

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

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

#### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R3-4-239                           | Amend                           |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 3-107(A)(1)  
Implementing statutes: A.R.S. §§ 3-201.01 and 3-211
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 8 A.A.R. 2398, May 31, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Sherry D. Blatner, Rules Specialist   |
| Address:   | Arizona Department of Agriculture<br>1688 W. Adams, Room 235<br>Phoenix, AZ 85007 |
| Telephone: | (602) 542-0962  |
| Fax:       | (602) 542-5420  |
| E-mail:    | sherry.blatner@agric.state.az.us  |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
This rulemaking updates the areas under quarantine, adds a regulated commodity, removes the need for a receiver to apply for a compliance agreement to have an approved holding area, and clarifies existing language.  
  
The Department committed to update this rule in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.
- 6. A reference to any study that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of and or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of the study and other supporting material:**  
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable

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**8. The preliminary 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.*

Beekeepers that ship beehives into Arizona from an area under quarantine will continue their current practice of holding beehives and pallets at staging areas; however, the requirements are now codified.

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

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

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

Name: Sherry D. Blatner, Rules Specialist

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1688 W. Adams, Room 235  
Phoenix, AZ 85007

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Fax: (602) 542-5420

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

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

The Department of Agriculture will schedule a public hearing if a written request for a public hearing is made to the person in item #4.

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

None

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

7 CFR 301.83-3, amended 67 FR 31935, May 13, 2002

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

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE**

**PLANT SERVICES DIVISION**

**ARTICLE 2. QUARANTINE**

Section

R3-4-239. Imported Fire Ants

**ARTICLE 2. QUARANTINE**

**R3-4-239. Imported Fire Ants**

**A. Definitions.**

“Pest” means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*.

“Pine straw” means baled, loose, or bulk pine needles.

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- B.** Area under quarantine. ~~All states~~ A state or portion of ~~any a~~ state listed in 7 CFR 301.81-3, amended ~~January 1, 1998~~ 67 FR 31935, May 13, 2002, and any area declared ~~infested~~ by a state ~~as being infested with the pest, or any area known to be infested with the pest.~~ This material is incorporated by reference, on file with ~~the Department and~~ the Office of the Secretary State, and does not include any later amendments or editions of the incorporated matter.
- C.** ~~Commodities covered:~~ Regulated commodities.
1. Pine straw;
  2. Beehives and associated pallets;
  3. Soil, except potting soil shipped in original containers in which the potting soil is packaged after commercial preparation;
  4. All plants associated with soil, except:
    - a. ~~Indoor-grown house plants not for sale~~ Plants that are maintained indoors year-round in a home or office environment, and are not for sale; and
    - b. Plants shipped bare-root and free from soil.
- D.** Restrictions.
1. Pine straw ~~from an area under quarantine~~ shall be fumigated with 3-9 lbs./1,000 ~~ft<sup>3</sup>~~ cu. ft. methyl bromide for 16-24 hours before entering ~~the state~~ Arizona and shall be accompanied by an original treatment certificate issued by an agricultural official of the state of origin. Pine straw fumigated in trailers shall be loaded to allow circulation of methyl bromide.
  2. ~~A receiver shall apply to the Director in writing for a quarantine holding area compliance agreement. The application shall include:~~
    - a. ~~The location of the holding area; and~~
    - b. ~~The type of barrier used to prevent the public from entering the holding area.~~
  3. ~~The receiver shall meet the following criteria before the quarantine holding area is approved by the inspector:~~
    - a. ~~The floor of the holding area shall be composed of a permeable surface, such as sand or soil, and shall be free from debris, grass, and weeds; and~~
    - b. ~~If the holding area is outdoors, the holding area shall be at least 15 ft. from all other plants.~~
  4. ~~Commodities shall be unloaded at destination into a quarantine holding area and held, undisturbed, until released by an inspector.~~
    - a. ~~Pine straw and covered commodities originating in areas not regulated by R3-4-234 shall be held at least 3 calendar days.~~
    - b. ~~All other covered commodities, except beehives, shall be held for at least 5 calendar days.~~
  5. ~~No pesticide or other chemical shall be applied to a covered commodity while in the quarantine holding area except under the direction and supervision of an inspector.~~
  6. ~~2. Beehives shall be allowed into Arizona if accompanied by a certificate evidencing that the beehives have been inspected and found free of the pest. The inspection shall include: A shipment of beehives from an area under quarantine shall be accompanied by an original certificate issued by an agricultural official of the state of origin confirming that:~~
    - a. ~~In palletized hives, the~~ The interior of each hive and those areas where the hives come into contact with each other; the area between adjacent hives was inspected and found free from soil and the pest, and
    - b. ~~Verification that hive pallets and bottom boards are free from soil; and~~ Each pallet and bottom board was inspected and found free from soil and the pest.
    - e. ~~The interior of each individual hive when no bee activity is apparent.~~
  3. Beehives and associated pallets shall be held undisturbed in a staging area selected by a shipper or a receiver until a Department inspector determines that they are free from the pest.
  4. A regulated commodity, other than a shipment of beehives and associated pallets, shall be unloaded at destination into a quarantine holding area as prescribed in subsection (5) and held for inspection by a Department inspector as follows:
    - a. Pine straw shall be held at least three consecutive days.
    - b. Soil and plants associated with soil from an area regulated for nematodes under R3-4-234(B) shall be held at least five consecutive days, and
    - c. Soil and plants associated with soil from an area not regulated for nematodes under R3-4-234(B) shall be held at least three consecutive days.
  5. An Arizona receiver of a regulated commodity, other than a shipment of beehives and associated pallets, shall establish a Department-approved quarantine holding area that meets the following specifications:
    - a. The floor shall be a permeable surface, such as sand or soil, and free from debris, grass, or weeds;
    - b. The area shall be isolated from public access, surrounded by a fence or other barrier;
    - c. The integrity and security of the area shall be maintained at all times; and
    - d. If outdoors, the area shall also be at least 15 feet from any masonry wall, property boundary, or non-quarantine plant.

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6. A receiver shall only treat a regulated commodity located in a quarantine holding area with a pesticide or other chemical when directed and supervised by a Department inspector.
- E.** Disposition of violations. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state at the owner's expense.