



*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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

It is not anticipated that the adoption of this rule will have any impact on private industry, small business, or consumers.

A. *The Arizona Department of Agriculture.*

The Department will use the new version of the Pasteurized Milk Ordinance for dairy and dairy products control, but will not be economically affected by the change.

B. *Political Subdivision.*

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

C. *Businesses Directly Affected By the Rulemaking.*

The dairy and dairy products industry will follow the new Pasteurized Milk Ordinance (PMO) but should not incur any additional costs associated with the new version of the PMO.

D. *Private and public employment.*

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

E. *Consumers and the Public.*

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

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

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

Name: Ross Rodgers  
Address: Arizona Department of Agriculture  
1688 West Adams, Room 235  
Phoenix, Arizona 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-0111  
E-Mail: ross.rodgers@agric.state.az.us

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

Date: November 7, 2000  
Time: 4:00 p.m.  
Location: Arizona Department of Agriculture  
1688 West Adams, Room 206  
Phoenix, Arizona 85007  
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business and consumer impact statement must be received by 5:00 P.M., November 7, 2000. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-8939 (TTY Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

**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:**

R3-2-801(11) Grade A Pasteurized Milk Ordinance, including the Administrative Procedures and Appendices, 1999 Revision.

**13. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION**

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

Section

R3-2-801. Definitions

**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, amended June 1, 1992, 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 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, low fat 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” means 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 for the manufacturing, processing, pasteurizing or converting of 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, ~~1995~~ 1999 Revision, This term includes the information found in the Administrative Procedures and Appendices of the PMO, and the PMO updates in the IMS-a-39, effective September 26, 1997, and the IMS-a-40, effective October 24, 1997. 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.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

##### PREAMBLE

- 1. Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R3-4-234	Repeal
R3-4-234	New Section
R3-4-235	Repeal
R3-4-236	Repeal
R3-4-237	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107

Implementing statutes: A.R.S. §§ 3-201.01, 3-202, 3-203, 3-204, 3-205, 3-207, 3-208(B), 3-209, and 3-210
- 3. A list of all previous notices appearing in the Register addressing the rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 2127, July 31, 1998; republished in 6 A.A.R. 3113, August 18, 2000.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ross Rodgers, rule writer

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

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-Mail: ross.rodgers@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

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

This rule consolidates information contained in the current R3-4-234 through R3-4-237 and adds the pest, burrowing nematode, *Radopholus similis* (Cobb). The options for destruction of a shipment has been removed because it restates A.R.S. 3-210.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
  - A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

The Department will not incur any additional costs by implementing and enforcing the rulemaking actions affecting the Nematode Quarantine program.

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

Political subdivisions of this State are not directly affected by the implementation and enforcement of this rule-making.

C. *Businesses Directly Affected By the Rulemaking. (Common and private carriers, mail facilities, railroads, instate and out-of-state nurseries, and retail outlets.)*

Benefits associated with implementing this rulemaking far outweighs the cost of a commodity becoming infested with the pest.

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

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

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

This rulemaking increases the positive public relations between the nursery industry and consumers by providing more pest and covered commodity requirements to assure that plants are not infested.

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

This rulemaking will have no impact on State revenues.

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

Name: Ross Rodgers, rule writer  
Address: Arizona Department of Agriculture  
1688 West Adams, Room 235  
Phoenix, Arizona 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-Mail: ross.rodgers@agric.state.az.us

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

Date: November 7, 2000  
Time: 3:00 p.m.  
Location: Arizona Department of Agriculture  
1688 West Adams, Room 206  
Phoenix, Arizona 85007  
Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., November 7, 2000. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-8939 (TTY Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None

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

None

**13. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

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

**ARTICLE 2. QUARANTINE**

Sections

<del>R3-4-234.</del>	<del>Nematode pest—area under quarantine</del> <u>Repealed</u>
<u>R3-4-234.</u>	<u>Nematode Pests</u>
<del>R3-4-235.</del>	<del>Nematode pest—commodities covered and exemptions</del> <u>Repealed</u>
<del>R3-4-236.</del>	<del>Nematode pest—conditions for admission</del> <u>Repealed</u>
<del>R3-4-237.</del>	<del>Nematode pest—disposition of violations</del> <u>Repealed</u>

**ARTICLE 2. QUARANTINE**

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

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

**R3-4-234. Nematode Pests**

**A. Definition.**

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

**B. Areas under quarantine. Alabama, Arkansas, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Puerto Rico.**

**C. Commodities covered.**

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

**D. Exceptions.**

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

**E. Restrictions.**

1. A receiver shall maintain a record of all shipments received from a nematode area at the nursery location for 1 year after receipt.
2. A receiver shall establish a registered quarantine holding area with the Department.
3. The following criteria shall be met by the receiver before the quarantine holding area is approved by the inspector:
  - a. The floor of the holding area shall be composed of a permeable surface, such as sand or soil, and shall be free from debris, grass and weeds;
  - b. If the holding area is outdoors, the location shall be at least 15 ft. from all masonry walls, property boundaries, and plants not part of a shipment being held;
  - c. The holding area shall be isolated from public access; and
  - d. The integrity of the holding area shall be maintained at all times.
4. All covered commodities shall be unloaded at destination into a quarantine holding area and held undisturbed until released by a Department inspector.
5. No pesticide or other chemical shall be applied to the covered commodity while in the quarantine holding area except under the direction and supervision of a Department inspector.

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6. All covered commodities from the area under quarantine, whether moved directly from the area or by diversion or reconsignment from any other point, (regardless of the time held or grown at an intermediate point) are prohibited entry unless each shipment or lot is accompanied by an original certificate. The certificate shall establish the commodity contained in the lot or shipment:
- a. Has been determined through surveys conducted at annual intervals or during the 1-year period before shipment that the pest does not exist on the property or facility used to grow the material, or
  - b. Were protected from infestation of the pest by:
    - i. Propagating from clean seed or from cuttings taken 12 inches or more above ground level;
    - ii. Planting in sterilized soil or other material prepared or treated to assure freedom from the pest;
    - iii. Retaining in sterilized pots, containers, or beds;
    - iv. Placing on sterilized benches or sterilized supports 18 inches or more from the ground or floor level;
    - v. Sampling commodities using methods approved by the Associate Director and found free of the pest; and
    - vi. Protecting commodities from contamination by the pest until shipped.
- G.** Disposition of violations. If an infested shipment is sent out-of-state or destroyed, the nurseryman or landscape contractor shall, under the supervision of an inspector, treat the quarantine holding area with a chemical labeled for the control of nematodes after the infested shipment has been returned out-of-state or destroyed.
- 1. The quarantine holding area shall be placed under quarantine for 30 days following treatment and no plants shall be placed inside the treated area.
  - 2. After 30 days, the inspector shall sample the quarantine holding area for the pest.
    - a. If the sample does not indicate the pest, the quarantine holding area shall be released from quarantine.
    - b. If the pest is detected, the quarantine holding area shall be retreated, held for an additional 30 days, and resampled. This procedure shall be repeated until no pest is detected in the holding area.

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

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

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

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

- 1. ~~The covered commodities originated in a geographical area of not less than 20 square miles in which Reniform Nematode is not known to occur; or~~
- 2. ~~It has been determined through surveys including soil sampling, conducted at annual intervals, or during the one year period prior to shipment, that the Reniform Nematode does not exist on the group of commodities to be certified or the Reniform Nematode does not exist on the premises used to grow the commodities and the commodities have been handled in a manner to assure protection from Reniform Nematode contamination from the time of survey to the time of shipment; or~~
- 3. ~~The soil of the lot or shipment was treated prior to shipment with a pesticide registered for use on the pest and the associated plant material which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data. A list of pesticides registered for use on the Reniform Nematodes will be kept on file with the Secretary of State of Arizona; or~~
- 4. ~~The lot or shipment is free of living plant material and consists only of Reniform Nematode free growing media or has been treated with a pesticide registered for use on the pest and site and which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data. A list of pesticides registered for use on the Reniform Nematode will be kept on file with the Secretary of State of Arizona; or~~

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5. ~~The lot or shipment consists of seedlings, plugs, or rooted cuttings grown on benches in Reniform Nematode-free growing media or which has been treated with a pesticide registered for use on the pest and the associated plant material which has been determined by the Arizona State Entomologist to be an effective eradicator of Reniform Nematode based on scientific research data; and that the lot or shipment consists of seedlings, plugs, or rooted cuttings which have been handled in a manner to assure protection from Reniform Nematode's contamination until shipped. A list of pesticides registered for use on the Reniform Nematode will be kept on file with the Secretary of State of Arizona; or~~
6. ~~The commodity meets the requirements of California's Department of Food and Agriculture Quarantine Proclamation No. 25, "Burrowing Nematode Exterior Quarantine" on file with the Secretary of State of Arizona, as long as certification to meet this proclamation includes assurance by the authorized agricultural official at state of origin, that the commodity is free of Reniform Nematode.~~

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

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