

## NOTICE OF SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, and repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rule with the Governor's Regulatory Review Council and the Secretary of State for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

**TITLE 3. AGRICULTURE  
CHAPTER 4. DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION**

**PREAMBLE**

- | <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
|------------------------------------|---------------------------------|
| R3-4-501.                          | Repeal                          |
| R3-4-502.                          | Repeal                          |
| R3-4-503.                          | Repeal                          |
| R3-4-504.                          | Repeal                          |
| R3-4-505.                          | Repeal                          |
| R3-4-506.                          | Repeal                          |
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 3-107  
Implementing statute: A.R.S. §§ 3-802, 3-803, 3-804, 3-805, and 3-806
  3. **The interim effective date of the summary rules:** February 10, 1995  
Close of Record: March 13, 1995
  4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Shirley Conard, Rules Specialist  
Address: Arizona Department of Agriculture  
1601 North 7th Street, Room 434  
Phoenix, Arizona 85006-2299  
Telephone Number: (602) 407-2834  
Fax Number: (602) 407-2839
  5. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
These rules govern the apiary industry. The definitions, apiary practices, and apiary procedure rules assist the beekeepers in the basic information needed to control the pests, parasites, and diseases detrimental to honey bees. The rules on Varroa Mite, Africanized Bees, and American Foulbrood of Bees establish specific quarantines against those pests and disease which are injurious to honey bees. Since the 1994 legislative session produced HB 2172 which repealed Title 3, Chapter 6 of the Arizona Revised Statutes, the regulatory authority is no longer granted to the Department.
  6. **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:**  
N/A
  7. **The preliminary summary of the economic, small business, and consumer impact:**  
Pursuant to A.R.S. § 41-1055(D)(2), the agency is exempt from writing the economic, small business and consumer impact statement summary.
  8. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Shirley Conard, Rules Specialist  
Address: Arizona Department of Agriculture  
1601 North 7th Street, Room 434  
Phoenix, Arizona 85006-2299  
Telephone Number: (602) 407-2834  
Fax Number: (602) 407-2839
  9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:**  
None scheduled

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10. **An explanation of why summary proceedings are justified:**  
Since no proceedings are scheduled, no justification is necessary.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules**  
None
12. **Incorporations by reference and their location in the rules:**  
None
13. **The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION**

**ARTICLE 5. APIARY REGULATIONS**

Section	
R3-4-501.	Definitions
R3-4-502.	Apiary practices
R3-4-503.	Apiary procedures
R3-4-504.	Varroa Mite
R3-4-505.	American Foulbrood in bees
R3-4-506	Africanized bees

**ARTICLE 5. APIARY REGULATIONS**

**R3-4-501. — Definitions**

In addition to the definitions provided in A.R.S. § 3-801, the following shall apply to this Article:

1. "Abandoned hives" means hives, the ownership which cannot be determined.
2. "Apiary Importation Permit" means a document issued by the Department giving permission to enter the State with colonies, hives, apiary equipment or appliances.
3. "Bees" means honey producing insects, including all life stages, of the genus *Apis*.
4. "Cappings" means the wax covering of cells, with adhering honey, that has been removed from the combs to permit removal of the remainder of the honey and rendering of the wax.
5. "Certificate of Apiary Inspection" means a document issued by a duly authorized official from the place or state of origin stating that the colonies, apiary equipment or appliances have been inspected as prescribed in A.R.S. § 3-805.
6. "Daylight hours" means one-half hour before sunrise to one-half hour after sunset.
7. "Depopulate" means destruction of all life stages of bees.
8. "Holding yard" means an apiary site prearranged between the beekeeper and the Department for placement of diseased, infected or infested colonies of bees.
9. "Life stage" means eggs, larvae, pupae and/or adult bees living or dead.
10. "Moving permit" means a permit issued by a duly qualified inspector for the movement of colonies of bees under quarantine.
11. "Quarantine" means the detaining of an apiary and all its equipment at its location at the time of the

discovery of an infectious or contagious disease, pest or parasite.

12. "Slumgum" means a residue after removal of wax from cappings or from combs in which brood has been reared.

**R3-4-502. — Apiary Practices**

**A. Importation:**

1. Any commodity listed in subsections R3-4-504(C), R3-4-505(C) and R3-4-506(C) which is imported into the state of Arizona shall be accompanied by a Certificate of Apiary Inspection as required in A.R.S. § 3-805(A), or an Apiary Importation Permit issued by the Department as required in A.R.S. § 3-805(B). The certificate or the permit shall include, but not be limited to:
  - a. The apiary owner or operator's name, address and telephone number in the state of origin;
  - b. The name, address and telephone number of the person receiving the shipment;
  - c. The date and results of the inspection;
  - d. The total number of colonies being shipped into Arizona;
  - e. A complete list of all used beekeeping equipment and appliances being shipped into Arizona;
  - f. The counties in Arizona in which the colonies will be located.
2. Pursuant to A.R.S. § 3-804, any commodity imported into the state of Arizona and in violation of this Article shall, at the expense of the owner or operator, be sent out of the state, or treated or abated as prescribed in R3-4-504, R3-4-505 and R3-4-506.

**B. Apiary equipment and appliances exposed to foraging bees.**

1. It is prohibited for the owner or operator to knowingly expose any infected or infested commodity to foraging bees.
2. If an inspector discovers infected or infested commodities exposed to foraging bees, the owner or operator shall be notified verbally or in writing to correct this condition. If this condition is not corrected within ten calendar days from the notification the inspector shall, pursuant to A.R.S. § 3-803(B) and (C), burn or otherwise destroy the infected or infested commodities.

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**C. Transportation of bee colonies within Arizona.**

1. Bee colonies transported over public roads during daylight hours shall be confined by placing netting over the colonies, or by blocking or screening the entrances in a manner that will prevent free flight.
2. Colonies under quarantine may be moved as an entire unit after receiving permission from the Department, in person, by mail or by telephone to obtain a moving permit which shall contain, but not be limited to:
  - a. The name, address and telephone number of the owner or operator;
  - b. The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;
  - c. The number of the infested colonies to be moved;
  - d. The quantity and description of any used apiary equipment and appliances;
  - e. The legal description, including county, township, range, section and quarter section numbers where the apiary will be relocated.

**D. Type of hives authorized for keeping bees.**

1. Pursuant to A.R.S. § 3-804(D), the use of natural or manufactured hives other than hives with removable frames are prohibited except by special use permit.
2. Upon application by the owner or operator, special use permits for non-removable frame hives may be issued by the Department when hives are used for experimental or demonstration purposes.
3. If an inspector discovers that colonies are being maintained in a receptacle without removable frames and a special use permit has not been issued, the owner or operator shall be notified verbally or in writing to correct this condition. If this condition is not corrected within five weeks of the notification, the inspector shall burn the receptacle and the contents.

**E. Custom and rental extracting equipment.** Prior to moving from one location to another and prior to returning any rental extracting equipment, all equipment and tools used in custom extracting shall be cleaned to the extent that wax and honey cannot be detected visually or by touch.

**R3-4-503. Apiary Procedures**

**A. Registration of apiary locations.**

1. Any person owning or operating one or more colonies of bees shall provide the following information on a form furnished by the Department:
  - a. The owner or operator's name, residence address and telephone number;
  - b. The owner or operator's business address and telephone number;
  - c. The legal description of all apiary sites to be used throughout the year, including county, township, range, section and quarter section numbers;
  - d. The total number of colonies;
  - e. The signature of the owner or operator;
  - f. The date the application is completed for submission to the Department.

2. The apiary registration shall be filed with the Department by February 1 of each year.

3. All newly acquired or established apiaries, or apiary locations not previously registered, shall be registered within 30 days of acquisition or establishment.

4. Any person owning or operating one or more apiaries shall, at the request of the inspector, provide in writing the exact location of every apiary the person owns or operates.

**B. Apiary identification.** The owner's name, mailing address and telephone number shall be legibly displayed at each apiary on a conspicuously placed weatherproof sign approximately 8" x 16", or on one or more hive bodies within the apiary.

**C. Inspection procedures.**

1. Pursuant to A.R.S. § 3-803, an inspector may enter an apiary to determine colony or equipment ownership.

2. An inspector may inspect and take samples from any apiary, or shipment being transported, to ensure compliance with R3-4-504, R3-4-505 and R3-4-506.

3. An inspector shall provide the owner or operator results of all inspections on a Certificate of Apiary Inspection which shall include, but not be limited to:

- a. The name, residence address and telephone number of the owner or operator;
- b. The name, business address and telephone number of the owner or operator;
- c. The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;
- d. The date the apiary was inspected;
- e. The results of the inspection;
- f. The number of colonies in the apiary;
- g. The number of colonies inspected in the apiary.

4. The certificate is valid for 90 days from the date of inspection.

**D. Advisory committee.** The Director shall appoint an advisory committee, pursuant to A.R.S. § 3-802(D). Members shall serve two-year staggered terms. The committee members, who are eligible for reappointment, shall consist of one delegate from each of the following groups choosing to be represented:

1. The Arizona Beekeepers Association;
2. The Beekeepers Association of Central Arizona;
3. The Southern Arizona Beekeepers Association;
4. United States Department of Agriculture Agriculture Research Service;
5. The Arizona Department of Agriculture;
6. Pollen packers;
7. Honey packers;
8. Commercial pollen producers;
9. Interstate migratory beekeepers;
10. Commercial pollination service providers; and
11. An apiarist from each county having 2500 or more registered colonies.

**R3-4-504. Varroa Mite**

**A. Definitions.**

— "Pest" means Varroa Mite, *Varroa jacobsoni*.

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**B.** Regulated area. Areas under quarantine shall include all states and districts of the United States.

**C.** The following commodities are hosts or carriers of the pest:

1. Bees in all life stages;
2. Used apiary appliances, equipment, and shipping and storage containers which are used at apiaries;
3. Comb containing brood;
4. Unprocessed pollen;
5. Any other product, article, or means of conveyance when it is determined by an inspector that it presents a risk of spreading the pest.

**D.** The following commodities are exempt from this rule:

1. New equipment;
2. Processed beeswax free of slumgum;
3. Processed honey;
4. Processed pollen.

**E.** Any commodity listed in subsection (C) which is imported into the state of Arizona shall follow the importation practices set forth in R3-4-502(A).

**F.** Upon laboratory confirmation of the presence of the pest in a colony, the Department shall give the owner the option to treat or to abate.

**G.** Chemical treatment.

1. If the owner chooses to treat with an approved chemical:

- a. The Department shall quarantine the infested apiary for the duration of the treatment;
- b. The owner shall treat all colonies in the infested apiary with an acaricide in accordance with the instructions on the label and as approved by the United States Environmental Protection Agency in 7 U.S.C. 136(a), (c), or (p), revised October 1988. This material incorporated herein by reference does not include any later amendments or editions of the incorporated matter and is on file with the Office of the Secretary of State.

2. Upon completion of the treatment, the Department shall issue a Release of Quarantine at the time the colonies are inspected, or the release shall be mailed to the colony owner or operator. The Release of Quarantine shall include, but not be limited to:

- a. The name, address and telephone number of the owner or operator;
- b. The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;
- c. The date the release is issued.

3. Colonies under quarantine in the infested apiary may be moved as prescribed in R3-4-502(C).

**H.** Non-chemical treatment.

1. If the owner chooses to treat with non-chemical controls:

- a. The Department shall quarantine the infested apiary for the duration of the treatment;
- b. The owner shall make application to the Director proposing a form of non-chemical treatment;
- c. The Director may issue a permit approving the non-chemical treatment subject to prescribed limitations, conditions and provisions set forth by the Director;

d. The Department shall monitor the implementation of the non-chemical treatment at a minimum of once per year.

2. Upon completion of the non-chemical treatment, the Department shall issue a Release of Quarantine as set forth in paragraph (G)(2).

3. Colonies under quarantine in the infested apiary may be moved as prescribed in R3-4-502(C).

**I.** Abatement.

1. The Department may abate when the owner chooses to abate; when colonies are abandoned; or when the owner refuses treatment as delineated in subsections (G) or (H).

2. The abatement shall be conducted at the expense of the owner or operator and under the direction of the Director who shall:

- a. Quarantine the apiary where the infested colonies are located;
- b. Depopulate the infested colonies and quarantine the equipment until free of all life stages of bees for a minimum of 20 days;
- c. Inspect each remaining colony of the infested apiary for the presence of the pest;
- d. Abate additional infested colonies in accordance with subparagraph (b);
- e. Upon completion of the abatement, release the uninfested colonies from quarantine as set forth in paragraph (G)(2).

**R3-4-505. American Foulbrood in bees**

**A.** Definitions.

1. "Authorized treatment" means treating with oxytetracycline.
2. "Disease" means American Foulbrood caused by *Bacillus larvae*.
3. "Sample" means a 3" x 3" section of comb containing brood remains, or a smear of those remains.

**B.** Regulated area. Areas under quarantine shall include all states and districts of the United States.

**C.** The following commodities are hosts or carriers of the disease:

1. Bees in all life stages;
2. Used apiary appliances, equipment, and shipping and storage containers which are used at apiaries;
3. Slumgum;
4. Unprocessed pollen and honey in the comb, and cappings;
5. Comb, with or without bees;
6. Any other product, article, or means of conveyance when it is determined by an inspector that it presents a risk of spreading the disease.

**D.** The following commodities are exempt from this rule:

1. New equipment;
2. Processed beeswax free of slumgum;
3. Processed slumgum;
4. Processed honey; and
5. Processed pollen.

**E.** Any commodity listed in subsection (C) which is imported into the state of Arizona shall follow the importation procedures set forth in R3-4-502(A).

**F.** Inspection procedures. In addition to the inspection procedures provided in R3-4-503(C), the Department may proceed with the following:

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1. Combs may be removed from the brood nest and examined for signs of the disease.
  2. If the disease is suspected in any colony during an inspection of an apiary the Department shall:
    - a. Take a sample from the suspect colony and submit it for laboratory analysis or, if the owner is present during the inspection and concurs that the disease is present, proceed with the treatment or abatement;
    - b. Mark all suspect colonies with the collection sample number;
    - c. Place the apiary under quarantine by posting a Notice of Quarantine in the apiary;
    - d. Send a Notice of Nuisance and Quarantine to the owner or operator which shall contain, but not be limited to:
      - i. The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;
      - ii. The number of colonies suspected to be infected with disease; and
      - iii. The method used to mark the suspected colonies.
  3. The quarantine shall remain in force until the Department issues a Release of Quarantine as prescribed in paragraph (H)(3).
  4. Colonies under quarantine in the infected apiary may be moved as prescribed in R3-4-502(C).
- G.** Upon laboratory confirmation of the presence of the disease in a colony, the Department shall give the owner the option to treat or to abate.
- H.** Chemical treatment.
1. If the owner chooses the authorized treatment:
    - I.** Abatement.
      1. The Department shall abate when the owner chooses to abate; when colonies are abandoned; or when the owner refuses or fails to begin treatment within five days, as delineated in subsection (H).
      2. The abatement shall be conducted at the expense of the owner or operator and under the direction of the Director who shall:
        - a. Quarantine the infected apiary;
        - b. Inspect each colony in the infected apiary for the presence of the disease;
        - c. Abate the infected colonies by burning the colonies and their combs, and by burying the residue in a pit;
        - d. Upon completion of the abatement, release the uninfected colonies from quarantine as set forth in paragraph (H)(3).
- R3-4-506. Africanized Bees**
- A.** Definitions.
- “Pest” means Africanized honey bee, *Apis mellifera scutellata*.
- B.** Regulated areas. Areas under quarantine shall include all states and districts of the United States.
- C.** The following commodities are hosts or carriers of the pest:
1. All reproductive life stages of the pest;
  2. Comb containing brood.
- a. The Department shall quarantine the infected apiary for the duration of the treatment;
  - b. The Department shall send a Notice of Treatment to the owner or operator which shall include, but not be limited to:
    - i. The name, address and telephone number of the owner or operator;
    - ii. The number and legal description, including county, township, range, section and quarter section numbers in which the infected colonies are located;
    - iii. The applicable treatment;
    - iv. The date treatment shall begin;
    - v. The reinspection date.
2. The Department shall inspect each infected colony no sooner than five weeks after the treatment begins.
3. If the colonies are found to be free of the disease, the Department shall issue a Release of Quarantine at the time the colonies are inspected, or the release shall be mailed to the colony owner or operator. The Release of Quarantine shall include, but not be limited to:
  - a. The name, address and telephone number of the owner or operator;
  - b. The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;
  - c. The date the release is issued.
4. Colonies remaining infected with the disease may receive additional treatments or be abated as prescribed in subsection (I).
5. Colonies under quarantine in the infected apiary may be moved as prescribed in R3-4-502(C).
- D.** Any commodity listed in subsection (C) which is imported into the state of Arizona shall follow the importation procedures set forth in R3-4-502(A).
- E.** Upon laboratory confirmation of the presence of the pest in a colony, the Department shall give the owner the option to treat or to abate.
- F.** Non chemical treatment.
1. If the owner chooses to treat with non-chemical controls:
    - a. The Department shall quarantine the infested apiary for the duration of the treatment;
    - b. The Department shall inspect and sample each colony of the infested apiary for the presence of the pest.
  2. The owner shall requeen all colonies testing positive for the pest with certified queens or queens known to be from domestic stock.
  3. Upon completion of requeening of all colonies testing positive for the pest, the Department shall issue a Release of Quarantine at the time the colonies are inspected, or the release shall be mailed to the colony owner or operator. The Release of Quarantine shall include, but not be limited to:
    - a. The name, address and telephone number of the owner or operator;

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- b. ~~The legal description, including county, township, range, section and quarter section numbers in which the apiary is located;~~
  - c. ~~The date the release is issued.~~
  - 4. ~~The Department shall monitor, a minimum of once per year, the implementation of the non-chemical treatment.~~
  - 5. ~~Colonies under quarantine in the infested apiary may be moved as prescribed in R3-4-502(C).~~
- G. ~~Abatement.~~
- 1. ~~The Department may abate when the owner chooses to abate; when colonies are abandoned; or when the owner refuses treatment as delineated in subsection (F).~~
  - 2. ~~The abatement shall be conducted at the expense of the owner or operator and under direction of the Director who shall:~~
    - a. ~~Quarantine the infested apiary;~~
    - b. ~~Inspect and sample each colony of the infested apiary for the presence of the pest;~~
    - c. ~~Depopulate the infested colonies;~~
    - d. ~~Upon completion of the abatement, release~~

~~the uninfested colonies from quarantine as set forth in paragraph (F)(3).~~

H. ~~Swarm Retrieval.~~

- 1. ~~All swarms retrieved from an area known to be infested with the pest shall be placed in a holding yard;~~
- 2. ~~Upon request of the owner or operator, the Department shall inspect the holding sites to test individual colonies for the presence of the pest;~~
- 3. ~~The owner or operator may request inspections, which shall not be performed more often than 90 day intervals, for previously inspected colonies;~~
- 4. ~~Colonies testing positive for the pest shall be treated as set forth in subsection (F), or abated as set forth in subsection (G).~~
- 5. ~~Colonies under quarantine in the infested apiary may be moved as prescribed in R3-4-502(C).~~
- 6. ~~Upon completion of treatment or the abatement, the Department shall release all remaining uninfested colonies from quarantine and the owner or operator may remove the colonies from the holding yard.~~