



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the

interpretation of the final exempt rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[R15-137]

PREAMBLE

- 1. Article, Part or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:
3. The effective date of the rule and the agency's reason it selected the effective date:
4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:
5. The agency's contact person who can answer questions about the rulemaking:
6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

The service charge fee for livestock inspection under A.R.S. § 3-1337 will be ten dollars, which is the same fee charged for fiscal years 2009 through 2015.



The license to slaughter fees under A.R.S. § 3-2003 will continue to be \$250, \$300 and \$450. The fees for processing, pet food manufacturing, and meat transportation licenses will continue to be \$300, broker, jobber, and meat storage licenses will continue to be \$450, and distributor licenses will continue to be \$500. *See* A.R.S. § 3-2081.

Manufacturing milk processing plant and wholesale distributor licenses will continue to be \$100 and milk sampler licenses and renewals will continue to be \$50 and \$30 respectively. Distributing plant licenses will continue to cost \$300 plus \$2,500 for each of the facility's pasteurizers. Similarly, producer-distributor licenses for IMS (interstate milk shipper) listed facilities will continue to cost \$150 plus \$2,500 for each of the facility's pasteurizers. The license fee for non-IMS listed producer-distributors will continue to be \$150, the same rate as the prior six years. The Department performs quarterly inspections on pasteurizers, which is why it determined to base fees on the number of pasteurizers. *See* A.R.S. §§ 3-607 and 3-619.

The fee for a license to engage in the manufacture of dairy trade products will continue to be \$100, the amount set out in A.R.S. § 3-665(B). This fee is included in the rule only for completeness.

7. **A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact, if applicable:**
Laws 2015, 1st Reg. Sess., Ch. 10, § 14 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2016. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.
10. **A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**
Not applicable
11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**
None received
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**
The Department of Agriculture Advisory Council voted on June 17, 2015 in favor of continuing the fees set out in this rulemaking through FY2016.
 - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
R3-2-203 requires a license to conduct certain activities. Rule R3-2-701 does not require a permit, and rule R3-2-810 sets out fees for certain licenses but does not itself require or establish any permits or licenses. The Department does not use a general permit for rule R3-2-203 because that would increase the cost for licensees by requiring them to pay the licensing fee for activities that the licensees do not engage in. Additionally, any duplication of information provided by an applicant to obtain multiple licenses would be minimal.
 - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
Not applicable
 - c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**
No
13. **A list of any incorporated by reference material and its location in the rule:**
None
14. **Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**
No
15. **The full text of the rules follows:**



TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section
R3-2-203. Licenses; Registration; Records

ARTICLE 7. LIVESTOCK INSPECTION

Section
R3-2-701. Department Livestock Inspection

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section
R3-2-810. License Fees

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-203. Licenses; Registration; Records

- A. No change
 - 1. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- D. During fiscal year ~~2015~~ 2016, the fee to obtain or renew a license to slaughter is:
 - 1. For not to exceed forty-five head of cattle, and not to exceed fifty-five head of sheep, goats or swine in one calendar year, two hundred fifty dollars.
 - 2. For more than forty-five and not to exceed one hundred fifty head of cattle and more than forty-five and not to exceed one hundred sixty head of sheep, goats or swine in one calendar year, three hundred dollars.
 - 3. For more than one hundred fifty head of cattle and more than one hundred sixty head of sheep, goats or swine in any one calendar year, four hundred fifty dollars.
- E. During fiscal year ~~2015~~ 2016, the fee to obtain or renew a meat license is:
 - 1. For a broker, four hundred fifty dollars.
 - 2. For exempt processing, three hundred dollars.
 - 3. For a distributor, five hundred dollars.
 - 4. For a jobber, four hundred fifty dollars.
 - 5. For a pet food manufacturer, three hundred dollars.
 - 6. For a processor, three hundred dollars.
 - 7. For meat storage, four hundred fifty dollars.
 - 8. For transportation, three hundred dollars.



6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The rulemaking updates the incorporation by reference of the federal pasteurized milk ordinance to the most recent version. A.R.S. § 3-605 says the provisions of the federal milk ordinance apply to this state, and the Department believes the most updated version of the ordinance is intended by this statute. The Department also wants to use the most updated version to be in compliance with FDA guidelines and to maintain the ability to participate in the National Conference on Interstate Milk Shippers.

The pasteurized milk ordinance refers to milk producer permits. Therefore, the Department is also adding R3-2-811 for the purpose of describing how a dairy farm may obtain the permit and the conditions for keeping the permit. Obtaining this permit is voluntary under Arizona law, but a producer may want the permit to comply with federal law or the laws of another state.

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

None

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

Not applicable

9. A summary of the economic, small business, and consumer impact:

A.R.S. §§ 3-605(E) and 41-1005(A)(32) authorize an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing rules to adopt and implement the provisions of the federal milk ordinance. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

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

Not applicable

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

None received

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

The Department received permission to conduct rulemaking from the Governor’s Office in compliance with Executive Order 2015-01. Pursuant to A.R.S. § 3-104(F), the ADA Advisory Council approved this rulemaking.

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

R3-2-811 refers to a milk producer permit. But since the permit is voluntary rather than mandatory, A.R.S. § 41-1037 does not apply.

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

No. This rule relates to the intrastate sale of milk. Federal law, found at 21 CFR 1240.61, relates to the interstate sale of milk.

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

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

“3A Sanitary Standards” and “3-A Accepted Practices,” as published by the International Association for Food Protection, amended May 31, 2002 – R3-2-801
2013 Grade A Pasteurized Milk Ordinance – R3-2-801

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

No text was changed between the emergency rule and the exempt rulemaking.

15. The full text of the rule follows:



TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section	
R3-2-801.	Definitions
R3-2-811.	Dairy Farm Permit

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

“3A Sanitary Standards” and “3-A Accepted Practices,” as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

“CIP” means a procedure by which equipment, pipelines, and other facilities are cleaned in place as prescribed in the 3A Accepted Practices.

“Converted” means the process by which a frozen dessert is changed from a frozen to semifrozen form without any change in the ingredients.

“Fluid trade product” means any trade product as defined in A.R.S. § 3661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

“Food establishment” means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

“Frozen desserts mix” or “mix” means any frozen dessert before being frozen.

“Grade A raw milk” means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

“Parlor” and “milk room” mean the facilities used for the production of Grade A raw milk for pasteurization.

“Plant” means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

“Manufacturing plant” means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

“Handling plant” means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

“Plate line” means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.

“PMO” means the Grade A Pasteurized Milk Ordinance — ~~1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2005 2013~~ Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the Department of Health and Human Services, Public Health Services, Food and Drug Administration, Dairy and Egg Branch (HFS 316), 5100 Paint Branch Parkway, College Park, MD 20740 3835. A copy of the incorporated material may also be viewed at <http://agriculture.az.gov>.

“Retail food store” means any establishment offering packaged or bulk goods for human consumption for retail sale.

R3-2-811. Dairy Farm Permit

A. A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:

1. Legal name.
2. Physical and mailing address.
3. Telephone number.



icate for each lot. Some applicants elect to artificially divide their nursery stock 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.

- 7. **A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. **The summary of the economic, small business, and consumer impact, if applicable:**
Laws 2015, 1st Reg. Sess., Ch. 10, § 14 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2016. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.
- 10. **A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**
Not applicable
- 11. **An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**
None received
- 12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**
The Department of Agriculture Advisory Council voted on June 17, 2015 in favor of continuing the fees set out in this rulemaking through FY2016.
 - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
The rule does not require a permit. The nursery certification program is voluntary.
 - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
Not applicable
 - c. **Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**
No
- 13. **A list of any incorporated by reference material and its location in the rule:**
None
- 14. **Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**
No
- 15. **The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 3. NURSERY CERTIFICATION PROGRAM

Section
R3-4-301. Nursery Certification

ARTICLE 3. NURSERY CERTIFICATION PROGRAM

R3-4-301. Nursery Certification
A. No change



- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- G. Notwithstanding subsections (B)-(D), during fiscal year ~~2015~~ 2016, an applicant for nursery stock inspection certification shall pay the following fee:
 - 1. For general certification, two hundred fifty dollars.
 - 2. For single shipment certification, fifty dollars for the first lot plus ten dollars for each additional lot per Department site trip.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

**CHAPTER 6. DEPARTMENT OF AGRICULTURE
OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION**

[R15-140]

PREAMBLE

- 1. **Article, Part or Section Affected (as applicable)** **Rulemaking Action**
 R3-6-102 Amend
- 2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**
 Authorizing statute: A.R.S. § 3-107(A)(1) & (B)(3); Laws 2015, 1st Reg. Sess., Ch. 10, § 14.
 Implementing statute: Laws 2015, 1st Reg. Sess., Ch. 10, § 14; A.R.S. § 3-109.02(A).
 Statute or session law authorizing the exemption: Laws 2015, 1st Reg. Sess., Ch. 10, § 14; A.R.S. § 41-1005(A)(5).
- 3. **The effective date of the rule and the agency’s reason it selected the effective date:**
 July 3, 2015. The effective date of the rule is based on the effective date of the law authorizing the rulemaking.



4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

None

5. The agency's contact person who can answer questions about the rulemaking:

Name: G. John Caravetta, Associate Director
Address: Arizona Department of Agriculture
1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-0996
Fax: (602) 542-0922
E-mail: jcaravetta@azda.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

This rulemaking continues fees from fiscal years 2011 through 2015 in fiscal year 2016 for services provided in fiscal year 2016 for phytosanitary certification in order to make up for decreases in general fund appropriations. See Notice of Exempt Rulemaking: 20 A.A.R. 2449, Sept. 5, 2014; 19 A.A.R. 3146, Oct. 11, 2013; 18 A.A.R. 2066, Aug. 24, 2012; 17 A.A.R. 1765, Sept. 2, 2011; & 16 A.A.R. 1339, July 23, 2010. By continuing these fees and nursery stock inspection certification fees, the Department anticipates it will be able to maintain its current level of services pertaining to the plant services division for fiscal year 2016.

With this rulemaking, the fee for state phytosanitary certification continues to be \$50 plus \$10 per additional lot and the fee for federal phytosanitary certification continues to be \$50. In addition to the \$50 fee for federal phytosanitary certification paid for the benefit of the Department, applicants will continue to 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.

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.

The reference to 7 CFR 354.3(g)(3)(i) is being updated from the 2013 version to the 2015 version. There is no difference in the subsection between the two versions, and the Department prefers to refer the most current version when possible.

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

None

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

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

Laws 2015, 1st Reg. Sess., Ch. 10, § 14 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2016. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

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

Not applicable

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

None received

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

The Department of Agriculture Advisory Council voted on June 17, 2015 in favor of continuing the fees set out in



this rulemaking through FY2016.

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

The rule does not require a permit.

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

The federal administrative user fee is set out in 7 CFR 354.3(g)(3)(i). This rule is not more stringent than federal law.

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

No

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

7 CFR 354.3(g)(3)(i), revised January 1, 2015, is incorporated by reference in R3-6-102(A)(2).

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

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 6. DEPARTMENT OF AGRICULTURE
OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION**

ARTICLE 1. MARKETING

Section
R3-6-102. Phytosanitary Certification

ARTICLE 1. MARKETING

R3-6-102. Phytosanitary Certification

- A. During fiscal year ~~2015~~ 2016, a person who applies to the Department for phytosanitary certification shall pay the following fee:
 - 1. For state certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.
 - 2. For federal certification, \$50 plus the federal administrative user fee set out in 7 CFR 354.3(g)(3)(i), revised January 1, ~~2014~~ 2015, which is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available for inspection at the Department, 1688 W Adams St., Phoenix, Arizona 85007 or may also be viewed at <http://www.gpo.gov/fdsys/>.
- B. This Section does not apply to phytosanitary certification under A.A.C. R3-4-301.