

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**

Article 1	
Table 1	Amend
Article 2	
R3-2-202	Amend
- 2. The specific 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) and 41-1073

Implementing statutes: A.R.S. §§ 3-1344, 3-1345, 3-2046, 3-2088, 3-2154, and 3-2161
- 3. The effective date of the rules:**

August 7, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 2774, June 29, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 3046, July 13, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 967, March 15, 2002

Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 1896, April 19, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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

This rulemaking updates the Department's rules regarding poultry slaughter and inspection to match changes in federal rules incorporating ratite and squab slaughter into the federal poultry rules. Incorporation by reference for both meat and poultry inspection are updated and excepted material is modified.

The time-frame table for the Animal Services Division is amended to eliminate the license for ratite slaughterhouses and to include a time-frame for the first time for issuance of Ownership and Hauling Certificates for Equines. Due to a change in internal procedures with respect to inspecting equine for Certificates, issuance of Certificates may take longer than seven days.

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

Not applicable

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

Not applicable

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

A. The Arizona Department of Agriculture.

The Department will license and inspect ratite and squab slaughter operations under the poultry rules. The Department's issuance of Ownership and Hauling Certificates for Equines will be included in the time-frame table. A change in internal procedures to issue the Certificates may now sometimes result in issuance of the Certificates in greater than a seven-day time-frame. These changes have a minimal cost to the Department related to training staff.

B. Political Subdivision.

It is not anticipated that the adoption of this rule will have any impact on political subdivisions.

C. Businesses Directly Affected By the Rulemaking.

Businesses previously licensed to slaughter ratites under Article 11 are now licensed under Article 2 provisions for poultry slaughter, R3-2-202(B). Only two licenses were issued under the ratite rules. If squabs are slaughtered, the poultry inspection, slaughtering standards, and licensing requirements apply to that activity.

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

The Notice of Proposed Rulemaking, published on March 15, 2002, incorporated the federal interim final rule requiring mandatory inspection of ratites and squab at slaughter, with an effective date of April 26, 2001. On March 22, 2002, the final rule, with changes, was published in the Federal Register. The final rule added information to section 381.94 on E. coli testing and sampling for ratites and squabs. In response to the change in the federal rule, the Department published a Notice of Supplemental Rulemaking to incorporate by reference the later edition of the Federal Register.

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

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

No comments were received. The Arizona Department of Agriculture's Advisory Council passed a motion in support of proceeding with the rulemaking. The Department appreciates the support of the Advisory Council.

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:

9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2001, amended 67 FR 13253-13259, March 22, 2002. The following parts and sections of 9 CFR are excepted from incorporation: 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218, and 381.220 through 381.225

The incorporated material appears in rule R3-2-202(A) and (B).

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 2. MEAT AND POULTRY INSPECTION

Section

R3-2-202. Meat and Poultry Inspection; and Slaughtering Standards

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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 7	7 7	7 14	7 7	14 21
Milk Processing Plant New Renewal	A.R.S. § 3-607	7 7	7 7	7 14	7 7	14 21
Plant Licensing New Renewal	A.R.S. § 3-665	7 7	7 7	7 14	7 7	14 21
Request to market a product as a milk product	A.R.S. § 601.01	7	7	7	7	14
Tester License	A.R.S. § 3-619	7	7	7	7	14
Trade Product Label	A.R.S. § 3-667	7	14	30	30	37
LIVESTOCK SELF INSPECTION						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14

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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	7	7	7	14
AQUACULTURE						
Aquaculture Facility	A.R.S. § 3-2907 R3-2-1004	14	14	30	14	44
Fee Fishing Facility	R3-2-1005	14	14	30	14	44
Processor	R3-2-1006	14	14	30	14	44
Transporter	R3-2-1007	14	14	30	14	44
Special Licenses	A.R.S. § 3-2908 R3-2-1008	14	14	30	14	44
RATITES						
Slaughterhouse and Wholesale Processing Establishment Registration	A.R.S. § 3-1482 R3-2-1102	14	14	60	14	74

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; and Slaughtering Standards

- A. All meat inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, ~~1999~~ 2001. This material is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions. The following parts and sections of 9 CFR, ~~Chapter III, Subchapter A~~, are excepted from incorporation: 302.2, ~~306.3~~ 307.5, 307.6, 312, ~~321~~ 322, 327, 329.7, 329.9, 331, and 335.
- B. All poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters C and E, revised as of January 1, ~~1999~~ 2001, amended 67 FR 13253-13259, March 22, 2002. This material is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions. The following sections of 9 CFR ~~Chapter III, Subchapter C~~ are excepted from incorporation: 381.38, ~~381.39~~, 381.96 through 381.112, ~~381.185 through 381.186~~, 381.195 through 381.209, 381.218, and 381.220 through 381.225 ~~381.230 through 381.236~~.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

R3-2-412
R3-2-413
R3-2-505
R3-2-606
R3-2-614
R3-2-615
R3-2-705

Rulemaking Action

New Section
New Section
New Section
Amend
Amend
Amend
Amend

2. The specific 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) and 3-1203(B)(1)

Implementing statutes: A.R.S. §§ 3-1204, 3-1205 and 3-1207

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3. The effective date of the rules:

August 7, 2002, except R3-2-413. An effective date of January 1, 2003 is necessary for R3-2-413 to coordinate the state's rule with a later implementation for intrastate shipment established in 9 CFR 79, 66 FR 43963-44003, August 21, 2001.

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 5258, November 23, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 5534, December 21, 2001

Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 1900, April 19, 2002

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

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

This rulemaking incorporates by reference amendments to 9 CFR 54, establishing procedures for scrapie eradication in goats and sheep, and 9 CFR 79, establishing identification requirements for interstate movement of goats and sheep. Requirements are established for identification of exhibition goats and sheep. Identification of goats and sheep to flock of birth is prescribed for intrastate movement. R3-2-614(B) was modified in a Notice of Supplemental Proposed Rulemaking to provide an exemption to the *Brucella ovis* test for exhibition rams returning to the out-of-state flock of origin. These animals do not present a disease threat if they do not remain in Arizona.

Language in Article 6 is clarified, health certificate requirements for equine are moved from R3-2-615 to R3-2-606(A)(7), and rules are modified to conform to the current language standards of the Office of the Secretary of State.

Self-inspection requirements in Article 7 for sheep are amended to include the new requirement of animal identification to flock of birth.

The rulemaking was initiated to conform Arizona requirements for importation of goats and sheep to updated federal requirements implemented to eradicate scrapie, and to implement these same requirements to intrastate movement, which is required within the next two years for Arizona to retain its designation as a Consistent State as described at 9 CFR 79.6.

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

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.

Sheep and goat producers will incur minimal additional expense to individually identify each animal shipped interstate with federally approved methods. USDA-approved tags and applicators are available free of charge from the USDA. Exhibitors of most native Arizona goats and sheep will be required to provide individual identification of their animals. Exhibit officials will be required to verify health and identification documentation as prescribed by rule. Movement of native Arizona goats and sheep will require individual identification of the animals to their flock of birth, except if the first point of commingling is an auction market also acting as the owner's agent.

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The Department believes that the added costs of implementing the federal guidelines for scrapie eradication and scrapie flock identification are outweighed by the benefit of enhanced disease prevention, and the need to maintain the state's classification as a Consistent State.

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

Changes between the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking:

R3-2-413 was modified to describe animals that are not in a slaughter channel.

R3-2-614(B) was modified to provide an exemption to the Brucella ovis test for exhibition rams returning to the out-of-state flock of origin. These animals do not present a disease threat if they do not remain in Arizona.

Changes between the Notice of Supplemental Proposed Rulemaking and the Final Rules:

Minor technical and grammatical changes were made in response to suggestions from Council staff.

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

No public comments were received. The Arizona Department of Agriculture's Advisory Council voted to support submission of the rulemaking at its meeting on April 24, 2002. The Department appreciates the support of its Council members.

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:

9 CFR 54; 66 FR 43963-44003, August 21, 2001. R3-2-505

9 CFR 79; 66 FR 43963-44003, August 21, 2001. R3-2-614

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 4. ANIMAL DISEASE PREVENTION AND CONTROL

Section

R3-2-412. Exhibition Sheep and Goats

R3-2-413. Sheep and Goats; Intrastate Movement

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

Section

R3-2-505. Scrapie Procedures for Eradication

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Section

R3-2-606. Health Certificate

R3-2-614. ~~Goats and~~ Sheep and Goats

R3-2-615. Equine Importation

ARTICLE 7. LIVESTOCK INSPECTION

Section

R3-2-705. Self-inspection for Sheep

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-412. Exhibition Sheep and Goats

An exhibit official shall deny entry to any sheep or goat not individually identified by the following:

1. Imported sheep or goat.

a. The health certificate prescribed in R3-2-606 and the animal identification required in R3-2-614, and

b. The import permit prescribed in R3-2-607.

2. Native Arizona sheep or goat. A method prescribed in 9 CFR 79.2(a)(2) for a non-neutered sheep or goat, and a neutered sheep or goat more than 18 months of age.

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R3-2-413. Sheep and Goats: Intrastate Movement

- A.** Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:
1. A slaughter facility.
 2. Custom slaughter, or
 3. A feeding operation before movement to slaughter.
- B.** Subsection (A) does not apply if:
1. The first point of commingling with animals other than those in the flock of birth is an Arizona auction market, and
 2. The auction market acts as the owner's agent to identify the sheep or goat to the flock of birth.
- C.** This Section is effective January 1, 2003.

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

R3-2-505. Scrapie Procedures for Eradication

The Department controls and eradicates scrapie using the procedures outlined in 9 CFR 54; 66 FR 43963-44003, August 21, 2001. 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.

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-606. Health Certificate

- A.** A health certificate is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
1. The name and address of the shipper and receiver;
 2. The origin of ~~shipment~~ the animal;
 3. The ~~shipment's~~ animal's final destination;
 4. Cattle.
 - a. The number of animals covered by the health certificate, and an accurate description and, except for steers, spayed heifers, or "F" branded heifers consigned to a designated feedlot identified by brand, ~~+~~ one of the following individual identifications:
 - i. The USDA metal eartag number;
 - ii. The registration tattoo number, or
 - iii. The registration brand of a breed association recognized by VS;
 - b. The health status of the animals, including date and result of an inspection, dipping, test, or vaccination required by Arizona; and
 - c. The method of transportation;
 5. Swine.
 - a. Evidence that the swine have been inspected by the veterinarian issuing the health certificate within 10 days before the shipment;
 - b. A statement that:
 - i. The swine have never been fed garbage, and
 - ii. The swine have not been vaccinated for pseudorabies;
 - c. Except for feeder swine consigned to a restricted swine feedlot:
 - i. A list of the individual permanent identification for each exhibition swine, using an ear-notch that conforms to the universal swine-ear-notch system or for each commercial swine, using other individual identification, and the premises identification using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
 - iii. The pseudorabies status of the state of origin; and
 - iv. The pseudorabies qualified negative herd number, if applicable;
 - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by ~~USDA-APHIS~~ APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival at destination and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry into Arizona; and
 - e. Feeder swine consigned to a restricted swine feedlot shall be identified by premises of origin using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 6. Sheep and goats. ~~A statement certifying that:~~
 - a. Individual identification prescribed in R3-2-614;

- b. A statement that:
 - ~~a.i.~~ The sheep or goats are not infected with bluetongue, ~~nor~~ or exposed to scrapie, ~~or~~ and do not originate from a scrapie-infected or source flock;
 - ~~b.ii.~~ Breeding rams have been individually examined and are free of gross lesions of ram epididymitis; and
 - c. A statement that the sheep or goat test negative for Brucella ovis if a test is required by R3-2-614(B); and
7. Equine.
- a. An accurate identification for each equine covered by the health certificate including age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings; and
 - b. A statement that the equine has a negative test for EIA, as required in R3-2-615, including:
 - i. The date and results of the test;
 - ii. The name of the testing laboratory; and
 - iii. The laboratory accession number.
- B. Additions, deletions, and unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate void. Uncertified photocopies of health certificates are invalid.
- C. The veterinarian issuing a health certificate shall certify that the animals shown on the health certificate are free from evidence of any infectious, contagious, or communicable disease or known exposure.
- D. An accredited veterinarian shall inspect animals for entry into the state.
- E. The Director may limit the period for which a health certificate is valid to less than 30 days if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock industry.

R3-2-614. ~~Goats and Sheep and Goats~~

- A. The owner of ~~goats and a sheep or goat~~ entering Arizona, or the owner's agent, shall comply with the requirements of:
1. Article 6 and pay the expenses incurred to quarantine, test, and retest the ~~goats and sheep or goat~~; and
 2. Animal identification prescribed in 9 CFR 79; 66 FR 43963-44003, August 21, 2001. 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.
- B. ~~Breeding rams~~ A breeding ram six months of age ~~and~~ or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis-free flock. An exhibition ram that returns to the out-of-state flock of origin within five days of the conclusion of the exhibit is exempt from the testing requirement of this subsection.

R3-2-615. Equine Importation

- A. Except for R3-2-607, equines an equine may enter the state as prescribed in R3-2-602 through R3-2-611.
- ~~B.~~ Equines shall be individually identified on the health certificate by age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings.
- ~~C.~~ Equines A person shall not import an equine with fistulous withers or poll evil shall not be imported.
- ~~D.~~ C. All equine ~~6~~ six months of age or older shall, using a test established in R3-2-407(A), be tested negative for EIA within 12 months before entry. Testing expenses shall be paid by the owner. ~~The health certificate shall contain:~~
1. ~~The date and results of the test;~~
 2. ~~The name of the testing laboratory; and~~
 3. ~~The laboratory generated accession number.~~

ARTICLE 7. LIVESTOCK INSPECTION

R3-2-705. Self-inspection for Sheep

- A. An owner or operator applying for a self-inspection certificate book for sheep movement shall obtain an application from the livestock officer or inspector and submit it with the following information to the Department:
1. The name, business or home address, telephone number, social security number, and signature of the applicant;
 2. The date of the application; and
 3. The signature and badge number of the livestock officer or inspector assigned in the inspection area.
- B. An owner or operator shall provide the following information on a self-inspection certificate whenever sheep are being moved:
1. The name, business or home address, telephone number, and signature of the owner;
 2. The date of the shipment;
 3. The name, address, and telephone number of the person purchasing the sheep, if applicable;
 4. The location from which the sheep are being moved;
 5. The name of the trucker;
 6. The location to which the sheep are being moved, including the name of the pasture, auction, exhibit, or slaughter establishment;
 7. The number of sheep being moved; ~~and~~
 8. The brand location and ear marks; and
 9. The flock of birth identification prescribed in R3-2-413.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**
- | | |
|--------------------|---------------------------------|
| Article 1, Table 1 | <u>Rulemaking Action</u> |
| R3-4-809 | Amend |
| R3-4-810 | Amend |
| R3-4-814 | Amend |
- 2. The specific 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), 3-442(B), 3-445, and 41-1073
Implementing statute: A.R.S. § 3-445
- 3. The effective date of the rules:**
- August 7, 2002
- 4. A list of all previous notices appearing in the Register addressing the adopted rule:**
- Notice of Rulemaking Docket Opening: 8 A.A.R. 492, February 1, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 820, March 1, 2002
Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 1938, April 26, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
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- Fax: (602) 542-5420
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- 6. An explanation of the rule, including the agency’s reasons for initiating the rule:**

This rulemaking eliminates the use of standard sized containers for packing and shipping citrus fruit. It also results in the elimination of procedures related to experimental container permits. The Department currently has 23 approved standard citrus containers. The demand for size specifications and container construction is now driven by the wholesale and retail food industry; in the past the transportation industry established shipping requirements. Producers, packers, and shippers need to be able to quickly respond to the demands of the wholesale and retail food markets in order to maintain market share. This rulemaking is proposed by the supervisor of standardization with the Director’s approval to accommodate changing industry needs by providing freedom of choice regarding container size and construction. The Citrus, Fruit and Vegetable Advisory Council approved a motion in support of this rulemaking at its December 11, 2001 meeting.

Errors in Packing Chart 1 and in Packing Chart 3 were corrected in the Notice of Supplemental Proposed Rulemaking.

The rulemaking amends the Plant Services Division time-frame table. It eliminates the experimental container permit and renames the licensing category title to “Experimental Pack and Product for Citrus Fruit.” Overall time-frames are increased for the following licenses:

Permit	Current Time-frame	Proposed Time-frame
➤ Experimental Containers for Fruit and Vegetables	9 days	14 days
➤ Experimental Pack and Product for Citrus Fruit	9 days	14 days
➤ Citrus Fruit Dealer, Packer, or Shipper License	20 days	28 days
➤ Fruit and Vegetable Dealer, Packer, or Shipper License	20 days	28 days

7. A reference to any study that the agency relied 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

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.

Citrus packers and shippers in Arizona face an increasing need to quickly change container specifications at the request of wholesale and retail customers to maintain market share. During the last three shipping seasons, returnable plastic containers (RPCs) have been successfully utilized under an experimental container permit. Under R3-4-814, continued use of RPCs requires a rulemaking to amend R3-4-809(C)(2), which exclusively provides standardized fiberboard container construction.

Some container manufacturing companies specialize in RPCs while others offer the full range of different sizes of fiberboard containers and RPCs. The rulemaking does not eliminate or prohibit use of fiberboard construction. The amendment to the rule will allow containers to be constructed of any type material and of any size needed by industry. The change will enable choice with respect to construction material and size.

The transportation industry is already able to haul containers of varying size and construction, standard or experimental, on the standard pallets used in shipping produce.

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

Differences between the Proposed Rules and the Supplemental Proposed Rules:

Packing Chart 1 contains two errors in the current rule. In the row entitled, Lemons, Column A, the count of 195 is changed to 200. In the row entitled, Grapefruit, Column B, the average diameter for a count of 32 grapefruit is changed to 4.030 from 4.020. In Packing Chart 3, there is one error in the current rule. The average diameter of super colossal citrus is changed to 3.315 from 3.375. These changes conform the rule to regional standards in use in California and by industry.

Differences between the Supplemental Proposed Rules and the Final Rules:

Minor technical and grammatical changes were made in response to suggestions from Council staff.

11. A summary of the principal comments 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 at its quarterly meeting held on April 24, 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:

None

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

No

15. The full text of the rules follows:

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TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames - Calendar Days

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

Section

R3-4-809. ~~Standard and Bulk Containers for Sale of Citrus Fruit; Non-licensed Purchaser~~

R3-4-810. Packaged Count and Average Diameter

R3-4-814. Experimental Container, Pack, and Product Permits for Citrus Fruit

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
QUARANTINE						
Cotton Boll Weevil Pest	A.R.S. § 3-201.01 R3-4-218	14	14	30	30	44
Citrus Fruit Surface Pest	A.R.S. § 3-201.01 R3-4-219	14	14	60	30	74
Citrus Nursery Stock Pests	A.R.S. § 3-201.01 R3-4-220	14	14	30	30	44
Lettuce Mosaic Pest	A.R.S. § 3-201.01 R3-4-233	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	A.R.S. § 3-201.01 R3-4-244 R3-4-245	14	14	30	30	44
Scale Insects Pests	A.R.S. § 3-201.01 R3-4-226	14	14	30	30	44
Plum Curculio Apple Maggot	A.R.S. § 3-201.01 R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. § 3-205.02 R3-4-501	14	0	0	0	14
NURSERY						
Ozonium Root Rot Inspection	A.R.S. § 3-201.01 A.R.S. § 3-217 R3-4-303					
• Method of Growing		7	14	30	14	37
• Indicator Crop Planted on Applicant's Property		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted in Sur- rounding Area		7	14	5 yrs	14	5 yrs, 7 days
Other Certification Inspections	A.R.S. § 3-201.01 A.R.S. § 3-217	30	14	1 yr	14	1 yr, 30 days
• Nursery Inspection						

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
STANDARDIZATION						
Experimental Containers for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	0 7	2 7	0 7	9 14
Experimental Containers Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	0 7	2 7	0 7	9 14
Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	4 14	14	4 14	14	20 28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	4 14	14	4 14	14	20 28
ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904 R3-4-602	7	14	7	14	14
• Qualifications for Salvage Assessed Native Plant Permits	A.R.S. § 3-906	5	14	5	14	10
• Salvage Restricted Native Plant Permits	R3-4-608	5	14	5	14	10
• Scientific Permits	R3-4-605	14	14	14	14	28
Movement Permits	A.R.S. § 3-906 R3-4-607	5	14	5	14	10
Qualifications for Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907 R3-4-608	5	14	5	14	10
SEED DEALERS AND LABELERS						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

R3-4-809. ~~Standard and Bulk Containers for Sale of Citrus Fruit; Non-licensed Purchaser~~

- ~~**A.** All citrus fruit packed in closed bags for sale to the consumer in their unbroken form shall have a net content of not more than 35 pounds.~~
- ~~**B.** All citrus fruit, when offered for sale, shall be in a closed container, unless bulk containers are used.~~
- ~~**C.** Standard and bulk containers for the packaging of citrus fruit shall conform to the following inside dimensions, in terms of inches.~~

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Standard	Length	Width		Depth	
	9-13/16"	10-1/4"	FGS-12	5-1/8"	Tri Pack 18#
	9-3/4"	8"	FGS-62	4-3/4"	1/4 Lemon Ctn. 10#
	10-1/4"	8-3/4"		5-Quad	
	11-3/8"	17-1/2"	FGS-677	4-1/4"	Single Layer
	13-1/4"	9"		5-1/4"	
	13-15/16"	9"	FGS-66	6"	Orange Consumer Ctn. 18#
	16-3/8"	10-11/16"	FGS-58	5-1/4"	Consumer 20# 1/2 Ctn. Family Pack
	16-3/8"	12-1/16"		5-1/2"	Family Pack
	16-3/8"	12-11/16"		5-1/2"	Consumer 20# 1/2 Ctn.
	16-3/8"	10-11/16"	FGS-11	7-1/2"	Tangerine 28#
	16-3/8"	10-11/16"	FGS-16	8-1/2"	Tangerine Tray 28#
	16-3/8"	10-11/16"	FGS-8	9-3/4"	Grapefruit
	16-3/8"	10-11/16"	FGS-7	10-1/4"	40#
	16-3/8"	10-11/16"	FGS-16	11-1/4"	Tangerine 28#
	16-7/8"	10-1/2"		10-1/8"	40#
	20-1/8"	12-1/4"	FGS-57	11"	Master Container
	20-1/4"	12-1/4"	FGS-56	11"	Master Container
	20-1/4"	12-1/4"		12"	Master Container
	20-7/16"	12-7/16"	FGS-49	12-3/6"	Master Container
	21"	13-1/4"	FGS-44-46-47	13-1/2"	Master Container
	23-1/2"	13"		12-1/2"	40# Master Container
	23-1/2"	13"		14-1/2"	Master Container
Bulk	48"	38"		24", 36", 42"	

1. ~~To allow for reasonable manufacturing variation, a tolerance of plus or minus 1/8 inch for standard container and a tolerance of plus or minus 1/2 inch for a bulk container shall be permitted in each dimension.~~
 2. ~~Citrus standard and bulk containers shall be of corrugated fiberboard construction with not more than a 1-inch gap between outer side flaps.~~
- ~~D. Consumer containers are exempt from standard container requirements but shall meet the labeling requirements prescribed in R3-4-811 and the minimum quality requirements of each commodity.~~
- ~~E. When If a non-licensed person purchases bulk variety citrus fruit in bulk from a licensed citrus dealer for the retail sale of fruit to the consumer, the non-licensed person shall possess a receipt or bill of lading for that lot. The licensed citrus fruit dealer shall ensure that the citrus fruit shall meet meets the minimum quality requirements of each commodity and the lot shall does not exceed 7,000 pounds.~~
- ~~F. Applicants may apply to the Supervisor for temporary, written permission to make an experimental shipment of citrus fruit in a container having dimensions other than those of the standard or bulk containers now in effect as prescribed in R3-4-814.~~

R3-4-810. Packaged Count and Average Diameter

- A. Oranges, grapefruit, and lemons, when packed or placed loose without packing in ~~standard~~ containers, shall be marked, by count, on the container and shall be ~~± one~~ of the numbers tabulated in Packing Chart 1, Column A. The average diameter marked on the container shall be the corresponding number tabulated in Packing Chart 1, Column B. The average diameter, in inches, of the oranges, grapefruit, or lemons in the container as determined by inspection of a representative sample shall not be less than the corresponding measurements tabulated in Packing Chart 1, Column B for each ~~such~~ fruit.
1. Oranges, grapefruit, and lemons, when placed loose without packing in ~~authorized standard~~ containers, shall be placed in the ~~containers~~ container so compactly that they will not readily move in the container. The container shall be level full of fruit and the count in the container shall be equal to the count marked with a permissible count not exceeding ~~8%~~ eight percent.
 2. The count of oranges, grapefruit, and lemons, when place packed in the ~~authorized standard~~ container, shall be equal to ~~or no more than five percent over~~ the count marked on the container ~~with a permissible count not exceeding 5%.~~
 3. Oranges, grapefruit, and lemons may be packed in bulk containers. ~~If A bulk containers are used, container shall contain~~ no more than ~~± one~~ size designation ~~shall be contained therein.~~
- B. Limes, when packed or placed loose without packing in ~~standard~~ Line containers, shall be marked, by size, ~~on the container~~ and shall be ~~± one~~ of the numbers tabulated in Packing Chart 1, Column B. The average diameter, in inches, of the limes in the container, as determined by inspection of a representative sample, shall not be less than the corresponding measurements tabulated in Packing Chart 1, Column A for each such fruit. ~~Limes shall be fairly uniform in size and shall be loosely packed in closed standard containers or in bulk containers. Every Each container shall be loosely packed and level full of limes.~~

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PACKING CHART 1

ORANGES		GRAPEFRUIT		LEMONS		LIMES	
Column A	Column B	Column A	Column B	Column A	Column B	Column A	Column B
Count	Av. Dia.	Count	Av. Dia.	Count	Av. Dia.	Range	Size
24	4.370	9	6.200	63	2.925	2-5/16" to 2-5/8"	110
32	3.970	12	5.640	75	2.775	2-5/32" to 2-5/16"	150
36	3.820	14	5.350	95	2.570	2-1/16" to 2-5/32"	175
40	3.680	16	5.120	115	2.410	1-29/32" to 2-1/16"	200
48	3.470	18	4.920	140	2.240	1-25/32" to 1-29/32"	250
56	3.300	23	4.540	165	2.130	1-21/32" to 1-25/32"	275
72	3.040	27	4.270	195 <u>200</u>	2.010	1- 9/16" to 1-21/32"	300
88	2.840	32	4.020 <u>4.030</u>	235	1.880		
113	2.600	36	3.880	285	1.770		
138	2.420	40	3.740	319	1.685		
163	2.290	48	3.530	343	1.640		
180	2.220	56	3.350				
210	2.070	64	3.170				
245	1.980	80	2.900				
270	1.920	88	2.840				

- C. The diameter, in inches, of tangerines, tangelos, or mandarins in containers shall be marked with ± one of the size designations tabulated in Column A of Packing Chart 2 and shall be between the measurements tabulated in corresponding lines of Column B and Column C; provided that the diameter, in inches, of not more than 10% percent, by count, of the fruit in the container measures less than the corresponding measurement in Column B, and not more than the corresponding measurement in Column C.

PACKING CHART 2

COLUMN A	COLUMN B	COLUMN C
OMG	4.25+	
Ultra Colossal	3.75	4.25
Super Colossal	3.25	3.75
Colossal	3.00	3.25
Mammoth	2.75	3.00
Jumbo	2.50	2.75
Large	2.25	2.50
Medium	2.00	2.25
Small	1.75	2.00

- D. Minneola tangelos may be packed, by count, using Packing Chart 2, or Packing Chart 3.

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PACKING CHART 3

	COUNT	AVERAGE DIAMETER	PACK PATTERN	ROWS	LAYERS
OMG	36	4.25	4x4	3	3
OMG	40	4.00	3x2	4	4
Super Ultra Colossal	48	3.75	3x3	4	4
Super Ultra Colossal	48	3.75	4x4	3	4
Ultra Colossal	56	3.50	4x3	4	4
Super Colossal	64	3.375 <u>3.315</u>	4x4	4	4
Colossal	80	3.125	5x5	4	4
Mammoth	100	2.875	4x4	5	5
Jumbo	125	2.625	5x5	5	5
Large	150	2.375	6x6	5	5
Medium	180	2.125	5x5	6	6
Small	210	1.875	6x6	6	6

E. If ~~a bulk containers container of tangerines, tangelos, or mandarins is~~ are marked with the words “irregular sizes,”; the tangerines, tangelos, or mandarins ~~which fail to meet the size requirement shall comply with this Section in the bulk container are exempt from the size requirements in Packing Chart 2 and Packing Chart 3.~~

R3-4-814. Experimental Container, Pack, and Product Permits for Citrus Fruit

A. ~~Applicants~~ An applicant for a permit for the use of “~~experimental containers~~”; “experimental packs”; or “experimental products”; ~~pursuant to~~ under A.R.S. § 3-445(B)(3), shall provide the following information on a form furnished by the Department:

1. The name, company name, address, and telephone number of the applicant;
2. The name and description of the product packed in the container;
3. The description of the arrangement of the product packed in the container; and
4. ~~The number of experimental containers to be used;~~
5. ~~The inside dimensions of the experimental container, expressed in inches;~~
6. ~~4.~~ The time period for use of the experimental ~~container~~, pack; or product.

B. All experimental products shall conform to the standards prescribed in this Article.

C. Upon completion of permit requirements, the supervisor ~~may~~ shall grant a permit ~~which shall be~~ that is valid for a period ~~of 1 one~~ year from the date of issuance.

D. ~~Applicants shall maintain purchase and shipping documents and all records showing the number of containers used under the approved permit for a period of 2 years, including the year for which the application was approved.~~

E. ~~Applicants~~ An applicant may request renewal of an experimental ~~container~~, pack; or product permit. ~~No person shall be granted a~~ The Department shall not grant a renewal permit for the same experimental ~~container~~, pack; or product for more than ~~3 three~~ consecutive years, unless the rulemaking process, prescribed under A.R.S. § 3-446, to standardize the experimental ~~container~~, pack; or product ~~has been~~ is initiated.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

PREAMBLE

1. Sections Affected

R4-28-101
R4-28-701
R4-28-802
R4-28-1101
R4-28-1103

Rulemaking Action

Amend
Amend
Amend
Amend
New Section

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. § 32-2107(E)

Implementing statute: A.R.S. §§ 32-2101, 32-2121, 32-2122, 32-2125, 32-2125.02, 32-2127, 32-2151, 32-2151.01, 32-2151.02, 32-2153, 32-2155, and 32-2171 through 32-2176

3. The effective date of the rules:

August 6, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 3487, August 10, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 1139, March 22, 2002

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

Name: Cindy Wilkinson, Policy Officer

Address: Arizona Real Estate Department
2910 N. 44th Street, Suite 100
Phoenix, AZ 85018

Telephone: (602) 468-1414, ext. 345

Fax: (602) 955-6284

E-mail: cwilkinson@re.state.az.us

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

The Arizona Department of Real Estate (Department) is charged with protecting the public by licensure and regulation of real estate salespersons, brokers, and regulation of land development and sales, including timeshares, cemetery property, and membership campgrounds. In addition to minor changes to existing Sections to be consistent with current rulewriting standards and to improve clarity, this rulemaking amends an existing Section to describe a licensee's standard of care and disclosures that may be required.

A new Section provides guidance as to a broker's "reasonable supervision" of licensees and others in the broker's employ. Based on statutory requirements found throughout A.R.S. Title 32, Chapter 20, the rule distills the various areas a broker must address to demonstrate that the broker is fulfilling the broker's statutory obligation to supervise licensees and unlicensed employees.

The areas identified in the rule are areas for which brokers have responsibility under statute. The rule merely identifies the areas in which a policy is required under statute and requires that it be in writing. Besides providing guidance for brokers and their employees, it provides a standard for the Department to use in evaluating complaints of a broker's negligence or lack of supervision.

Applicable statutory requirements distilled in the rules include A.R.S. §§ 32-2121, 32-2122(B), (C), and (D), 32-2155(A), (B), and (C) (a license is required to act as broker or receive compensation for licensed acts); A.R.S. § 32-2101(8), (11), (35), and (46) (definitions of "broker", "cemetery broker", "membership camping broker", and "real estate broker" as persons who act for another in a real estate transaction); A.R.S. Title 32, Chapter 20, Articles 3 and 3.1 (Regulation and Property Management); A.R.S. § 32-2153(A)(2) (acting for more than one party in a transaction without knowledge or consent is grounds for disciplinary action); and A.R.S. § 32-2153(A)(21) (failure to exercise reasonable supervision of licensees or others in the broker's control, including control of the licensed entity, if any, for which the designated broker is responsible, is grounds for disciplinary action).

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

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 economic impact of the rulemaking is expected to be minimal on salespersons and brokers, the Department, and consumers. Many of the changes clarify the rules' meaning, remove uncertainty or ambiguity, and thus make them easier to understand. Disclosure requirements that were previously inferred are now explicitly stated.

Clarifying what types of disclosures required to be made by a broker or salesperson will have a positive impact on both consumers and the licensees. Behavior that previously fell short of the expected standard but was merely deemed unethical will now clearly be a violation of the rules. Brokers and salespersons will have a better understanding of what disclosures they must make, as well as how and when they are to make them. Consumers will benefit from the additional disclosures they are entitled to receive. Misunderstandings will be reduced, and disputes that lead to expensive and time-consuming litigation are expected to decrease.

A minor change to R4-28-1101(E) will require a salesperson or broker with an interest in a transaction to disclose that interest to consumers up front, and not merely require disclosure when the licensee is acting as a principal. Consumers will have this information when evaluating the advantages and disadvantages of a prospective transaction, which will allow them to make more informed decisions.

The new Section, R4-28-1103, identifies the areas a broker is to address with licensed and unlicensed persons in the broker's employ in order to demonstrate that the broker has taken or is taking reasonable steps to supervise these persons in the course of their employment with the broker. This responsibility to supervise is not new. What is new is setting out in one Section the areas over which the broker is expected to supervise licensees and other employees, and the requirement that office policies and procedure be established in writing.

It is anticipated that most, if not all, of the larger brokerage firms (those employing 100 or more licensees) already have these procedures, policies, and systems in place. As of December 18, 2001, the Department determined how many licensed real estate brokerages were one-person firms, how many were "small businesses" (with less than 100 licensed employees), and how many employed 100 or more licensees. The breakdown was:

4,078	One licensed employee (self; no licensed employees, unlicensed employees are not tracked)
6,180	More than one and fewer than 100 licensed employees
152	More than 100 licensed employees

A broker may be able to convey in a single sentence the policy and procedure for each of the areas (for example, if a broker prohibits a certain practice), or it may take several pages, depending on the size and complexity of the brokerage. Establishment and documentation of a system that will allow the broker to monitor and review may cost approximately \$400. The costs will vary depending on the involvement of legal counsel in the development of the policies or procedures, the complexity or simplicity of the system developed, the staff time needed, as well as the number of copies needed and cost of materials used. Assuming the broker earns \$50 per hour, if a broker spends one eight-hour day and prepares one page for each of the nine areas, has copies made at the local copy shop (9 pages x \$.10 each), and places the statements in an inexpensive one-inch binder (\$3), the cost is estimated at \$403.90.

For the "one-person" brokerages, the costs are expected to be even less, addressing the activities of any unlicensed employees the broker may have. Because the impact, if any, on small business is expected to be minimal, no measures were taken to reduce the impact of this rulemaking on small businesses.

10. A description of changes between the proposed rule, including supplemental notices, and final rules:

The definition of "Closing" was revised slightly to omit the reference to a specific document that may be used in a transaction and instead refer to the fact that documents are signed and recorded.

The definition of "Immediate family" was amended to: (1) eliminate the reference to a licensee, which is properly included within the context of the rule and not in the definition; and (2) make it clear that it includes identified relatives regardless of whether the tie is by blood, marriage, or adoption.

The words "in writing" were inserted in R4-28-802(B) to make it clear that the required 'express instructions' from a client to a salesperson or broker to cease submitting offers must be in writing, whether included in the listing agreement, as is common, in another contract form, or separately authorized.

"Real estate" was added before "salesperson or broker" in R4-28-1101(E) to exclude application of this rule on cemetery and membership camping brokers and salespersons. This change was prompted by stakeholder comments that it unnecessarily included cemetery brokers. Because of the nature of the cemetery and membership campground business, it is clear to consumers that these licensees represent the seller or are themselves the seller.

The word "licensee" was replaced with "salesperson or broker" in R4-28-1101(F), (G), (H), (I), (J), and (K) to mirror statutory language.

The sentences in R4-28-1101(I) were reversed for clarity.

R4-28-1103 was reformatted to place the verbs next to the object to which each applies. As proposed, the verbs contained in the introductory lead-in did not all correspond with the items originally numbered one through nine.

Most of the above changes were made based on suggestions by G.R.R.C. staff. In addition to the changes listed above, additional minor technical changes suggested by G.R.R.C. staff were made throughout the rules to improve clarity, grammar, and consistency. The changes are not substantive and do not change the stated purpose of the rulemaking.

11. Summary of principal comments received from the public and the agency's response to them:

The principal comments received to the proposed rulemaking concerned the applicability of the proposed rules to cemetery brokers and salespersons. Specifically, representatives from the Arizona Cemetery Association requested that the cemetery brokers and salespersons be excluded from R4-28-1101(E)(2), (3), and (4), (G) and (H), and R4-28-1103 as proposed. The Department considered the comments, agreed in some instances and disagreed in others.

An additional, written comment suggested that recordation of a deed be incorporated into the definition of "closing" in R4-28-101, which was done, and asked whether R4-28-1101(G) is amended to allow compensation in violation of the Real Estate Settlement Procedures Act. The minor changes to the current rule were not intended to and do not seek to allow acts that may be otherwise prohibited.

Changes were made to clarify that R4-28-1101(E) applies only to "real estate" salespersons and brokers since consumers who purchase cemetery property clearly understand that cemetery salespersons and brokers are employed by, and receive compensation from, the cemetery. It is also apparent to the consuming public that a salesperson or broker selling membership camping contracts is employed by the campground in which the interests are being sold. The same cannot be said for real estate salespersons and brokers and, thus, disclosure of whom they represent is appropriate.

Conversely, the Department did not agree to limit disclosure of compensation for additional, related goods and services to only real estate salespersons and brokers: this disclosure should apply to all brokers and salespersons regulated by the Department. Disclosure is also necessary and appropriate if the salesperson or broker proposes to provide services that are outside the broker's or salesperson's field of competence. R4-28-1101(G) and (H) were amended to clearly apply to cemetery and membership camping salespersons and brokers.

The Department received comments that much of R4-28-1103 did not apply to cemetery brokers. The Department disagrees: the only area of clear non-applicability concerned the use of real estate employment agreements. Changes have been made to clarify the applicability of this Section to cemetery and membership camping brokers as well as real estate brokers.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

Section
R4-28-101. Definitions

ARTICLE 7. COMPENSATION

Section
R4-28-701. Compensation Sharing Disclosure

ARTICLE 8. DOCUMENTS

Section
R4-28-802. Conveyance Documents

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ARTICLE 11. PROFESSIONAL CONDUCT

Section

R4-28-1101. Duties to Client

R4-28-1103. Broker Supervision and Control

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

~~1.~~ No change

~~2.~~ No change

“Closing” means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow.

~~3.~~ No change

~~4.~~ No change

~~5.~~ No change

~~6.~~ No change

~~7.~~ No change

~~8.~~ No change

“Immediate family” means persons related to an individual by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren.

~~9.~~ No change

~~10.~~ No change

~~11.~~ No change

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing Disclosure

A real estate broker shall disclose to all the parties in a transaction, in writing before ~~close of escrow~~ closing, the name of each employing broker ~~receiving~~ who represents a party to the transaction and who will receive compensation from the transaction.

ARTICLE 8. DOCUMENTS

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document ~~prescribed pursuant to A.R.S. Title 32, Chapter 20~~, a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. ~~In addition to any other obligation imposed by law or contract during the term of a listing agreement,~~ During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson’s or broker’s client all offers to purchase or lease the listed property ~~to the client~~. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers ~~until the sale or lease is final or close of escrow~~ made prior to closing and is not released from this duty by the client’s acceptance of an offer unless the client instructs the salesperson or broker in in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily ~~advise~~ submit offers to the seller or lessor ~~of offers notwithstanding~~ regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement ~~has~~ is terminated.

C. No change

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

A. No change

B. No change

1. No change

2. No change

3. No change

4. No change

C. No change

D. No change

E. A real estate salesperson or broker shall not act ~~as a principal~~, directly or indirectly, in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, ~~that the~~ of a present or prospective interest or conflict in the transaction, including that the:

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1. ~~salesperson~~ Salesperson or broker has a license and is acting as a principal;
 2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
 3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
 4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.
- F. A ~~licensee~~ salesperson or broker shall not accept compensation from or represent ~~both parties~~ more than one party to a transaction without the prior written consent of ~~both~~ all parties.
- G. A ~~licensee~~ salesperson or broker shall not accept any compensation, ~~rebates, or profit for transactions made on behalf of a client including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without the that person's prior written consent of the client~~ acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.
- H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.
- I. A salesperson or broker shall exercise reasonable care in ensuring that information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license.
- J. A salesperson or broker shall not:
1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
 2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.
- K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel regarding the risks of pre-possession or post-possession of a property.

R4-28-1103. Broker Supervision and Control

- A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, rules, procedures, and systems to:
1. Review and manage:
 - a. Transactions requiring a salesperson's or broker's license; and
 - b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02.
 2. Manage:
 - a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
 - b. Handling of trust funds; and
 - c. Use of unlicensed assistants by a salesperson or broker;
 3. Oversee delegation of authority to others to act on behalf of the broker;
 4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and
 5. Review and inspect:
 - a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
 - b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.
- B. A broker shall establish a system for monitoring compliance with the broker's policies, rules, procedures, and systems. A broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| Article 8 | Amend |
| R9-8-801 | New Section |
| R9-8-802 | New Section |
| R9-8-803 | New Section |
| R9-8-804 | New Section |
| R9-8-805 | New Section |
| R9-8-806 | New Section |
| R9-8-807 | New Section |
| R9-8-808 | New Section |
| R9-8-809 | New Section |
| R9-8-810 | New Section |
| R9-8-811 | Repeal |
| R9-8-811 | New Section |
| R9-8-812 | Repeal |
| R9-8-812 | New Section |
| R9-8-813 | Repeal |
| R9-8-813 | New Section |
| R9-8-814 | Repeal |
| R9-8-815 | Repeal |
| R9-8-816 | Repeal |
| R9-8-817 | Repeal |
| R9-8-823 | Repeal |
| R9-8-824 | Repeal |
| R9-8-838 | Repeal |
| R9-8-847 | Repeal |
| R9-8-851 | Repeal |
| R9-8-852 | Repeal |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rule is implementing (specific):**
Authorizing statute: A.R.S. § 36-136(A)(7)
Implementing statutes: A.R.S. §§ 36-132(A)(12) and 36-136(H)(10)
- 3. The effective date of the rules:**
August 9, 2002
- 4. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 5391, November 30, 2001
Notice of Proposed Rulemaking: 8 A.A.R. 2002, May 3, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Will Humble, Office Chief
Address: Department of Health Services
Office of Environmental Health
3815 N. Black Canyon Highway
Phoenix, AZ 85015
Telephone: (602) 230-5941
Fax: (602) 230-5933
E-mail: whumble@hs.state.az.us
or

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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:

In 1976, ADHS promulgated rules for the design, construction, and maintenance of public and semipublic swimming pools and spas and natural and semi-artificial bathing places. The rules are contained in Title 9, Chapter 8, Article 8 of the Arizona Administrative Code. Other than the repeal of certain rules discussed below, the existing rules have not been updated since 1976.

A.R.S. § 49-104(B)(12), enacted in 1986, transferred the regulatory authority for the design, construction of public and semipublic swimming pools and bathing places to the Arizona Department of Environmental Quality (ADEQ) and also gave ADEQ authority to prescribe minimum standards for sanitary conditions at public and semipublic swimming and bathing places. At the same time, A.R.S. § 36-136(G)(14) was amended by removing the authority of the Director of the Department of Health Services (ADHS) to prescribe minimum standards for the design and construction of public and semipublic swimming pools and bathing places.

The amended statute, renumbered as A.R.S. § 36-136(H)(10), requires the Director of ADHS to promulgate rules for the minimum sanitary standards that shall be maintained at public and semipublic swimming pools and bathing places. As both ADHS and ADEQ have authority over this matter, the statute states that ADHS and ADEQ shall develop rules that are consistent with each other.

On February 3, 1998, ADEQ adopted rules in 18 A.A.C. 5, Article 2 that relate to the design, construction, and disinfection of public and semipublic swimming pools and spas. The ADEQ rules do not apply to bathing places other than public and semipublic swimming pools and spas, such as natural and semi-artificial bathing places. On October 6, 1998, ADHS repealed those rules in 9 A.A.C. 8 that related to the design and construction of public and semipublic swimming pools and spas.

The proposed rules are necessary to fill the gap left by the ADEQ rules and the current ADHS rules. Although the ADEQ rules include a Section concerning disinfection, they do not deal completely with the area of sanitation. In some areas, for example, the ADEQ rules address the capabilities that a pool or spa system must possess, but do not address its ongoing maintenance. In addition, because the ADEQ rules are expressly inapplicable to natural and semi-artificial bathing places, the only rules that currently regulate natural and semi-artificial bathing places are the current ADHS rules, which are outdated and need to be revised. Finally, only two county health departments currently regulate public and semipublic swimming pools and spas in their counties through delegations of authority from ADEQ and using the ADEQ rules. ADHS believes that promulgating rules with standards relating to sanitation that are consistent with, and even identical in some areas to, the ADEQ rules may result in greater enforcement of public and semipublic swimming pool and spa sanitation at the county level.

The proposed rules satisfy the requirement that the ADHS rules for the sanitary operation of public and semipublic swimming pools and bathing places be consistent with the ADEQ rules for the design, construction, and sanitation of public and semipublic swimming pools. The water quality standards in the proposed rules for natural, semi-artificial, and artificial bathing places are consistent with the ADEQ surface water quality standards in A.A.C. R18-11-108 and R18-11-109. The proposed rules prescribe reasonably necessary measures to prevent deleterious health conditions at all public and semipublic swimming pools and bathing places.

The proposed rules establish minimum standards that are consistent with the voluntary national standards for public swimming pools and spas that have been developed by the American National Standards Institute (ANSI) and the National Spa and Pool Institute (NSPI). The minimum sanitary criteria are also generally consistent with the current swimming pool and spa ordinances of Maricopa and Pima counties.

The proposed rules apply only to the sanitary conditions of public and semipublic swimming pools and bathing places. A swimming pool or bathing place is "public" if it is open to members of the general public, regardless of whether a fee is charged for admission. A public swimming pool or bathing place can be operated by a county, a municipality, a school district, a political subdivision, a university, or a college or it can be operated by a commercial entity where the primary business of the entity is the operation of the swimming pool or bathing place. A swimming pool or bathing place is "semipublic" if it is operated in conjunction with a lodging such as a hotel; a motel; a resort; an apartment, townhouse, or condominium complex; a trailer court; a mobile home park; a recreational vehicle park; a country club, a health club, a camp, or a similar establishment or it could be a swimming pool or bathing place that is operated by a neighborhood or homeowner's association for the residents of the community and the residents' guests, but that is not open to members of the public. A "bathing place" is a volume of water, other than a public or semipublic swimming pool, used collectively by a number of individuals for water contact recreation, together with the shores, bathhouse, sanitary facilities, equipment, or other appurtenances pertaining to the volume of water.

The proposed rules do not apply to swimming pools or bathing places at private residences, including swimming pools or bathing places at duplexes or triplexes. Nor do the rules apply to swimming pools and spas that are used for medical or physical therapy and supervised by licensed medical personnel. Finally, the rules do not apply to bodies of water that are not used for water contact recreation.

ADHS recognizes that new swimming pool and spa technologies are constantly being developed. The proposed rules provide the flexibility to use alternative disinfection methods as long as the method used effectively maintains the proper oxidation-reduction potential in the water.

The proposed rules include an inspection provision that provides authority for representatives of a regulatory authority to determine whether public and semipublic swimming pools and bathing places comply with the rules. The proposed rules provide that any violation of the rules constitutes a public nuisance. Should inspection of a public or semipublic swimming pool or bathing place reveal a violation of the proposed rules, the regulatory authority shall order the operator of the swimming pool or bathing place to cease and desist and abate the nuisance.

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

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 Bearers

Counties to which ADHS has delegated authority to inspect public and semipublic swimming pools and bathing places will incur some costs under the proposed rules. Persons who operate public or semipublic swimming pools or bathing places will incur some costs under the proposed rules and include the following:

- a. Operators of lodgings such as hotels, motels, and resorts;
- b. Operators of commercial swimming pools, water parks, and wave pools;
- c. Homeowner associations and operators of apartment and condominium complexes, mobile home parks, trailer courts, recreational vehicle parks, country clubs, health clubs, camps, and similar establishments with swimming pools or spas; and
- d. Political subdivisions that operator public swimming pools or bathing places.

An individual who uses a public or semipublic swimming pool or spa will incur costs if required to purchase swim diapers or rubber pants because of fecal incontinence.

Beneficiaries

Individuals that use public and semipublic swimming pools and bathing places will realize the greatest benefits from the proposed rules, because public and semipublic swimming pools and bathing places operating in compliance with the rules will be more sanitary and thus less likely to cause waterborne illness.

Manufacturers and distributors of equipment and supplies for swimming pools and spas will also benefit from the proposed rules, because they will be able to sell more diverse disinfection products and additional equipment to the operators of public and semipublic swimming pools and spas.

Finally, the operators identified above will also benefit greatly from the proposed rules, because they will have more choice in the products that they use to maintain their swimming pools and bathing places in sanitary condition.

Costs and Benefits to State Agencies

ADHS will also incur minimal costs as a regulatory authority, because ADHS is ultimately responsible for the inspection of the sanitary conditions of public and semipublic swimming pools and bathing places. ADHS has delegated this authority to the county health departments in each county, but the counties may agree to take only a portion of the authority or decline to take the authority. In these instances, ADHS remains as the regulatory authority and incurs all of the costs of enforcement. Also, ADHS currently acts as the regulatory authority for one public swimming pool that is owned by the state. Thus, ADHS will incur minimal costs from purchasing the test kits and equipment required by the proposed rules and from inspecting the public pool more frequently during its open season and may incur minimal costs from having to take action to abate a nuisance at the public pool.

Costs and Benefits to Political Subdivisions

Each county that acts as a regulatory authority under the rules will incur minimal costs from purchasing the test kits and equipment required by the proposed rules and minimal-to-moderate costs from inspecting public swimming

pools more frequently during open season. Each county may also incur minimal-to-substantial costs from having to reinspect 24 hours after issuing a cease and desist order and from taking action to abate a nuisance at a public or semipublic swimming pool or bathing place. In addition, each county with an ordinance for public or semipublic swimming pools or bathing places will incur a moderate cost in amending the ordinance. Each county will also incur a minimal cost from providing training to staff regarding the new rules so that the new rules can be effectively enforced. Being able to enforce rules that are consistent with ADEQ's swimming pool rules should result in a moderate benefit to each county.

Costs and Benefits to Operators of Swimming Pools and Bathing Places

Operators of public and semipublic swimming pools and bathing places, whether political subdivisions or private businesses, will incur similar costs and benefits as a result of the proposed rules. Each operator will incur minimal costs from the need to train staff regarding the new rule requirements, from the need to increase the amount of chlorine disinfectant required to maintain compliance, and from the need to purchase additional test kits and equipment. Each operator will also incur minimal costs in educating staff and individuals using the public or semipublic swimming pool or spa about the exclusion of individuals with fecal incontinence (unless wearing tight fitting rubber or plastic pants or a swim diaper) and individuals with diarrhea from public or semipublic swimming pools or spas and in adding these exclusions to their screening process. However, the savings to an operator from these exclusion requirements are potentially substantial. A number of serious outbreaks of waterborne illness in public bathing places have been caused by fecal contamination. Requiring exclusion of individuals with fecal incontinence and individuals with diarrhea could help protect an operator from potential liability for illness, or even death, caused by waterborne agents.

Operators of public or semipublic swimming pools or spas will also incur minimal-to-moderate costs for each fecal accident due to the new Section that requires the operator to close the pool after a fecal accident until designated actions are taken. The requirements differ for fecal accidents with solid feces and liquid feces, but should result in minimal-to-moderate costs for each incident at a public or semipublic swimming pool or spa owned by a political subdivision and minimal-to-substantial costs for each incident at a public or semipublic swimming pool or spa owned by a private business, depending on the level of lost revenue during the closure, the cost of chemicals to treat the water, the cost of staff time involved, and the cost of chemical testing materials. ADHS anticipates that only large water parks would incur a substantial cost for each incident, due primarily to the large amount of revenue lost and the large volume of chemicals needed to treat the water. The savings to an operator from the fecal accident requirements are potentially substantial. A number of serious outbreaks of waterborne illness in public bathing places have been caused by fecal contamination. Taking appropriate remedial action in the event of a fecal accident could help protect an operator from potential liability for illness, or even death, caused by waterborne agents.

Operators will also be impacted by the replacement of the summary suspension provision with a cease and desist and abatement provision. Each affected operator will incur minimal costs from the requirement that the operator comply with a cease and desist and abatement order within 24 hours. Each affected operator may also be benefited minimally by the requirement that the regulatory authority reinspect the swimming pool or bathing place after 24 hours, because the swimming pool or bathing place may be reopened more quickly than it would have been under the summary suspension rule, which did not include a deadline for reinspection.

Costs and Benefits to Businesses that Maintain Swimming Pools and Bathing Places

Businesses that maintain public and semipublic swimming pools and bathing places will also be impacted by the rules. They will incur a minimal cost from the need to train their staff on the new rule requirements and should receive a minimal benefit from being able to use rules that are consistent with the ADEQ rules. If they are not already following the voluntary national standards, they will also incur a minimal cost from the need to use more chlorine disinfectant to maintain compliance. They may also incur a minimal cost from the need to purchase additional equipment to monitor swimming pools and spas. The availability of new technologies for chemical disinfection may result in a minimal cost if they need to purchase additional equipment or test kits due to client choices, but also should result in a minimal benefit, primarily due to increased customer satisfaction. The new fecal accident Section could also result in minimal-to-moderate benefits, because business may increase, resulting in a corresponding increase in revenues.

Costs and Benefits to Businesses that Sell Pool and Spa Supplies

Businesses that sell equipment or materials for the maintenance of swimming pools and spas will also be impacted by the rules. They will realize minimal-to-moderate benefits from increased sales of chlorine disinfectant, other disinfectants, test kits, thermometers, and oxidation-reduction potential meters.

Costs and Benefits to Businesses that Sell Rubber or Plastic Pants or Swim Diapers

Finally, businesses that sell rubber or plastic pants or swim diapers will likely realize a minimal-to-moderate benefit from increased sales due to the fecal incontinence exclusion.

Costs and Benefits to Individuals who use Swimming Pools and Bathing Places

Individuals who use public or semipublic swimming pools or bathing places will benefit by having more sanitary swimming pools and bathing places to use. They may incur minimal costs from the rules if operators choose to pass

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through any increased costs by increasing the prices of admission to public swimming pools or bathing places or increasing the costs of associations or lodgings that include use of semipublic swimming pools or bathing places. In addition, incontinent individuals or the parents or guardians of incontinent individuals who desire to use swimming pools or spas may need to purchase rubber or plastic pants or swim diapers to avoid exclusion from swimming pools and spas. The costs of these items are minimal.

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

Technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

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

COMMENT

R9-8-803(E)(2) states "The water temperature in the spa does not exceed 40EC."

EC may be confusing to some and both Centigrade and Fahrenheit degrees should be provided and spelled out.

DEPARTMENT'S RESPONSE

R9-8-803(E)(2) actually states "The water temperature in the spa does not exceed 40° C." The "EC" was a misprint in the Arizona Administrative Register. Industry currently uses centigrade to measure temperature. The Department determined that adding Fahrenheit in addition to centigrade would not add to the clarity of the rules and is not amending the rules.

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 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

**ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS
AND BATHING PLACES**

Section

- R9-8-801. ~~Reserved-Definitions~~
- R9-8-802. ~~Reserved-Applicability~~
- R9-8-803. ~~Reserved-Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards~~
- R9-8-804. ~~Reserved-Public and Semipublic Swimming Pool and Spa Water Circulation Requirements~~
- R9-8-805. ~~Reserved-Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads~~
- R9-8-806. ~~Reserved-Posting Requirements~~
- R9-8-807. ~~Reserved-Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation~~
- R9-8-808. ~~Reserved-Bathing Place Towels~~
- R9-8-809. ~~Reserved-Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water~~
- R9-8-810. ~~Reserved-Fecal Contamination in Public and Semipublic Swimming Pools and Spas~~
- R9-8-811. ~~Definitions-Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards~~
- R9-8-812. ~~Water quality standards-Inspections~~
- R9-8-813. ~~Life guards; safety equipment-Cease and Desist and Abatement~~
- R9-8-814. ~~Excluded persons-Repealed~~
- R9-8-815. ~~Instructions-Repealed~~
- R9-8-816. ~~Suits and towels-Repealed~~
- R9-8-817. ~~First aid kit-Repealed~~
- R9-8-823. ~~Concessions-Repealed~~
- R9-8-824. ~~Operation-Repealed~~
- R9-8-838. ~~Approval to operate-Repealed~~
- R9-8-847. ~~Design standards and specifications; natural and semi-artificial bathing places-Repealed~~

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- R9-8-851. ~~Violations Repealed~~
R9-8-852. ~~Inspections Repealed~~

**ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS
AND BATHING PLACES**

R9-8-801. Reserved Definitions

In this Article, unless otherwise specified:

1. "Artificial lake" has the same meaning as in A.A.C. R18-5-201.
2. "Backwash" has the same meaning as in A.A.C. R18-5-201.
3. "Bathing place" means a volume of water that is used for water contact recreation.
4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.
7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in R9-18-101.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.
23. "Scum" means a film that forms on the surface of water.
24. "Semi-artificial bathing place" means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. "Semipublic spa" has the same meaning as in A.A.C. R18-5-201.
26. "Semipublic swimming pool" has the same meaning as in A.A.C. R18-5-201.
27. "Shallow area" has the same meaning as in A.A.C. R18-5-201.
28. "Shock treatment" means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. "Slime" means a glutinous or viscous liquid matter.
30. "Spa" has the same meaning as in A.A.C. R18-5-201.
31. "Surface water" has the same meaning as in A.A.C. R18-11-101.
32. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
33. "Turnover rate" has the same meaning as in A.A.C. R18-5-201.
34. "Wading pool" has the same meaning as in A.A.C. R18-5-201.
35. "Water circulation system" has the same meaning as in A.A.C. R18-5-201.
36. "Water circulation system components" has the same meaning as in A.A.C. R18-5-201.
37. "Water fountain" means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
38. "Water contact recreation" means an activity for enjoyment in which an individual wets all or part of the individual's body with water.

R9-8-802. Reserved Applicability

This Article does not apply to:

1. A private residential swimming pool.
2. A private residential spa.
3. A bathing place used for medical treatment or physical therapy supervised by licensed medical personnel, or
4. A body of water that is not used as a bathing place.

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R9-8-803. ~~Reserved~~ Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa is filled only with potable water;
 2. The water in the swimming pool or spa:
 - a. Complies with the water quality standards in this Section when the swimming pool or spa is open for water contact recreation;
 - b. Maintains a pH of between 7.2 and 7.8;
 - c. Maintains a total alkalinity of between 60 and 100 ppm; and
 - d. Is sufficiently clear so that the main drain in the swimming pool or spa is visible from the deck of the swimming pool or spa;
 3. The surface of the water in the swimming pool or spa is free from scum and floating debris;
 4. The bottom and sides of the swimming pool or spa are free from sediment, dirt, slime, and algae;
 5. The chemical disinfection level, pH, total alkalinity, and temperature of the water is tested at least once daily; and
 6. A daily operating log that includes the results of the tests in subsection (A)(5) is maintained for 12 months from the date of the test and is available to a regulatory authority or a member of the public upon request.
- B.** An operator of a public or semipublic swimming pool or spa:
1. Shall not use chloramine as a primary disinfectant in the swimming pool or spa;
 2. Shall not add gaseous disinfectant directly into the swimming pool;
 3. Shall not add dry or liquid disinfectant directly into the swimming pool or spa for routine disinfection; and
 4. May add dry or liquid disinfectant directly into the swimming pool or spa for shock treatment.
- C.** An operator of a public or semipublic swimming pool or spa using chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization in the swimming pool or spa shall ensure that the water in the swimming pool or spa maintains an oxidation-reduction potential equal to or greater than 650 millivolts and that cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, do not exceed 150 ppm.
- D.** An operator of a public or semipublic swimming pool shall ensure that the water in the swimming pool meets one of the following chemical disinfection standards:
1. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
 2. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
 3. An oxidation-reduction potential equal to or greater than 650 millivolts.
- E.** An operator of a public or semipublic spa shall ensure that:
1. A chlorine gas disinfection system is not used in the spa;
 2. The water temperature in the spa does not exceed 40° C; and
 3. The water in the spa meets one of the following chemical disinfection standards:
 - a. A free chlorine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
 - b. A free bromine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
 - c. An oxidation-reduction potential equal to or greater than 650 millivolts.

R9-8-804. ~~Reserved~~ Public and Semipublic Swimming Pool and Spa Water Circulation Requirements

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa water circulation system complies with the water circulation requirements in 18 A.A.C. 5, Article 2; and
 2. The swimming pool or spa is equipped with:
 - a. A flow meter as specified in 18 A.A.C. 5, Article 2; and
 - b. A vacuum cleaning system as specified in 18 A.A.C. 5, Article 2.
- B.** An operator may draw water from a swimming pool for a water slide or a water fountain without filtering or disinfecting the water.

R9-8-805. ~~Reserved~~ Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads

An operator of a public or semipublic swimming pool or spa shall ensure that the maximum bathing load, as specified in 18 A.A.C. 5, Article 2, is not exceeded.

R9-8-806. ~~Reserved~~ Posting Requirements

An operator of a public or semipublic swimming pool or spa shall ensure that a sign is posted within 50 feet of the swimming pool or spa, that includes the following instructions:

1. Use the toilet before entering the pool or spa;
2. Take a shower before entering the pool or spa;
3. Do not enter the pool with a cold, skin or other body infection, open wound, diarrhea, or any other contagious condition;
4. If incontinent, wear tight fitting rubber or plastic pants or a swim diaper; and
5. Observe all safety regulations.

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R9-8-807. Reserved Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that a sanitary facility at the public or semipublic swimming pool is maintained in a clean condition.
- B.** An operator of a public or semipublic swimming pool or bathing place shall provide a soap dispenser with liquid or powdered soap at each sink in a sanitary facility.

R9-8-808. Reserved Bathing Place Towels

If a towel is provided by a bathing place to an individual using the bathing place, an operator of the bathing place shall ensure that the towel is washed with soap or detergent and hot water and thoroughly dried after each individual use.

R9-8-809. Reserved Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water

An operator of a public or semipublic swimming pool or spa shall ensure that sewage, filter backwash, and swimming pool or spa water are disposed of according to A.A.C. R18-5-236.

R9-8-810. Reserved Fecal Contamination in Public and Semipublic Swimming Pools and Spas

- A.** If solid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed.
 2. The feces in the swimming pool or spa are removed and disposed of in a toilet.
 3. The chemical disinfection level of the water in the swimming pool or spa is tested to determine whether the water complies with the water quality and disinfection standards in R9-8-803, and
 4. The swimming pool or spa is not reopened until a test conducted under subsection (A)(3) indicates that the water complies with the water quality and disinfection standards in R9-8-803.
- B.** If liquid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed;
 2. The swimming pool or spa is closed for at least 24 hours;
 3. As much of the liquid feces as possible in the swimming pool or spa is removed and disposed of in a toilet;
 4. The swimming pool or spa is chemically treated with a shock treatment;
 5. The water in the swimming pool or spa is tested 24 hours after applying the shock treatment to determine whether the water complies with the water quality and disinfection standards in R9-8-803; and
 6. The swimming pool or spa is not reopened until a test conducted under subsection (B)(5) indicates that the water complies with the water quality and disinfection standards in R9-8-803.

R9-8-811. Definitions Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards

- A.** "Approved" means acceptable to the Department.
- B.** The term "bathing place" as used in these regulations includes all bodies of water used collectively by a number of persons for swimming, wading or recreation bathing purposes, together with the shores, bathhouse, sanitary facilities, bathing suits, equipment and appurtenances pertaining to such bathing places; except that these regulations do not apply to private swimming pools as herein defined, nor do they include baths used for cleansing purposes, hydrotherapy or for the healing arts, unless such baths consist of a pool or pools used collectively by a number of individuals.
- C.** "Construct" means, and includes, building or installing a new bathing place or enlarging or altering existing facilities.
- D.** "Cross connection" is any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other sewage or water of unknown or questionable safety, through which water may flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
- E.** "Department" means the Arizona Department of Health Services or its designated representative.
- F.** "Fill and draw pool" means a swimming pool where the principal means of cleaning is the complete removal of the used water and the replacement thereof with clean water.
- G.** "Flow through pool" means a swimming pool where clean water constantly enters the pool and an equal quantity of used water constantly flows out of the pool.
- H.** "Natural bathing place" includes natural outdoor lakes, ponds, rivers, etc.
- I.** "Operate" means to conduct, maintain or otherwise provide facilities and appurtenances at bathing places.
- J.** "Private pool" means a pool established or maintained on any premise by an individual for his own or his family's use or for guests of his household.
- K.** "Public pool" means a swimming pool such as municipal, community, commercial, or cooperative, admission to which may be gained by the general public with or without payment of a fee.
- L.** "Recirculating pool" means a swimming pool where a portion of the pool water is constantly being removed, treated, filtered and disinfected and then returned to the pool.
- M.** "Semi-artificial bathing place" means outdoor bathing places which are partly artificial and partly natural in character.
- N.** "Semipublic pool" means a swimming pool on the premises of, or part of, a hotel, motel, trailer court, apartment house, country club, camp or similar establishment where the primary business of the establishment is not the operation of swim-

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ming facilities and where admission to the use of the pool is included in the fee, or consideration paid or given for the primary use of the premises.

- ~~Q.~~ “Spray pond” means an artificially constructed basin into which water is sprayed but not allowed to accumulate.
- ~~P.~~ “Swimming pool” means, and includes, all entirely artificially constructed fill and draw, flow through or recirculating pools, either indoors or outdoors.
- ~~Q.~~ “Wading pool” means a shallow pool intended chiefly for use by children, having a separate basin to contain the water and a maximum water depth of 20 inches.

An operator of a public or semipublic natural bathing place, a semi-artificial bathing place, or an artificial lake shall ensure that the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake meets the narrative and numeric water quality standards in 18 A.A.C. 11, Article 1 when the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake is open for water contact recreation.

R9-8-812. ~~Water quality standards-Inspections~~

- ~~A.~~ Quality of water — Swimming pool water shall be so treated and maintained, whenever the swimming pool is open for use, that the bacterial, chemical and physical quality of the water meets the standards set forth in this Article.
- ~~B.~~ Only water from approved sources shall be used in swimming pools and other bathing places
- ~~C.~~ Bacterial standards — Of any 3 consecutive dechlorinated samples of the pool water collected when the pool is open for use:
 1. None shall contain more than 200 bacteria per milliliter nor shall the average bacteria count of the 3 samples exceed 100 per milliliter.
 2. At least 60% of the 10 milliliter portion shall give a negative test for bacteria of the coliform group and no sample shall show positive for the coliform group in 3 out of 5 ten milliliter portions.
- ~~D.~~ Chemical standards — Whenever chlorine, or a chlorine compound, is employed for swimming pool disinfection, the amount of free chlorine in the water as shown by the orthotolidine “flash” test shall not be less than 0.4 ppm nor more than 1.0 ppm; nor shall the pH of the water be less than 7.0 nor more than 8.0, except that higher residuals will be allowed with corresponding increase in pH. During periods of heavy bathing loads, disinfection residuals shall be maintained near the upper limits of the permissible range.
- ~~E.~~ Physical standards — The surface of the pool water shall be kept free of scum and foreign floating matter. The bottom and sides of the pool shall be maintained free of sediment, dirt, slime and algae. Water in the pool spa shall be maintained free of turbidity and shall be sufficiently clear so that the main drain grille is clearly visible from the side of the pool.
- ~~F.~~ Tests — Tests of the residual disinfectant, pH, temperature and cleanliness of the pool water shall be made by the operator as frequently as necessary to maintain the standards required by this regulation. The pool operator shall use approved equipment suitable for the performance of these tests and shall maintain daily operating records. Such records shall be made available to state and county health department upon request.
- A. A regulatory authority shall inspect a bathing place to determine whether the bathing place complies with this Article.
- B. A regulatory authority shall inspect a public swimming pool at least once each month that the swimming pool is open for water contact recreation.

R9-8-813. ~~Life guards; safety equipment-Cease and Desist and Abatement~~

- ~~A.~~ In all public pools one life guard, expert in rescue and resuscitation, shall be provided for each 2,000 square feet of pool surface area or fraction thereof.
- ~~B.~~ Life guards shall be in constant attendance during bathing hours and no bather shall be permitted in a pool area unless such life guards are present.
- ~~C.~~ Each public swimming pool shall have at least one elevated life guard chair for each 2,000 square feet of pool surface or fraction thereof.
- ~~D.~~ Safety equipment consisting of at least 2 ring buoys, each with 50 feet of ½ inch rope attached, and one shepherd’s crook shall be provided at each public pool. One ring buoy, with lifeline attached, and one shepherd’s crook shall be provided at each semipublic pool. Safety equipment shall be located and maintained ready for immediate use at all times.
- ~~E.~~ A lifeline shall be installed in all public swimming pools at the change in floor slope between the shallow and deep portions of the pool. The lifeline shall be ¾ inch minimum diameter.
- A. Engaging in any practice in violation of this Article is a public nuisance.
- B. If a regulatory authority has reasonable cause to believe that an operator of a public or semipublic swimming pool or bathing place is creating or maintaining a public nuisance at the public or semipublic swimming pool or bathing place, the regulatory authority shall order the operator to discontinue the activity and to abate the public nuisance as follows:
 1. The regulatory authority shall serve on the operator a written cease and desist and abatement order requiring the operator to discontinue the activity and to remove the public nuisance at the operator’s expense within 24 hours after service of the order. The order shall contain:
 - a. A reference to the statute or rule that is alleged to have been violated or on which the order is based.
 - b. A description of the operator’s right to request a hearing, and
 - c. A description of the operator’s right to request an informal settlement conference.

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2. The regulatory authority shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the operator or other party's last address of record with the regulatory authority or by any other method reasonably calculated to effect actual notice to the operator or other party.
3. The operator or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the regulatory authority within 30 days after service of the order. The operator or other party appealing the order shall serve the notice of appeal upon the regulatory authority by personal delivery or certified mail, return receipt requested, to the office of the regulatory authority or by any other method reasonably calculated to effect actual notice on the regulatory authority. Appealing an order does not release the operator from the obligation to comply with the order.
4. If a notice of appeal is timely filed, the regulatory authority shall do one of the following:
 - a. If the regulatory authority is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 is delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
 - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
5. If a written notice of appeal is not timely filed, the order becomes final.
6. A regulatory authority shall inspect the public or semipublic swimming pool or bathing place 24 hours after service of the order to determine whether the operator has complied with the order. If the regulatory authority determines upon inspection that the operator has not ceased the activity and abated the public nuisance, the regulatory authority shall cause the public nuisance to be removed.

R9-8-814. ~~Excluded persons Repealed~~

~~Persons with sore or inflamed eyes, colds, nasal or ear discharges, boils, or other acute or obvious skin or body infections, or cuts shall be excluded from the pool. No person in or at a swimming pool shall commit, or be permitted to commit, any act prejudicial to the life or health of any other person using the pool.~~

R9-8-815. ~~Instructions Repealed~~

~~All persons shall be instructed before entering the pool, by means of suitable, clearly lettered signs properly located, to use the toilet, take a cleansing shower and observe all safety regulations.~~

R9-8-816. ~~Suits and towels Repealed~~

~~Bathing suits, towels, linens, or similar articles provided to patrons shall be properly washed with soap and boiling water and thoroughly dried after each individual use and before another use.~~

R9-8-817. ~~First aid kit Repealed~~

~~There shall be provided for emergency use a standard first aid kit. In addition, at public pools, a standard stretcher and two blankets shall be provided.~~

R9-8-823. ~~Concessions Repealed~~

~~Drinks, candy, tobacco, popcorn, gum, or food of any kind shall not be permitted within the pool enclosure.~~

R9-8-824. ~~Operation Repealed~~

~~All bathing place facilities shall be operated and maintained in a clean and sanitary condition at all times.~~

R9-8-838. ~~Approval to operate Repealed~~

~~Operation of newly constructed public or semipublic bathing places shall not commence before a final inspection has been made and approval to operate has been given by the local health department. Where a local health department does not exist the final inspection shall be made by the Department.~~

R9-8-847. ~~Design standards and specifications; natural and semi-artificial bathing places Repealed~~

- ~~A. Approval of natural and semi-artificial bathing places will be based upon the results of a sanitary survey of the drainage area and the results of bacteriological, chemical and physical quality of the water in the proposed bathing area.~~
- ~~B. The water shall be considered acceptable for bathing purposes, from a bacterial standpoint, when the average MPN of coliform organisms of a representative number of samples is not greater than 1000 per 100 ml.~~
- ~~C. A bathing place shall be located so that it will not be adversely affected by the discharge of sewage or objectionable industrial wastes; nor shall it be so located that by its use it will affect the source of supply of a public water supply system.~~
- ~~D. The provisions of R9-8-846 shall apply to all natural and semi-artificial bathing places, except that hot water for showers and lavatories may not be required.~~

R9-8-851 ~~Violations Repealed~~

~~Any person, firm, company, corporation or political subdivision constructing, operating or maintaining a public or semipublic bathing place contrary to the provisions of these rules shall be prosecuted in accordance with A.R.S. § 36-140.~~

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R9-8-852. ~~Inspections Repealed~~

~~Inspections of public and semipublic bathing places shall be made by representatives of the state or county health departments to determine that installed facilities and operational procedures comply with these rules. Should the Department, after inspection of a bathing place, that an extreme health hazard exists, they may order the immediate suspension of the operation of the establishment. Such suspension of operation shall continue until, in the opinion of the Department, the hazard has ceased to exist. The Department may suspend operation for repeated or continued violation of any of the Department's rules.~~

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION – SECURITIES

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-4-131 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 44-1821
Implementing statutes: A.R.S. §§ 44-1961 and 44-1962
Constitutional authority: Arizona Constitution, Article XI, §§ 4, 6, and 13
- 3. The effective dates of the rule:**
July 31, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 3122, July 20, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4844, October 19, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Cheryl T. Farson, General Counsel |
| Address: | Arizona Corporation Commission, Securities Division
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007-2996 |
| Telephone: | (602) 542-4242 |
| Fax: | (602) 594-7470 |
| E-mail: | cf@ccsd.cc.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
A.R.S. § 44-1961(A)(12) states that a dealer's failure to reasonably supervise its salesmen is grounds for denial, revocation, or suspension of the dealer's registration in Arizona. A.A.C. R14-4-131 ("rule 131") provides a "safe harbor" for dealers—it provides that no dealer shall be deemed to have failed to reasonably supervise its salesmen for purposes of A.R.S. § 44-1961 if the dealer complies with the procedures set forth in the rule. The legislature has amended A.R.S. § 44-1962(A) to provide that a salesman's failure to reasonably supervise other salesmen under the salesman's supervisory control is grounds for denial, revocation, or suspension of the supervisory salesman's registration in Arizona. The Corporation Commission amends rule 131 to include supervisory salesmen in the rule's "safe harbor" for purposes of A.R.S. § 44-1962(A)(11).
- 7. A reference to any study that the agency relied 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
- 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:**
The amendment to rule 131 does not diminish a previous grant of authority of a political subdivision of this state.

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

The economic, small business, and consumer impact statement for the amendment to rule 131 analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of the proposed amendment, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by the amendment to rule 131 are nonquantifiable. The amendment to rule 131 should benefit the Commission's relations with the regulated public because of increased uniformity with federal and other state laws and the clarification of the supervisory obligations imposed by A.R.S. § 44-1962. The public will benefit from the clarification of the standards imposed on salesmen who supervise other salesmen in connection with the offer and sale of securities. The Commission anticipates that the proposed amendment may decrease recordkeeping burdens on regulated persons because it clarifies the procedures to which the regulated persons are expected to adhere. The costs of implementation or enforcement are not increased or are only marginally increased and such increase does not equal or exceed the potential reduction in burdens.

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

Not applicable

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

The Commission received one written letter from Investment Company Institute in support of the amendment to 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:

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 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION – SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-131. Supervision of Salesmen

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-131. Supervision of Salesmen

For purposes of A.R.S. §§ 44-1961(A)(12) and 44-1962(A)(11), no ~~dealer person~~ shall be deemed to have failed to reasonably supervise ~~its salesmen~~ any other person if:

1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such ~~salesman~~ other person of the Arizona Securities Act, or of any rule or regulation adopted thereunder; and
2. Such ~~dealer person~~ has reasonably discharged the duties and obligations incumbent upon ~~it~~ that person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.