

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**

Article 1, Table 1	<u>Rulemaking Action</u>
R3-4-708	Amend
R3-4-740	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), 3-487, 3-527.02, and 41-1073
Implementing statute: A.R.S. § 3-487
- 3. The effective date of the rules:**

October 2, 2002

An immediate effective date is requested pursuant to A.R.S. § 41-1032(A)(5). The current rulemaking is less stringent than the rule that is currently in effect and it does not have an impact on the public health, safety, welfare, or environment. An immediate effective date will permit cantaloupe producers and shippers to schedule container purchases for the next season, beginning as early as November, based on the provisions of the amended rule and advise the container manufacturers of their potential orders with adequate lead time for production to occur.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 492, February 1, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 2882, July 12, 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 eliminates the use of standard sized containers for packing and shipping cantaloupe. It also results in the elimination of procedures related to experimental container permits. 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. Additionally, the rulemaking amends the standardization time-frame table by deleting the term "experimental containers" from the license type and adding "experimental pack" and "experimental product" for clarity.

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7. A reference to any study that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:

None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

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

B. *Political Subdivision.*

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

C. *Businesses Directly Affected By the Rulemaking.*

Cantaloupe 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 four experimental containers have been approved for use under an experimental container permit. Under R3-4-740, continued use of experimental containers requires a rulemaking to amend R3-4-708, which provides the allowed standard container specifications.

The amendment to the rule will allow containers to be constructed of any size needed by industry.

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):

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

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

No written comments were received. The Arizona Department of Agriculture's Advisory Council supported the amendments by a motion during a telephonic meeting held on August 5, 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:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames (Calendar Days)

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ARTICLE 7. FRUIT AND VEGETABLE STANDARDIZATION

Section

R3-4-708. Cantaloupe Standards, Containers, and Packing Arrangements

R3-4-740. Experimental Container, Pack, and Product Permits for Fruit and Vegetables

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	7	14	30	14	37
• Method of Growing		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted on Applicant's Property		7	14	5 yrs	14	5 yrs, 7 days
• Indicator Crop Planted in Surrounding 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						
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
STANDARDIZATION						
Experimental Containers Pack and Product for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	7	7	7	14

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Experimental Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	7	7	7	14
Citrus Fruit Dealer, Packer or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	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 7. FRUIT AND VEGETABLE STANDARDIZATION

R3-4-708. Cantaloupe Standards, Containers, and Packing Arrangements

A. Definitions.

1. "Mature" means that a cantaloupe has reached the stage of development that ensures the completion of the normal ripening process, the arils that surround the seed during development of maturity are absorbed, and the juice of the edible portion contains not less than 9% nine percent soluble solids as determined by the standard hand refractometer:
 - a. Soluble solids determination means selecting the least mature-looking cantaloupes and remove 2 1/2-inch diameter plugs from opposite sides of each melon, 1/2 the distance between the stem and blossom ends. Removing the outer 3/8 inch of the rind from the plugs; however, use all the rag on the inside of the plugs. Extract the juice from the plugs and determine the percentage of soluble solids by using a standard hand refractometer.
 - b. Low sugar indicators means the cantaloupe has poor netting, dark spots, sunburn, dark green color, or is soft, and has been torn from the vine before reaching full slip.
2. "Lidded or closed" means:
 - a. The opening of corrugated fiberboard containers is completely covered, except for necessary ventilation openings. The container covering is made of material similar to that used in the construction of the sides and bottom of the container and is securely attached to the top.
 - b. Forty percent or more of nailed wooden, wirebound, or other container openings is covered with material similar to that used in the construction of the sides and bottoms of the container and is securely attached to the top.

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3. "Serious damage" includes damage caused by bruises, sunburn, growth cracks, cuts, sponginess, flabbiness, or wilting.

B. Cantaloupes shall be:

1. ~~1. mature~~ Mature but not overripe;
2. ~~2. fairly~~ Fairly well-netted; and
3. ~~3. free~~ Free from mold, decay, and insect damage ~~which has penetrated or damaged~~ that penetrates or damages the edible portion of the cantaloupe; and
4. ~~4. free~~ Free from serious damage.

C. If a preliminary inspection of the cantaloupes indicates that further testing is required; as prescribed in R3-4-739(A) and (B); the inspector shall randomly select ~~the following number of melons~~ for testing and average the results to determine the percent of soluble solids for each lot. The minimum number of cantaloupes selected from a ~~container~~ lot for maturity sampling is as follows:

Melons Per Container	Min. Melons Tested
9 or less	7
12	8
15	11
18	13
22	15
23	16
<u>24 or more</u>	<u>2/3 of the melons in the container, not to exceed 30 melons</u>

D. ~~Not~~ The Department shall not permit more than ~~5%~~ five percent, by count, of the cantaloupes in any ~~one~~ lot for any ~~one~~ defect and not more than ~~10%~~ percent, by count, ~~shall to fail~~ the total requirements prescribed in this Section. The owner or holder of a lot in violation of these tolerance standards may recondition the lot as prescribed in R3-4-739. If the lot is not reconditioned, the provisions of A.R.S. § 3-486 apply.

E. All cantaloupes in each container shall be of ~~one~~ variety or of similar varietal characteristics.

F. Cantaloupes packed in ~~the standard~~ containers shall be uniform in size and ~~shall~~ packed in a compact arrangement, conform with the following:

1. ~~All containers of cantaloupes shall have the following information appearing in plain sight and in plain letters on the outside end:~~
 - a. ~~The name of the person who 1st packed or authorized the packing of the cantaloupe, or the name under which the packer does business; and~~
 - b. ~~The address of the person or business.~~
2. ~~Each container of cantaloupes shall be conspicuously marked in letters of not less than 1/2 inch in height, stating the exact number of melons packed within the container.~~
3. ~~All cantaloupes shall be packed in a regular compact arrangement in a closed standard container.~~
4. ~~Standard containers shall be in counts of 6, 9, 12, 15, 18, 22, 23, 30, or 36.~~
5. ~~Consumer containers or single layer containers shall be in counts of 5, 6, 8, or 9.~~

G. ~~Standard and bulk containers shall conform to the following inside dimensions, in terms of inches:~~

Containers	Length	Width	Depth
Standard containers and consumer packs	16-7/16"	13-9/16"	6"
	16"	12-13/16"	10-1/2"
	21-7/8"	12"	12"
	21-7/8" to 22-1/8"	13"	13" to 13-1/2"
	22-1/2"	13"	13-1/2"
	21-7/8" to 22"	13"	9" to 9-1/2"
	22" to 22-3/8"	13"	9" to 10"
	22"	13"	10-1/2"
	12-7/8"	12-7/8"	15-1/2" to 16"
	16-3/8" to 17"	12-3/8" to 13-1/4"	9-3/4" to 10-1/2"
	16-1/2"	13-5/8" to 14"	10-1/4"
	22-1/8"	16"	6-3/4" to 8-3/4"
	22-1/8"	14"	7-3/4"
	22-1/8"	14-1/2"	5-3/4"
	23-5/8"	15-3/4"	7-3/4"
Bulk containers	17"	15-1/4"	6-1/2"
	48"	38"	18", 24", 36", or 48"

R3-4-740. Experimental Containers, Pack, and Product Permits for Fruit and Vegetables

A. ~~Applicants~~ An applicant for a permit for the use of ~~"experimental containers", an "experimental packs pack", or "experimental products product"~~, pursuant to under A.R.S. § 3-487(B)(3), shall provide the following information on a form furnished by the Department:

1. The applicant's 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. ~~The time period for use of the experimental container, pack, or product.~~
- B.** ~~All~~ The shipper or packer shall make the experimental products shall product conform to the standards for unlisted fresh fruit and vegetables prescribed in R3-4-736.
- C.** Upon completion of permit requirements by the applicant, the supervisor ~~may~~ shall grant a permit ~~which shall be that is~~ valid for a period of 1 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. § 3-497, to standardize the experimental ~~container, pack, or product~~ has been ~~is~~ initiated.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 1. DEPARTMENT OF HEALTH SERVICES ADMINISTRATION

PREAMBLE

- | | |
|---|--|
| 1. Sections Affected
R9-1-412 | <u>Rulemaking Action</u>
Amend |
| 2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statutes: A.R.S. §§ 36-132(A)(1) and (17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-405 and 36-406 | |
| 3. <u>The effective date of the rules:</u>
October 2, 2002 | |

The Department of Health Services (ADHS) is requesting that the rule become effective immediately upon filing with the Office of the Secretary of State as authorized under A.R.S. § 41-1032(A)(4) because the rule will provide a benefit to the public, and a penalty is not associated with a violation of the rule.

An immediate effective date benefits businesses that construct or operate new hospitals, recovery care centers, or nursing care institutions in local jurisdictions because they will experience moderate-to-substantial cost savings from the adoption of the 2000 *International Building Code*. In fact, ADHS has been informed by one business constructing a hospital that it is awaiting this rulemaking before applying for a license because adoption of the 2000 *International Building Code* will save the business between \$5 and \$10 million. Cost savings from the 2000 *International Building Code* represent over 15% of the total construction costs for the building shell and build-out work. If the business is required to wait an additional 60 days for the rule to become effective, it will lose approximately \$10 million.

Additionally, businesses that construct or operate new outpatient surgical centers that do not use general anesthesia will experience a substantial cost savings from the adoption of the 2001 *Guidelines for Design and Construction of Hospital and Health Care Facilities*.

Businesses that operate new hospitals, recovery care centers, or nursing care institutions and payers of services in new hospitals, recovery care centers, and nursing care institutions may experience substantial cost savings if the additional hand-washing stations required by the *Guidelines* reduce infections and the costs associated with the treatment of those infections. Likewise, consumers receiving care in new hospitals, recovery care centers, and nursing care institutions may experience substantial savings in health care costs and other benefits if the additional hand-washing stations reduce the incidence of infections. Having this rule become effective immediately will mean that the benefits resulting from this enhanced infection control measure will be realized immediately.

In addition, the 2000 *International Building Code* eliminates the use of some difficult-to-enforce standards, such as the NFPA's standard that requires sprinkling systems in assisted living facilities based on the evacuation capabilities

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of the residents, something that can change on a regular basis. The 2000 *International Building Code's* use of a bright-line standard makes it unnecessary for ADHS to determine how quickly residents can evacuate and enhances resident safety by requiring sprinkling systems for all assisted living facilities with eight or more residents.

Finally, businesses that construct or operate health care institutions in local jurisdictions that have adopted or will adopt the 2000 *International Building Code* will experience minimal-to-moderate cost savings during ADHS's architectural review process because ADHS will be applying the same codes and standards as the local jurisdictions.

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 4361, October 5, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 1212, March 29, 2002

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

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1740 W. Adams, Room 102
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or

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

In R9-1-412, the Department incorporates by reference codes and standards for physical plants. The Department does this in R9-1-412 so that the Department can refer to R9-1-412 in its licensure rules within 9 A.A.C. rather than including separate incorporations by reference in each set of licensure rules. The Department last updated the codes and standards incorporated by reference in R9-1-412 in November 2000.

In this rulemaking, the Department updates the codes and standards incorporated by reference in R9-1-412 by incorporating by reference the International Code Council's *International Building Code* (2000), *International Fuel Gas Code* (2000), *International Mechanical Code* (2000), *International Property Maintenance Code* (2000), *International Fire Code* (2000), *ICC Electrical Code—Administrative Provisions* (2000), and *International Energy Conservation Code* (2000). The 2000 *International Building Code* combines the nation's three regional building codes (from the International Conference of Building Officials, Building Officials and Code Administrators International, and the Southern Building Code Congress International) into one code. This represents more than 200 years of building code experience. The 2000 *International Building Code*, which references the other international codes listed, has already been adopted by Pima, Pinal, Cochise, Navajo, and Santa Cruz Counties. The Department anticipates that it will also be adopted by more than 87% of the building officials in Arizona. These international codes are generally more cost effective than the 1997 *Uniform Building Code*, the standard previously adopted by the Department, which will still be followed in most, if not all, of the local jurisdictions that do not adopt the 2000 *International Building Code*.

In addition, this rulemaking updates the incorporations by reference for the American Institute of Architects and Facilities Guidelines Institute's *Guidelines for Design and Construction of Hospital and Health Care Facilities* and the National Fire Protection Association's *National Fire Codes* and corrects the citation for the International Code Council's *American National Standard: Accessible and Usable Buildings and Facilities*.

This rulemaking also clarifies the language of the rule and modifies it to conform to current rulemaking format and style requirements.

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7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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:

As used in this summary, “minimal” means less than \$1,000, “moderate” means \$1,000 to \$9,999, and “substantial” means \$10,000 or more.

The Department will experience moderate one-time cost increases as a result of the rulemaking. The cost increases will result from purchasing the updated codes and standards and notifying the local jurisdictions of the Department’s updated codes and standards. The Department will experience cost decreases when dealing with health care institutions in local jurisdictions that have adopted the 2000 *International Building Code*, which refers to the other international codes being incorporated by reference in this rulemaking, because the Department will be using the same codes and standards that are used by the local jurisdictions and will save staff time presently spent reconciling the differences between different codes and standards during architectural review. Thus far, the 2000 *International Building Code* has been adopted by Pima, Pinal, Cochise, Navajo, and Santa Cruz Counties. The Department anticipates that it will also be adopted by more than 87% of the building officials in Arizona.

Each local jurisdiction in the state that has adopted or will adopt the 2000 *International Building Code* will experience minimal cost savings as a result of the rulemaking. The savings are due to the Department’s use of the same codes and standards that are used by the local jurisdictions and the resulting savings in staff time presently spent reconciling the differences between the different codes and standards during the architectural review and permit process.

Businesses that construct or operate health care institutions in those local jurisdictions that have adopted or will adopt the 2000 *International Building Code* will experience minimal-to-moderate cost savings during the Department’s architectural review process because the Department will be applying the same codes and standards as the local jurisdictions.

Businesses that construct or operate certain types of new health care institutions will experience both increased and decreased costs as a result of the rulemaking. Businesses that construct or operate new hospitals, recovery care centers, or nursing care institutions will experience moderate-to-substantial increased costs because the 2001 *Guidelines for Design and Construction of Hospital and Health Care Facilities* require additional hand-washing stations for patient rooms. The extent of the cost increases depends upon the size of the new hospital, recovery care center, or nursing care institution and the number of patient rooms that are not already designed to have a hand-washing station in the room.

Businesses that construct or operate new hospitals, recovery care centers, or nursing care institutions in local jurisdictions that have adopted or will adopt the 2000 *International Building Code* will experience moderate-to-substantial cost savings because the 2000 *International Building Code* requires fewer fire dampers; fewer smoke dampers; fewer fire-rated walls and doors; fixed, rather than openable, windows; wire glass rather than fire-rated glass; and less panic hardware on doors. The extent of the cost savings depends upon the size of the new hospital, recovery care center, or nursing care institution and the extent to which these lower cost alternatives are incorporated into the design and construction of a facility.

Businesses that construct or operate new outpatient surgical centers that do not use general anesthesia will experience a substantial cost savings in the construction of operating rooms and savings in medical gas and emergency generator costs because of changes in the 2001 *Guidelines for Design and Construction of Hospital and Health Care Facilities*.

Businesses that operate new hospitals, recovery care centers, or nursing care institutions and payers of services in new hospitals, recovery care centers, and nursing care institutions (such as private insurers, Medicare, Medicaid, and businesses that contract with Medicare and Medicaid) may experience substantial cost savings if additional hand-washing stations reduce infections and the costs associated with the treatment of those infections.

Consumers may experience minimal increased costs at new hospitals, recovery care centers, and nursing care institutions if costs for additional hand-washing stations are passed along to consumers. Consumers in local jurisdictions that have adopted or will adopt the 2000 *International Building Code* may experience minimal decreases in health care costs if the savings in construction costs for new hospitals, recovery care centers, and nursing care institutions are passed along to consumers. Consumers treated in outpatient surgical centers may experience minimal health care cost decreases if the savings in operating room construction and medical gas and emergency generator costs are passed along to consumers. Additionally, consumers may experience substantial decreases in health care costs and other benefits if hand-washing stations reduce the incidence of infections in new hospitals, recovery care centers, and nursing care institutions.

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The rulemaking should have no direct impact on private and public employment in businesses, agencies, and political subdivisions of this state.

The rulemaking will impact small business, as defined in A.R.S. § 41-1001, in the same way that it will impact large business.

The rulemaking should not increase or decrease state revenues.

The Department believes that incorporating by reference the most up-to-date international and national codes and guidelines is the least intrusive and least costly method of achieving the purpose of the rulemaking, protecting the public health, safety, and welfare by establishing minimum standards and requirements for the physical plants of health care institutions.

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

ADHS deleted the incorporation by reference for the *International Private Sewage Disposal Code* (2000) at the request of Governor’s Regulatory Review Council staff because it conflicts in part with the Arizona Uniform Plumbing Code. ADHS added new modification language in R9-1-412(A)(1)(e), (t), and (u) to reflect the omission of the *International Private Sewage Disposal Code* and relabeled to conform as necessary. In addition, ADHS added language in R9-1-412(B) to clarify that the Arizona Uniform Plumbing Code governs if a code or standard incorporated by reference in R9-1-412(A) conflicts with the Arizona Uniform Plumbing Code. Finally, ADHS removed the references to old versions of R9-1-412 in subsections (A)(1), (8), (9), and (10).

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

Comment	Agency Response
The Building Official for the Town of Cave Creek, who is also the Chair of the Arizona Building Officials’ Code Review and Development Committee, expressed support for the rulemaking. He stated that the International Building Code is the descendant of codes that have more than 50 years of history in the state; that saved tens of thousands of lives on September 11, 2001; and that have steadily lowered the number of fire-related deaths and injuries over the last 20 years in spite of the increased number of structures during that time. In addition, the Arizona Building Officials and the Maricopa County Association of Governments’ Building Codes Committee both have recommended that their members adopt the international set of codes with common amendments that would, among other things, bring the codes into line with ADHS rules. ADHS’s using a set of codes that will be used by the majority of jurisdictions in the state will bring consistency, which is the key to effective implementation and enforcement of the rules. The clear way to ensure the safety of the residents in health care institutions is to adopt the codes that are used by the vast majority of jurisdictions and that have a proven history of safety.	ADHS appreciates the support.
The Building Official for the City of Surprise expressed support for the rulemaking. He stated that ADHS has an essential working relationship with local jurisdictions. The vast majority of Arizona cities have either already adopted or plan to adopt the international codes. The trend throughout the state is clearly to adopt the international codes. ADHS will be well served by adopting the same codes that are being adopted and enforced locally throughout the state.	ADHS appreciates the support.

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<p>A representative for the International Conference of Building Officials' Evaluation Services expressed support for the rule-making. The International Conference of Building Officials is one of the partners in the development of the international codes. Several jurisdictions in the state have already adopted the international codes, and others are in the process of adopting them. There is a political issue at the City of Phoenix that has precluded the City of Phoenix from adopting the international codes, but there is a rather large group out there that will be advocating adoption of the international codes by the City of Phoenix as well.</p>	<p>ADHS appreciates the support.</p>
<p>The Professional Fire Fighters of Arizona expressed opposition to the rulemaking. Fire fighters do not have a final vote in the making of the international codes and thus are unable to back up their objections or input. Fire fighters are the individuals who have to go into burning structures to save lives and protect property, and they should have a say in the way that structures are built to provide the necessary time to allow fire fighters to do search and rescue with minimal risk to citizens and themselves. Codes should be developed through an open consensus process accredited by the American National Standards Institute, which gives everyone in the build environment an opportunity to have a voice and vote in the process. The National Fire Protection Association (NFPA) develops codes and standards using the open consensus process. The NFPA will have the NFPA 5000 building code adopted in September 2002. ADHS should wait and compare the two building codes. The NFPA codes and standards will serve to ensure public safety and fire fighter safety.</p>	<p>ADHS believes that the International Building Code, along with the other codes being adopted in R9-1-412, including the NFPA's National Fire Codes, serve to ensure public safety and fire fighter safety. The international codes are revisions of the uniform codes that have been incorporated by reference in R9-1-412 since 1975. Although the NFPA 5000 was issued by the NFPA's Standards Council on July 19, 2002, it has not yet been published. The NFPA 5000 is designed to be part of an integrated set of codes that will not be completed until 2003. It is important for ADHS to update the rule now rather than delay the rulemaking until the NFPA 5000 is published and ready for a comparison, a process that could take many months and that would result in at least moderate additional costs to ADHS from the time spent evaluating the requirements of the NFPA 5000. In adopting the international codes, ADHS is adopting a set of codes that ensures public safety and fire fighter safety, that is currently available for use, and that will be used by the majority of local jurisdictions in the state.</p>

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:

In R9-1-412, ADHS incorporates by reference the following, with modifications:

R9-1-412(A)(1): International Code Council, *International Building Code* (2000)

R9-1-412(A)(2): International Code Council, *International Fuel Gas Code* (2000)

R9-1-412(A)(3): International Code Council, *International Mechanical Code* (2000)

R9-1-412(A)(4): International Code Council, *International Property Maintenance Code* (2000)

R9-1-412(A)(5): International Code Council, *International Fire Code* (2000)

R9-1-412(A)(6): International Code Council, *ICC Electrical Code—Administrative Provisions* (2000)

R9-1-412(A)(7): International Code Council, *International Energy Conservation Code* (2000)

R9-1-412(A)(8): American Institute of Architects and Facilities Guidelines Institute, *Guidelines for Design and Construction of Hospital and Health Care Facilities* (2001 ed.)

R9-1-412(A)(9): National Fire Protection Association, *National Fire Codes* (2001), as updated by *National Fire Codes Supplement Part 1* (2001) and *National Fire Codes Supplement Part 2* (2001)

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

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 4. CODES AND STANDARDS REFERENCED

Section

R9-1-412. Physical Plant Health and Safety Codes and Standards

ARTICLE 4. CODES AND STANDARDS REFERENCED

R9-1-412. Physical Plant Health and Safety Codes and Standards

A. ~~When this Section is referenced in a rule contained in 9 A.A.C., the~~ The following physical plant health and safety codes and standards are incorporated by reference ~~as modified, and are~~ on file with the Department and the Office of the Secretary of State. ~~This incorporation by reference contains , and include~~ no future editions or amendments: :

1. ~~Uniform Building Code and appendices—1997 edition, Volumes 1 through 3; published by the International Code Council, International Building Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 (formerly R9-1-412(A)). , with the following modifications:~~
 - a. Appendices A, B, C, D, G, I, and J are omitted;
 - b. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;
 - c. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”;
 - d. Section 101.2 is modified by deleting the “Exception”;
 - e. Section 101.4.4 is modified by replacing “International Private Sewage Disposal Code” with “Arizona Uniform Plumbing Code”;
 - f. Sections 103.1 through 103.3 are omitted;
 - g. Sections 104.1 through 104.9.1 are omitted;
 - h. Sections 105.1 through 105.7 are omitted;
 - i. Sections 106.1 through 106.5 are omitted;
 - j. Sections 107.1 through 107.4 are omitted;
 - k. Sections 108.1 through 108.6 are omitted;
 - l. Sections 109.1 through 109.6 are omitted;
 - m. Sections 110.1 through 110.5 are omitted;
 - n. Sections 111.1 through 111.3 are omitted;
 - o. Sections 112.1 through 112.3 are omitted;
 - p. Sections 113.1 through 113.4 are omitted;
 - q. Sections 114.1 through 114.3 are omitted;
 - r. Sections 115.1 through 115.5 are omitted;
 - s. Section 2113.15 is modified by omitting “or Chapter 24 of the International Residential Code”;
 - t. Section 2901.1 is modified by replacing “International Private Sewage Disposal Code” with “Arizona Uniform Plumbing Code”; and
 - u. Section 3401.3 is modified by omitting “International Private Sewage Disposal Code,” and “International Residential Code”;
2. ~~Uniform Mechanical Code and appendices—1997 edition; published by the International Conference of Building Officials; 5360 Workman Mill Road, Whittier, CA 90601-2298 (formerly R9-1-412(C)).~~
2. International Code Council, International Fuel Gas Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears.
 - b. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”.
 - c. Sections 103.1 through 103.4 are omitted,
 - d. Sections 104.1 through 104.8 are omitted,
 - e. Sections 106.1 through 106.5.3 are omitted,
 - f. Sections 107.1 through 107.5 are omitted,

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- g. Sections 108.1 through 108.7.3 are omitted, and
- h. Sections 109.1 through 109.7 are omitted;
- 3. International Code Council, International Mechanical Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. Appendix B is omitted.
 - b. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears.
 - c. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”.
 - d. Sections 103.1 through 103.4 are omitted.
 - e. Sections 104.1 through 104.8 are omitted.
 - f. Sections 106.1 through 106.5.3 are omitted.
 - g. Sections 107.1 through 107.5 are omitted.
 - h. Sections 108.1 through 108.7.3 are omitted, and
 - i. Sections 109.1 through 109.7 are omitted;
- 4. International Code Council, International Property Maintenance Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears.
 - b. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”.
 - c. Sections 103.1 through 103.6 are omitted.
 - d. Sections 104.1 through 104.8 are omitted.
 - e. Sections 106.1 through 106.5 are omitted.
 - f. Sections 107.1 through 107.5 are omitted.
 - g. Sections 108.1 through 108.6 are omitted.
 - h. Sections 109.1 through 109.6 are omitted.
 - i. Sections 110.1 through 110.4 are omitted.
 - j. Sections 111.1 through 111.8 are omitted.
 - k. Section 201.3 is modified by omitting “International Zoning Code”.
 - l. Section 602.2 is modified by adding a period after “toilet rooms” and omitting the remainder of the sentence, and
 - m. Section 602.3 is modified by omitting the second sentence of the “Exception”;
- 5. International Code Council, International Fire Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. Appendix A is omitted.
 - b. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears.
 - c. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”.
 - d. Sections 103.1 through 103.4.1 are omitted.
 - e. Sections 104.1 through 104.11.3 are omitted.
 - f. Sections 105.1 through 105.7.12 are omitted.
 - g. Sections 106.1 through 106.3 are omitted.
 - h. Sections 108.1 through 108.3 are omitted.
 - i. Sections 109.1 through 109.3.1 are omitted.
 - j. Sections 110.1 through 110.4 are omitted, and
 - k. Sections 111.1 through 111.4 are omitted;
- 6. International Code Council, ICC Electrical Code—Administrative Provisions (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”;
 - b. Section 201.3 is modified by deleting “International Residential Code, International Zoning Code”;
 - c. Chapter 3 is omitted;
 - d. Chapter 4 is omitted;
 - e. Chapter 5 is omitted;
 - f. Chapter 7 is omitted;
 - g. Chapter 8 is omitted;
 - h. Chapter 9 is omitted;
 - i. Chapter 10 is omitted;
 - j. Chapter 11 is omitted; and
 - k. Section 1201.1.1 is modified by deleting “the International Residential Code or”;

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7. International Code Council, International Energy Conservation Code (2000), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298, with the following modifications:
 - a. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears.
 - b. Section 101.1 is modified by omitting “of [NAME OF JURISDICTION]”, and
 - c. Section 101.4 is modified by deleting the “Exception”;
 - ~~3.8. Guidelines for Design and Construction of Hospital and Health Care Facilities and appendices, 1996-97 edition; published by American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Hospital and Health Care Facilities (2001 ed.), published by and available from The American Institute of Architects Press, 1735 New York Avenue, N.W., Washington, DC 20006 (formerly R9-1-412(F)). , with the following modifications:~~
 - a. In the appendices, the word “should” is replaced with “shall” each time it appears; and
 - b. Section 1.5.A is omitted;
 - ~~4.9. National Fire Codes and appendices—1999 edition, Volumes 1 through 12, and 1999 Supplement Part 1 and Part 2, published by the National Fire Protection Association, National Fire Codes (2001), as updated by National Fire Codes Supplement Part 1 (2001) and National Fire Codes Supplement Part 2 (2001), published by and available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101 (formerly R9-1-412(G) and includes the former R9-1-412(B), Life Safety Code, NFPA 101 and the former R9-1-412(E), National Electrical Code, NFPA 70). , with the following modifications:~~
 - a. All annexes and appendices are omitted, except the following:
 - i. In NFPA 15, Annexes A, B, and C;
 - ii. In NFPA 20, Appendices A and B;
 - iii. In NFPA 70, Annexes A, B, C, and D;
 - iv. In NFPA 80, Appendices A, B, C, D, E, F, G, H, I, and J;
 - v. In NFPA 82, Appendix A;
 - vi. In NFPA 90A, Appendices A and B;
 - vii. In NFPA 96, Annexes A and B;
 - viii. In NFPA 99, Appendices A, B, and C and Annexes 1 and 2;
 - ix. In NFPA 99B, Appendices A and B;
 - x. In NFPA 101, Annex A;
 - xi. In NFPA 101B, Appendix A;
 - xii. In NFPA 110, Appendices A and B;
 - xiii. In NFPA 111, Appendix A;
 - xiv. In NFPA 253, Appendices A, B, C, D, and E;
 - xv. In NFPA 255, Appendices A, B, C, and D;
 - xvi. In NFPA 288, Annexes A, B, and C;
 - xvii. In NFPA 418, Appendix A;
 - xviii. In NFPA 701, Appendices A, B, C, and D; and
 - xix. In NFPA 801, Appendices A and B; and
 - b. The language in the included appendices and annexes shall be construed as mandatory rather than advisory; and
 - ~~5.10. American National Standard Accessible and Usable Buildings and Facilities, ANSI A117.1—1998 edition; published by International Code Council, 5203 Leesburg Pike, #708, Falls Church, VA 22041 International Code Council, Pub. No. ICC/ANSI A117.1-1998, American National Standard: Accessible and Usable Buildings and Facilities (1998), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 (formerly R9-1-412(H)).~~
- B. When this Section is referenced in a rule contained in 9 A.A.C., the following apply:**
1. A physical plant that is required to comply with the codes and standards in this Section is also required to comply with the Arizona Uniform Plumbing Code in 4 A.A.C. 48, Article 1; and
 2. Arizona State Fire Code in 4 A.A.C. 36, Article 2. If a conflict exists between a code or standard incorporated by reference in subsection (A) and the Arizona Uniform Plumbing Code, the Arizona Uniform Plumbing Code governs.
- C. The Department shall not assess any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.**

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES**

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-6-202 | Amend |
| 2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):</u> | |
| Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F) | |
| Implementing statute: A.R.S. § 36-136(H)(1) and (12) | |
| 3. <u>The effective date of the rule:</u> | |
| December 1, 2002 | |
| 4. <u>A list of all previous notices appearing in the Register addressing the final rule:</u> | |
| Notice of Rulemaking Docket Opening: 8 A.A.R. 1555, March 29, 2002 | |
| Notice of Proposed Rulemaking: 8 A.A.R. 1629, April 5, 2002 | |
| Notice of Public Information: 8 A.A.R. 1860, April 12, 2002 | |
| 5. <u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u> | |

Name:	Kip Beardsley
Address:	Arizona Department of Health Services Office of HIV 3815 N. Black Canyon Highway Phoenix, AZ 85015
Telephone:	(602) 230-5819
Fax:	(602) 230-5973
E-mail:	kbeards@hs.state.az.us

or

Name:	Kathleen Phillips
Address:	Arizona Department of Health Services Office of Administrative Rules 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 December 1999, the Department completed a five-year review report for 9 A.A.C. 6. The five-year review report was approved by G.R.R.C. in March 2000. As a result of the review process, the Department identified a number of changes that needed to be made in 9 A.A.C. 6. The Department also determined that those changes should be made in three separate rule packages. The Department originally included the HIV-related changes to R9-6-202 in the first of those rule packages. However, due to a deficient docket opening, the Department was required to remove R9-6-202 from that rule package. Thus, this rule package makes the HIV-related changes to R9-6-202 that the Department intended to make in the first rule package, which dealt with the rules for HIV and sexually transmitted diseases.

This rule package clarifies the clinical laboratory reporting requirement for HIV and adds a clinical laboratory reporting requirement for laboratory findings of CD₄-T-lymphocyte counts of fewer than 200 per microliter of whole blood or CD₄-T-lymphocyte percentages of total lymphocytes of less than 14%. The addition of this reporting requirement is consistent with the Centers for Disease Control and Prevention's definition of AIDS and will improve the Depart-

ment's ability to track the number of AIDS cases in Arizona. This rule package also makes minor changes to R9-6-202 that were recommended by G.R.R.C. staff to make the rule more clear, concise, and understandable.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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:

As used in this summary, minimal means less than \$1,000, moderate means from \$1,000 to \$9,999, and substantial means \$10,000 or greater.

The Department anticipates that the proposed rule changes will minimally burden clinical laboratories, which will newly be required to report CD₄-T-lymphocyte counts of fewer than 200 per microliter of whole blood or CD₄-T-lymphocyte percentages of total lymphocytes of less than 14%. Because clinical laboratory directors are already required by Article 2 to make regular reports of numerous laboratory results, the addition of this reporting requirement should result in only a minimal burden. The clarification of the HIV reporting requirement should result in a minimal benefit to clinical laboratories because it should resolve any existing confusion about what HIV-related test results are required to be reported.

The Department will incur the costs of the rulemaking process, which should be minimal to moderate.

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

The Department clarified subsection (E) so that it addresses anonymous HIV testing and made other minor grammatical or stylistic changes at the request of G.R.R.C. staff.

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

The Department did not receive any comments concerning the proposed rule.

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 rule:

Not applicable

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

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES**

ARTICLE 2. COMMUNICABLE DISEASE REPORTING

Section

R9-6-202. Special Reporting Requirements

ARTICLE 2. COMMUNICABLE DISEASE REPORTING

R9-6-202. Special Reporting Requirements

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change

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9. No change
 10. No change
 11. No change
 12. No change
 13. No change
 14. No change
 15. No change
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
- C.** No change
1. ~~Foodborne/waterborne~~ Foodborne or waterborne illness,
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change
- D.** A clinical laboratory director, ~~or authorized representative,~~ either personally or through a representative, shall submit to the Department a weekly written, or electronic report of the following:
1. ~~positive~~ Positive laboratory findings for the following communicable disease pathogens:
 - 1-a. No change
 - 2-b. No change
 - 3-c. No change
 - 4-d. No change
 - 5-e. No change
 - 6-f. No change
 - 7-g. No change
 - 8-h. No change
 - 9-i. No change
 - 10-j. No change
 - 11-k. No change
 - 12-l. No change
 - 13-m. No change
 - 14-n. No change
 - 15-o. No change
 - 16-p. Human Immunodeficiency Virus (HIV) (by culture, antigen, antibodies to the virus, or viral genetic sequence detection);
 - 17-q. No change
 - 18-r. No change
 - 19-s. No change
 - 20-t. No change
 - 21-u. No change
 - 22-v. No change
 - 23-w. No change
 - 24-x. No change
 - 25-y. No change
 - 26-z. No change
 - 27-aa. No change

~~28-bb.~~No change

~~29-cc.~~No change

~~30-dd.~~Yersinia sp.; and

2. Each laboratory finding of a CD4-T-lymphocyte count of fewer than 200 per microliter of whole blood or a CD4-T-lymphocyte percentage of total lymphocytes of less than 14%.

E. No change

1. Unless the test result is from anonymous HIV testing as described in R9-6-331, Name, name and, if available, address; and telephone number of the patient;
2. Unless the test result is from anonymous HIV testing as described in R9-6-331, Birth date of birth of the patient;
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

F. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change