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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

PREAMBLE

1. Sections Affected **Rulemaking Action**
R2-5-403 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):
Authorizing statute: A.R.S. § 41-763(6)

Implementing statute: A.R.S. § 41-783(17)

3. The effective date of the rule:
August 2, 2003

4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 9 A.A.R. 474, February 14, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 410, February 14, 2003

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

Name:	Claudia Smith, Human Resources Consultant
Address:	100 N. 15th Avenue, Suite 261 Phoenix, AZ 85007
Telephone:	(602) 542-4894
Fax:	(602) 542-2796
E-mail:	Claudia.Smith@ad.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:
This rulemaking, in conformance with S.B. 1339, Laws 2002, Ch. 334, amends Annual Leave rule subsection (E) that identifies the family relationships that are eligible to transfer one employee's annual leave to another employee for a seriously incapacitating illness or injury when the receiving employee has exhausted all available leave balances. This amendment will expand the family relationships eligible to transfer annual leave to include aunt, uncle, nephew, or niece.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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:
The proposed rulemaking affects State Service employees only and will not have an impact on small businesses and consumers. Any financial impact would be restricted to a transfer of annual leave time from one employee in an agency to another employee in the same agency or another State Service agency. A transfer within the same agency

would be on a dollar-for-dollar basis without increasing or decreasing expenditures. The cost for a transfer to another agency would be borne by the receiving agency and could increase receiving agency expenditures.

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

The agency made non-substantive, grammatical and stylistic changes to the final rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments regarding the rule.

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

Laws 2002, Ch. 334, § 1 amended A.R.S. § 41-783(17)(a) to include aunts, uncles, nieces, and nephews as relationships eligible to transfer annual leave to another employee in the same agency or another State Service agency.

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

Not applicable

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

No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

ARTICLE 4. BENEFITS

Section
R2-5-403. Annual Leave

ARTICLE 4. BENEFITS

R2-5-403. Annual Leave

A. Definition. "Annual leave" means a period of approved absence with pay that is not chargeable to another category of leave.

B. Accrual.

1. All employees except temporary, emergency, clerical pool, and part-time employees shall accrue annual leave in accordance with the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	3.70
3 years but fewer than 7 years	4.62
7 years but fewer than 15 years	5.54
15 years or more	6.47

2. Part-time employees who:
   a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of annual leave; or
   b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time shall accrue annual leave at the next lower rate.
3. Temporary, emergency, clerical pool, and part-time employees who work less than 1/4 time shall not accrue annual leave.
4. Eligible employees accrue annual leave on the last day of each bi-weekly pay period if the employee is in a pay status for at least 1/2 of the scheduled work hours in that pay period.
5. Service in a position that became covered in accordance with A.R.S. Title 41, Chapter 4 (formerly A.R.S. Title 38, Chapter 6), is considered credited service in determining accrual rate change dates.
6. The effective date for change in the accrual rate is the first day of the pay period immediately following the attainment of the required credited service.

C. Credited service.

1. Credited service shall be calculated from the first day of the first complete pay period worked.

2. Credited service shall include:
   a. ~~Any~~ A period of service as an employee of a state budget unit before a break in service of less than two years that is not the result of disciplinary action;
   b. ~~Any~~ A period of leave without pay of 240 hours or less;
   c. Approved Family Medical Leave Act (FMLA) leave;
   d. Military leave taken under A.R.S. §§ 26-168, 26-171, or 38-610; and
   e. Active military service of an employee who is restored to state service under A.R.S. § 38-298.

D. Accumulation.
1. Except as provided in subsections (D)(2) and (D)(3), an employee shall forfeit annual leave accumulated in excess of 240 hours as of the last day of the last pay period that begins in a calendar year, unless the Director authorizes an exception in an individual case. An application for exception submitted to the Director shall contain a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
2. An employee who accrues additional annual leave for working on a state holiday may exceed the 240-hour limitation by up to 24 hours.
3. An employee may retain annual leave accumulated as a result of service that became covered in accordance with A.R.S. Title 41, Chapter 4, (formerly A.R.S. Title 38, Chapter 6), without regard to the accumulation limit contained in subsection (D)(1).

E. Donation of annual leave.
1. Definitions.
   a. "Immediate family" means the recipient employee's parent, spouse, or child, whether natural, adopted, foster, or step.
   b. *"Family" means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, ~~or~~ father-in-law, aunt, uncle, nephew or niece.*
   c. "Extended illness or injury" means a period of at least three weeks to a maximum of six consecutive months.
2. Eligibility.
   a. An employee may donate annual leave to an individual who has no accumulated annual leave if the individual is:
      i. Another employee in the same agency as the donating employee; or
      ii. A family member of the donating employee who is employed in another agency.
   b. The recipient employee in the same agency or the recipient family member in another agency may use the donated annual leave to care for the recipient or an immediate family member who has a seriously incapacitating illness or injury.
   c. A recipient employee or family member may use a maximum of six consecutive months of annual leave donated for each qualifying occurrence unless the recipient employee or family member applies for Long-term Disability (LTD) by the end of the fifth month. The recipient employee or family member then may continue to use donated annual leave until an LTD determination is made.
   d. Before using donated annual leave, a recipient employee:
      i. With a qualifying illness or injury shall exhaust all available sick leave and annual leave; or
      ii. Whose immediate family member has a qualifying illness or injury shall exhaust 40 hours of sick leave granted in accordance with R2-5-404(A)(4), if available, and all annual leave.
3. Unused leave. If the recipient employee separates from state service, recovers before using all donated leave, or the need for the donated annual leave is otherwise abated, the agency shall return unused leave to contributors on a pro-rata basis.
4. Calculation of hours donated. An agency shall adjust the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient employee. To calculate the number of hours of donated annual leave:
   a. Multiply the actual number of hours donated by the donating employee's hourly rate of pay; and
   b. Divide the result by the recipient employee's hourly rate of pay.

F. Use of annual leave. An employee may take annual leave at any time approved by the agency head. An agency shall not advance annual leave to an employee.

G. Movement to another agency. An employee who moves from one agency to another state service agency shall transfer all accumulated and unused annual leave to the employee's annual leave account in the new agency.

H. Separation. An agency shall pay an employee who separates from state service for all unused and unforfeited annual leave at the employee's current rate of pay.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Sections Affected	Rulemaking Action
Article 12	New Article
R2-12-1201	New Section
R2-12-1202	New Section
R2-12-1203	New Section
R2-12-1204	New Section
R2-12-1205	New Section
R2-12-1206	New Section
R2-12-1207	New Section
R2-12-1208	New Section
R2-12-1209	New Section

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

Authorizing statute: A.R.S. § 47-9410

3. The effective date of the rules:

August 1, 2003

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 386, February 7, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 298, February 7, 2003

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

Name: Russ Savage
Electronic Transactions Liaison

Address: Office of the Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-2022

Fax: (602) 542-1575

6. An explanation of the rule, including the agency's reason for initiating the rule:

In accordance with A.R.S. § 41-369, the Secretary of State may establish policies, procedures, fees and any other duties or services required to permit the commission of electronic notary public.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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:

The establishment of electronic notarial services for electronic transactions, by which the role of the electronic notary public will be to maintain public trust in electronic transactions for those requiring levels of authenticity equivalent to notarized paper documents.

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

Language was added for the civil penalty for failure to deposit electronic notary journal to the Secretary of State as required in A.R.S. § 41-359(A). The existing rules for civil penalties provide for a ten dollar per day penalty up to the maximum allowed. This penalty is similar except that it has a minimum.

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

Language was added for A.R.S. § 41-359(A) based on comments from the Attorney General's Office regarding similar language in a prior, separate, proposed emergency rule filing that was found to not meet the emergency rule criteria and was, for that reason, denied.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 12. ELECTRONIC NOTARY

Section
R2-12-1201. Application and Renewal
R2-12-1202. Applicant Filing Fee, Bond, and Bond Filing Fee
R2-12-1203. Notarial Journal
R2-12-1204. Standards for Electronic Notary Token and Notary Service Electronic Certificate
R2-12-1205. Use of Electronic Notary Tokens and Notary Service Electronic Certificate
R2-12-1206. Approval of Time Stamp Token Provider
R2-12-1207. Fees
R2-12-1208. Penalty Fee for Lack of Notice
R2-12-1209. Civil Penalties

ARTICLE 12. ELECTRONIC NOTARY

R2-12-1201. Application and Renewal

Each applicant for an electronic notary commission or a renewal of an electronic notary commission shall:

1. Submit to the Secretary of State a verified application on a form furnished by the Secretary of State that provides the following information about the applicant:
   a. Full name and any former names used by the applicant;
   b. Physical address and telephone number;
   c. Mailing address and telephone number;
   d. Business address, telephone number, fax number and email address, if applicable;
   e. County of residence;
   f. Gender;
   g. Date of birth;
   h. The previous commission number of the applicant if previously an electronic notary or notary public appointed under A.R.S. § 41-312 in Arizona, if applicable;
   i. Responses to questions regarding the applicant's background on the following subjects:
      i. Whether the applicant has been convicted of a felony or an undesignated offense in this or any other jurisdiction and whether the applicant has been restored to civil rights.
      ii. Whether the applicant has been convicted of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public in this or any other jurisdiction such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that constituted misconduct in public office or demonstrated dishonesty or a lack of veracity.
      iii. Whether the applicant has ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that demonstrated dishonesty or a lack of veracity.
      iv. Whether the applicant has had a notary commission revoked, suspended, restricted, or denied in this state or any other jurisdiction.
      v. Statement that applicant is 18 years of age or older.

vi. Statement of being an Arizona resident.
vii. Whether the applicant holds or has held a notary commission in another state or jurisdiction and the commission number and jurisdiction, if applicable.

2. The Secretary of State may require that the applicant provide a detailed explanation and supporting docu-mentation for each response on the application regarding the applicant's background.
3. Each applicant shall register with the Secretary of State the applicant's possession of an approved electronic notary token within 90 days of submitting the application.

R2-12-1202. Applicant Filing Fee, Bond, and Bond Filing Fee

A. The application and renewal fee is $25.
B. The bond filing fee is $25.
C. The applicant shall purchase a surety bond in the amount of $25,000. The original bond shall be filed with the Secretary of State's office accompanying the application or renewal.
D. The bond shall contain, on its face, the oath of office for the electronic notary public as specified in A.R.S. § 38-231(G). The electronic notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the electronic notary's name under which the person has applied to be commissioned as an electronic notary and exactly as the name appears on the electronic notary application form filed with the Secretary of State's Office.

R2-12-1203. Notarial Journal

A. An electronic notary public shall keep a journal of all electronic notarial acts in bound paper form with the same form as required in A.R.S. § 41-319 herein referenced as a "journal." If an electronic notary act is conducted upon an electronic signature that is not recognized under A.R.S. § 41-132, the electronic notary shall have the signer sign the paper journal in a manner consistent with A.R.S. § 41-319.
B. The journal shall be under the control of the electronic notary.
C. If an electronic notary also holds commission as a notary public appointed under A.R.S. § 41-312, and the commission dates are identical between the two commissions, then the electronic notary may use the notary public journal as the electronic notary paper journal. If the dates are not identical, then the electronic notary shall maintain two separate journals.
D. If a notary service electronic certificate is used in a manner to create an electronic signature in a notarial act, the document name, title, brief description of contents, and the time stamp shall be entered into the issuing electronic notary's journal as a notary service electronic certificate entry.
E. Journals are not deemed received until the Secretary of State accepts the journals as complete. The electronic notary shall not be subject to a penalty for delay outside the control of the electronic notary in delivering the journal to the Secretary of State.

R2-12-1204. Standards for Electronic Notary Token and Notary Service Electronic Certificate

A. An electronic notary token, and subsequently a notary service electronic certificate, shall be approved under A.R.S. § 41-132.
B. A provider of an electronic notary token may not provide an official electronic notary token to a person unless the person first presents evidence of the electronic notary commission for that person to the provider.
C. A provider of a notary service electronic certificate may not provide an official notary service electronic certificate to a person unless the person presents himself or herself before and receives authorization from an electronic notary for reception of the notary service electronic certificate.
D. An electronic notary token shall contain:
1. The commission number of the electronic notary;
2. The full name of the electronic notary, as commissioned as an electronic notary;
3. The expiration date of the notary's commission;
4. A link to the commission record of the electronic notary on the Secretary of State's official web site; and
5. Any applicable information relative to A.R.S. § 41-132.

E. A notary service electronic certificate shall contain:
1. The commission number of the electronic notary authorizing the notary service electronic certificate;
2. The identification of the authorizing electronic notary's electronic notary token;
3. The full name of the individual, as presented to the electronic notary;
4. A link to the authorizing commission record of the electronic notary on the Secretary of State's official web site; and
5. Any applicable information relative to A.R.S. § 41-132.

F. An electronic notary may possess only one electronic notary token.

R2-12-1205. Use of Electronic Notary Tokens and Notary Service Electronic Certificate

A. An electronic notary may only use an electronic notary token for the duties set forth in A.R.S. §§ 41-351 through 41-369 and interactions with the provider of the electronic notary token.

B. A person may only use a notary service electronic certificate for the purposes of creating electronic notarized documents and interactions with the provider of the notary service electronic certificate.

C. Use of an electronic notary token is not complete without:

1. Incorporating the electronic notary token elements into the document;
2. Either directly incorporating the time and date of notarization or incorporating the time and date of notarization using a process of an approved time stamp provider;
3. Affixing the notary's electronic signature.

D. Use of a notary service electronic certificate is not complete without:

1. Presence of a date and time stamp from an approved time stamp token provider;
2. Affixing the notary's electronic signature.

R2-12-1206. Approval of Time Stamp Token Provider

Any person or entity that can provide a service that synchronizes time as defined in A.R.S. § 1-242 into a process using an electronic notary token or a notary service electronic certificate, where applicable, may be added to the list of approved time stamp token providers. All time stamp tokens that interact with electronic notary tokens and notary service electronic certificates need to meet the applicable technology standards required by A.R.S. § 41-132.

R2-12-1207. Fees

Electronic notaries may charge the following fees:

1. Fee for an acknowledgment shall be not more than $25.
2. Fee for an oath or affirmation shall be not more than $25.
3. Fee for a jurat shall be not more than $25.
4. Fee for authorizing a notary service electronic certificate to a person shall be not more than $50. This does not include any vendor fees or charges to the person for reception of the notary service electronic certificate.
5. Fee for any other notarial act shall be not more than $25.

R2-12-1208. Penalty Fee for Lack of Notice

The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of the electronic notary's journal shall be $10 per use of electronic notary token up to a maximum of $500. When audit trail is not recoverable, the maximum of $500 shall be imposed upon the electronic notary for each failure to provide proper notice of a loss, theft, or compromise of the electronic notary's journal.

R2-12-1209. Civil Penalties

A. The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of a notary service electronic certificate or of loss, theft or compromise of any materials or processes used in creating an electronic notary token or authorizing a notary service electronic certificate shall be $10 per day, up to a maximum of $500 for each failure to provide proper notice of a loss, theft, or compromise of a notary service electronic certificate or compromise of any materials or processes used in creating an electronic notary token.

B. The penalty to be imposed upon an electronic notary for each failure to provide signed notice as defined in the statute to the Secretary of State of a change of address shall be $10 per day, up to a maximum of $250 for each failure to provide proper notice of a change of address.

C. The penalty to be imposed upon an electronic notary for failure to deposit the notary's electronic notary journal and records as defined in the statute with the Secretary of State shall be $50 for the first day and then $10 per day up to a maximum of $500.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**

Table 1	Amend
R3-2-801	Amend
R3-2-803	Amend
R3-2-902	Amend
R3-2-903	Amend
R3-2-906	Amend

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

Authorizing statutes: A.R.S. §§ 3-107(A)(1), 3-603(A), 3-667, 3-710(F), and 41-1073

Implementing statutes: A.R.S. §§ 3-601.01, 3-605, 3-606, 3-663, 3-705, 3-706, 3-707, 3-708, 3-712, 3-714, 3-715, 3-733, and 3-739

3. The effective date of the rules:

August 2, 2003

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 3756, August 30, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 5064, December 13, 2002

Notice of Supplemental Proposed Rulemaking: 9 A.A.R. 305, February 7, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 532, February 21, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 498, February 21, 2003

Notice of Supplemental Proposed Rulemaking: 9 A.A.R. 869, March 14, 2003

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

Name: Sherry D. Blatner, Rules Analyst

Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

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

This rulemaking is in response to the Division's five-year review of rules approved by the Council on August 6, 2002.

R3-2-801, R3-2-803, and R3-2-902 contain out-dated incorporations by reference. The most current material is incorporated in the amended rules.

R3-2-903 contains language that may be confusing. The amendments provide greater clarity. R3-2-906 has additional language included to provide enhanced understandability.

Time-frames to issue a license are increased to accommodate the competing needs of a centralized licensing section.

Language usage is conformed to the current publication standards of the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Businesses engaged in dairy production will be required to operate under the most current editions or amendments of incorporated material. Clarification of language in the amended rules should enhance the producers' ability to comply with regulations.

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

R3-2-801 includes the incorporation of a more recent edition of "3-A Sanitary Standards" and "3-A Accepted Practices," May 31, 2002 replaces November 21, 2000.

R3-2-902 includes the incorporation of a more recent edition of AMS 56.200 et seq., July 20, 2000 replaces April 6, 1995.

Table 1 was opened under a separate docket and is included in this rulemaking.

Minor technical and grammatical changes have been made to the rules based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No written comments were received. The Arizona Department of Agriculture's Advisory Council supported the amendments by a motion during a meeting held on December 12, 2002. The Department thanks the Council for its support of this 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:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended May 31, 2002—R3-2-801

Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2001 Revision—R3-2-801

21 CFR 101, 131, and 133, amended April 1, 2002—R3-2-803

AMS 56.200 et seq., effective July 20, 2000—R3-2-902

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

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section
Table 1. Time-frames (Calendar Days)

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section
R3-2-801. Definitions
R3-2-803. Milk and Milk ~~Product~~ Products Labeling

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

Section

R3-2-902. Standards, Grades, and Weight Classes for Shell Eggs

R3-2-903. Sampling: Schedule and Methods for Evidence

R3-2-906. Violations and Penalties

ARTICLE 1. GENERAL PROVISIONS

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
MEAT AND POULTRY INSPECTION						
License to Slaughter	A.R.S. § 3-2002 A.R.S. § 3-2003 R3-2-208	14	14	30	14	44
Transfer of license without fee	A.R.S. § 3-2009	14	14	30	5	44
State Meat Inspection Service	A.R.S. § 3-2047	14	14	30	14	44
Sale or Exchange of Meat or Poultry	A.R.S. § 3-2081 R3-2-208	14	14	30	14	44
Rendering Facility Certification	A.R.S. § 3-2081 R3-2-205	14	14	30	14	44
Transfer of License	A.R.S. § 3-2086	14	14	30	5	44
Official Slaughter Meat Licenses	A.R.S. § 3-2122 R3-2-208	14	14	30	14	44
FEEDING OF ANIMALS						
Feed Lot License	A.R.S. § 3-1452	14	14	60	14	74
Permit to Feed Garbage to Swine	A.R.S. § 3-2664	14	14	60	14	74
DAIRY PRODUCTS AND CONTROL						
Milk Distributing Plant New Renewal	A.R.S. § 3-607	 ~~7~~ 14 ~~7~~ 14	 ~~7~~ 14 ~~7~~ 14	 ~~7~~ 14 14	 ~~7~~ 14 ~~7~~ 14	 ~~14~~ 28 ~~21~~ 28
Milk Processing Plant New Renewal Plant Licensing New Renewal	A.R.S. § 3-607 A.R.S. § 3-665	 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14	 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14	 ~~7~~ 14 14 ~~7~~ 14 14	 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14 ~~7~~ 14	 ~~14~~ 28 ~~21~~ 28 ~~14~~ 28 ~~21~~ 28
Request to market a product as a milk product	A.R.S. § 601.01	~~7~~ 14	~~7~~ 14	~~7~~ 14	~~7~~ 14	~~14~~ 28
Tester License	A.R.S. § 3-619	7	7	7	7	14
Trade Product Label	A.R.S. § 3-667	~~7~~ 14	14	30	30	~~37~~ 44
LIVESTOCK INSPECTION						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14
Ownership and Hauling Certificate for Equines	A.R.S. § 3-1344 A.R.S. § 3-1345	14	14	14	14	28
EGG PRODUCTS AND CONTROL						
Annual Licensing	A.R.S. § 3-714	~~7~~ 10	~~7~~ 10	~~7~~ 10	~~7~~ 10	~~14~~ 20
AQUACULTURE						
Aquaculture Facility Fee Fishing Facility Processor Transporter	A.R.S. § 3-2907 R3-2-1004 R3-2-1005 R3-2-1006 R3-2-1007	14 14 14 14	14 14 14 14	30 30 30 30	14 14 14 14	44 44 44 44
Special Licenses	A.R.S. § 3-2908 R3-2-1008	14	14	30	14	44

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions

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

~~1.~~ "3-A Sanitary Standards" and "3-A Accepted Practices," as published ~~in Dairy and Food and Environmental Sanitation~~ by the International Association for Food Protection, amended ~~June 1, 1992~~ 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 ~~of the incorporated matter~~, and is on file with the Department and the Office of the Secretary of State.

~~2.~~ "C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

~~3.~~ "Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

~~4.~~ "Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

~~5.~~ "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.

~~6.~~ "Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

~~7.~~ "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.

~~8.~~ "Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization.

~~9.~~ "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:

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

~~b.~~ "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.

~~10.~~ "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.

~~11.~~ "PMO" means the Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, ~~1999~~ 2001 Revision. This material is incorporated by reference, does not include any later amendments or editions ~~of the incorporated matter~~, and is on file with the Department and the Office of the Secretary of State.

~~12.~~ "Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

R3-2-803. Milk and Milk ~~Product~~ Products Labeling

A. ~~All~~ The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO ~~shall be~~ are designated by the name of the product and shall conform to its definition.

B. ~~All~~ The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended ~~November 20, 1996~~ April 1, 2002. This CFR material is incorporated by reference, does not include any later amendments or editions ~~of the incorporated matter~~, and is on file with the Department and the Office of the Secretary of State.

C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor ~~who~~ that has plants in other states shall use a code number or letter to designate ~~where~~ the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has ~~more than one~~ a plant within ~~the state~~ Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the ~~state~~ Arizona code, 04, with ~~their~~ the plant ~~number~~ code assigned by the Dairy Supervisor.

D. If ~~a plant manufactures or processes~~ milk or milk products ~~and packages them~~ are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer's or processor's like product, the manufacturer or processor shall include the statement "Manufactured or Processed at (name and address of plant or code number or letter)" ~~shall be included~~ on the carton or closure. The carton or closure may also contain the statement, "Distributed by: (name of person or firm)."

E. ~~New or modified label.~~ Any person planning to use a new or modified label on a container ~~may~~ shall submit the proposed label to the Dairy Supervisor for review.

~~1. If a new or modified label is submitted, the person shall provide duplicate copies of the proposed label.~~

~~2.~~1. If the proposed label does not meet labeling standards specified in ~~R3-2-803(B)~~ subsection (B), the Dairy Supervisor shall note the required changes on the ~~copies~~ proposed label, and sign and return the proposed label to the ~~person~~ applicant.

~~3.~~2. A ~~written request may be submitted for~~ person who requests additional time to use the inventory amounts of slow moving cartons or closures before using a modified label shall submit a written request to the Dairy Supervisor. The Dairy Supervisor may approve continued use of the existing cartons and closures if:

a. The use does not present a public health issue, and

b. The information on the cartons and closures is not misleading.

~~**F.** Any person who markets, processes, manufactures, or sells any other food product as a milk product, shall submit a written request to the Dairy Supervisor.~~

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-902. Standards, Grades, and Weight Classes for Shell Eggs

All ~~grading of shell eggs and~~ standards, grades, and weight classes for shell eggs shall be ~~conducted~~ as prescribed in ~~7 CFR~~ AMS 56.200 et seq., ~~revised May 1, 1991~~ effective July 20, 2000. ~~The~~ This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State ~~and does not include any later amendments or additions of the incorporated matter~~. "AMS" means Agricultural Marketing Service, United States Department of Agriculture.

R3-2-903. Sampling: Schedule and Methods for Evidence

A. ~~The~~ An inspector may conduct random spot-check sampling ~~to determine if lots~~ of a lot of eggs ~~meet~~ to determine whether the lot meets minimum quality and weight standards.

B. Representative egg sampling, ~~pursuant to~~ under A.R.S. § 3-710(G), shall be based on the following table. ~~Lots which do~~ A lot that does not meet minimum quality or weight standards shall receive a warning notice hold tag.

MINIMUM NUMBER OF CASES AND CARTONS COMPRISING A REPRESENTATIVE SAMPLE

~~**When lot size is in cartons of**~~ **Lot size of cartons**	**Minimum eggs for inspection**	~~**When lot size is in 30-doz. cases**~~ **Lot size of 30 doz. per case**	**Minimum cases for inspection[1]**
1 - 4 ~~Cartons~~ cartons	All	1 ~~Case~~ case	1 ~~Case~~ case
5 - 30 ~~Cartons~~ cartons inclusive	50	2 - 10 ~~Cases~~ cases inclusive	2 ~~Cases~~ cases
31 - 120 ~~Cartons~~ cartons inclusive	100	11 - 25 ~~Cases~~ cases inclusive	3 ~~Cases~~ cases
120 – 210 ~~Cartons~~ cartons inclusive	200	26 - 50 ~~Cases~~ cases inclusive	4 ~~Cases~~ cases
211 - 315 ~~Cartons~~ cartons inclusive	300	51 - 100 ~~Cases~~ cases inclusive	5 ~~Cases~~ cases
		101 - 200 ~~Cases~~ cases inclusive	8 ~~Cases~~ cases
		201 - 300 ~~Cases~~ cases inclusive	11 ~~Cases~~ cases
		301 - 400 ~~Cases~~ cases inclusive	13 ~~Cases~~ cases
		401 - 500 ~~Cases~~ cases inclusive	14 ~~Cases~~ cases
		501 – 600 ~~Cases~~ cases inclusive	16 ~~Cases~~ cases
		~~for~~ For each additional 50 ~~Cases~~ cases or fraction ~~thereof~~ of a case in excess of 600 ~~Cases~~ cases	1 ~~Case~~ case

[1]~~The~~ An inspector shall take 100 eggs from each case for inspection.

1. ~~The~~ An inspector may draw additional samples to determine ~~if~~ whether the lot meets the minimum requirements.
2. When loose eggs are out of the case, the sample shall be based on ~~the~~ a carton.

3. Eggs shall be sampled on a 30-dozen-case basis. ~~All~~ When eggs are packed in other lot quantities, an inspector shall ~~be converted~~ convert the quantity of eggs to the equivalent 30-dozen-case ~~amounts~~ basis to establish the official sample size.

~~**C.** A lot shall be from one packer or one producer or any one source. The cartons, cases, or containers shall be labeled with one size, one quality grade, the packing date, and one brand name, if the brand is identified.~~

R3-2-906. Violations and Penalties

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, ~~shall be~~ is subject to the penalties in subsection (B) ~~if~~ for any of the following ~~actions occur~~ violations:

1. Category A:
   a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
   b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
   c. Selling shell eggs with an incorrect~~,~~ or incomplete expiration date, or ~~no~~ without an expiration date ~~codes~~;
   d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container~~.~~, unless the eggs are exempt under A.R.S. § 3-715(K); ~~The Department shall not penalize a retailer under this subsection if not more than 10% or 60 dozen of the eggs, whichever is less, are offered for sale after the expiration date on the carton, case, or container, under A.R.S. § 3-715(K);~~
   e. Failing to maintain records and reports required by this Article;
   f. Failing to label a carton, case, or container with one size, one ~~quality~~ grade, and one brand name;
   g. Moving eggs~~,~~ or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
   h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
   i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
2. Category B:
   a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(10); or
   b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C:
   a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
   b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature ~~not higher than~~ of 0° F or lower; or
   c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F.

B. Any violation of this Article or of 3 A.R.S. 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.

C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is:

Number of Violations	**Category A**	**Category B**	**Category C**
1 ~~(Notice)~~	Warning	Warning	Warning
2	~~$50.00~~ $50	~~$50.00~~ $50	~~$100.00~~ $100
3	~~$100.00~~ $100	~~$100.00~~ $100	~~$200.00~~ $200
4		~~$150.00~~ $150	~~$400.00~~ $400
5		~~$200.00~~ $200	~~$500.00~~ $500
6		~~$250.00~~ $250	
7		~~$300.00~~ $300	

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**
R3-4-239 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):

Authorizing statute: A.R.S. § 3-107(A)(1)

Implementing statutes: A.R.S. §§ 3-201.01 and 3-211

3. The effective date of the rule:

August 2, 2003

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2398, May 31, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4834, November 22, 2002

Notice of Supplemental Proposed Rulemaking: 9 A.A.R. 599, February 28, 2003

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

Name: Sherry D. Blatner, Rules Analyst

Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

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

This rulemaking updates the areas under quarantine, modifies regulated commodities, removes the need for a receiver to apply for a compliance agreement to have an approved holding area, and clarifies existing language.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Nurseries in an area not previously under quarantine that ship regulated commodities into Arizona will be required to ship only to Arizona receivers with approved holding areas.

Arizona businesses that receive regulated commodities from an area not previously under quarantine will need to become familiar with the expanded list of areas. The majority of nursery stock shipped to Arizona from areas under quarantine originates from California, Florida, and Texas.

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

Changes were made as a result of the comments received by the Department and discussed in item #11. In order for this rulemaking to comply with the existing federal quarantine regulating fire ants, all references to pine straw and bees and associated pallets are deleted. The deletions occur in subsections (A), (C), and (D). These changes clarify the rule.

On February 5, 2003, an updated interim rule amending 7 CFR 301.81-3 was published in the Federal Register. This material is incorporated by reference at subsection (B), and the Department published a Notice of Supplemental Proposed Rulemaking to incorporate the most current revision.

Minor technical and grammatical changes have been made to the proposed rule based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

Don Henry, California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Pest Exclusion Branch, letter of December 9, 2002:

Mr. Henry reminded the Department that the Plant Protection Act limits the commodities that a state may place under quarantine, the commodities cannot exceed those established in an existing federal quarantine. In the Notice of Proposed Rulemaking, the Department listed beehives and associated pallets, and fumigation of pine straw, which exceed the federal requirements established in the Federal Fire Ant Quarantine, 7 CFR 301.81, 1-10. The Department removed those references from the rulemaking. The rulemaking now complies with federal requirements.

Harry Fulton, Mississippi Department of Agriculture, e-mail received November 25, 2002:

In addition to the comments presented by Mr. Henry, Mr. Fulton asked for the basis of the three to five-day holding period. John Caravetta, Associate Director, Plant Services Division, Arizona Department of Agriculture, responded to the need for an extended holding period, stating in part:

> The quarantine holding period was implemented following detection of RIFA at a number of nurseries that routinely receive nursery stock shipments from infested areas. Arizona's port inspection program is our first line of defense against the entry of plant pests however the inspectors are unable to conduct a thorough inspection without unloading the commodities. Regulated commodities that pass port inspection proceed to an approved holding area at destination.
>
> At destination, the inspector checks the plants as they are unloaded and placed into holding areas. Soil samples are collected, if appropriate, based on the shipment's origin. The plants are released three to five days later following a third inspection if pests are not detected and the soil samples, if collected, are negative. We need the five days for nematodes, as a laboratory test is required.
>
> …
>
> The reason we have implemented this two-step process of inspection, the port of entry inspection then the holding area, is that we find Red Imported Fire Ant (RIFA) on properly certified loads of nursery stock originating in Southern Plant Board states. In fiscal year 2002, we had eight instances confirmed RIFA on loads of certified nursery stock intercepted at our ports of entry. In the first six months of fiscal year 2003, we have four confirmed RIFA interception on loads of certified nursery stock. We currently have 21 suspended out-of-state nursery stock shippers due to confirmed interceptions of RIFA. In addition, we have had several instances where we have allowed suspended shippers to enter Arizona with proper state phytosanitary certificates only to find they are still infested with RIFA even though they carried additional certifications.

The Department provides a cross-reference at R3-4-239(D)(1)(b) to the nematode quarantine restriction at R3-4-234(E)(2).

The Arizona Department of Agriculture's Advisory Council supported the rulemaking by a motion at its December 12, 2002 meeting. The Department thanks the Council for its support of this 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 rule:

7 CFR 301.81-3, amended 68 FR 5794, February 5, 2003, at R3-4-239(B)

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

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-239. Imported Fire Ants

ARTICLE 2. QUARANTINE

R3-4-239. Imported Fire Ants

A. Definitions.
"Pest" means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*.
~~"Pine straw" means baled, loose, or bulk pine needles.~~

B. Area under quarantine. ~~All states~~ A state or portion of ~~any~~ a state listed in 7 CFR 301.81-3, ~~amended January 1, 1998~~ 68 FR 5794, February 5, 2003, and any area a state declares infested. ~~declared by a state as being infested with the pest, or any area known to be infested with the pest.~~ This material is incorporated by reference, on file with the Department and the Office of the Secretary State, and does not include any later amendments or editions ~~of the incorporated matter~~.

C. ~~Commodities covered.~~ Regulated commodities.
~~1. Pine straw;~~
~~2. Beehives;~~
~~3.~~1. Soil, except potting soil shipped in an original ~~containers~~ container in which the potting soil is packaged after commercial preparation; and
~~4.~~2. All plants associated with soil, except:
a. ~~Indoor-grown house plants not for sale~~ Plants that are maintained indoors year-round, and are not for sale; and
b. Plants shipped bare-root and free ~~from~~ of soil.

D. Restrictions.
~~1. Pine straw shall be fumigated with 3-9 lbs./1,000 methyl bromide for 16-24 hours before entering the state and shall be accompanied by an original treatment certificate issued by an official of the state of origin. Pine straw fumigated in trailers shall be loaded to allow circulation of methyl bromide.~~
~~2. A receiver shall apply to the Director in writing for a quarantine holding area compliance agreement. The application shall include:~~
~~a. The location of the holding area; and~~
~~b. The type of barrier used to prevent the public from entering the holding area.~~
~~3. The receiver shall meet the following criteria before the quarantine holding area is approved by the inspector:~~
~~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; and~~
~~b. If the holding area is outdoors, the holding area shall be at least 15 ft. from all other plants.~~
~~4. Commodities shall be unloaded at destination into a quarantine holding area and held, undisturbed, until released by an inspector.~~
~~a. Pine straw and covered commodities originating in areas not regulated by R3-4-234 shall be held at least 3 calendar days.~~
~~b. All other covered commodities, except beehives, shall be held for at least 5 calendar days.~~
~~5. No pesticide or other chemical shall be applied to a covered commodity while in the quarantine holding area except under the direction and supervision of an inspector.~~
~~6. Beehives shall be allowed into Arizona if accompanied by a certificate evidencing that the beehives have been inspected and found free of the pest. The inspection shall include:~~
~~a. In palletized hives, the interior of each hive and those areas where the hives come into contact with each other;~~
~~b. Verification that hive pallets and bottom boards are free from soil; and~~
~~c. The interior of each individual hive when no bee activity is apparent.~~
1. A shipper of a regulated commodity shall unload a regulated commodity at destination into an approved quarantine holding area as prescribed in subsection (D)(2). The Department shall inspect and quarantine the regulated commodity as follows:
a. Soil and plants associated with soil from an area under quarantine in subsection (B) shall be held at least three consecutive days, and
b. Soil and plants associated with soil from an area under quarantine for nematodes under R3-4-234(B) shall be held at least five consecutive days.

2. An Arizona receiver of a regulated commodity shall establish a Department-approved quarantine holding area that meets the following specifications:
   a. The floor is of a permeable surface, such as sand or soil, and free from debris, grass, or weeds;
   b. The area is isolated from public access, surrounded by a fence or other barrier;
   c. The integrity and security of the area is maintained at all times; and
   d. If outdoors, the area is at least 15 feet from any masonry wall, property boundary, or non-quarantine plant.
3. A receiver shall apply a pesticide or other chemical to a regulated commodity located in a quarantine holding area only when directed and supervised by a Department inspector.

E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**
R3-4-246 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):

Authorizing statute: A.R.S. § 3-107(A)(1)

Implementing statutes: A.R.S. §§ 3-201.01 and 3-211

3. The effective date of the rule:

August 2, 2003

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 1110, March 15, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4984, December 6, 2002

Notice of Supplemental Proposed Rulemaking: 9 A.A.R. 601, February 28, 2003

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

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1688 W. Adams, Room 235
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking redefines the pest, limits the area under quarantine to certain counties in Florida and to the Commonwealth of Puerto Rico, and updates the list of regulated commodities. Unnecessary language pertaining to treating infested areas or surveying uninfested areas is deleted. Entry requirements for regulated commodities are clarified.

The Department committed to update this rule in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Companies that ship regulated commodities to Arizona will need to become familiar with the revised area under quarantine, list of regulated commodities, and treatment schedule.

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

Subsection (D)(2) in the Notice of Proposed Rulemaking was deleted. The subsection provided an exemption for certain regulated commodities from an area under quarantine to enter Arizona if they were produced by a conventional method and commercially packed.

Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No written comments were received. The Arizona Department of Agriculture's Advisory Council supported the amendments by a motion during a meeting held on December 12, 2002. The Department thanks the Council for its support of this 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 rule:

None

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

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-246. Caribbean Fruit ~~fly pests~~ Fly

ARTICLE 2. QUARANTINE

R3-4-246. Caribbean Fruit ~~fly pests~~ Fly

~~**A.** Notice of quarantine: It has been determined that there are economically dangerous fruit fly pests not known to occur in the state of Arizona; that these pests are a serious threat to the agricultural industry of the state of Arizona and to the thousands of ornamental fruit trees and garden plants in home plantings. In order to prevent the introduction into the state of Arizona, and the spread within the state of these dangerous pests, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona, or the movement within the state, shall be governed by the following rule.~~

~~**B.**~~**A.** ~~Pests: Any species of the fruit fly genera Anestrepha, Ceratitis or Dacus, belonging to the Family Tephritidae.~~ Definitions. The following term applies to this Section:

"Pest" means all life stages of the Caribbean fruit fly, *Anastrepha suspensa*.

~~**C.**~~**B.** Area under quarantine.~~: The quarantined area shall include all areas outside of the state of Arizona and any areas found infested within the state of Arizona. An infested area may be declared by the State Entomologist within the area under quarantine whenever any insect covered by this rule becomes established in any such area, and represents a known infestation. Any infested area within the area under quarantine as declared by the State Entomologist for any pest covered by~~

~~this rule, together with a list of host commodities which may harbor or be the carrier of such pest, shall be incorporated herein and made a part of this rule.~~

1. In the state of Florida, the following counties: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Duval, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia.
2. The Commonwealth of Puerto Rico.

~~**D.**~~**C.** ~~Commodities covered:~~ Regulated commodities. ~~All commodities listed in this rule which have been declared by the State Entomologist as capable of being infested by, or harboring, any pest covered by this rule.~~

1. The fresh fruit of the following plants:
   Actinidia chinensis (Kiwi),
   Annona glabra (Pond Apple),
   Annona hybrid,
   Annona squamosa (Sugar Apple),
   Atalantia citriodes,
   Averrhoa carambola (Carambola),
   Blighia sapida (Akee),
   Canella winteriana (Wild Cinnamon),
   Capsicum frutesceas (Bell Pepper),
   Carica papaya (Papaya),
   Carissa grandiflora (Natal Plum),
   Casimiroa edulis (White Sapote),
   Chrysobalanus icaco (Cocoplum),
   Citrus aurantiifolia (Lime),
   Citrus aurantium (Sour Orange),
   Citrus limonia (Rangpur Lime),
   Citrus nobilis 'unshu' x *Fotunella* sp. (Jack Orangequat),
   Citrus paradisi (Grapefruit),
   Citrus paradisi x C. *reticulata* (Tangelo),
   Citrus reticulata (Tangerine),
   Citrus sinensis (Sweet Orange),
   Citrus sinensis x *C. reticulata* (Temple Orange),
   Clausena lansium (Wampi),
   Dimocarpus longan (Longan),
   Diospyros blancoi (Velvet Apple or Velvet Persimmon),
   Diospyros khaki (Japanese Persimmon),
   Dovyalis caffra (Kei Apple),
   Dovyalis hebecarpa (Ceylon Gooseberry),
   Drypetes lateriflora (Guiana Plum),
   Eriobotrya japonica (Loquat),
   Eugenia aggregata (Cherry of the Rio Grande),
   Eugenia brasiliensis (Grumichama),
   Eugenia coronata,
   Eugenia ligustrina,
   Eugenia luschnathiana (Pitomba),
   Eugenia uniflora (Surinam Cherry),
   Ficus altissima,
   Ficus carica(Fig),
   Flacourtia indica (Governor's Plum),
   Fortunella spp. (Kumquat),
   Garcinia livingstonei (Imbe),
   Garcinia xanthochymus,
   Litchi chinensis (Lychee),
   Lycopersicon esculentum (Tomato),
   Malpighia glabra (Barbados Cherry),
   Malus sylvestris (Apple),
   Mangifera indica (Mango),
   Manilkara jaimiqui spp. Emarginata (Wild Dilly),
   Manilkara roxburghiana,

Manilkara zapota (Sapodilla),
Momordica charantia (Wild Balsam Apple),
Muntingia calabura (Calbur),
Murraya paniculata (Orange Jasmine),
Myciaria cauliflora (Jaboticaba),
Myrcianthes fragrans,
Myricaria glomerata,
Persea americana (Avocado),
Pimenta dioica (Allspice),
Pouteria campechiana (Egg Fruit),
Prunus persica (Nectarine),
Prunus persica (Peach),
Pseudanamomis umbellulifera,
Psidium spp. (Guava),
Punica granatum (Pomegranate),
Pyrus cummunis (Pear),
Pyrus pyrifolia (Japanese Pear),
Pyrus pyrifolia x *Pyrus communis* (Kieffer Pear),
Rheedia aristata,
Rubus hybrid (Blackberry),
Severinia buxifolia (Box Orange),
Spondias cytherea (Otaheite Apple),
Synsepalum dulcificum (Miracle Fruit),
Syzygium cumini (Jambolan Plum),
Syzygium jambos (Rose Apple),
Syzygium samarangense (Java Apple),
Terminalia catappa (Tropical Almond),
Terminalia muelleri,
Trevisia palmata,
Triphasia trifolia (Limeberry),
X Citrofortunella floridana (Limequat), and
X Citrofortunella mitis (Calamondin).

2. Soil or planting media within the drip area of plants producing, or that have produced, a regulated commodity.

~~E.~~**D.** Restrictions~~:~~. ~~All commodities listed in this rule shall be admitted to the state of Arizona from any infested area declared by the State Entomologist, only when each lot or shipment meets the requirements listed in subsections (F) or (G) of this rule.~~

A regulated commodity produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one of the following:

1. Citrus fruit (*Citrus* spp. and *Fortunella* spp.) has been fumigated with methyl bromide ("Q" label only) for a minimum of two hours under the following conditions:

Pulp Temperature	Rate per 1000 cu. ft.
No less than 60° F to 79° F	3 pounds
80° F or above	2 1/2 pounds

2. Non-citrus fruit has been treated in compliance with a treatment plan approved by the Director.

~~F. Treatment: Commodities meet the treatment provision of this rule when the requirements of subsection (F)(4) and (5) have been satisfied and the commodity has been treated in 1 of the manners set forth in subsection (F)(1), (2) or (3) for the appropriate commodity and type of fruit fly.~~

~~1. Fruits or vegetables treated in the manner specified for the appropriate fruit fly genus and commodity listed in either:~~

~~a. The USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine Treatment Manual, as amended April 1987, which is incorporated herein by reference and on file with the Office of the Secretary of State. Treatments specified by USDA for export only are not acceptable for delivery in the USA. Treatment schedules listed by USDA for Hawaiian commodities may also be used for fruits and vegetables originating in other areas infested with fruit flies of the genera Dacus and Ceratitis; or,~~

~~b. *A Guide to Commodity Treatment in California*, California Department of Food and Agriculture, Division of Plant Industry, as amended November 15, 1983, incorporated herein by reference and on file with the Office of the Secretary of State, with the exception of the use of ethylene dibromide which is prohibited.~~

2. ~~Citrus fruit treated for Caribbean Fruit Fly (Anastrepha suspensa) by fumigation at atmospheric pressure in a gastight semitrailer or chamber using methyl bromide gas for a period of 2 hours at a pulp temperature of 21° C (70° F.) or above, using 40 g/m^3 (2-1/2 lbs/1000 cu. ft.). The load cannot exceed 80% of the volume of the semitrailer or chamber.~~
3. ~~All soil, garbage or other material, which could be a carrier of fruit fly, shall be treated with 1/4 pound of actual Diazinon per 100 gallons of water, or 1/2 pound 50% Diazinon wettable powder per 100 gallons of water.~~
4. ~~All commodities treated in accordance with subsection (F)(1) or (2) and (3) above for entry into the state of Arizona must be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that the treatment was done under his supervision, and provided that each and every container and sub-container bears a stamp with the state or area name where the treatment was made, and with the words, "Processed in Accordance with Arizona Requirements".~~
5. ~~Commodities shall be treated only with those pesticides registered for use on the commodity in the state, county or commonwealth where treatment is made.~~

~~G.~~ ~~Requirements for Caribbean fruit fly free area designation: Commercially grown grapefruit and oranges meet the requirements of this rule for Caribbean fruit fly (Anastrepha suspensa) if they have originated in an area designated by an agricultural agency of the United States, state, county or commonwealth as a Caribbean fruit fly free area. The commodities shall be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that they originate in a designated area which is free of Caribbean fruit fly. Each and every container and sub-container shall bear a stamp with the words "Designated area". The designation of an area as free of Caribbean fruit fly shall be based upon the following minimum criteria:~~

1. ~~Negative trapping:~~
   a. ~~No more than 6 target plants with fruit shall be found within 3 miles of the perimeter of the designated area. The target plants are common guava, cattley guava, Surinom cherry, rose apple, and loquat.~~
   b. ~~Should 1 to 6 target plants with fruit be found within the subject buffer zone, ground or aerial bait spray shall be applied at 9- to 10-day intervals, beginning 30 days prior to harvest and continuing until the end of harvest.~~
   c. ~~The minimum size of the designated area shall be 300 acres.~~
   d. ~~The designated area shall be surrounded by a buffer zone of 1 1/2 miles.~~
   e. ~~Trap surveys shall be conducted as follows:~~
      i. ~~McPhail traps shall be set in the designated area and in the 1 1/2 mile buffer zone adjoining the designated area at the density of 15 traps per square mile. It is not required that areas without target plants such as pastures and marshlands (i.e., McPhail trap densities shall be concentrated in areas where target plants exist) be trapped.~~
      ii. ~~The attractant used in the McPhail trap shall be 4 or 5 yeast-borax tablets dissolved in 1/2 liter of water and shall be changed weekly.~~
      iii. ~~Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.~~
   f. ~~Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:~~
      i. ~~If the Caribbean fruit fly is found as a result of the trap survey, Commission shall be notified within 1 working day of fruit fly identification.~~
      ii. ~~If 2 adults, within 1 1/2 miles of each other during a life cycle (30 days) are found during the trap survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly-free area shall be withdrawn. The area can be redesignated as a Caribbean fruit fly free area if a 1/4 mile area around the trap catches is treated by aerial bait spray at 9-to 10-day intervals for 30 days with negative trapping.~~
      iii. ~~If either 1 or more larva or pupa is found during the survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly-free area shall be withdrawn for the entire season.~~
2. ~~Bait sprays:~~
   a. ~~The minimum size of the designated area shall be 40 acres with an additional 300-feet buffer zone. The buffer zone shall not contain any target plants. The target plants are common guava, cattley guava, Surinom cherry, rose apple, and loquat.~~
   b. ~~No more than 6 target plants with fruit shall be found within 1 mile of the perimeter of the designated area.~~
   c. ~~McPhail traps shall be established in the designated area and 300-feet buffer zone at the density of 15 traps per square mile (a minimum of 4 traps shall be required).~~
   d. ~~The attractant used in the McPhail trap shall be 4 or 5 yeast-borax tablets dissolved in 1/2 liter of water and shall be changed weekly.~~
   e. ~~Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.~~
   f. ~~There shall be a 30-day negative trapping period in the designated area and buffer zone prior to the area becoming eligible for designation as a Caribbean fruit fly-free area.~~
   g. ~~In addition, aerial bait sprays are to be applied beginning 7 days prior to harvest and throughout the harvest period.~~
   h. ~~Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:~~

~~i. If a Caribbean fruit fly is found before spraying begins, the area involved shall be ineligible for designation as a Caribbean fruit fly-free area.~~

~~(1) The designation as a Caribbean fruit fly-free area shall be reinstated if the area is sprayed for a 30-day (one life cycle) period and no additional flies are found. Spraying is to be continued throughout the harvest period after designation is restored.~~

~~(2) If an additional fly is found during the 30-day preharvest spray period or during the harvest period after reinstatement, the area shall be ineligible for designation as a Caribbean fruit fly-free area for the balance of the season.~~

~~ii. If Caribbean fruit fly is found after spraying begins, the area shall be ineligible for designation as a Caribbean fruit fly-free area.~~

~~(1) The area may be redesignated as a Caribbean fruit fly-free area after 30 days if no additional flies are trapped. Spraying is to be continued during the 30-day period and throughout the harvest period after designation is restored.~~

~~(2) If additional flies are found during the 30-day spray period, or during harvest after redesignation, the area shall be ineligible for designation as a Caribbean fruit fly-free area for the balance of the season.~~

~~3. Bait spray formulations:~~

~~a. Aerial bait spray shall consist of a mixture of 2.4 oz. (71.04 ml) 91% malathion and 9.6 oz. (284.16 ml) Staley's bait (Nulure) per acre.~~

~~b. Ground bait spray shall consist of 1 oz. (29.6 ml) Staley's bait (Nulure) and 1 oz. 56.44% EC malathion (Cythion - EPA Reg. No. +5905-196) per 1 gallon of water.~~

~~H.~~**E.** Disposition of ~~violations~~ commodity not in compliance~~:~~. ~~Any material or article which has been brought into the state of Arizona, or moved within the state of Arizona, in violation of this quarantine regulation shall immediately be sent out of the state, or returned to origin, or destroyed at the option and at the expense of the owner or owners, or their responsible agent, and under the direction of the State Entomologist or his inspectors.~~ A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

~~I. General rules: See "General Rules and Definitions, Article 1."~~

~~J. Pursuant to authority provided in subsection (C) of this rule, the State Entomologist hereby declares the state of Florida as an infested area for Caribbean fruit fly, Anastrepha suspensa, and lists the following commodities capable of being infested by, or harboring any stage of development, of said pest.~~

~~K. Commodities: All fruit and vegetables of the following:~~

~~1. The fruit of:~~

~~Apple~~	~~Malus sylvestris~~
~~Avocado~~	~~Persea americana~~
~~Balsam apple~~	~~Marmodica charantia~~
~~Barbados cherry~~	~~Malpighia glabra~~
~~Bell pepper~~	~~Capsicum frutescceus~~
~~Box orange~~	~~Severinia buxifolia~~
~~Calamondin~~	~~Citrus mitis~~
~~Carambola~~	~~Averrhoa carambola~~
~~Ceylon gooseberry~~	~~Dovyalis hebecarpa~~
~~Cherry of the Rio Grande~~	~~Eugenia aggregata~~
~~Coco plum~~	~~Chrysobalanus icaco~~
~~Common guava~~	~~Psidium guajava~~
~~Egg fruit~~	~~Pouteria campechiana~~
~~Governor's plum~~	~~Flacourtia indica~~
~~Grapefruit~~	~~Citrus paradisi~~
~~Grumichama~~	~~Eugenia brasiliensis~~
~~Guiana plum~~	~~Drypetes lateriflora~~
~~Imbe~~	~~Garcinia livingstonei~~
~~Jaboticaba~~	~~Myciaria cauliflora~~
~~-----~~	~~Myciaria glomerata~~
~~Kei apple~~	~~Dovyalis caffra~~
~~Kumquat~~	~~Fortunella japonica~~
~~Kumquat (oval)~~	~~Fortunella margarita~~
~~Lime~~	~~Citrus aurantifolia~~
~~Lime berry~~	~~Triphasia trifolia~~
~~Litchi~~	~~Litchi chinenis~~
~~Loquat~~	~~Eriobotrya japonica~~
~~Mango~~	~~Mangifera indica~~

~~Miracle fruit~~	~~Synsepalum dulcificum~~
~~Natal plum~~	~~Carissa grandiflora~~
~~Orange jasmine~~	~~Murraya paniculata~~
~~Paraguava~~	~~Britoa acida~~
~~Peach~~	~~Prunus persica~~
~~Pear~~	~~Pyrus communis~~
~~Pitomba~~	~~Eugenia luschnathiana~~
~~Pomegranate~~	~~Punica granatum~~
~~Rose apple~~	~~Syzygium jambos~~
~~Sapidolla~~	~~Achras zapota~~
~~Sour orange~~	~~Citrus aurantium~~
~~Strawberry guava~~	~~Psidium cattleianum~~
~~Sugar apple~~	~~Annona squamosa~~
~~Surinam cherry~~	~~Eugenia uniflora~~
~~Sweet orange~~	~~Citrus sinensis~~
~~Tangelo~~	~~Citrus paradisi x C. reticulata~~
~~Tangerine~~	~~Citrus reticulata~~
~~Temple orange~~	~~Citrus sinensis x C. reticulata~~
~~Tomato~~	~~Lycopersicon esculentum~~
~~Tropical almond~~	~~Terminalia catappa~~
~~Wampi~~	~~Clausena lansium~~
~~Water apple~~	~~Syzygium samarangense~~
~~White sapote~~	~~Casimiroa edulis~~
~~-----~~	~~Pseudanamomis umbellulifera~~

~~2. Avocados, mangoes, litchis, bell peppers and tomatoes may be shipped to Arizona without fumigation if commercially grown and packed. If not commercially grown and packed, these fruits must be certified as having been fumigated.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 11. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: RATES AND CHARGES

PREAMBLE

1. Sections Affected **Rulemaking Action**

Article 4	New Article
R9-11-401	New Section
R9-11-402	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rule is implementing (specific):

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A), and 36-136(F)

Implementing statute: A.R.S. § 36-125.05

3. The effective date of the rules:

June 3, 2003. This immediate effective date is allowed under A.R.S. § 41-1032(A)(1) to preserve the public peace, health, or safety. The Department receives funding from the Public Health and Social Services Emergency Fund (Section 319 of the Public Health Service Act, 42 U.S.C. 247d) for supporting bioterrorism preparedness and response activities. The information required by the rules is necessary to allow the Department to allocate the funds to eligible health care institutions based on the number of patients and services provided to patients. The hospitals will then use the funding for bioterrorism preparedness and response activities.

4. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2642, June 21, 2002

Notice of Proposed Rulemaking: 9 A.A.R. 591, February 28, 2003

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

Name: Joe Brennan, Economist III

Address: Department of Health Services
Office of Epidemiology & Statistics
1647 E. Morten, Suite 130
Phoenix, AZ 85020

Telephone: (602) 674-9710

Fax: (602) 395-8910

E-mail: jbrenna@hs.state.az.us

or

Name: Kathleen Phillips

Address: 1740 W. Adams, Room 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

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

A.R.S. § 36-125.05 includes requirements for a uniform patient reporting system and statistical and demographic reports. Before 1996, the reporting requirements applied to hospitals and included information concerning the provision of inpatient services. A.R.S. § 36-125.05 was amended by Laws 1996, Ch. 295 to include specific reporting requirements for outpatient services provided by hospitals and outpatient surgical centers. The Department is making rules to implement the changes consistent with current statutory authority, industry standards, Department policies and rulemaking format and style requirements.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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:

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

COST/BENEFIT TO ADHS

The rulemaking will require additional resources to process and store the 6,000,000 additional records generated by the rulemaking. ADHS plans to employ an additional person and ADHS' costs for the additional staff and storage related to the rulemaking will be substantial. The collection of the additional records will reduce ADHS' reaction time to emerging health care epidemics and increase ADHS' ability to provide consumers and the health care industry with health care information.

COST/BENEFIT TO HOSPITALS AND OUTPATIENT SURGICAL CENTERS

The rulemaking will affect approximately 250 hospitals and outpatient surgical centers located across the state. Most of these facilities already collect the information required in the rules for other purposes. The rules will specify the format for submitting the information to the Department, which may be different than the format the facilities are currently using. The majority of costs to adjust to the required format will be a one-time computer programming cost. The primary benefit to hospitals and outpatient surgical centers will be an increase in the facility's ability to access information about what and where outpatient services are being provided and the value of the outpatient services provided.

COST/BENEFIT TO CONSUMERS

Although consumers will not experience an immediate direct increase or decrease in costs, they will benefit in several ways. Health care facilities will more likely be located in areas where reported usage is high and less likely to be located in areas where there is already an over-saturation of facilities, which could lead to a reduction in consumer costs. Insurance companies will have access to actual financial and utilization data before negotiating contracts with health care providers. This may result in lower health care insurance premiums for consumers.

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

Added "illness" to the definition of "diagnosis" in R9-11-401(2).

Corrected cite in R9-11-401(7)(b).

Added "schedule" and "format" in R9-11-402.

Made other technical and grammatical changes suggested by G.R.R.C. staff.

11. A summary of comments made regarding the rule and the agency response to them:

No comments

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 11. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: RATES AND CHARGES

ARTICLE 4. OUTPATIENT SERVICES REPORTING

Section
R9-11-401. Definitions
R9-11-402. Reporting Requirements

ARTICLE 4. OUTPATIENT SERVICES REPORTING

R9-11-401. Definitions

The following definitions apply in this Article:

1. "Charge" means the same as "rate or charge" in R9-11-101.
2. "Diagnosis" means a determination of an individual's disease, illness, or injury, made by a health care provider authorized by law to make the determination.
3. "Diagnostic-related group code" means a numeric or alpha-numeric identifier that is assigned by the Center for Medicare and Medicaid Services to two or more outpatient services that are provided to an individual with a specific diagnosis.
4. "Governing authority" has the same meaning as in A.R.S. § 36-401.
5. "Hospital" has the same meaning as in A.A.C. R9-10-201.
6. "Hospital identification number" has the same meaning as in R9-11-301.
7. "Outpatient" has the same meaning as in A.A.C. R9-10-201.
8. "Outpatient services" means:
   a. Hospital services as defined in A.A.C. R9-10-201 provided to an outpatient by a hospital; and
   b. Outpatient surgical services as defined in A.A.C. R9-10-1701 provided to an individual by an outpatient surgical center.
9. "Outpatient surgical center" has the same meaning as in A.R.S. § 36-401.
10. "Patient certificate or social security number" has the same meaning as "patient certificate/social security number" in R9-11-301.
11. "Patient control number" has the same meaning as in R9-11-301.
12. "Payer code" has the same meaning as in R9-11-301.
13. "Procedure" means a surgical operation or technique.
14. "Tax ID number" means the numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
15. "Total patient charges" has the same meaning as in R9-11-301.

R9-11-402. Reporting Requirements

A governing authority of a hospital or an outpatient surgical center shall submit the following information for each outpatient according to the schedule and format requirements in R9-11-302:

1. An identification number as follows:
   a. For a hospital, the hospital identification number; or
   b. For an outpatient surgical center, the outpatient surgical center's tax ID number;
2. The patient control number;
3. The patient certificate or social security number;
4. The patient's address including city, state, and zip code;
5. The patient's date of birth;
6. The patient's sex;
7. The date outpatient services were initiated;
8. The date outpatient services were terminated;
9. The diagnostic related group code;
10. The total patient charges;
11. The payer code;
12. The principal diagnosis;
13. The second diagnosis;
14. The third diagnosis;
15. The fourth diagnosis;
16. The fifth diagnosis;
17. The sixth diagnosis;
18. The seventh diagnosis;
19. The eighth diagnosis;
20. The ninth diagnosis;
21. External cause of injury;
22. Second external cause of injury;

23. The date of the principal procedure;
24. The principal procedure;
25. The second procedure;
26. The third procedure;
27. The fourth procedure;
28. The fifth procedure; and
29. The sixth procedure.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Sections Affected **Rulemaking Action**

R20-5-601	Amend
R20-5-602	Amend

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. § 23-405(4)

Implementing statute: A.R.S. § 23-410

3. The effective date of the rules:

June 2, 2003. To better preserve the safety and health of employees throughout the state of Arizona, the Division is proposing an immediate effective date. The rulemaking will preserve public safety and health by implementing the most current Federal Occupational Safety and Health standard for employees who work in areas where traffic control is necessary to accomplish construction activities. The rulemaking will preserve public safety and health by implementing the most current Federal Occupational Safety and Health standard for means of egress for employees in general industry locations.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 184, January 24, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 302, February 7, 2003

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

Name: Patrick Ryan, Assistant Director

Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington, Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: pat.ryan@osha.gov

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

A.A.C. R20-5-601 The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926.

The Occupational Safety and Health Administration (OSHA) has revised the construction industry safety standards to require that traffic control signs, signals, barricades or devices protecting workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD).

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The

Industrial Commission is amending R20-5-601 by adopting amendments for 29 CFR 1926, Subpart G, Signs, Signals and Barricades.

A.A.C. R20-5-602 The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910.

The Occupational Safety and Health Administration (OSHA) has revised its standards for means of egress. The purpose of this revision is to rewrite the existing requirements in clearer language so they will be easier to understand by employers, employees, and others who use them. The revisions reorganize the text, remove inconsistencies among sections, and eliminate duplicative requirements. The rules are performance-oriented to the extent possible, and more concise than the original, with fewer subparagraphs, and fewer cross-references to other OSHA standards. Additionally, a table of contents has been added that is intended to make the standards easier to use. Also, OSHA is changing the name of the subpart from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents.

Finally, OSHA has evaluated the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition (NFPA 101-2000), and has concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101-2000 instead of the OSHA standards for Exit Routes may do so.

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission is amending R20-5-602 by adopting amendments for 29 CFR 1910, Subpart E, Exit Routes, Emergency Action Plans, and Fire Prevention Plans.

Copies of the material are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington, Room 203, Phoenix, AZ 85007, and can be downloaded from the Federal OSHA web site www.osha.gov.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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 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:

The Division has determined that these revisions will have little to no impact for affected industry groups and has determined the revisions to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, AZ 85007.

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

None

11. A summary of the comments made regarding the rule and the agency response to them:

None

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

Not applicable

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

R20-5-601. Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926.

R20-5-602. Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910.

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

Not applicable

15. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section
R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
Each employer shall comply with the standards in the *Federal Occupational Safety and Health Standards for Construction*, as published in 29 CFR 1926, with amendments as of ~~January 18, 2001~~ September 12, 2002, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~January 18, 2001~~ September 12, 2002.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910
Each employer shall comply with the standards in Subparts C through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~January 18, 2001~~ November 7, 2002, incorporated by reference and on file with the Office of the Secretary of State. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~January 18, 2001~~ November 7, 2002.