

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 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1164.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 16, 2013.

[R14-66]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**

R3-2-801	Amend
R3-2-811	New Section
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 3-107(A)(1), 3-603(A) and 3-605(C)
Implementing statute: A.R.S. § 3-605
- 3. The effective date of the rule:**

May 2, 2014

 - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
 - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable
- 4. Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this Notice of Emergency Rulemaking:**

None
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:	Roland Mader
Address:	Department of Agriculture 1688 W. Adams Phoenix, AZ 85007
Telephone:	(602) 542-0884
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The rulemaking updates the incorporation by reference of the federal pasteurized milk ordinance to the most recent version. A.R.S. § 3-605 says the provisions of the federal milk ordinance apply to this state, and the Department believes the most updated version of the ordinance is intended by this statute. The Department also wants to use the most updated version to be in compliance with FDA guidelines and to maintain the ability to participate in the National Conference on Interstate Milk Shippers.

The pasteurized milk ordinance refers to milk producer permits. Therefore, the Department is also adding new rule R3-2-811 for the purpose of describing how a dairy farm may obtain the permit and the conditions for keeping the permit. Obtaining this permit is voluntary under Arizona law, but a producer may want the permit to comply with federal law or the laws of another state.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

None

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

Not applicable

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

Not applicable

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

The Department received permission to conduct rulemaking from the Governor's Office in compliance with Executive Order 2012-03. Pursuant to A.R.S. § 3-104(F), the Department will discuss this rulemaking with the ADA Advisory Council prior to adopting the rule.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Section R3-2-811 refers to a milk producer permit. But since the permit is voluntary rather than mandatory, A.R.S. § 41-1037 does not apply.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No. This rule relates to the intrastate sale of milk. Federal law, found at 21 CFR 1240.61, relates to the interstate sale of milk.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

11. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended May 31, 2002 – R3-2-801

2013 Grade A Pasteurized Milk Ordinance – R3-2-801

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

Section R3-2-801 currently incorporates the 2005 version of the federal pasteurized milk ordinance. The purpose of the pasteurized milk ordinance is to facilitate the shipment and acceptance of milk and milk products of high sanitary quality. The pasteurized milk ordinance was revised in years 2007, 2009, 2011 and 2013. As a result, the Department's rule is far behind the current version of the pasteurized milk ordinance.

Arizona is a participant in the Interstate Milk Shippers (IMS) program that allows the Arizona dairy industry to participate in interstate commerce. That participation requires triennial review of the State's program by FDA. FDA's compliance guidelines state that the adopted PMO cannot be more than six years prior to the most recent IMS conference. The last IMS conference occurred in 2013, which means the adopted PMO cannot be older than 2007. Thus, Arizona is out of compliance because it has only adopted the 2005 version. The Department expects the FDA to conduct a program evaluation this March and therefore seeks to update this rule immediately. The Department is going through the regular rulemaking process as well in order to make the update permanent. If the Department fails to update the pasteurized milk ordinance, the State may be excluded from participation in the National Conference on Interstate Milk Shippers. The Department is also concerned that Arizona producers would not be able to ship their milk out-of-state.

This rulemaking is justified as an emergency rule pursuant to A.R.S. § 41-1026(A)(1) and (A)(5). The milk sanitation requirements in the pasteurized milk ordinance are the national standard. The production of sanitary milk protects the public health and the most up-to-date practices should be followed. Failure to update the pasteurized milk ordinance may also result in serious prejudice to the interests of Arizona milk producers and the Department. Because the Department's incorporated version of the pasteurized milk ordinance is more than six years older than the last IMS conference, Arizona is out-of-compliance, which could lead to a ban on interstate milk sales by Arizona producers and to the exclusion of the state from the National Conference on Interstate Milk Shippers. With a federal program review expected in March of this year, the Department believes time is of the essence in updating this rule.

13. The date the Attorney General approved the rule:

14. The full text of the rule follows:

TITLE 3. AGRICULTURE

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

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section

R3-2-801. Definitions

R3-2-811. Dairy Farm Permit

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

"C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

"Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

"Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

"Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

"Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

"Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

"Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization.

"Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

"Plate line" means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.

"PMO" means the Grade A Pasteurized Milk Ordinance — 1978 Recommendations of the United States Public Health

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~~Service/Food and Drug Administration, 2005 2013~~ Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 ~~and the Department of Health and Human Services, Public Health Services, Food and Drug Administration, Dairy and Egg Branch (HFS-316), 5100 Paint Branch Parkway, College Park, MD 20740-3835. A copy of the incorporated material may also be viewed at <http://www.fda.gov>.~~

“Retail food store” means any establishment offering packaged or bulk goods for human consumption for retail sale.

R3-2-811. Dairy Farm Permit

- A.** A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:
1. Legal name.
 2. Physical and mailing address.
 3. Telephone number.
 4. Owner’s name.
 5. Herd size.
 6. Daily milk production.
 7. Water source.
 8. Waste water disposal system.
 9. Number of bulk storage tanks, and
 10. Certification that the dairy farm facilities comply with Grade A requirements.
- B.** An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.
- C.** A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.
- D.** The Department may suspend a permit for a permittee’s failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.
- E.** Dairy farm permits are not transferable.