
NOTICES OF EMERGENCY RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Emergency Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the emergency rules should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF EMERGENCY RULEMAKING**TITLE 3. AGRICULTURE****CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

[R16-102]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R3-2-405 | Amend |
| R3-2-601 | Amend |
| R3-2-602 | Amend |
| R3-2-603 | Amend |
| R3-2-605 | Amend |
| R3-2-606 | Amend |
| R3-2-608 | Amend |
| R3-2-609 | Amend |
| R3-2-610 | Amend |
| R3-2-611 | Amend |
| R3-2-617 | Repeal |
| R3-2-618 | Repeal |
- 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), 3-1203(B)(1) and 3-1205(A)
Implementing statute: A.R.S. § 3-1205
- 3. The effective date of the rule:**
June 22, 2016
- 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):**
Refer to A.R.S. § 41-1026(D)
- 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 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: Leatta McLaughlin
Address: Department of Agriculture
1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-7186
Fax: (602) 542-4290



6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

According to a report released on July 31, 2015 by the United States Department of Agriculture Animal and Plant Health Inspection Service Veterinary Service there have been confirmed cases of High Pathogenic Avian Influenza (HPAI) in 21 states. A total of 211 commercial and 21 backyard operations have been infected with HPAI. About 7.5 million turkeys and 42.1 million chickens have been depopulated due to HPAI outbreaks. On July 7, 2015 the Secretary of the United States Department of Agriculture transferred approximately \$305 million to the Animal and Plant Health Inspection Service for HPAI activities. In January 2016, the presence of HPAI was confirmed in a commercial turkey flock in Indiana.

HPAI outbreaks threaten the poultry industry in the state of Arizona. Recently game bird eggs were transported into Arizona from a farm in Iowa that later became infected with HPAI. While no infected poultry were detected in Arizona, this incident demonstrates how easily the disease could be brought into the state. If HPAI were to spread to poultry operations in the state of Arizona, it could result in millions of dollars lost in egg and chicken production and the depopulation of thousands or millions of birds. The indirect effect on related businesses could result in millions more in losses to the state economy. As a result, the rules governing the importation of poultry and hatching eggs into our state must be strengthened to reduce the threat posed by HPAI to the poultry industry and the state of Arizona.

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:

The Department did not rely on any study in its evaluation of or justification for the rule. The Department did a limited review of the study 2014 Economic Contribution of the Poultry Industry to gather information on the economic impact of the poultry industry in Arizona. The study, underlying data, and analysis are available from the US Poultry and Egg Association.

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:

Refer to A.R.S. § 41-1055(D)(1)

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 2015-01. Pursuant to A.R.S. § 3-104(F), the ADA Advisory Council approved this rulemaking. The Director of the Arizona Department of Agriculture is statutorily obligated to protect the poultry industry from contagious and infectious diseases. A.R.S. § 3-1203(A). This rulemaking is necessary to implement the Directors statutory obligations and to protect the public health and safety.

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:

Not applicable. R3-2-607 allows a person to obtain a permit number from the Department. To obtain a Department permit number covers a class of activities that are substantially similar in nature. Obtaining a Department permit number requires less information than traditional permits and does not require a public hearing. A more general permitting system would not be technically feasible or meet the statutory requirements of protecting the livestock and poultry industry from disease.

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:

There is no federal law applicable to the subject of this rule. There is federal guidance applicable to movement of poultry out of federal quarantine zones, but state law governs importation into Arizona.

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:

None

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

As stated above total of 210 commercial and 21 backyard operations have been infected with HPAI. About 7.5 million turkeys and 42.1 million chickens have been depopulated due to HPAI outbreaks. If Arizona were to experience a large HPAI outbreak the damage to affected business and the state economy could be substantial. The Department believes the spread of this contagious disease to be an emergency situation threatening the state and its welfare. This situation was not created due to the agency's delay or inaction nor can it be averted by timely compli-



ance with notice and public participation in the rulemaking. As indicated above infected animals can easily enter the state. Delaying this rulemaking could result in the introduction of the disease into Arizona during the notice and comment period. A.R.S. § 41-1026(A)(1) allows for emergency rulemakings necessary to protect public health, safety, or welfare. This rulemaking is needed to protect the state welfare from the cost of an HPAI outbreak.

13. The date the Attorney General approved the rule:

June 21, 2016

14. The full text of the rule follows:

TITLE 3. AGRICULTURE

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

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

Section

R3-2-405. Depopulation of Animals Infected with a Foreign Disease

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Section

R3-2-601. Definitions
R3-2-602. Importation Requirements
R3-2-603. Importation of Diseased Animals
R3-2-605. Quarantine for Animals Entering Illegally
R3-2-606. Health Certificate
R3-2-608. Consignment of Animals
R3-2-609. Diversion; Prohibitions
R3-2-610. Tests; Official Confirmation
R3-2-611. Transporter Duties
R3-2-617. ~~Poultry Repealed~~
R3-2-618. ~~Psittacine Birds Repealed~~

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-405. Depopulation of Animals Infected with a Foreign Disease

When ~~any a foreign~~ animal disease identified in R3-2-402(1) and (2) is diagnosed, the State Veterinarian ~~shall~~ MAY order the owner to immediately depopulate and dispose of all infected and exposed animals and poultry on the premises if necessary to prevent the spread of the disease among animals and poultry.

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-601. Definitions

The following terms apply to this Article:

“Animal” means livestock, feral swine, ~~rattie~~, bison, water buffalo, oxen, llama, and any exotic mammal not regulated as restricted live wildlife by the Arizona Game and Fish Department.

“Certified copy” means a copy of an official health certificate that includes an additional original signature from the authorizing veterinarian.

“HPAI” means highly pathogenic avian influenza.

“Macaque” means any monkey of the genus *Macaca* in the family *Ceropithecidae*.

“Official eartag” means an identification tag providing unique identification for individual animals. An official eartag that contains or displays an AIN with an 840 prefix must bear the US shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the USDA. The official eartag must be tamper-resistant and have a high retention rate in the animals. Official eartags must adhere to one of the following number systems:

National Uniform Eartagging System,
Animal identification number (AIN),



Premises-based number system. The premises-based number system combines an official premises identification number (PIN) with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag, or

Any other numbering system approved by the Administrator of APHIS for the identification of animals in commerce.

"Poultry" means any bird, whether live or dead, including but not limited to chickens, turkeys, ducks, geese, guineas, ratites, squabs, and any exotic birds not regulated as restricted live wildlife by the Arizona Game and Fish Department. The definition of "poultry" also includes hatching eggs, which are fertilized eggs produced by breeding poultry.

"Specifically approved stockyard" means a stockyard specifically approved by VS and the State Veterinarian for receiving from other states cattle and bison that are not brucellosis-reactor, brucellosis-suspect, or brucellosis-exposed.

R3-2-602. Importation Requirements

- A. All animals or poultry transported or moved into the state of Arizona, unless otherwise specifically provided for in this Article, must be accompanied by:
1. An official health certificate from the state of origin or a permit number, or both; and
 2. The health documentation shall be attached to the waybill or in the possession of the driver of the vehicle or person in charge of the animals or poultry.
- B.** All poultry transported or moved into the state of Arizona must be accompanied by an official health certificate from the state of origin or a form 9-3 from the National Poultry Improvement Program.
- B.C.** When a single health certificate and permit number is issued for animals or poultry being moved in more than one vehicle, the driver of each vehicle shall retain the original or a certified copy of the health certificate and permit number.

R3-2-603. Importation of Diseased Animals

- A. An animal affected with or recently exposed to any infectious, contagious, or communicable disease, or which originates in a state or federal quarantine area, shall not be transported or moved into the state of Arizona unless a permit for the entry is first obtained from the Arizona State Veterinarian's Office. All conditions for the movement of animals from a quarantined area established by the quarantining authority or APHIS shall be met.
- B.** Poultry shall not be transported or moved into the State of Arizona if it has been infected with or recently exposed to HPAI or it originates from one of the following:
1. A county where a wild bird tested positive for HPAI within the previous 60 days;
 2. A county, or a county contiguous to a county, with a state or federally established HPAI quarantine area;
 3. A county, or a county contiguous to a county, where all state or federal established HPAI quarantine areas have not been lifted for at least 30 days prior to shipment;
- B.C.** The owner or owner's agent shall obtain prior permission from the State Veterinarian to ship or move into Arizona any animal from a lot or herd from which an animal shows a suspicious or positive reaction to a test required for admission to Arizona.

R3-2-605. Quarantine for Animals Entering Illegally

- A. Animals or poultry entering the state without a valid health certificate or permit number, or both if required, or in violation of any Section under 3 A.A.C. 2, shall be held in quarantine at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Animals under quarantine for noncompliance with this Article may be released only after the State Veterinarian is satisfied by testing, dipping, or observation over time, that the animals are not a threat to the livestock ~~industry~~ or poultry industries.
- B. The State Veterinarian may request that an imported animal failing to meet entry requirements be returned to the state of origin, consigned directly to slaughter, confined to a designated feedlot, or consigned to a feedlot in another state within two weeks of the request. Any extension to this time-frame shall be approved in writing by the State Veterinarian.
- C. If the owner or owner's agent fails to comply with a request to return an animal to the state of origin within the time-frame required in subsection (B), the Department shall require that the animal be immediately gathered at the owner's risk and expense to avoid exposure of Arizona animals. The owner shall pay the expenses no later than five days after receipt of the bill, or an auction of sufficient livestock to pay the just expenses shall be held within 10 days at a livestock auction market. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of livestock.
- D.** The State Veterinarian may request that imported poultry failing to meet entry requirements be returned to the state of origin, euthanized and disposed of at the owner's risk and expense, or held at a location specified by the State Veterinarian. If the owner or owner's agent fails to comply with a request by the time-frame stated in the request, the Department shall require that the poultry be immediately gathered at the owner's risk and expense to avoid exposure of Arizona poultry. The owner shall pay the expenses no later than five days after receipt of the bill. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of poultry.

R3-2-606. Health Certificate

- A. A health certificate is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
1. The name and address of the shipper and receiver;
 2. The origin of the animal;
 3. The animal's final destination;



4. Cattle.
 - a. The number of animals covered by the health certificate, an accurate description and, except for steers, spayed heifers, or "F" branded heifers consigned to a designated feedlot identified by brand, one of the following individual identifications:
 - i. The official eartag number that, for dairy cattle, identifies the herd of birth, or
 - ii. The registration tattoo number and the registration brand of a breed association recognized by VS.
 - b. The health status of the animals, including date and result of an inspection, dipping, test, or vaccination required by Arizona;
 - c. The method of transportation; and
 - d. For bulls subject to testing under R3-2-612(J), a statement that the bulls:
 - i. Tested negative for *Tritrichomonas foetus* within one month prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart; and
 - ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.
5. Swine.
 - a. Evidence that the swine have been inspected by the veterinarian issuing the health certificate within 10 days before the shipment,
 - b. A statement that:
 - i. The swine have never been fed garbage, and
 - ii. The swine have not been vaccinated for pseudorabies;
 - c. Except for feeder swine consigned to a restricted swine feedlot:
 - i. A list of the individual permanent identification for each exhibition swine, using an ear notch that conforms to the universal swine-ear notch system or for each commercial swine, using other individual identification, and the premises identification using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
 - iii. The pseudorabies status of the state of origin; and
 - iv. The pseudorabies qualified negative herd number, if applicable;
 - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival at destination and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry into Arizona; and
 - e. Feeder swine consigned to a restricted swine feedlot shall be identified by premises of origin using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
6. Sheep and goats.
 - a. Individual identification prescribed in R3-2-614;
 - b. A statement that:
 - i. The sheep or goats are not infected with bluetongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock;
 - ii. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis; and
 - c. A statement that the sheep or goat test negative for *Brucella ovis* if a test is required by R3-2-614(B); and
7. Equine.
 - a. An accurate identification for each equine covered by the health certificate including age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings; and
 - b. A statement that the equine has a negative test for EIA, as required in R3-2-615, including:
 - i. The date and results of the test;
 - ii. The name of the testing laboratory; and
 - iii. The laboratory accession number.

B. A health certificate or a form 9-3 for poultry is valid for not more than 15 days after the date of issue.

~~B-C.~~ Additions, deletions, and unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate void. Uncertified photocopies of health certificates are invalid.

~~C-D.~~ The veterinarian issuing a health certificate shall certify that the animals or poultry shown on the health certificate are free from evidence of any infectious, contagious, or communicable disease or known exposure.

~~D-E.~~ An accredited veterinarian shall inspect animals or poultry for entry into the state.

~~E-F.~~ The Director may limit the period for which a health certificate is valid to less than 15 days for poultry and less than 30 days for other animals if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock ~~industry~~ or poultry industries.

R3-2-608. Consignment of Animals

The owner, or owner's agent, of an animal or poultry transported or moved into Arizona, except an exhibition or show animal, shall consign the animal or poultry to or place it in the care of an Arizona resident or an entity authorized to do business



in Arizona.

R3-2-609. Diversion; Prohibitions

A person consigning, transporting, or receiving an animal or poultry into the state of Arizona shall not authorize, order, or carry out diversion of the animal or poultry to a destination or consignee other than as set forth on the health certificate and permit, if required, without first obtaining permission from the State Veterinarian.

R3-2-610. Tests; Official Confirmation

A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal or poultry testing required by a state or federal authority as a condition for entry into Arizona.

R3-2-611. Transporter Duties

- A. All owners and operators of railroads, trucks, airplanes, or other conveyances transporting animals or poultry into or through the state shall possess a valid health certificate under R3-2-606, and a permit number issued by the State Veterinarian, if required by R3-2-607. These documents shall be attached to the waybill, or be in the possession of the vehicle driver, or person in charge of the animals or poultry. When a single health certificate or permit number is issued for animals or poultry being moved in more than one vehicle, the driver of each vehicle shall possess the original or a certified copy of the health certificate containing the permit number, if required.
- B. The owner of a railroad car, truck, airplane, or other conveyance used to transport animals or poultry into or through the state shall maintain the conveyance in a clean and sanitary condition.
- C. The owners and operators of railroads, trucks, airplanes, or other conveyances who transport animals or poultry into the state in violation of this Section shall clean and disinfect the conveyance in which the animals or poultry were illegally brought into the state before using the conveyance for transporting more animals or poultry. The cleaning and disinfection shall be performed under the supervision of an authorized representative of the State Veterinarian or the USDA.
- D. The owners and operators of railroads, trucks, airplanes, or other conveyances shall follow the USDA requirements, Department and Arizona Commerce Commission rules, and Arizona statutes in the humane transport of animals or poultry into, within, or through the state.

R3-2-617. Poultry Repealed

~~The Department has no entry requirements on poultry provided the poultry appear healthy, do not originate from a poultry quarantine area, comply with all interstate requirements of APHIS, and are accompanied by a health certificate or Form 9-3 from the National Poultry Improvement Program.~~

R3-2-618. Psittacine Birds Repealed

- ~~A. The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a health certificate issued by a veterinarian within 30 days of entry, certifying:
 - 1. The bird is not infected with the agent that causes avian chlamydiosis, and
 - 2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.~~
- ~~B. The health certificate shall accompany the psittacine bird at the time of entry into Arizona.~~