

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 1222.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 19, 2010.

[R11-55]

PREAMBLE

1. Sections Affected

Article 11
R12-4-1103
R12-4-1104

Rulemaking Action

New Article
New Section
New Section

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. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-255.01, 17-255.02, and 17-255.03

3. The effective date of the rules:

June 2, 2011, immediately upon filing with the Secretary of State.

The immediate effective date is allowed under A.R.S. § 41-1032(A)(1), which allows a rule to become effective immediately to preserve the public peace, health or safety. Dreissena species (quagga and zebra mussels) pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways, which is likely to cause economic or environmental harm to residents and businesses in Arizona. The unrestricted spread of quagga and zebra mussels has far-reaching financial and ecological impacts that can affect virtually every resident of the state. These mussels cost millions of dollars annually to control. When present, they become a serious problem for water delivery systems and industrial facilities using this water. In the United States, Congressional researchers estimated that zebra mussels alone cost the power industry \$3.1 billion and industries, businesses, and communities more than \$5 billion from 1993 to 1999. California spends well over \$1.5 million annually to hyper-chlorinate the water and remove the dead mussels from their water delivery systems. The establishment of mandatory conditions for movement of watercraft in this state is essential in preventing the spread of these mussels to unaffected water bodies. Establishing conditions for the overland movement of watercraft is crucial in helping to prevent the accidental spread of mussels; and the financial, economic, and ecological costs that will surely accompany them; to unaffected water bodies. Quagga mussel populations are currently established in Lake Mead, Lake Mohave, Lake Havasu, and Lake Pleasant. While zebra mussels have not yet been detected in Arizona, they pose a serious potential threat as they are present in California and Colorado. The establishment of decontamination procedures in rule, as specified in A.R.S. § 17-255.01(C)(2), is necessary to fully implement this new legislation and guide the public's expectations regarding actions that may be mandatory on their part. It benefits the public, and in particular water delivery systems and industrial facilities using this water, to have this new rule in place immediately upon filing with the Secretary of State. The rulemaking will benefit all Arizonans by proactively addressing the far-reaching financial and ecological impacts that these bio-fouling mussels pose to public health and safety and Arizona's waterways.

4. Is this rulemaking a renewal of a previous emergency rulemaking? If yes, the Register citation to previous notices of emergency rulemaking:

No

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

Name: Tom McMahon, Invasive Species Coordinator
Address: Game and Fish Department, WMHB
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7271
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E-mail: tcmahon@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

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

Laws 2009, 3rd Special Session, Ch. 7, § 28(B)(1), which allows an agency to pursue rulemaking for an authorization or requirement enacted by the legislature after January 1, 2009. Laws 2009, 1st Regular Session, Ch. 77 became effective September 30, 2009. This legislation allows the Department to establish orders, enforce laws and rules designed to prevent the spread of aquatic invasive species.

The Aquatic Invasive Species legislation was supported during legislative hearings by a broad array of stakeholders including the Salt River Project, Central Arizona Project, Arizona Municipal Water Users Association, and Roosevelt Water Conservation District.

Quagga and zebra mussels accumulate on underwater surfaces and have the ability to impair water delivery structures and systems. These mussels reproduce rapidly; resulting in large populations in affected water bodies, resulting in a negative ecological and environmental impact to Arizona waterways and water delivery systems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment that have adult mussels attached and the movement of water itself in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. It is believed that the initial movement of these mussels to the Colorado River was as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland.

On March 1, 2010, in accordance with A.R.S. § 17-255.01(B)(1), the Arizona Game and Fish Department's Director issued Orders listing quagga and zebra mussels as aquatic invasive species, listing locations where these mussels are present, documented, or suspected, and establishing conditions for movement of watercraft, vehicles, conveyances, or other equipment from listed waters.

The proposed rules will provide definitions for terms related to aquatic invasive species and establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

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

Not applicable

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

The rules will benefit private consumers and public and private entities by addressing a current threat to public health and safety.

The Department anticipates the rulemaking will have a minimal impact on private persons and consumers. Ninety nine percent of watercraft users are day users who use their watercraft during the weekend. These persons will be required to simply "drain and dry" their watercraft. A person who owns or operates a 65 foot houseboat, moored long-term in Lake Mead, Lake Mohave, Lake Havasu, Lake Pleasant, Mittry Lake, Martinez Lake, Imperial Reservoir, Topock Marsh, or the Lower Colorado River (from Pierce Ferry Rapid through the southerly international boundary with Mexico), infested with quagga mussels, and being moved to any other location may be required to spend \$1,500 to \$2,000 to decontaminate the houseboat.

The Department anticipates increased costs associated with implementing the proposed rules due to increased training of enforcement officers.

The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

None

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

Not applicable

11. An explanation of the situation justifying the rule's making as an emergency rule:

Emergency rulemaking is necessary because quagga and zebra mussels are aquatic invasive species that currently pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways. Quagga mussel populations are currently established in Lake Mead, Lake Mohave, Lake Havasu, and Lake Pleasant. While zebra mussels have not been detected in Arizona, they pose a potential threat as they have been detected in California, Colorado, and some other Western States.

While there are Orders in effect, the establishment of decontamination procedures in rule, as specified in A.R.S. § 17-255.01(C)(2), is necessary to fully implement this new legislation and guide the public's expectations regarding actions that may be mandatory on their part.

Quagga and zebra mussels accumulate on underwater surfaces and have the ability to impair water delivery structures and systems. These mussels reproduce rapidly; resulting in large populations in affected water bodies. They can clog water intake and delivery pipes; infest hydropower infrastructures, dams, and water control structures; adhere to watercraft bottoms, boat engines, docks, and pilings; destroy beaches and alter the functioning of our native aquatic ecosystems. This creates an ecological and environmental impact to waterways, as well as the facilities, equipment, and structures related to the treatment and delivery of water.

The establishment of mandatory conditions for movement of boats and aquatic equipment to and from waters and locations in this state is essential in preventing the spread of these mussels to unaffected water bodies and the financial, economic, and ecological costs that will accompany them. These conditions are crucial in helping to prevent the accidental movement of quagga mussels, as well as other aquatic invasive species, to unaffected water bodies and must be specified in rule.

Because boating season in general is year round and quagga mussels are easily transported by the overland movement of boats and equipment; the prompt establishment of conditions for the movement of watercraft, conveyances, or other equipment is necessary to prevent them from spreading throughout the state and contaminating public waterways.

For these reasons, the Department is pursuing emergency rulemaking, to be followed by regular rulemaking to establish permanent aquatic invasive species rules.

12. The date of the Attorney General's approval of the emergency rule:

June 2, 2011

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 11. AQUATIC INVASIVE SPECIES

Section

R12-4-1103. Definitions

R12-4-1104. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-1101. Reserved

R12-4-1102. Reserved

R12-4-1103. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

"Aquatic invasive species" means those species listed in Director's Order 1.

"Certified agent" means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

"Conveyance" means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

"Equipment" means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

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“Operator” means an individual who operates or is in actual physical control of the watercraft, vehicle, conveyance, or equipment.

“Owner” means any individual, firm, corporation, partnership, or association that claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” means an owner, operator, or transporter of a watercraft, vehicle, conveyance, or equipment.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means any individual, firm, corporation, partnership, or association responsible for the overland movement of watercraft, vehicles, conveyances, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

R12-4-1104. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

- A.** A person shall not, unless authorized by the Commission under Article 4:
1. Possess, import, ship, or transport into or within this State an aquatic invasive species, unless authorized by the Director.
 2. Sell, purchase, barter, or exchange in this State an aquatic invasive species.
 3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
- B.** Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and before leaving that location, a person shall:
1. Remove all clinging materials such as plants, animals, and mud.
 2. Remove any plug or other barrier that prevents water drainage or, when none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C.** Before transporting watercraft, vehicles, conveyances, or equipment to any waters located within or bordering this State from waters where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D.** Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect watercraft, vehicles, conveyances, and equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E.** If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the protocols described in Director’s Order 3.
- F.** Director’s Order 1 - Aquatic Invasive Species List, Director’s Order 2 – Designation of Waters or Locations Where Aquatic Invasive Species are Present, and Director’s Order 3 – Mandatory Conditions on Movement from Listed Waters are available at any Department office and online at azgfd.gov.
- G.** This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.