

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**

R3-4-234	Amend
R3-4-235	Repeal
R3-4-236	Repeal
R3-4-237	Repeal
- 2. 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, 3-210.
- 3. The effective date of the rules:**

September 24, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 3113, August 18, 2000

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

Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 1368, March 30, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. 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 requirements to follow current practices, and state and federal quarantine restrictions.

This rulemaking:

 - Consolidates information contained in the current rules, R3-4-234 through R3-4-237;
 - Adds the pest, burrowing nematode, *Radopholus similis* (Cobb); and
 - Adds additional counties to the quarantine area.

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7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable

8. 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

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

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

This rulemaking will require training updates for personnel at Arizona's six port-of-entry locations in Douglas, Duncan, Ehrenberg, Sanders, San Simon, and Yuma, and for the district inspectors in the Nogales, Phoenix, Parker, Tucson, Willcox, and Yuma districts. All bareroot plants and cuttings entering the state from areas under quarantine will be delivered to approved quarantine holding areas, and inspected for the burrowing nematode and the reniform nematode.

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.*

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 a cutting or bareroot commodity is placed in a container during the holding period and tests positive, costs will be incurred to transport the commodity, container, and soil out-of-state, 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, except for the Arizona Department of Agriculture, 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.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A supplemental proposed rulemaking was published. The supplement permits cuttings and bareroot commodities from areas under quarantine to be placed in containers during the holding period. If a commodity tests positive for the pests, the commodity, soil, and container shall be:

- Transported out-of-state, or
- Destroyed by a method approved by the Associate Director.

Areas under quarantine have been listed by county if the entire state is not subject to quarantine.

An out-of-state grower, whose property has not been inspected annually, may have the origin state inspect the regulated commodity, two weeks before shipment, to determine the regulated commodity is pest-free.

Based on comments from Council staff, minor clarifying and technical changes were made to the proposed rule.

11. A summary of the principal comments and the agency response to them:

The Department received comments from Texas Nursery and Landscape Association, the Texas Department of Agriculture, and the Louisiana Department of Agriculture and Forestry requesting the listing of areas under quarantine by county only when an entire state is not subject to the pests. That change was incorporated into the final rulemaking.

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

None

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. 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~~ Nematode Pests
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.

1. Reniform nematode.

- a. The entire states of Florida and Hawaii.
- b. The Commonwealth of Puerto Rico.
- c. In the State of Alabama, the counties of, Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Saint Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, and Winston.
- d. In the State of Arkansas, the counties of Ashley, Jefferson, Lonoke, and Monroe.
- e. In the State of Georgia, the counties of, Baker, Banks, Barrow, Bartow, Ben Hill, Berrien, Bleckley, Brooks, Bulloch, Burke, Calhoun, Candler, Catoosa, Charlton, Clarke, Clay, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Elbert, Emanuel, Franklin, Gordon, Grady, Hall, Hart, Houston, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Lee, Macon, Marion, Miller, Mitchell, Montgomery, Morgan, Newton, Oconee, Peach, Pierce, Pulaski, Randolph, Richmond, Schley, Screven, Seminole, Stewart, Sumter, Tattnall, Taylor, Terrell, Thomas, Tift, Tombs, Turner, Twiggs, Walker, Walton, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, and Worth.
- f. In the State of Louisiana, the parishes of, Acadia, Ascension, Assumption, Avoyelles, Beauregard, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Concordia, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint John the Baptist, Saint Landry, Saint Tammany, Tangipahoa, Tensas, Terrebonne, West Baton Rouge, West Carroll, and Winn.
- g. In the State of Mississippi, the counties of, Adams, Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Copiah, Covington, DeSoto, Forrest, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jones, Lafayette, Lee, Leflore, Lowndes, Madison, Marion, Marshall, Monroe, Noxubee, Oktibbeha, Panola, Perry, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Sunflower, Tallahatchie, Tippah, Tunica, Union, Warren, Washington, Yalobusha, and Yazoo.
- h. In the State of North Carolina, the counties of, Cumberland, Harnett, Hoke, Johnston, Richmond, Robeson, Sampson, and Scotland.
- i. In the State of South Carolina, the counties of, Calhoun, Clarendon, Darlington, Dillon, Florence, Kershaw, Lee, Marlboro, Orangeburg, Sumter, and Williamsburg.
- j. In the State of Texas, the counties of, Brazos, Burlison, Cameron, Fort Bend, Hidalgo, Lynn, Robertson, Starr, Terry, Wharton, and Willacy.

2. Burrowing nematode.

- a. The entire states of Florida and Hawaii.

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- b. In the State of Texas, the counties of, Cameron and Hildago.
- c. The Commonwealth of Puerto Rico.

C. Regulated Commodities.

- 1. Soil;
- 2. All plants with roots, including bulbs, corms, tubers, rhizomes, and stolons; and
- 3. All plant cuttings for propagation.

D. Exceptions to regulated commodities.

- 1. Industrial sand and clay;
- 2. 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, including species normally growing in, on, or under water;
- 4. Dormant bulbs, corms, tubers, rhizomes, and stolons 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. Quarantine Restrictions.

- 1. The Associate Director shall deny entry of a regulated commodity from an area under quarantine, whether moved directly from the area or by diversion or reconsignment, unless the regulated commodity is accompanied by an original certificate from the state of origin. The certificate shall state that the regulated commodity contained in the shipment is pest-free by one of the following methods:
 - a. The origin state determined through an annual survey conducted within the 12-month period immediately before shipment, that the pests do not exist on the property or in the facility used to grow the regulated commodity.
 - b. The regulated commodity in the shipment was sampled two weeks before shipment, and found pest-free.
 - c. The regulated commodity was protected from infestation of the pests by implementing all of the following steps:
 - i. Propagated from clean seed or from cuttings taken 12 inches or higher above ground level,
 - ii. Planted in sterilized soil or other material prepared or treated to ensure freedom from the pests,
 - iii. Retained in a sterilized container or bed,
 - iv. Placed on a sterilized bench or sterilized support 18 inches or higher from the ground or floor level, and
 - v. Found pest-free using a sampling method approved by the Associate Director.
- 2. All regulated commodities entering Arizona shall be unloaded at destination into a quarantine holding area and held undisturbed for at least five calendar days until the Department confirms the regulated commodities are pest-free.
- 3. An Arizona receiver of a regulated commodity shall establish a quarantine holding area approved by the Department that satisfies the following conditions:
 - 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. An outdoor quarantine holding area shall be at least 15 ft. from all masonry walls, property boundaries, and non-quarantined plants;
 - c. The quarantine holding area shall be isolated from public access, and surrounded by a fence or other barrier; and
 - d. The integrity and security of the holding area shall be maintained at all times.
- 4. A cutting or bareroot regulated commodity may be placed in a container during the quarantine holding period. If the Associate Director determines that the regulated commodity is infested with a pest, the regulated commodity, container, and soil shall be transported out-of-state or destroyed by a method approved by the Associate Director.
- 5. Pesticides and other chemicals shall not be applied to a regulated commodity in a quarantine holding area except under the direction and supervision of a Department inspector.

F. Disposition of violations.

If laboratory testing indicates a regulated commodity is infested with a pest, the regulated commodity shall be destroyed or transported out-of-state.

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

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~~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.~~

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.~~