

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 6 A.A.R. 3807, October 6, 2000

2. Sections Affected

Rulemaking Action

R3-4-234

Repeal

R3-4-234

New Section

R3-4-235

Repeal

R3-4-236

Repeal

R3-4-237

Repeal

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 3-107

Implementing statutes: A.R.S. §§ 3-201.01, 3-202, 3-203, 3-204, 3-205, 3-207, 3-208(B), 3-209, and 3-210

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Sherry Blatner
Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

Telephone: (602) 542-0962

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5. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking clarifies existing language, updates the current format and structure of the Section to meet the guidelines of the Office of the Secretary of State, and updates rulemaking requirements to follow current practices and state and federal quarantine restrictions.

This rule consolidates information contained in the current R3-4-234 through R3-4-237 and adds the pest, burrowing nematode, *Radopholus similis* (Cobb).

6. An explanation of the substantial change which resulted in this supplemental notice:

We are now allowing cuttings and bareroot commodities to be placed in containers during the holding period with the condition that if they test positive for the pests, the commodities, soil, and containers shall be returned out of state or destroyed by a method approved by the Associate Director.

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

Not applicable

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

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

None

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this State are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking. (Out-of-state shipping nurseries and in-state receiving nurseries.)*

This rulemaking will have an effect on the out-of-state shipping nurseries in areas not previously included in the area under quarantine. They will be required to obtain certificates from the state of origin confirming compliance with the Rule's restrictions. If cuttings and bareroot commodities are placed in containers during the holding period and test positive, costs will be incurred to return out of state the commodities, containers, and soil or to destroy them by a method approved by the Associate Director.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

None

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department of Agriculture will schedule a public hearing if a written request for a public hearing is made to the person in item 4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

~~R3-4-234. Nematode pest—area under quarantine~~

R3-4-234. Nematode Pests

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- R3-4-235. Nematode pest—commodities covered and exemptions Repealed
- R3-4-236. Nematode pest—conditions for admission Repealed
- R3-4-237. Nematode pest—disposition of violations Repealed

ARTICLE 2. QUARANTINE

R3-4-234. Nematode pest—area under quarantine Nematode Pests

A quarantine is established to protect against introduction into Arizona of the Reniform Nematode, *Rotylenchulus reniformis*, which is a serious threat to cotton, vegetables, and other crops due to its damaging the small feeder roots thereby causing extensive yield reduction. The area under quarantine consists of the entire states of Florida, Hawaii and Louisiana, the entire commonwealth of Puerto Rico, and in Texas the counties of Willacy, Hidalgo, Cameron and Terry, in South Carolina the counties of Allendale, Clarendon, Sumter and Charlestown, and in Alabama the counties of Dallas, Escambia, Madison, Montgomery, Tuscaloosa and Washington.

A. Definition.

“Pest” means the reniform nematode, *Rotylenchulus reniformis*, and the burrowing nematode, *Radopholus similis* (Cobb).

B. Areas under quarantine.

Alabama, Arkansas, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Puerto Rico.

C. Commodities covered.

1. Soil.
2. All plants grown in or associated with soil with roots.
3. All parts of plants produced below ground or soil level, and
4. All plant cuttings for propagation.

D. Exceptions.

1. Industrial sand and clay;
2. Air plants, including orchids and plants produced epiphytically, if growing exclusively in or on soil-free material such as osmunda fiber, tree fern trunk, or bark;
3. Aquatic plants (those species normally growing in, on, or under permanent water, either rooted in soil or free-floating), if free from soil;
4. Dormant bulbs and corms, except taro, for propagation, if free from roots and soil; and
5. All fleshy roots, corms, tubers, and rhizomes for edible or medicinal purposes, if free of soil.

E. Restrictions.

1. ~~A receiver shall maintain a record of all shipments received from a nematode area at the nursery location for 1 year after receipt.~~
- 6.1. ~~All covered commodities~~ Commodities covered from the area under quarantine, whether moved directly from the area or by diversion or reconsignment from any other point; (regardless of the time held or grown at an intermediate point), are prohibited entry unless each shipment or lot is accompanied by an original certificate issued by an official of the state of origin. The certificate shall establish affirm the commodity commodities contained in the lot or shipment were determined to be free of the pests by one of the following methods:
 - a. ~~The origin state Has been~~ determined through surveys conducted at annual intervals or during the 1-year period before shipment that the pest pests does do not exist on the property or facility used to grow the material; or.
 - b. ~~Were~~ The commodities covered were protected from infestation of the pest pests by all of the following methods:
 - i. ~~Propagating~~ Propagated from clean seed or from cuttings taken 12 inches or more above ground level;
 - ii. ~~Planting~~ Planted in sterilized soil or other material prepared or treated to assure freedom from the pests;
 - iii. ~~Retaining~~ Retained in sterilized pots, containers, or beds;
 - iv. ~~Placing~~ Placed on sterilized benches or sterilized supports 18 inches or more from the ground or floor level; and
 - v. ~~Sampling~~ Sampled commodities using methods approved by the Associate Director and found free of the pests.
 - c. ~~vi. Protecting~~ The commodities covered were protected from contamination by the pests until shipped.
- 4.2. ~~All covered commodities shall be unloaded at destination into a quarantine holding area and held undisturbed until released by a Department inspector for at least 5 calendar days while the Department confirms the commodities are free of the pests.~~
- 2.3. ~~An Arizona receiver shall establish a registered quarantine holding area with the Department. 3. The following criteria shall be met by the receiver before the quarantine holding area is approved by the inspector Department:~~
 - a. The floor of the holding area shall be composed of a permeable surface, such as sand or soil, and shall be free from debris, grass and weeds;
 - b. If the holding area is outdoors, the location shall be at least 15 ft. from all masonry walls, property boundaries, and plants not part of a shipment being held;
 - c. The holding area shall be isolated from public access; and
 - d. The integrity of the holding area shall be maintained at all times; and

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- e. The holding area shall be surrounded by a fence or other barrier to prevent access by the public.
- 4. Cuttings and bareroot commodities may be placed in containers during the holding period. If the commodities are determined to be infested with the pests, the commodities, containers, and soil shall be returned out of state or destroyed by a method approved by the Associate Director.
- 5. No pesticide or other chemical shall be applied to the covered commodity while in the quarantine holding area except under the direction and supervision of a Department inspector.

G. Disposition of violations.

Commodities determined through laboratory analysis to be infested with the pests shall be destroyed or returned out of state.

If an infested shipment is sent out of state or destroyed, the nurseryman or landscape contractor shall, under the supervision of an inspector, treat the quarantine holding area with a chemical labeled for the control of nematodes after the infested shipment has been returned out of state or destroyed.

- 1. The quarantine holding area shall be placed under quarantine for 30 days following treatment and no plants shall be placed inside the treated area.
- 2. After 30 days, the inspector shall sample the quarantine holding area for the pest.
 - a. If the sample does not indicate the pest, the quarantine holding area shall be released from quarantine.
 - b. If the pest is detected, the quarantine holding area shall be retreated, held for an additional 30 days, and resampled. This procedure shall be repeated until no pest is detected in the holding area.

R3-4-235. Nematode pest — commodities covered and exemptions Repealed

A. ~~The commodities covered are soil, plants, and plant products associated with that soil, as they are a means of disseminating this pest.~~

B. ~~The following covered commodities are exempt from the requirements of this regulation:~~

- 1. ~~Air plants, including certain orchids and other plants produced epiphytically, if growing exclusively in or on soil-free material such as osmunda fiber, tree fern trunk, or bark.~~
- 2. ~~Aquatic plants if free from soil.~~
- 3. ~~Plants secured by air layering if roots are established and enclosed in the original soil-free moss wrappings.~~
- 4. ~~Dormant bulbs, fleshy roots, tubers, rhizomes and corms, if free from roots and soil.~~
- 5. ~~Unrooted plant cuttings free of soil.~~
- 6. ~~Shipments of 25 or less indoor-grown houseplants that have been maintained in a home and are not for sale.~~

R3-4-236. Nematode pest — conditions for admission Repealed

~~From and after August 1, 1985, all covered commodities originating in the area under quarantine listed in R3-4-234 are prohibited entry unless each shipment or lot is accompanied by a certificate issued by an authorized agricultural official at the state of origin affirming that:~~

- 1. ~~The covered commodities originated in a geographical area of not less than 20 square miles in which Reniform Nematode is not known to occur; or~~
- 2. ~~It has been determined through surveys including soil sampling, conducted at annual intervals, or during the one year period prior to shipment, that the Reniform Nematode does not exist on the group of commodities to be certified or the Reniform Nematode does not exist on the premises used to grow the commodities and the commodities have been handled in a manner to assure protection from Reniform Nematode contamination from the time of survey to the time of shipment; or~~
- 3. ~~The soil of the lot or shipment was treated prior to shipment with a pesticide registered for use on the pest and the associated plant material which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data. A list of pesticides registered for use on the Reniform Nematodes will be kept on file with the Secretary of State of Arizona; or~~
- 4. ~~The lot or shipment is free of living plant material and consists only of Reniform Nematode free growing media or has been treated with a pesticide registered for use on the pest and site and which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data. A list of pesticides registered for use on the Reniform Nematode will be kept on file with the Secretary of State of Arizona; or~~
- 5. ~~The lot or shipment consists of seedlings, plugs, or rooted cuttings grown on benches in Reniform Nematode free growing media or which has been treated with a pesticide registered for use on the pest and the associated plant material which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data; and that the lot or shipment consists of seedlings, plugs, or rooted cuttings which have been handled in a manner to assure protection from Reniform Nematode's contamination until shipped. A list of pesticides registered for use on the Reniform Nematode will be kept on file with the Secretary of State of Arizona; or~~
- 6. ~~The commodity meets the requirements of California's Department of Food and Agriculture Quarantine Proclamation No. 25, "Burrowing Nematode Exterior Quarantine" on file with the Secretary of State of Arizona, as long as certification to meet this proclamation includes assurance by the authorized agricultural official at state of origin, that the commodity is free of Reniform Nematode.~~

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R3-4-237. ~~Nematode pest — disposition of violations~~ Repealed

~~If any quarantined commodity arrives in Arizona in violation of this quarantine, or is found to be infested with the Reniform Nematode pest, it shall be immediately sent out of state or destroyed, at the option and expense of the owner(s), or owner's responsible agents, and under the direction of the Arizona State Entomologist or his representative.~~