous inspection or the authorized representative and reviewed the Notice of Inspection Rights Form.
 2. The regulated person or authorized representative has signed and dated an acknowledgment that an ADA employee has reviewed the Notice of Inspection Rights Form within the past twelve months.
 3. The regulated person or authorized representative has signed and dated a Waiver of Further Notification Form, Attachment "D", within the past twelve months and the original is on file with ADA.

ADA employees must still inform any person who is being interviewed that their statements may be included in an inspection report and whether their interview is being tape recorded as required in paragraphs (A)(3) and (A)(4). Additionally, the requirements of paragraphs (A)(5) and (6) still apply.

ATTACHMENTS

- Attachment A -- List of Exempt Activities
- Attachment B -- Notification of Inspection Rights
- Attachment C -- Agency Action Update Letter
- Attachment D -- Waiver of Further Notification

LIST OF EXEMPT ACTIVITIES

Department

1. Technical or compliance assistance visits which will not lead to agency actions.
2. Meetings to negotiate licenses, permits, agency actions or property access.
3. Visits to places where inspections occur for employee training or "open house" tours.
4. Meetings for the development of rules, policies and guidance.
5. Professional meetings and conferences.
6. Community outreach or educational activities.
7. Enforcement follow-up visits which are part of an original inspection including visits to the location where the inspection occurred to determine whether deficiencies have been corrected pursuant to A.R.S. § 41-1009(F).

Agricultural Consultation and Training

All activities.

Animal Services Division

1. Roadside stops to inspect vehicles.
2. Inspections for roadside kills conducted on roads.
3. Inspections for Equine Ownership and Hauling Certificates, A.R.S. § 3-1344-1345.

Citrus, Fruit and Vegetable

1. Federal-State Inspection except for Inspections to determine compliance with marketing orders and U.S. Import Requirements.

Environmental Services Division

None

Plant Services Division

1. Terminal inspections of agricultural commodities at facilities such as UPS, air cargo, truck docks, post offices and Federal Express.
2. Inspections of agricultural commodities on vehicles at ports of entry.

State Agricultural Laboratory

None

ATTACHMENT B

ARIZONA DEPARTMENT OF AGRICULTURE

NOTICE OF INSPECTION RIGHTS; DISCLOSURE VERIFICATION

Name: _____	
Location: _____	
Mailing Address (if different) _____	
Telephone: _____	Fax: _____
Arizona Department of Agriculture Inspection Information	
Date of Inspection ___/___/___ Time: _____AM/PM	
Inspector: _____	
Accompanied by: _____	

1. This inspection is conducted under the authority of Arizona Revised Statute (A.R.S.) § _____.
2. The purpose of this inspection is to determine compliance with A.R.S. § _____ and Arizona Administrative Code (A.A.C.) _____.
3. Fees for this inspection are: _____ Not Applicable _____ Authorized by A.R.S. § _____ as follows: _____.
4. An authorized representative of this facility may accompany the inspector during the inspection conducted on these premise, except during any confidential interview.
5. You have a right to receive:
 - a. Copies of any original documents taken by the inspector(s) during the inspection in those cases where the agency has authority to take original documents.
 - b. A split or duplicate of any samples taken during the inspection, if the splitting or duplication of the sample(s) would not prohibit analysis from being conducted or render the analysis inconclusive.
 - c. Copies of any analysis performed on sample(s) taken during the inspection.
6. Each person interviewed during this inspection will be informed that statements made by the person may be included in the inspection report.
7. Each person whose conversation is tape recorded during the inspection will be informed that the conversation is being tape recorded.

8. If you have questions regarding this inspection, you may contact _____
at _____.

9. You have a right to appeal a final decision of the Arizona Department of Agriculture if any administrative order is issued or other enforcement action is taken based on the results of this inspection. Administrative hearing rights are found in A.R.S. §41-1092 *et seq.*, and rights relating to appeal of a final decision are found in A.R.S. §12-901 *et seq.*

10. If you have any questions regarding your right to appeal an enforcement action taken by the Arizona Department of Agriculture based on the results of this inspection, you may contact:

ADA representative: _____ at
_____.

ADA Ombudsman: _____ at
_____.

Office of Ombudsman-Citizen Aide, 1101 West Washington Street, Phoenix, AZ 85007;
(602)255-1932

Upon entry onto the premises, for this inspection, the Arizona Department of Agriculture inspector(s), identified above, presented photo identification indicating that they are Arizona Department of Agriculture employees and reviewed with me the above notice of Inspection Rights. I understand that while I have the right to decline to sign this form, the Arizona Department of Agriculture representatives may nevertheless proceed with the inspection.

Signature & Title of Authorized Representative _____ Date

_____ refused to sign this form.

_____ The regulated person or authorized representative is not present.

Signature of ADA Inspector _____ Date

Remarks: _____

(AGENCY ACTION UPDATE LETTER)

[Date]

[File No., Case No., DR No.]

[Name of Regulated Person]

[Address]

RE: Update of ADA Action Resulting from Inspection at [location of inspection]

Dear [Regulated Person]:

This letter constitutes the monthly update on the status of ADA action resulting from ADA's inspection at the above-referenced site on [Date of Inspection], as required by A.R.S. § 41-1009(H). In providing this update, ADA has reviewed only action resulting from this inspection, and has not considered other information that may be in ADA's files for this location or any action unrelated to this inspection.

The current status of ADA action resulting from the above-referenced inspection is as follows (applicable items are checked):

- ___ 1. Transmitting samples to laboratory; awaiting results
- ___ 2. Analyzing sample data/reviewing sample analysis
- ___ 3. Preparing inspection report
- ___ 4. Reviewing and analyzing inspection report
- ___ 5. Determining appropriate ADA response to identified violations
- ___ 6. Awaiting response from you
- ___ 7. Other

If you have any questions regarding this update, you may contact the undersigned at the phone number provided.

Sincerely,

[Name of ADA Personnel]

[Phone Number]

WAIVER OF FURTHER NOTIFICATION

Pursuant to A.R.S. § 41-1004, I hereby waive my right to have Arizona Department of Agriculture employees follow the requirements of A.R.S. § 41-1009 before conducting an inspection. I also waive my right to be notified verbally and in writing of the following:

- 1. The purpose of the inspection.
2. The legal authority for conducting the inspection.
3. The legal authority for fees that may be charged for the inspection.
4. That I or my authorized representative is entitled to accompany the inspector during the inspection, including being present for any interviews, except confidential interviews. This does not, however, waive my right to be present during interviews, but only my right to be notified of this right before an inspection begins.
5. That if any original documents are taken by an ADA employee during the inspection, then ADA, if requested, will provide me with copies of those documents at ADA's expense.
6. That I or my authorized representative is entitled to a split or duplicate of any sample(s) taken during the inspection unless the split or duplication of the sample(s) would prohibit the analysis from being conducted or render the analysis inconclusive.
7. That I am or my authorized representative is entitled to copies of any analysis performed on samples taken during the inspection at the ADA's expense.

I retain my right to request a split or duplicate sample, my right to an administrative hearing pursuant to A.R.S. § 41-1092 et seq., and my right to judicial review of the final administrative decision pursuant to A.R.S. § 12-901 et seq.

I acknowledge I have met with a representative of the Arizona Department of Agriculture who has reviewed the Notice of Inspection Rights Form and the Waiver of Further Notification Form with me. I have been afforded the opportunity to review this with my attorney and have done so or waive the right to do so. I sign this waiver knowingly and voluntarily.

Print Name of Regulated Person or Authorized Representative and Position

Signature of Regulated Person or Authorized Representative

Date

Print Name of ADA Employee

Signature of ADA Employee

Date