

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st 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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

R3-3-701
R3-3-702
R3-3-703
R3-3-704
R3-3-801
R3-3-801
R3-3-802
R3-3-802
R3-3-803
R3-3-805
R3-3-806
R3-3-807
R3-3-808
R3-3-809
R3-3-810
R3-3-811
R3-3-901
R3-3-902
R3-3-902
R3-3-903
R3-3-903
R3-3-904
R3-3-904
R3-3-905
R3-3-906
R3-3-909
R3-3-910
R3-3-911
R3-3-912
R3-3-913
R3-3-914
R3-3-915
R3-3-916

Rulemaking Action

Amend
New Section
New Section
New Section
Repeal
New Section
Repeal
New Section
New Section
Repeal
Amend
Repeal
New Section
Repeal
New Section
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New Section
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 3-264, 3-343, 3-2603.

Implementing statute: A.R.S. §§ 3-268, 3-272, 3-273, 3-274, 3-275, 3-276, 3-2605, 3-2606, 3-2609, 3-2611, 3-2616.

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3. A list of all previous notices appearing in the Register addressing the adopted rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 2127, July 31, 1998.

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

Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

5. The explanation of the rule, including the agency's reasons for initiating the rules:

Articles 7, 8, and 9 have been edited to remove unnecessary and duplicative information, and any information contained in the "Act," (the Federal Insecticide, Fungicide and Rodenticide Act of 1972) which is incorporated by reference in Article 1; and to provide stakeholders with clear and understandable requirements.

R3-3-701. Definitions. The current definition for "pesticide" is different from the statute definition in A.R.S. § 3-341(21) and has been deleted. The terms "discontinuation period" and "official sample" have been defined, and the statute definition of "pest" has been expanded pursuant to A.R.S. § 3-341(20)(b).

R3-3-702. Pesticide Registration and Cancellation: Fees. The information required on the registration form, and the fee, expiration date and multiple year requirements specified in A.R.S. § 3-272(B) and (C) have been added to this Section for the convenience of the applicant.

R3-3-703. General Provisions. This Section contains additional label requirements for pesticides that may over time, deteriorate; changes the 1 year maximum requirement to dispose pesticides that have been canceled by the manufacturer to 3 years and voids the manufacturer's responsibility of a pesticide product if the product has not been sold or used 3 years after the manufacturer's registration cancellation; and lists the allowed deviations for active ingredients in pesticide formulations when analyzing a sample; and updates the prohibited acts.

Three years ago when the Department expressed concern regarding pool pesticides being sold that didn't meet label guarantees, the industry said that they didn't want a rule or law regulating this issue but would police their own people and products. Since that didn't happen, the Department is now requiring that the statement "Not for sale or use after (date)" be placed on the label of all liquid sodium hypochlorite products with a label claim on 5.25% - 12.5% active ingredient. Because heat and light affects the active ingredient the seller must practice good stewardship when storing the product.

R3-3-704. Labels. This Section makes certain that all labels, whether new or revised are on file with the Department. It assures the Department that the label provided for a registered product is accurate and current.

R3-3-801. Definitions. This Section defines the term "Official Publication" and encompasses not only definitions found in this publication, but the definitions in A.R.S. § 3-262.

R3-3-802. Licensure: Specialty Fertilizer Registration: Fees. This Section contains information required on the license and speciality fertilizer registration forms, and includes the fee, expiration date and multiple year requirements specified in A.R.S. § 3-272.

R3-3-803. General Provisions. This Section combines the information currently found in R3-3-801 through R3-3-810; changes the annual tonnage report and inspection fee submittal date; specifies criteria for estimating annual distribution, and provides the licensee an option of reporting quarterly or annually, if the annual tonnage is 400 tons or less.

R3-3-901. Definitions. This Section defines "Official Publication" and includes definitions previously found in R3-3-913(A).

R3-3-902. Licensure. Fee. This Section lists information required to obtain a license; offers multi-year licensing; and establishes the license fee and per ton inspection fee of commercial feed offered for sale or distributed in Arizona.

R3-3-903. Tonnage Report and Inspection Fee; Ammoniation. This Section contains the information previously found in R3-3-912 and R3-3-916, provides the licensee an option of reporting quarterly or annually, if the annual tonnage is 400 tons or less, and lowers the tonnage fee from 25¢ to 20¢ per ton.

R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed. This new Section establishes that the appearance and labeling of a milk or milk product sold as animal feed must be changed to alert the public that the product is not for human consumption, and provides a color standard for these animal feed products.

R3-3-905. Labeling, precautionary Statements. This Section contains information previously contained in R3-3-902, R3-3-903, R3-3-904, and R3-3-909.

R3-3-906. Nonprotein Nitrogen. This Section has been updated for clarity and understanding.

R3-3-910. Drug and Feed Additives. The incorporated reference in this Section has been updated.

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R3-3-913, Sampling Methods. This Section has been updated for clarity and understanding, and the incorporated reference has been updated.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, 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.

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

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Changing the date for submitting the feed and fertilizer licenses from February to June 30th, will benefit the division in overall time management by providing a more uniform work flow. The Department will realize expenses for software updates which must be completed to allow for multiple year licensing. Whether multiple year licensing will create additional processing time for tracking is unknown.

Offering the licensee the opportunity to estimate annually for 400 tons or less, rather than quarterly, could offer the Department a financial benefit in clerical time for handling and processing checks.

FY 97/98 Type of License	Total #	# Qualified to Estimate	# Actually Estimating	# Additionally Qualified
Feed License	418	284	209	91
Fertilizer License	218	91	89	63

If all qualified licensees estimated annually, the Department would process approximately 600 checks less per year and save \$1,000 in clerical salaries. (10 minutes processing per check at a \$10 per hour average salary.)

Requiring milk and milk products to be decharacterized will assist the Department in regulating any milk or milk product intended as pet food. Products not clearly labeled as pet food as required by rule and easily apparent to the public, or products that have the same appearance as those for human consumption will be enforced as unacceptable.

Other changes will have no impact upon the department, other than they will consolidate information and create clear and understandable Articles. The Department anticipates no additional costs associated with this rulemaking.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

This rulemaking provides businesses with the information required on licensing and registration documents before they fill out an application. Any business dealing with milk or milk products used as animal feed will be required to decharacterize the product. The decharacterization consists of using food coloring approved by the FDA and should be minimal.

Providing more licensees the opportunity to estimate tonnage fees will save them time and money expended for dealing with paperwork.

The reduction in the tonnage fee will provide a monetary benefit to the licensee and begin to reduce that fund to a more acceptable level. The following information provides an analysis of the fund and the fee reduction:

Fiscal Year	Actual Tonnage	Appropriated Budget	Expended Budget	Current Fiscal Balance
1995	786,229	180,800	165,342	
1996	824,505	173,400	163,411	
1997	863,104	166,700	153,571	
1998	974,699	171,200	154,694	

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Average Tons	Inspection Fees	Funds Collected	1998 Budget	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	-84,987	6 yrs
862,134	15¢	129,320	171,200	-41,880	11 yrs
862,134	20¢	172,427	171,200	1,227	-----

The Department anticipates that additional monies will be expended from the fund for increased State Agricultural Laboratory fees, sampling costs, and equipment. The following chart allows for an additional \$25,000 and \$50,000.

Average Tons	Inspection Fee	Total Fees	1998 Budget	Additional 25K	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	196,200	-109,987	5 yrs
862,134	15¢	129,320	171,200	196,200	-66,879.9	7 yrs
862,134	20¢	172,427	171,200	196,200	-23,773.2	18 yrs
High Tons						
974,699	10¢	97,470	171,200	196,200	-73,730	5 yrs
974,699	15¢	146,205	171,200	196,200	-24,995	9 yrs
974,699	20¢	194,940	171,200	196,200	23,740	50+ yrs

Average Tons	Inspection Fee	Total Fees	1998 Budget	Additional 50K	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	221,200	-134,987	4 yrs
862,134	15¢	129,320	171,200	221,200	-91,880	5 yrs
862,134	20¢	172,427	171,200	221,200	-48,773	9 yrs
High Tons						
974,699	10¢	97,470	171,200	221,200	-73,730	4 yrs
974,699	15¢	146,205	171,200	221,200	-24,995	6 yrs
974,699	20¢	194,940	171,200	221,200	23,740	15 yrs

If existing stocks of pesticides whose registrations have been canceled have not been sold or distributed within 3 years, the manufacturer's responsibility moves to the person who holds the product. This rulemaking allows 3 years, instead of 1 year for the product to move through normal channels of trade. The rulemaking removes the assumption that the manufacturer is responsible for the product no matter how long it exists and puts the responsibility of the pesticide on any person not selling or disposing of the product after 3 years, as long as they have been informed.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

Consumers and the public are affected by the decharacterization requirement for milk and milk products. While consumers and the public have the right to purchase any product they want, this requirement will ensure that a product destined for animal feed is not purchased by mistake.

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F. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state revenues.

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: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

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 rules:

Date: May 18, 1999
Time: 1 p.m.
Location: Land Department
1616 West Adams, Auditorium (Basement)
Phoenix, Arizona 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., May 19, 1999. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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:

R3-3-801(A) Terms and definitions found in the Official Publication of the Association of American Plant Food Control Officials, amended 1999.
R3-3-803(E) Investigational allowances as prescribed in the Official Publication.
R3-3-901 Definitions and terms found in the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.
R3-3-904 Color standard card
R3-3-905(B)(1) The feed labeling guide, the medicated feed labeling, and expression of guarantees requirements prescribed in the Official Publication.
R3-3-910(B)(1) "Food Additives Permitted in Feed and Drinking" in the Official Publication.
R3-3-910(B)(2) "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication.
R3-3-913(A) Methods of sampling commercial feed prescribed in the "Official Methods of Analysis" found in the publication the Association of Official Analytical Chemists, 16th Edition, 1995.

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION**

ARTICLE 7. PESTICIDE

ARTICLE 8. FERTILIZER MATERIALS

Section
R3-3-701. ~~General provisions of technical rules and regulations~~ Definitions
R3-3-702. Pesticide Registration; Fee
R3-3-703. General Provisions
R3-3-704. Labels

~~R3-3-801. Labeling~~
~~R3-3-802. Chemical analysis~~
~~R3-3-805. Annual tonnage report and inspection fee~~
~~R3-3-806. Value of deficiency~~
~~R3-3-807. Investigational allowances~~
~~R3-3-808. Definitions~~
~~R3-3-809. Claims and misleading statements~~

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- R3-3-810. ~~Leased containers~~
- R3-3-811. ~~Amount of inspection fee~~
- R3-3-801. Definitions
- R3-3-802. Licensure; Specialty Fertilizer Registration; Fees
- R3-3-803. General Provisions

ARTICLE 9. COMMERCIAL FEED

- R3-3-901. ~~Definitions and terms~~
- R3-3-902. ~~Brand names~~
- R3-3-902. Licensure; Fee
- R3-3-903. Expression of guarantees
- R3-3-903. Tonnage Report and Inspection Fee; Ammoniation
- R3-3-904. ~~Ingredient statement~~
- R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed
- R3-3-905. ~~Label format~~ Labeling, Precautionary Statements
- R3-3-906. ~~Nonprotein nitrogen~~ Nitrogen
- R3-3-909. ~~Directions for use and precautionary statements~~
- R3-3-910. ~~Drug and feed additives~~ Feed Additives
- R3-3-911. ~~Good manufacturing practices~~
- R3-3-912. ~~Annual tonnage report and inspection fee~~
- R3-3-913. ~~Methods of sampling commercial feed~~ Sampling Methods
- R3-3-914. ~~Methods of analyzing commercial feed~~
- R3-3-915. ~~Amount of inspection fee~~
- R3-3-916. ~~License required to ammoniate~~

ARTICLE 7. PESTICIDE

R3-3-701. General provisions of technical rules and regulations Definitions

- A. Definitions**
- 1. ~~“Pesticide”. A substance or preparation is or is not a pesticide depending upon the purpose for which it is intended and the determination of this intent is very important and for all general purposes it will be the deciding factor in declaring a product a pesticide. Intent for use as a pesticide may be established by:~~
 - a. ~~Claims for usefulness or directions for pesticide uses on any of the labeling accompanying an article.~~
 - b. ~~Claims or recommendations for pesticide uses through any public advertising.~~
 - c. ~~Claims for pesticide uses either oral or written by a representative of the manufacturer, wholesaler, or distributor of an article.~~

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

- 1. “Discontinuation period” means the period of time when the registrant is no longer distributing a product into Arizona.
- 2. “Pest” means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots and plant parts.
- 3. “Official sample” means any sample of pesticide material taken by the Associate Director, or the Associate Director’s agent and designated as official by the Associate Director.

- B. Prohibited acts**
- 1. ~~The delivery of a pesticide to the property of each user, as required by A.R.S. § 3-352(A)(2), shall be in unbroken containers not exceeding 55 gallons (210 liters) each for liquid pesticides, or 110 pounds (50 kilograms) each for non-liquid pesticides. This requirement shall not apply in those instances where:~~

- a. ~~Pesticides are used by structural pest control applicators pursuant to R3-3-701(B)(2) of this Article, or~~
- b. ~~Pesticides are containerized in amounts greater than 55 gallons or 110 pounds for distribution in bulk to a licensed applicator of agricultural pesticides for use on the property of more than one user.~~

- 2. ~~Persons when acting as structural pest control applicators, that is, persons dealing in services which include the application of pesticides, are exempt from provisions of R3-3-701(B)(1) above.~~
- 3. ~~No person shall purchase pesticides for the purpose of repackaging the pesticide for distribution and sale without relabeling the containers so packaged and further complying with the provisions of the Act.~~
- 4. ~~All pesticides shall be prominently labeled and in a manner that can be easily read and understood and must include all the information required by the Act as it applies to that particular pesticide.~~

C. ~~Declaration of pests. The State Chemist declares the following to be pests: All birds, mammals, reptiles, amphibians, fishes, slugs, snails, crayfish, roots and plant parts.~~

D. ~~Cancellation of registration to protect the public. If a registrant voluntarily cancels the registration of a pesticide to protect the public, unless otherwise prohibited by law, existing stocks of material may be distributed, but in no instance may the pesticide be distributed beyond one year following voluntary cancellation.~~

R3-3-702. Pesticide Registration; Fee

A. Registration. Any person registering a pesticide shall provide the following documents and information on a form provided by the Department with a nonrefundable \$100 fee for each product, for each year of the registration:

- 1. The name, address, telephone number, and signature of the applicant;
- 2. The name and address of the company appearing on the label;
- 3. The date of the application;
- 4. The brand and name of the product being registered;
- 5. The EPA registration number of the product if applicable;
- 6. The analytical methods for the analyses of residues for the active ingredients of the pesticide, if requested by the Department;
- 7. The toxicological and safety data, if requested by the Department;
- 8. The name and telephone number of the person providing the toxicological and safety data;
- 9. Two product labels for newly registered products;
- 10. The material safety data sheet for each product.

B. A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for 1 or 2 years.

C. When choosing a 2-year registration option any new product requiring registration during:

- 1. The 1st year of a 2-year registration period shall be registered for the entire 2-year period;
- 2. The 2nd year of a 2-year registration period shall be registered for 1 year.

R3-3-703. General Provisions

A. Deterioration of pesticides. Pesticides manufactured as swimming pool and spa chlorinating liquids that significantly change in chemical composition, such as sodium hypochlo-

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rite products with a label claim of 5.25% - 12.5% active ingredient, shall:

1. Display the following statement in a prominent position on the label: "Not for sale or use after (date)."
 - a. If in individual containers, the statement shall be on the container label;
 - b. If individual containers are in closed or sealed boxes or cartons, the statement shall be displayed on the labeling of the box or carton; or
 - c. If in bulk tanks for refilling reusable containers, the statement shall be displayed on the labeling of the bulk container.
2. Meet all claims indicated on the label.

B. Discontinued products. In addition to the requirements for discontinued products established in A.R.S. § 3-351(K), any person holding a product found in the channels of trade following the 3-year discontinuation period shall be responsible to register or dispose of the product.

C. Sampling.

1. The Associate Director, or the Associate Director's agent, shall sample, inspect and make analyses of pesticides distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article.

2. The analytical results from label claims on pesticide formulations shall be based on the allowed deviations in Table 1.
3. The results of official analyses of any pesticide which has been found to be deficient shall be forwarded by the Associate Director to the registrant or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of any sample found subject to a cease and desist action.

D. Prohibited acts. No person shall:

1. Purchase a pesticide to repackage the pesticide for distribution and sale without relabeling the container and complying with the provisions of the Act.
2. Distribute, sell, offer for sale, hold for sale, trade, or barter any pesticide after the expiration date indicated on the label.

R3-3-704. Labels

A. A registrant shall provide the Department with 2 product labels of any pesticide labeling that has been revised since the pesticide was originally registered.

B. The Associate Director may request a copy of a pesticide label if the Department believes the label has been revised or the label on file is older than 3 years.

Table 1. Allowed Deviations Of Analytical Results From Label Claims For Active Ingredients In Pesticide Formulations

Claim %	HCV ⁽¹⁾ %	HSD ⁽²⁾	Allowed Deviations for "uniform" ⁽³⁾ samples		Allowed Deviations for "non-uniform" ⁽⁴⁾ samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24

⁽¹⁾ HCV(%) = Horwitz Coefficients of Variation = $2 \sqrt{1 - 0.5 \log(\text{claim \%}/100)}$

⁽²⁾ HSD = Horwitz Standard Deviation = (Claim %) HCV % / 100

⁽³⁾ "Uniform" samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

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(4) "Non-uniform" samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the "non-uniform" guidelines may be used for allowed deviations. States may use judgment in placing a sample into the "uniform" or "non-uniform" category.

ARTICLE 8. FERTILIZER MATERIALS

R3-3-801. Labeling

- A.** The grade numerals which accompany the brand name of a commercial fertilizer shall be in the order of total nitrogen, available phosphoric acid and soluble potash. Numerals representing other guaranteed constituents in the commercial fertilizer shall not be included with the grade numerals unless they follow the grade numerals and are immediately preceded with the name of the substance to which they refer in the guaranteed analysis, and said name to be printed in such manner to be as prominent as the numerals used.
- B.** The materials from which claimed nutrients are derived must be listed on the label. All labels must meet this requirement by no later than December 31, 1978.
- C.** A grade is not required for fertilizer materials which claim no primary nutrient (i.e. 0-0-0 not required). No grade is required for fertilizer materials which claim only one primary nutrient derived from a single compound. In all cases, the claim of a nutrient requires a guarantee.

R3-3-802. Chemical analysis

All nutrients with the exception of phosphoric acid and potash, if guaranteed, shall be stated in terms of the elements.

R3-3-805. Annual tonnage report and inspection fee

The person responsible for reporting distribution of fertilizer materials and paying the fee may estimate the annual distribution and submit, no later than the last day of February, a report of the estimated tonnage for the calendar year together with the inspection fee based upon the estimated tonnage. In subsequent years, adjustments may be made for overestimates or underestimates.

R3-3-806. Value of deficiency

The value of a deficiency in a fertilizer material shall take into account total value of all constituents at their guaranteed level and the price of the fertilizer material at the time of sale.

R3-3-807. Investigational allowances

For the purpose of enforcement of Section 3-276 of the Act, the investigational allowances shall be those published by the Association of American Plant Food Control Officials, "(official publication, Association of American Plant Food Control Officials, 1976. Copies available from: W. L. Baker, University of Missouri, Columbia, Missouri 65201)".

R3-3-808. Definitions

The definitions of terms of the Association of American Plant Food Control Officials (1976-77 Official Publication) apply to all terms used in labels or claims for fertilizer materials.

R3-3-809. Claims and misleading statements

- A.** Any constituent claimed in a fertilizer material must be accompanied by a minimum guarantee for such constituent. In no case may a constituent be claimed unless there exists for such constituent a laboratory method of analysis approved by the State Chemist.
- B.** Where claims of improved efficacy or increased productivity are made for fertilizer materials, sound scientific data supporting such claims must be made available to the State Chemist upon request.

R3-3-810. Leased containers

Where fertilizer material storage containers are leased, such containers shall be clearly stenciled: "Leased by Enter name and address of lessor to Enter name and address of lessee)".

R3-3-811. Amount of inspection fee

On and after January 1, 1980, inspection fee paid for all commercial fertilizers offered for sale, or otherwise distributed in Arizona, as provided for in A.R.S. § 3-268 shall be at the rate of 25¢ per ton.

R3-3-801. Definitions

In addition to terms and definitions found in the Official Publication and the definitions found in A.R.S. § 3-262, the following term applies to this Article:

"Official Publication" means the Official Publication of the Association of American Plant Food Control Officials, amended 1999.

R3-3-802. Licensure; Specialty Fertilizer Registration; Fees

- A.** Commercial fertilizer license. Any person applying for a commercial fertilizer license, pursuant to A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information to the Department with a nonrefundable fee of \$125 for each year of the license:
1. Original license. A copy of each fertilizer product label intended for distribution within the state if not already registered as a specialty fertilizer product, or
 2. Renewal license. A copy of each fertilizer product label not already on file with the Department; and
 3. The following information on the license application provided by the Department:
 - a. The name, title, and signature of the applicant;
 - b. The date of the application;
 - c. The company name, mailing address, telephone and fax number;
 - d. The physical location, and telephone and fax number of the company, if different than subsection (A)(3)(c);
 - e. The name, address, and telephone and fax number of the company where inspection fees are paid, if different than subsection (A)(3)(c).
- B.** Inspection fee. The inspection fee for all commercial fertilizers sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
- C.** A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 or 2 years. Any license issued from March 1, 2000, through June 30, 2000, shall not expire until June 30, 2001, or if a 2-year license, June 30, 2002.
- D.** Any fertilizer company applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for that quarter. Any commercial feed distributed in the final 2-weeks of the initial quarter shall be included on the next full quarterly report. A person applying for a new license who distributed commercial feed before having a license as required under A.R.S. § 3-2009 shall pay all past due inspection fees before the license will be issued.
- E.** Specialty fertilizer registration.

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1. Any manufacturer or distributor whose name appears on the label of a specialty fertilizer shall provide the following information to the Department with a nonrefundable fee of \$50 per brand and grade of specialty fertilizer for each year of the registration:
 - a. The name, address, telephone number and signature of the applicant;
 - b. The name and address of the company appearing on the label;
 - c. The date of the application;
 - d. The grade, brand and name of the product, and
 - e. The current product label.
2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 to 2 years.
3. When choosing a 2-year registration option any new product requiring registration during:
 - a. The 1st year of a 2-year registration period shall be registered for the entire 2-year period;
 - b. The 2nd year of a 2-year registration period shall be registered for 1 year.

R3-3-803. General Provisions

- A. Annual tonnage report and inspection fee.**
 1. Any person responsible for reporting distribution of fertilizer materials may estimate the annual distribution if the annual tonnage is 400 tons or less per year.
 2. The estimated annual tonnage report shall be submitted with the inspection fee no later than the last day of July.
 3. Any person estimating annual tonnage shall pay at least \$2 per quarter. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual sales shall be made only on the next license year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales over 400 tons shall be made during the 1st quarter of the following license year.
 4. Any person estimating annual tonnage shall verify the accuracy of the previous year's tonnage estimates and submit a verification with the license renewal for the following year.
 5. No refund shall be given when a license is not renewed and the tonnage has been overestimated.
- B. Labeling.**
 1. The grade numbers that accompany the brand name of a commercial fertilizer shall be listed in the following order: total nitrogen, available phosphate, and soluble potash. Numbers representing other guaranteed constituents in the commercial fertilizer shall not be included with the grade numbers unless they follow the grade numbers and are immediately preceded with the name of the substance to which they refer in the guaranteed analysis, and the name printed is as prominent as the numbers used.
 2. The materials from which claimed nutrients are derived shall be listed on the label.
 3. No grade is required for fertilizer materials that claim no primary nutrient (i.e. 0-0-0).
 4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of the elements.
 5. The brand of a fertilizer shall be used in the labeling. No misleading or confusing numerals shall be used in the brand of a fertilizer.
 6. Fertilizer materials not defined in the Official Publication may be used as fertilizer materials if a definition or

other method of analysis and agronomic data is approved by the Associate Director.

C. Claims and misleading statements.

1. Any nutrient claimed in a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. No ingredient shall be claimed unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
2. When claims of improved efficacy or increased productivity are made for fertilizer materials, sound scientific data supporting the claims shall be made available to the Associate Director upon request.
3. When the name of a fertilizer material is used as a part of the brand name of a fertilizer, such as blood, bone or fish, the nutrients guaranteed shall be derived from or supplied entirely by the material named.
4. Any product coming under the fertilizer law shall not carry labels to emphasize that dilutions will make so many gallons of fertilizer. Specific claims, such as "Contents of this package will make _____ gallons of fertilizer" is prohibited. The labels shall not carry any extravagant and misleading advertising and claims.

D. Deficiencies.

1. The value of a deficiency in a fertilizer material shall take into account total value of all constituents at their guaranteed level and the price of the fertilizer material at the time of sale.
2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.

E. All investigational allowances shall be conducted as prescribed in the Official Publication. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

F. Leased fertilizer material storage containers shall be clearly labeled with the following:

1. Grade numbers;
2. Brand name, if applicable; and
3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."

ARTICLE 9. COMMERCIAL FEED

R3-3-901. Definitions and terms General Provisions

- A.** The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the Association of American Feed Control Officials and contained in the current official publication Association of American Feed Control Officials except as the State Chemist designates otherwise in specific cases.
- B.** The terms used in reference to commercial feeds shall be the official feed terms adopted by the Association of American Feed Control Officials and contained in the current official publication Association of American Feed Control Officials except as the State Chemist designates otherwise in specific cases.
- C.** The following commodities are hereby declared exempt from the definitions of commercial feed, under the provisions of Section 24-903 of the Act: Hay and straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials, provided that these commodities are not adulterated within the meaning of Section 24-913 of the Act.

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D. A copy of the current official publication of the Association of American Feed Control Officials shall be filed by the State Chemist with the Office of the Secretary of State.

In addition to the definitions and terms found in the Official Publication and the definitions found in A.R.S. § 3-2601, the following terms apply to this Article:

1. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611. A.R.S. § 3-2601(2)
2. "Lot" means any distinct, describable and measurable configuration that contains no more than 100 tons, unless the Director, after review of scientific data documenting that samples may be obtained that are representative of the lot, issues an exemption to allow a lot size larger than 100 tons.
3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.

R3-3-902. Brand names

The brand or product name must be appropriate for the intended use of the feed and must not be misleading.

R3-3-902. Licensure, Fee

A. Any person applying for a commercial feed license, pursuant to A.R.S. § 3-2609, to manufacture or distribute commercial feed shall provide the following information and a non-refundable fee of \$10 for each year of the license:

1. The inspection fee for all commercial feed sold, offered for sale or distributed in Arizona at 20¢ per ton. The tonnage shall be rounded to the nearest whole ton;
2. Original license. A copy of each feed product label intended for distribution within the state; or
3. Renewal license. A copy of each feed product label not already on file with the Department; and
4. The following information on the license application provided by the Department:
 - a. The name, title, and signature of the applicant;
 - b. The company name, mailing address, telephone and fax number;
 - c. The date of the application;
 - d. The physical location, and telephone and fax number of the company, if different than subsection (A)(4)(b);
 - e. The name, address, and telephone and fax number of the company where inspection fees are paid, if different than subsection (A)(4)(b).

B. A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 or 2 years. Any license issued from March 1, 2000, through June 30, 2000, shall not expire until June 30, 2001, or if a 2-year license, June 30, 2002.

C. Any person applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly inspection fee for that quarter. Any commercial feed distributed in the final 2-weeks of the initial quarter shall be included on the next full quarterly report.

R3-3-903. Expression of guarantees

The expression of guarantees shall be the official expression of guarantees adopted by the Association of American Feed Control Officials and contained in the official publication Association of

American Feed Control Officials except as the State Chemist designates otherwise in specific cases.

R3-3-903. Tonnage Report and Inspection Fee: Ammoniation

- A.** Annual tonnage report and inspection fee.
1. Any person responsible for reporting distribution of commercial feed may estimate the annual distribution provided the annual tonnage is 400 tons or less per year.
 2. The estimated annual tonnage report shall be submitted with the inspection fee no later than the last day of July.
 3. Any person estimating annual tonnage shall pay at least \$2 per quarter. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual sales shall be made only on the next license year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales over 400 tons shall be made during the 1st quarter of the following license year.
 4. Any person estimating annual tonnage shall verify the accuracy of the previous year's tonnage estimates and submit a verification with the license renewal for the following year.
 5. No refund shall be given when a license is not renewed and the tonnage has been overestimated.
- B.** Ammoniation. Any person who ammoniates feed or feed material for distribution shall obtain a commercial feed license and is responsible for all testing, labeling or other requirements pertaining to commercial feeds. The inspection fee shall be paid unless the feed is ammoniated on the premises of the consumer.

R3-3-904. Ingredient statement

- A.** The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the 1984 Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the State Chemist.
- B.** All commercial feed and customer formula feed containing cottonseed or cottonseed products shall list such ingredients in the ingredient statement. Such required listing must be in addition to collective terms already present on the label.

R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed

- A.** No person shall sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed that does not meet grade A milk standards as specified in A.A.C. R3-2-802 or has been produced as prescribed in A.A.C. R3-2-805, unless the milk or milk product has been decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization will not affect its nutritive value. The color produced from the decharacterization shall match the color standard card incorporated by reference and on file with the office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a color standard card from the Environmental Services Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.
- B.** Every container holding decharacterized milk or milk products shall contain the phrase "WARNING -NOT FOR HUMAN CONSUMPTION" in letters ¼ to ½ inch in height depending upon the size of the container. The container shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria," in letters at least

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inch in height. All milk and milk products commercial feed labels are subject to the approval of the Associate Director.

- C.** No milk or milk product intended for commercial feed shall be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it has been decharacterized and clearly identified "Not for Human Consumption."

R3-3-905. ~~Label format~~ **Labeling, Precautionary Statements**

A. Ingredient statement.

1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name or a name approved by the Associate Director.
2. All commercial feed and customer-formula feed containing cottonseed or cottonseed products shall contain the ingredients in the ingredient statement in addition to the collective terms already present on the label.

B. The label format shall conform to the official label format adopted by the Association of American Feed Control Officials and contained in the 1984 Labeling and expression of guarantees.

1. All labeling and expression of guarantees shall comply with the feed labeling guide, the medicated feed labeling, and expression of guarantees requirements prescribed in the Official Publication. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
2. The brand or product name shall be appropriate for the intended use of the feed and shall not be misleading.
3. Directions for use and precautionary statements.
 - a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of the product.
 - b. Directions for use and precautionary statements shall be provided for feed containing nonprotein nitrogen as specified in R3-3-906.
 - c. All whole cottonseed or cottonseed product delivered to an ultimate consumer for feed shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. This documentation shall be left with the consumer and shall contain the following statements:
 - i. This lot of whole cottonseed or cottonseed product shall not be commingled with any other lot of whole cottonseed or cottonseed product, and
 - ii. "This feed contains 20 or less ppb aflatoxin and may be fed to any animal;" or
 - iii. "WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption."
 - d. Any person possessing a lot of either cottonseed or cottonseed product intended for further processing, planting seed, or for another purpose approved by the Department, and which will not be used as commercial feed until tested and brought into com-

pliance with all state laws and rules, shall certify in writing that documentation as prescribed in subsection (B)(3)(c) is not required. The distributor shall maintain this certification for 1 year and make it available to the Department upon request. The material shall be labeled with the following statement: WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state rules.

- e. All commercial feed or customer-formula feed delivered to a consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and, if containing more than 20 ppb aflatoxin, shall contain the following statement: WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption. All commercial feed or customer-formula feed not so labeled shall contain 20 or less ppb aflatoxin.

R3-3-906. ~~Nonprotein nitrogen~~ **Nitrogen**

A. Urea and other nonprotein nitrogen products, as defined in the 1984 Official Publication of the Association of American Feed Control Officials, are acceptable ingredients in commercial feeds for ruminant animals as a source of equivalent crude protein.

1. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of nonprotein nitrogen, ~~added as such~~, or if the equivalent crude protein from all forms of nonprotein nitrogen, ~~added as such~~, exceeds ~~one-third~~ $\frac{1}{3}$ of the total crude protein, the label shall bear ~~adequate~~ directions for the safe use of feeds and ~~a the following~~ precautionary statement: "Caution: Use as Directed"
2. The directions for use and the caution statement shall be ~~in type of such size and so printed and placed on the label so~~ that they will be read and understood by ordinary persons under customary conditions of purchase and use.

B. Nonprotein nitrogen products, as defined in the 1984 Official Publication of the Association of American Feed Control Officials, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein nitrogen sources when used in nonruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements as required by all applicable regulations contained in the Code of Federal Regulations, Title 21, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen. Labels for medicated feeds already containing directions or warning statements, or both, shall not require a duplication of the feeding directions or the precautionary statements if those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

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R3-3-909. Directions for use and precautionary statements

- A.** Directions for use and precautionary statements on the labeling of all whole cottonseed, commercial feeds and customer formula feeds containing additives (including drugs, special purpose additives, or non nutritive additives) shall:
1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and
 2. Include, but not be limited to, all information prescribed by all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983.
- B.** Adequate directions for use and precautionary statements are required for feeds containing non protein nitrogen as specified in R3-3-906.
- C.** Adequate directions for use and precautionary statements necessary for safe and effective use, as prescribed by all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983, are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.
- D.** All whole cottonseed or cottonseed product which is delivered to an ultimate consumer must be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the State Chemist. Such documentation must be left with the consumer and must contain 1 of the following statements:
1. This feed contains 20 or less ppb aflatoxin and may be fed to any animal.
 2. **WARNING:** This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption.
- E.** Any person taking possession of a lot of cottonseed or cottonseed product which is intended for further processing, for planting seed or for other special purposes approved by the State Chemist and which is not intended for use as animal feed until tested and brought into full compliance with all state rules and regulations may certify in writing that he does not require the documentation set forth in subsection (D) above. Such certification must be kept on file for a period of one year by the distributor and shall be submitted to the State Chemist or his representative upon request. Such material must, however, be labeled with the following statement:
WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state rules and regulations.
- F.** All commercial feed or customer formula feed delivered to a consumer must be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the State Chemist. Such documentation must be left with the consumer and must contain the following statement if it contains more than 20 ppb aflatoxin:
WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption. All commercial feed or customer formula feed not so labeled must contain 20 or less ppb aflatoxin.

R3-3-910. Drug and feed additives Feed Additives

- A.** Prior to approval of Before a label is approved for commercial feed which contains containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence to

prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

- B.** Satisfactory evidence Evidence of safety and efficacy of a commercial feed may be:
1. When the commercial feed contains such containing additives, the use of which conforms to the requirements of all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983 "Food Additives Permitted in Feed and Drinking" found in the Official Publication. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter; or
 2. When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 512, as amended January 1980 as specified in "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

R3-3-911. Good manufacturing practices

For the purposes of enforcement of Section 24-913 of the Act, the State Chemist adopts the following as current good manufacturing practices:

1. The regulations prescribing good manufacturing practices for medicated feeds as published in 21 CFR 225, as revised April 1, 1983.
2. The regulations prescribing good manufacturing practices for medicated premises as published in 21 CFR 226, as revised April 1, 1983.

R3-3-912. Annual tonnage report and inspection fee

The person responsible for reporting distribution of commercial feed and paying the fee may estimate the annual distribution and submit, no later than the last day of February, a report of the estimated tonnage for the calendar year together with the inspection fee based upon the estimated tonnage. In subsequent years, adjustment may be made for overestimates or underestimates.

R3-3-913. Methods of sampling commercial feed Sampling Methods

A. Definitions

1. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, which are distributed for use as feed or for mixing in feed. "Commercial feed" includes raw agricultural commodities distributed for use as feed or for mixing, in feed when such commodities are adulterated within the meaning of Section 24-913 of the Commercial Feed Law.
2. "Lot" means any distinct, describable and measurable configuration which contains no more than 100 tons. The State Chemist may, after review of sufficient scientific data documenting that samples can be obtained which are representative of the lot, issue specific exemptions to allow a lot size of more than 100 tons.

B.A. Methods of sampling Sampling commercial feed. Methods The methods of sampling commercial feed shall be those methods adopted by the State Chemist and which are in accordance with procedures outlined in the publication entitled "Official Methods of Analysis of the Association of Official Analytical Chemists", 13th Edition, 1980, a copy of which is on file with the Secretary of State. comply with the

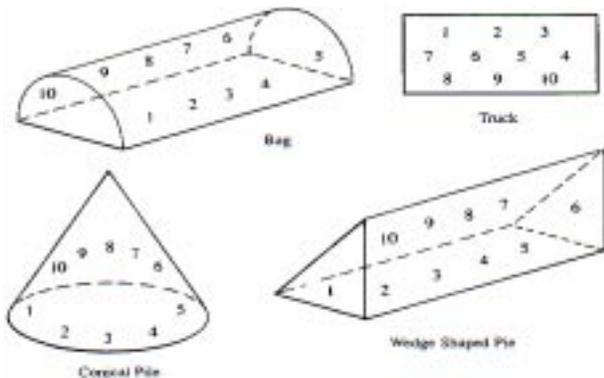
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procedures established in 4.1.01 Official Method 965.16 Sampling of Animal Feed, in the "Official Methods of Analysis of AOAC International, 16th Edition, 1995. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

C.B. Method of sampling Sampling whole cottonseed.

1. Sample size - A gross sample of not less than 30 pounds shall be taken from a lot. ~~A~~ The gross sample shall consist of not less than ~~ten~~ 10 probes evenly spaced or ~~ten~~ 10 stream sample passes taken following the procedure ~~outlined prescribed~~ in subsection (C)(4)(b) of this regulation (B)(4)(b).
2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. ~~All samples must~~ The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location and ~~all analyses the analysis~~ performed and reported within five 5 working days from receipt of sample.
3. Sampling equipment.
 - a. Scale, graduated in ½ pound increments.
 - b. Trier, approximately 50 inches in length and capable of taking at least a 3-pound sample.
 - c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic ~~swampler~~ sampler.
 - d. Stream sampler similar to the following: A container approximately 8 inches x 5 inches x 5 ½ inches attached to a pole long enough to enable the sampler to pass the container through falling streams of cottonseed.
 - e. Automatic stream samplers or other sampling equipment provided ~~sufficient~~ scientific data documenting their ability to obtain a representative sample is made available and found acceptable by the State Chemist Associate Director.
 - f. Shop vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of ¾ in PVC pipe.
4. Sampling procedure.
 - a. ~~All lots will be sampled by taking at least ten equally spaced probes. If a corkscrew trier or probe-a-vac sampler is used, at least 10 equally spaced probes shall be taken per lot~~ ~~All~~ The probed samples ~~will~~ shall be taken according to the following patterns:

SAMPLING PROCEDURES



~~All~~ The probes ~~must~~ shall penetrate to a minimum depth of at least 50 inches. ~~Not less than two and at least 2 of the ten~~ 10 probes per sample ~~must~~ shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

- b. If a shop-vac system is used at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.
- b-c. Stream samples shall be taken while the material is being discharged, provided there is a uniform discharge flow over a set period of time. The sample shall ~~take not less than ten~~ consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the proper sample size.
- e-d. The ~~entire~~ gross sample shall be weighed to the nearest ½ pound. ~~In no case shall the gross sample, but shall not~~ be reduced in size. If any gross sample does not meet the minimum 30 pound weight that gross sample ~~must~~ shall be discarded and the procedure repeated from the beginning. When using a shop vac, the gross sample shall meet a minimum 10 pound weight or be discarded and the procedure repeated from the beginning.
- d-e. Modifications to the sampling procedure ~~above~~ may be made provided sufficient scientific data documenting that a representative sample ~~will~~ be obtained by ~~such a~~ the change is made available and found acceptable by the State Chemist Associate Director.

R3-3-914. Methods of analyzing commercial feed

A. Definitions

1. "Aflatoxin" is defined as the sum of concentrations of all specific aflatoxins identified in the testing.
2. "AOAC" is defined as Association of Official Analytical Chemists.
3. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, which are distributed for use as feed or for mixing in feed. "Commercial feed" includes raw agricultural commodities distributed for use as feed or for mixing, in feed when such commodities are adulterated within the meaning of Section 24-913 of the Commercial Feed Law.
4. "JAOAC" is defined as the Journal of the Association of Official Analytical Chemists.

B. Methods of analysis. Methods of analyzing commercial feeds shall be in accordance with procedures outlined in the publications entitled "Official Methods of Analysis of the Association of Official Analytical Chemists", 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983, copies of which are on file with the Secretary of State.

C. Methods of analysis for whole cottonseed

1. Sample preparation
 - a. ~~High moisture ammoniated or other wet samples shall be dried within 24 hours of receipt by the laboratory at a temperature not more than 1405 F. until it has dried sufficiently to be dehulled. If the sample cannot be dried within 24 hours, it must be maintained at 165 C. or less until it can be dried according to the procedure above.~~
 - b. ~~Dehull the entire sample by passing through a mill or decorticator to crack at least 99% of the hulls.~~

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- e. Separate the meats from the hulls by sieve, shaker, scalper or beater.
 - d. The entire sample of meats are to be ground to pass a 20-mesh screen.
 - e. The ground meats are to be blended in a double cone or twin shell blender or small drum type mixer for a minimum of 15 minutes.
 - f. The laboratory sample of approximately 500 grams is drawn by passing ground meats through a divider system such as a boemer or riffler.
 - g. Draw an analytical sample of approximately 50 grams by dividing the laboratory sample with a riffler.
 - h. The retained portion (approximately 450 grams) of the sample is to be kept refrigerated at a temperature of 165 C. or less for not less than 60 days.
 - i. Other equipment may be employed in place of the requirements in subparagraphs (b) thru (h) above provided sufficient scientific data documenting that it is capable of performing equal or better than existing approved equipment is made available and found acceptable by the State Chemist.
2. Sample analysis
- a. Determination of aflatoxin in cottonseed is to be done according to Sections 26.052-26.060, AOAC, 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983. Modifications allowed are:
 - i. Liquid partitioning of the aflatoxin into chloroform.
 - ii. For thin layer chromatography, the use of a tank solvent of formic acid, ethyl acetate and toluene (1+3+6).
 - b. Confirmation procedures are to be done by Sections 26.076-26.082, or 26.083 of AOAC, 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983.
3. Method of reporting
- a. To calculate the amount of aflatoxin in the dried whole seed use the following formula: $.5 \times \text{total ppb found} = \text{ppb in dried whole seed}$. For Pima variety or delinted seed the total ppb found = ppb in dried whole seed.
 - b. Determination of pass/fail samples
 - i. An initial single sample will be run and if the results are 20 ppb or less on a 20 ppb level, or 300 ppb or less on a 300 ppb level, it shall be considered a passed sample.
 - ii. If the results of a single sample are greater than 20 ppb or 300 ppb on a 20 ppb or 300 ppb level respectively, the sample shall be rerun in duplicate. If the average of all three samples is over 20 ppb on a 20 ppb level or 300 ppb on a 300 ppb level, it shall be considered to not pass.
- R3-3-915. Amount of inspection fee**
On and after January 1, 1980, the inspection fee paid for all commercial feeds offered for sale or otherwise distributed in Arizona, as provided for in A.R.S. § 24-907(B) shall be at the rate of 25¢ per ton.
- R3-3-916. License required to ammoniate**
Pursuant to the licensing requirements in A.R.S. § 24-911, any person who ammoniates feed or feed material is required to obtain a commercial feed license and is responsible for all testing, labeling or other state rules or regulations pertaining to commercial feeds. The inspection fee, as required in A.R.S. § 24-907, must be paid unless the feed is ammoniated on the premises of the consumer.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected

R3-4-102
R3-4-201
R3-4-201
R3-4-202
R3-4-204
R3-4-238
R3-4-239
R3-4-242
R3-4-244
R3-4-601
R3-4-602
R3-4-602
R3-4-603
R3-4-603
R3-4-603
R3-4-604
R3-4-604

Rulemaking Action

Amend
Repeal
New Section
Repeal
Amend
Amend
Amend
New Section
Amend
Amend
Repeal
New Section
Repeal
Repeal
Amend
Repeal
New Section

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R3-4-605	Renumber
R3-4-605	New Section
R3-4-606	Amend
R3-4-607	Repeal
R3-4-607	Renumber
R3-4-607	Amend
R3-4-608	Repeal
R3-4-608	New Section
R3-4-609	Repeal
R3-4-609	New Section
R3-4-610	Repeal
R3-4-610	New Section
R3-4-611	Repeal
R3-4-611	Renumber
R3-4-611	Amend
R3-4-612	Repeal
R3-4-613	Repeal
R3-4-614	Repeal
R3-4-615	Repeal
R3-4-616	Renumber
R3-4-617	Repeal
R3-4-618	Renumber
Appendix A	Amend

2. **The specific 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, 3-903(C), 3-904(C) and (E), 3-905(C), 3-906(D), 3-910(B), 3-912(A), and 3-913.

Implementing statute: A.R.S. §§ 3-201.01, 3-202, 3-203, 3-204, 3-205, 3-205.01, 3-206, 3-207, 3-208(B), 3-209, 3-210, 3-214, and 3-901 et seq.

3. **A list of all previous notices appearing in the Register addressing the adopted rule:**

Notices of Rulemaking Docket Opening: 4 A.A.R. 932, April 17, 1998, 4 A.A.R. 1973, July 26, 1998, 4 A.A.R. 2127, July 31, 1998, 4 A.A.R. 2171, August 7, 1998, 4 A.A.R. 2709, September 25, 1998, 4 A.A.R. 3342, October 23, 1998, and 5 A.A.R. 73, January 8, 1999.

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

Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

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

This rulemaking clarifies existing language, updates the current format and structure of each Section to meet the guidelines of the Office of the Secretary of State, and updates rulemaking requirements to follow current practices and state and federal quarantine restrictions.

R3-4-102, Definitions. This rule defines the terms used within this Chapter and simplifies interpretation of responsibility and clarity of purpose. The terms 'disseminate,' 'imported plant,' 'notice of quarantine,' 'plant product,' and 'terminal inspection,' have been deleted; the 'nursery' definition is not the same as the statute definition and has been changed; and the term "soil," the phrase 'quarantine holding area,' and the statute definition for 'plant' have been added.

R3-4-201, Transportation and Packaging. The 1992 legislative session removed the requirement for all vehicles to stop at a port-of-entry station to be inspected for pests before entering the state. A year later, new legislation provided the Department with the authority to staff 5 port-of-entry stations (2 in Yuma) to inspect commercial vehicles. This rulemaking removes all references to, and requirements for, private vehicle inspections and removes all out-dated information and references to inspection stations and inspection points.

This rule combines R3-4-201 and R3-4-202 and lists many of the agricultural commodities that require inspection upon arrival in Arizona. The rule establishes the requirements for commercial vehicles, consignees and postmasters when transporting agricultural commodities into the state, and describes the types of packaging allowed for any commodity shipment entering Arizona and the thickness of waxes and coating allowed on plants so that inspection for plant pests is possible.

R3-4-204, Pink Bollworm and the Cotton Boll Weevil Complex. This rule provides growers with a list of specific small grain crops that may be rotated following cotton harvest if the grower elects to take advantage of minimum tillage. The rule

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changes the boundaries in zones “C”, “D”, and “F,” and changes the plow down and planting dates in zone “E.”

Meeting the requirement of destroying the cotton host plant and root system after the cotton harvest may be accomplished when the plants are shredded and the land tilled to destroy the host plant and its root system leaving no stalks attached to the soil. The field may then be prepared for a 2nd crop.

If the grower decides to plant the field with a 2nd crop that grower shall choose only the small grain crops specified in the rule, unless another small grain crop is approved by the Director. Any host plant or root that has not been destroyed will continue to grow with the 2nd crop. If the 2nd crop has a short growing season, it can be harvested before the cotton host plant or root can create a fertile environment for the pink bollworm.

In July 1998, the Arizona Cotton Growers Association requested that R3-4-204, Pink Bollworm and the Cotton Boll Weevil Complex, be updated to allow growers in zones “A” and “C” to elect an earlier planting date if they comply with the existing plow up requirements.

Subsection (E)(4) establishes that if a grower in zones “A” or “C” elects to plant a small grain 2nd crop, the grower need not shred nor till the land before the small grain crop is planted.

In July, the Arizona Cotton Research and Protection Council received 3 letters from growers requesting zone changes for their plow-up and planting dates. The proposed changes would allow the growers to schedule their plow up and planting dates according to a zone that more accurately reflected the land elevation or was consistent with the grower’s other property. These changes will reduce economic hardships on the grower. The Cotton Advisory Committee met December 4, 1998 to discuss the requests and the effect they would have on existing zones and on insuring cotton pest abatement. This rulemaking reflects the Committee’s recommendations.

R3-4-238, Whitefly Pests. This rule correct errors in the host commodity list; adds 3 additional commodities; and updates the area under quarantine and the entry requirements for hosts originating from a quarantined area outside the infested area. The options for destruction of a shipment has been removed because it repeats A.R.S. 3-210.

R3-4-239, Imported Fire Ants. This rule consolidates information found in the current imported fire ants rule; adds pine straw as a covered commodity; requires that all covered commodities be unloaded into a holding or staging area to prevent pest infestation; and removes shipment destruction options because these options are already stated in A.R.S. § 3-210.

Arizona’s mandate to control, eradicate or suppress a crop pest or disease or prevent introduction into this state of a crop pest or disease from out of state (A.R.S. § 3-201.01(A)(2)(c)) is becoming increasingly difficult because surrounding states are already infested with the pest. Southeastern states have become totally infested with the pest and no longer have a proactive program to monitor and deal with imported fire ant infestations.

In late January, 1999, the Governor declared a public health and economic emergency and released state emergency funds to combat the introduction of the red imported fire ant into Arizona. These funds were released after California officials determined that portions of Orange, Los Angeles, and Riverside counties were infested with the red imported fire ant. The California infestation threatens more than 800 nurseries and landscape operations in Arizona. As many as 14 major suppliers of nursery stock and sod to Arizona have been found infested with fire ants, presenting a significant threat to Arizona.

Arizona is considered “pest-free” for red imported fire ants, although the state each year abates isolated infestations. (Three incidents were abated in 1998.) All commercial shipments from known fire ant areas, mostly the Southeast, Texas and New Mexico, are stopped at Arizona’s borders and inspected for fire ants. The addition of California and its large volume of plant material imported into Arizona each year, including the bee pollination activities, promises to strain pest protection efforts.

Introduced in Alabama in 1930 from South America, fire ants feed on seeds and young plants. They damage electrical and irrigation systems and prevent harvesting crops by hand. Fire ants also attack people, livestock and wild animals. The red imported fire ant biting and stinging behavior are generally a defensive reaction. When a mound is disturbed, large numbers of worker ants come to the mound surface and can rapidly cover an unsuspecting victim.

Red imported fire ants live and do most of their foraging for food in underground tunnels. A nest consists of a network of tunnels and chambers that occupy a vertical column 12-18” in diameter and 36” deep.

Nests are generally built in sunny, open areas such as lawns, golf courses, pastures, cultivated fields and meadows. The ants also may be found around trees or stumps, under pavement and buildings and occasionally indoors. Electrical equipment and utility houses may serve as fire ant nest sites, sometimes resulting in short circuits.

New colonies do not make conspicuous mounds for several months. Once a colony is established, a single queen can lay more than 2,000 eggs per day. The red imported fire ant is notorious for their painful sting that results in a pustule and intense itching which can persist for 10 days. Some people are allergic to the sting and, in some cases, fire ant stings can result in death.

R3-4-242, Brown Citrus Aphid. This rule is based upon a Director’s Administrative Order and establishes quarantine requirements for the brown citrus aphid.

R3-4-244, Regulated and Restricted Noxious Weeds. In addition to minor editing, the pest, sweet resinbush, was added to the list of restricted noxious weeds.

Sweet resinbush (*Euryops sunbcarnosus* subsp. *vulgaris*) is a shrubby member of the Sunflower Family (*Asteraceae*) and

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is native to the arid and semi-arid regions of southern Africa. The plant was introduced into Arizona by the Soil Conservation Service (SCS) during the early 1930's as a drought-resistant forage plant. No other state was involved.

Propagation nurseries were established by the SCS on Frye Mesa (SW of Thatcher) in Graham County and on sites in Pima County. From 1934 to 1942, the SCS provided the Civilian Conservation Corps with sweet resinbush seeds and seedlings for use in their erosion control projects. Records of planting sites were poorly kept or not recorded at all. Today the following 7 localities are known to contain naturalized populations of *Euryops*:

Frye Mesa -- Graham County

East Side of Penaleño Mountains -- Graham County

Southeast of Cottonwood -- Yavapai County

Punkin Center, 5 miles south of -- Gila County

South of Globe -- Gila County

Sabino Canyon (north of Tucson) -- Pima County

Santa Rita Range (south of Tucson) -- Pima County

Sweet resinbush is a highly undesirable invader of rangeland and desert. It is a pest that threatens the environment and the livestock industry. The weed is aggressive and invasive; it establishes a monoculture wherever it is allowed to grow, causing a severe decline in species diversity; the weed is allelopathic – its roots secrete a toxin that inhibits the growth of native plants as they attempt to reestablish in an area; the phytochemistry of the plant makes foliage extremely bitter for livestock and wild browsers; sheet erosion of soil occurs within sweet resinbush stands due to absence of soil-binding grass roots and its roots won't hold the soil.

Sweet resinbush is expanding its range in Arizona, especially in the Frye Mesa area. The natural communities of arid grassland, desert-scrub, and Sonora desert occupy the elevational range and soil types ideal for this weed. Areas occupied by these natural vegetations will steadily shrink and be replaced by pure stands of sweet resinbush. Because sweet resinbush will not support livestock, this industry will become much less a part of Arizona's economy and could eventually disappear from southern Arizona.

Dissemination of sweet resinbush through human means is becoming more and more of a possibility because of sweet resinbush's expanding range, the increase in off-road travel, and livestock movement by truck. These factors could aid in this weed's introduction into New Mexico, Texas, and California.

Many federal agencies will not initiate control action against a weed if it is not declared noxious by the state in which it is causing the problems. This is true in the case of agencies such as the Bureau of Land Management, Natural Resource Conservation Service and the U.S. Forest Service.

R3-4-601. Definitions. This rule defines the terms used within this Article and simplifies interpretation of responsibility and clarity of purpose. The terms "device, equipment or vehicle" have been removed because those terms fall under the Chapter definition of "appliance." The terms "imported plants," "inaccessible," "mutilate," and "unsalvageable protected native plant," are not used within the Article and have been deleted. The term "permit" is used within the Article, but does not always mean the removal and transportation permit and has been deleted.

The terms "blue seal," "red seal," and "white seal," have been deleted from this Section and transferred to R3-4-606(C). The Department is taking this rulemaking opportunity to coordinate the colors of the seals and tags so that it will be easier for stakeholders and enforcement agencies to determine whether the protected native plants are correctly labeled.

The current red seal, which specifies the saguaro cactus, will be discontinued and replaced with a white seal. This white seal will be paired with the white tag. The current white seal will be replaced with the yellow seal, paired with the yellow tag, and represent all protected native plants, except the saguaro. The current yellow seal will be replaced by a green seal and represent all imported plants. The blue seal represents protected native plants that will be moved from locations that are not their original growing sites and remains unchanged.

The term "simple survey" has been included with the term "survey" and expanded to define a "complete survey."

Statutory authority does not extend to issuing permits for educational purposes. Therefore, the term "scientific or education collection" has been changed to "scientific collection."

R3-4-602. Protected Native Plant Destruction. This new Section is a combination of the current R3-4-602, R3-4-603, and R3-4-604.

R3-4-603. Disposal and Salvage of Protected Native Plants by a State Agency. This Section lists the options for disposing of protected native plants.

R3-4-604. Protected Native Plant Permits; Tags; Fees. This Section provides the application and fee requirements and, except for the fee increases, is a compilation of requirements currently found in R3-4-609, R3-4-610, R3-4-613, and R3-4-614.

R3-4-605. Scientific Permits. This Section provides the application requirements for scientific permits.

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R3-4-606, Protected Native Plant Survey; Fee. This Section establishes that native plant surveys must be taken for salvage assessed native plants and sets the parameters for meeting this survey requirement.

R3-4-607, Movement Permit; Tags, Metal Seals, and Cord Use. This Section provides the applicant with instructions on obtaining a Movement Permit, how to move a protected native plant, and how to attach the seals, tags, and cord required for transportation of the plant. This Section identifies each metal seal and by transferring the definition meanings, explains the use of each.

R3-4-608, Salvage Assessed and Harvest Restricted Native Plants. This Section establishes the salvage assessed and harvest restricted native plant requirements, and is a compilation of requirements currently found in R3-4-611 and R3-4-612.

R3-4-609, Arizona Native Plant Law Education. This Section establishes seminars and training courses for native plant education and is a compilation of requirements currently found in R3-4-607 and R3-4-608.

R3-4-610, Permit Denial, Revocation, and Suspension. This Section lists the prohibited acts which would cause denial, revocation or suspension of a permit and is a compilation of requirements currently found in R3-4-610(B), R3-4-611(B), and R3-4-617.

R3-4-611, Confiscation of Plants, Plant Parts, Wood or Fiber as Evidence. This Section deals with the disbursal of any native plant as evidence in a violation proceeding. Because any court may be involved with a native plant violation, the term "appellate" has been deleted. It should be understood that the Department will dispose of confiscated evidence "in the best interest of the state." Therefore, this phrase has been deleted.

Appendix A. This Section identifies native plants by categories and lists those specific native plants which are protected by this Article.

The Agavaceae family in the highly safeguarded, salvage restricted, and harvested restricted protected native plant categories has been amended to show that some of the species in the Nolinaceae family are included in the Agavaceae family. Because some universities and other institutions do not recognize the Nolinaceae family this addition makes known that certain plants within the Nolinaceae family are regulated under this Article. This addition reflects the technical advisory board's recommendation of the best way to deal with those certain plants belonging to the Nolinaceae family.

At the request of the Native Plant Technical Advisory Board, *Parkinsonia aculeata* L.-Jerusalem Thorn has been removed from the Salvage Restricted Protected Native Plant category. This committee is established by A.R.S. § 3-910(D) and *annually reviews the numbers of native plants harvested and salvaged in order to assess whether plant species, communities or populations are being depleted, to recommend revisions to the protected categories and to recommend priorities for additional monitoring and scientific study.*

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, 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.

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

A. Estimated Costs and Benefits to the Arizona Department of Agriculture.

Fire ant eradication is expensive. In Texas alone, officials estimate more than \$300 million is spent on fire ants. Another \$90 million is spent in Texas' urban areas each year fighting fire ants. California estimates it will spend \$650 thousand in the next 6 months on survey and detection.

The emergency funds, released in late January, 1999, will be spent on increased staffing at Phoenix and Tucson agriculture district offices; Ehrenberg and Yuma ports of entry; the state's pest survey and detection program; and the Arizona State Agricultural Laboratory.

The Department will continue high-risk nursery surveys for the presence of red imported fire ants and abate if necessary; review all commercial loads originating from infested areas in California through Arizona's western ports; continue some scrutiny at eastern ports for shipment from red imported fire ant areas; establish destination inspections for nursery material and sod from red imported fire ant areas; and require suspect nursery stock and beehives to enter holding or staging areas for detailed inspection and treatment, if necessary.

The Department is considering hiring 4 people who are already experienced in handling beehives to do the required inspections at the beehive staging areas. Because these employees will be temporary, they will be teamed with current Department employees, moved from other program specifically for this program.

The Department will bring all employees working with the pest to 1 of 3 locations –Phoenix, Tucson or Yuma – to receive safety and inspection procedure training.

Beekeepers were successful in repealing Arizona's apiary laws in 1994 and will be opposed to this rule because of their

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aversion for any kind of restriction on their activities. Litigation may occur.

In August 1998, the Department's budgeting office notified the native plant program manager that the native plant fund either had to reflect increased revenues or the program must decrease expenditures to remain solvent in FY 2001. In fact, if expenses rise in FY2000 the projected \$3,300 overage could disappear.

Previously, a September 1997, rulemaking established 'at cost' fees for metal seals. While this new fee did not add revenue to the native plant fund, it did pay for the Department's cost of the metal seals, which had been provided free of charge with the tags.

This rulemaking increases tags for saguaro, trees cut for firewood and listed in the harvest restricted category; harvested restricted native plants of *nolina* and *yucca* parts, and all other protected native plants referenced in A.R.S. § 3-903(B) and listed in Appendix A by \$1 each (R3-4-606).

The following chart provides the income and expenditures for the native plant fund for the past 5 years and includes the FY98/99 projected revenue:

TAG TYPE/FEE/ REVENUE	93/94	94/95	95/96	96/97	97/98	98/99 Projected
Saguaro Current fee @ \$5 Proposed fee @ \$6	8,778 \$43,890 -----	9,262 \$46,310 -----	10,022 \$50,110 -----	10,833 \$54,165 -----	10,833 \$54,165 -----	10,833 ----- \$64,998
Wood Current fee @ \$3 Proposed fee @ \$4	255 \$765 -----	534 \$1,602 -----	232 \$696 -----	133 \$399 -----	249 \$747 -----	249 ----- \$996
Harvest Restricted Current fee @ \$3/ton Proposed fee @ \$4/ton	2,969 \$8,907 -----	2,906 \$8,718 -----	2,750 \$8,250 -----	2,179 \$7,521 -----	2,014/ton \$6,042 -----	2,014/ton ----- \$8,056
Pincushion Current fee @ \$.50	749 \$374.50	941 \$470.50	250 \$125	280 \$140	250 \$125	250 \$125
Salvage Assessed Current fee @ \$3 Proposed fee @ \$4	39,690 \$119,070 -----	39,149 \$117,447 -----	28,524 \$85,572 -----	36,234 \$108,702 -----	37,542 \$112,626 -----	37,542 ----- \$150,168
TOTALS	173,006	174,547	144,753	170,927	173,705	224,343
TOTAL INCREASE						\$50,638.

The chart below shows actual and estimated source and disposition of funds for FY 98/99 through FY 2001/2002.

SOURCE OF FUNDS	Actual FY 1998	Estimated FY 1999	Estimated FY 2000 (w/fee increase)	Estimated FY 2001
Balance Forward from Prior Year	55.8	62.9	35.9	47.8
Permits and Seals	6.1	6.1	6.1	6.1
Tags	173.7	173.7	224.3	227.1
Misc. Receipts, Fines, Charges for Goods and Services, Interest Income	5.7	6.3	6.3	6.3
TOTAL RECEIPTS	<u>241.3</u>	<u>249.0</u>	<u>272.6</u>	<u>284.5</u>
DISPOSITION OF FUNDS				

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Total Disbursements, including Personal Services, Employee-Related Expenditures, In-State and Out-of-State Travel, Equipment, Other Operating Expenses, and Equipment	178.4	213.1	224.8	224.8
Balance Forward to Next Year	62.9	35.9	47.8	59.7

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. Businesses Directly Affected By the Rulemaking. (Common and private carriers, mail facilities, railroads, instate and out-of-state nurseries, and retail outlets.)

R3-4-204, Pink Bollworm and the Cotton Boll Weevil Complex. Growers electing to take advantage of minimum tillage must grow only listed small grain crops as their 2nd crop, unless they receive approval from the Director to grow another small grain crop. This may have a economic advantage for the grower by not having to spent the time and money to till the soil to remove stub, soca, or volunteer cotton. This earlier planting date gives the crop a longer growing season and may produce a larger harvest. The earlier planting date also shortens the time that the field is fallow and reduces the opportunity for cotton plants to produce volunteer, stub, or soca cotton.

The zone changes provide the requesting growers an economic benefit by allowing them to plow up and plant later. In some cases the growers will be able to coordinate their farming responsibilities between land that is not contiguous, but within the same elevation, and thus the same growing conditions.

R3-4-239, Imported Fire Ants. Before an Order on imported fire ants was enacted by the Director, the Dona Ana County nurseries shipped to Arizona without restrictions. The threat of infestation of imported fire ants was enormous. Now, all shipments must go to Arizona nurseries with approved holding areas. Because all receivers, such as Target stores, may not qualify for holding areas, alternate holding areas may have to be obtained. The alternate receiver will be responsible for holding, watering and ultimately delivering the commodity to the nursery or retail outlet. This process may delay the delivery of the nursery product and any sales or promotions would have to be managed accordingly. However, the necessity to maintain a commodity in a location that will preclude the spread of a pest far outweighs the cost of maintaining or finding alternate holding areas.

The addition of covered commodities new host plants requires nurseries to treat plants and covered commodities for these pests before shipping and to obtain certification of the treatment. Treatment costs can vary depending upon the method used and the location of the treatment.

Methyl bromide – Approximately \$550 per shipment.

Chlorpyrifos – Approximately \$300.

Bifenthrin – Approximately \$200.

No actual cost can be given for the treatment of aphids. The cost would depend upon the specific pesticide product chosen by the owner and the labor used in the treatment.

It is impossible to forecast the economic impact on Arizona’s golf courses and landscaping and agricultural industries other than to stress that the impact will be significant.

Beekeepers returning beehives to Arizona will be required to go to a staging area for inspection. The hives need to be removed from the trailer for inspection. Hives that are infested with imported fire ants will have to be treated.

Benefits associated with implementing these rules far outweigh the costs by removing the possibility of commodities becoming infested with pests.

Native Plants. The educational permit is a nonfee permit and ITS removal from the rule should not adversely affect stakeholders as only 3 persons have taken advantage of this permit. In 2 of those cases, plants were donated to schools and in the other case, the permittee was using the educational permit as a means to sell native plants in his business (which the permit prohibits). The financial impact of removing this permit is minimal.

If the proposed increases are not implemented as outlined within the Department’s economic, small business, and consumer impact summary, the balance forwarded for FY2001 will not be \$47,800 but only \$3,300. If permits, seals, tags, and other expenses remain constant FY 2001 will generate \$29,300 more expenses than revenues. The native plant program depends upon the proposed fee increases and unless legislative changes are made to provide general funds, the program will cease to exist.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

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The red imported fire ant, if allowed to establish itself in Arizona, will severely impact Arizona's quality of life and raise serious public health concerns for our state's at-risk populations, namely children and the elderly. In states with known infestations, taxpayers spend hundreds of millions of dollars annually on fire ant abatement and control. The impact is felt in urban areas, too, with residents trying to control fire ants in lawns and gardens, repairing damage done by the pests and obtaining medical treatment for bites.

This rulemaking increases the positive public relations between the nursery industry and consumers by providing more pest and covered commodity requirements to assure that plants are not infested.

Native Plants. The consumers and the public are not directly affected by the implementation and enforcement of this rulemaking. However indirect benefits occur through public perception and Arizona's tourism industry. The saguaro is representative of Arizona and many of the protected native plants in Appendix A are found in no other place in the world.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

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: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

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:

Date: May 19, 1999
Time: 10 a.m.
Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., May 20, 1999. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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:

R3-4-204(D)(2) Pink bollworm treatment for cotton products, USDA Treatment Manual, revised April 1998

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-102. Definitions
R3-4-201. ~~Transportation and inspection requirements for plants and plant products and for other agricultural products or equipment subject to inspection under Arizona law and vehicle quarantine~~ Repealed
R3-4-202. ~~Packaging, Sealing, Waxing and Coating of Nursery Stock~~ Repealed
R3-4-201. Transportation and Packaging
R3-4-204. Pink Bollworm and the Cotton Boll Weevil Complex

R3-4-238. ~~Whiteflies quarantine~~ Whitefly Pests
R3-4-239. ~~Imported fire ants~~ Fire Ants
R3-4-242. Brown Citrus Aphid
R3-4-244. Regulated and Restricted Noxious Weeds

ARTICLE 6 - ARIZONA NATIVE PLANTS

R3-4-601. Definitions
R3-4-602. ~~Notice of Intent: Written or Oral~~ Repealed
R3-4-603. ~~Confirmation of Notice of Intent~~ Repealed
R3-4-604. ~~Public Notice: Posting and Mailing List; Fee~~ Repealed
R3-2-602. Protected Native Plant Destruction

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- ~~R3-4-605.~~ ~~R3-4-603.~~ ~~State Agencies—Disposal and Salvage of Protected Native Plants by a State Agency~~
~~R3-4-604.~~ ~~Protected Native Plant Permits; Tags; Fees~~
~~R3-4-605.~~ ~~Scientific Permits~~
R3-4-606. Protected Native Plant Surveys; Fee
R3-4-607. ~~Seminars, Training Courses, Pamphlets and Printed Material; Fee Repealed~~
R3-4-608. ~~Native Plant Law Educational Classes; Fee Repealed~~
R3-4-609. ~~Permits Repealed~~
R3-4-610. ~~Qualifications for Permit Applicants Repealed~~
R3-4-611. ~~Qualifications for Salvage Assessed Native Plant Permit~~
R3-4-612. ~~Qualifications for Annual Permits for Harvest Restricted Native Plants; Fee Repealed~~
R3-4-613. ~~Native Plant Permit Fees; Exemptions Repealed~~
R3-4-614. ~~Native Plant Tag Assessments and Receipt Fees Repealed~~
R3-4-615. ~~Procedures for Attaching Tags, Metal Seals and Cord to Protected Native Plants Repealed~~
~~R3-4-616.~~ ~~R3-4-607.~~ ~~Use of Metal Seals, Movement Permit; Tags, Metal Seals, and Cord Use~~
R3-4-617. ~~Misuse of Permits, Tags or Metal Seals Repealed~~
~~R3-4-608.~~ ~~Salvage Assessed and Harvest Restricted Native Plants~~
~~R3-4-609.~~ ~~Native Plant Education~~
~~R3-4-610.~~ ~~Permit Denial, Revocation, and Suspension~~
~~R3-4-618.~~ ~~R3-4-611.~~ ~~Confiscation of Plants, Plant Parts, Wood, or Fiber, or Artifacts as Evidence~~
Appendix A. Protected Native Plants by Categories

ARTICLE 2. QUARANTINE

R3-4-102. Definitions

In addition to the definitions provided in A.R.S. §§ 3-201, 3-231, 3-441 and 3-481, the following ~~shall~~ terms apply to this Chapter:

1. "Air plant (Epiphyte)" means a plant that grows on another plant or object but does not require it as a source of nutrients.
2. "Appliance" means any box, tray, container, ladder, tent, vehicle, implement, or any article or thing which is or may be used in ~~connection with the~~ growing, harvesting, handling, packing, or ~~transportation of~~ transporting any agricultural commodity.
3. "Aquatic" means living or growing in or on water.
4. "Bulk container" means a package ~~for a commodity that is used solely for the transportation of the~~ transporting a commodity in bulk quantities.
5. "Carrier" means any plant, ~~plant product, or any other material~~ or thing ~~which that~~ can transport or harbor a crop pest.
6. "Certificate" means ~~a~~ an original document issued by an inspector ~~or of~~ the Department, ~~the~~ United States Department of Agriculture or ~~duly~~ authorized officer of the State of Origin, stating name, quantity and nature of the regulated ~~articles~~ commodity, and the information required by a specific regulation.
7. "Certificate of Inspection" means a document issued by ~~an inspector of the Department, United States Department of Agriculture, or duly authorized officer of the State of Origin stating that the commodity for which the certificate of inspection is issued has been inspected and found apparently free of pests or diseases.~~
- 8-7. "Commodity" means any plant, plant product, appli- ance, soil, material, or thing ~~which that~~ is subject to Department federal and state laws and rules.
- 9-8. "Common carrier" means any person transporting ~~com-~~ modities a commodity for compensation or commercial purposes.
- 10-9. "Consumer container" means a package ~~for a commod-~~ ity that is produced or distributed for retail sales or for consumption by an individuals.
- 11-10. "Container" means any box, crate, lug, chest, basket, carton, barrel, keg, drum, can, sack or other receptacle for a commodity.
- 12-11. "Cotton harvesting machine" means any machine used ~~for the purpose of picking or harvesting to pick or har-~~ vest raw cotton in the field.
- 13-12. "Cotton lint" means the remnant produced when cottonseed is processed in a gin.
- 14-13. "Cotton plant" means all parts of *Gossypium* spp. whether wild or domesticated, except manufactured cotton products.
- 15-14. "Cotton products" includes seed cotton, cotton ~~list~~ lint, cotton linters, motes, cotton waste, gin trash, cottonseed, and cotton hulls.
- 16-15. "Cotton waste" includes all waste products from the processing of cotton at gins and cottonseed-oil mills, in any form or under any trade designation.
- 17-16. "Defoliate" means ~~the removal of~~ to remove the leaves from a plant.
- 18-17. "Diseased" means ~~a disease can be demonstrated to exist therein or in any part thereof; the abnormal condi-~~ tion of a plant resulting from an infection.
19. "Disseminate" means to scatter, spread abroad, or ~~dis-~~ perse.
- 20-18. "Fumigate" means to apply a gaseous substance to a commodity in a closed area ~~for the purpose of eradicat-~~ ing to eradicate a pests.
- 21-19. "Gin trash" means organic waste or materials resulting from ~~the~~ ginning of cotton.
- 22-20. "Head leaves" means all leaves ~~which that~~ enfold the compact portion of the head of lettuce or cabbage.
- 23-21. "Host" means a plant ~~or plant product~~ on or in which a pest can live ~~and/or~~ reproduce, or both.
- 24-22. "Hull" means the dry outer covering of a seed or nut.
- 25-23. "Husk" means the membranous outer envelope of many seeds and fruit, such as of an ear of corn or a nut.
26. "Imported plant" means ~~any plant grown outside the state of Arizona and brought into Arizona.~~
- 27-24. "Infected" means any plant, ~~plant product,~~ or other material on or in which has been found a disease.
- 28-25. "Infested" means any plant, ~~plant product,~~ or other material on or in which has been found a pest.
- 29-26. "Inspector" means an employee of the Department or ~~other cooperating governmental agencies whose duties are the enforcement of any agency who enforces any~~ law or rule of the Department.
- 30-27. "Label" means all tags and other written, printed or graphic representations in any form ~~whatsoever,~~ accompanying or pertaining to ~~any a~~ plant, ~~plant product,~~ or other commodity.
31. "Location" means the locality of any commodity.
- 32-28. "Lot" means any ~~one~~ 1 group of specimens of such plants, ~~plant products,~~ or things, whether or not containerized, ~~and which that~~ is set apart or is separate from any other group.
33. "Notice of quarantine" means ~~an official order or notice given out to detain a commodity from being sold or transported.~~

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- ~~34-29.~~ "Nursery" means any grounds or premises on or in which nursery stock is grown, or propagated for sale or distribution. *"Nursery" means real property or other premises on or in which nursery stock is propagated, grown or cultivated or from which source nursery stock is offered for distribution or sale.*
- ~~35-30.~~ "Permit" means an official document authorizing the movement of a host plants and carriers.
- ~~36-31.~~ "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.
- ~~32.~~ *"Plant" includes every kind of vegetation, wild or domesticated, and any part thereof, as well as seed, fruit or other natural product of such vegetation. A.R.S. § 3-201(8)*
- ~~37.~~ "Plant product" means any plant part which has not been subjected to processing or manufacturing.
- ~~38-33.~~ "Private carrier" means any person transporting commodities a commodity for a noncommercial purposes.
- ~~34.~~ *"Quarantine holding area" means a site approved by the Department to hold plant material originating from areas infested with imported fire ants or nematode pests.*
- ~~39-35.~~ "Reshipment" means a the shipment of a commodity after having been received from another shipping point.
- ~~40-36.~~ "Sell" means to exchange for money or its equivalent including to offer, expose, or possess a commodity for sale, expose for sale, possess for sale or to otherwise exchange, barter, or trade.
- ~~41-37.~~ "Serious damage" means any injury or defect rising from any circumstance, natural or mechanical, which that affects the appearance or the edible or shipping quality of the commodity, or the lot as a whole.
- ~~38.~~ "Soil" means any nonliquid combination of organic, or organic and inorganic material in which plants can grow.
- ~~42-39.~~ "Standard container" means a container receptacle used to pack a specific commodity as specified within this Article.
- ~~43-40.~~ "Stub or soca cotton" means those cotton stalks of a previous crop which begin to show signs of growing by displaying buds which swell or which send out shoots of plant growth, either white or green.
- ~~44-41.~~ "Subcontainer" means any container when being used within another container.
- ~~45.~~ *"Terminal inspection" means the inspection of a commodity at a destination.*
- ~~46-42.~~ "Transport" means the moving of an article from one 1 point to another.
- ~~47-43.~~ "Treatment" means an application of a substance as either a spray, mist, dust, granule, or fumigant; or a process in which a substance or procedure is used to control or eradicate a crop pests.
- ~~48-44.~~ *"Warning hold for agricultural inspection Warning-Hold For Agricultural Inspection" means an official Department notice given out to a common carrier or private carrier to place a commodity or commodities carried under quarantine.*
- ~~49-45.~~ "Vector" means an organism (usually an insect) that may carry a pathogens from one 1 host plant to another.
- ~~50-46.~~ "Vehicle" means an automotive device, such as a car, bus, truck, or private or recreational vehicle.
- ~~51-47.~~ "Volunteer cotton" means a sprout from seed of a previous crop.

~~52-48.~~ "Wrapper leaves" means all leaves which that do not closely unfold the compact portion of the head of lettuce or cabbage.

R3-4-201. Transportation and inspection requirements for plants and plant products and for other agricultural products or equipment subject to inspection under Arizona law and vehicle quarantine Repealed

A. Notice of quarantine:

1. It has been determined that importation of plants, plant products and certain other agricultural products and equipment into the state of Arizona constitutes a menace to the agriculture and ornamental horticulture of Arizona unless said plants, plant products and certain other agricultural products and equipment are inspected for dangerous crop pests. In order to prevent the introduction into the state of Arizona of dangerous crop pests, it is hereby ordered and declared that transportation and inspection of plants, plant products and certain other agricultural products and equipment shall be governed by this regulation.
2. It has also been determined that in order to facilitate the inspection of plants, plant products or certain other agricultural products and equipment which are subject to inspection; or anything deemed to be a host or carrier of any crop pest under Title 3, Chapters 1 and 2, Arizona Revised Statutes, which is being transported by common or private carrier, passenger vehicles, recreational vehicles and buses into, within or through the state of Arizona; and to reduce to a minimum the delay incidental to inspection, and at the same time safeguard the state of Arizona against the introduction and/or the dissemination of dangerous crop pests, the transporting of plants, plant products or certain other agricultural products and equipment by common or private carrier, passenger vehicles, recreational vehicles and buses into, within or through the state of Arizona shall be governed by the following regulation. The State Entomologist is ordered to carry out these regulations and the State Entomologist is authorized to grant this authority to his agents by designation.

B. Plants, plant products, and other agricultural products and equipment subject to inspection:

1. Plants or nursery stock:

Agaves	Herbaceous plants
All trees	—Annual
Buds	—Biennial
Bulbs	—Perennial
Cacti	Plant cuttings
Corms	Rhizomes
Decorative plant material	Roots
Flowers	Scions
Fruit pits or seeds	Shrubs
Grafts	Succulents
Grass	Turf
	Vegetable plants
	Vines

and other plants intended for sale, gift, personal use, or propagation from either cultivated sources or collected in the wild.

2. Fruits, vegetables and nuts:

Apples	Neectarines
Apriots	Peaches
Beans (in the pod)	Pears
Beets	Pecans in the shell
Butternuts in the shell	Peppers

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- | | |
|---|--|
| Cherries | Persimmons |
| Citrus fruits, which include:
oranges, lemons, limes,
grapefruit, tangerines,
and all others | Plums |
| Corn | Pomegranates- |
| Crab apples | Prunes |
| Dates | Quince |
| Endive | Rhubarb |
| Green coconuts with caps
attached | Sorghum |
| Hawthorn | Sweet potatoes- |
| Hickory nuts in the shell | Swiss chard |
| Loquats | Tropical fruit:
Mangos,
papayas, and
avocados |
| Walnuts in the husk | |

3. Plant products: Plant products shall consist of plants which include every kind of vegetation, wild or domesticated and any part thereof:
- | | |
|--|-------------------------|
| Bees and bee equipment | Grains |
| Cotton, raw and unmanufactured | Seeds— for all purposes |
| Cut palm fronds | Spanish moss |
| Fruits and other natural products of such vegetation which have not been subjected to processing or manufacturing. | |
4. Other agricultural products and equipment: Other agricultural products and equipment shall consist of:
- | | |
|--|-----------------------------|
| Agricultural harvest and tillage equipment— used | Cotton appliances— used |
| Citrus appliances— used | Soil from all states |
| | Sugar beet appliances— used |
- and any commodity that the Commission shall have declared to be a carrier of dangerous crop pests.

- C.** Articles exempt from inspection: The following materials are hereby exempt from inspection:
1. Cut flowers, except citrus blossoms.
 2. Cut ornamental greens or florist greens except pine boughs and holly.
 3. Vegetables for human consumption, except those listed above.
- D.** Common carriers' responsibilities:
1. Common carriers are required to hold and not deliver to a consignee any products listed in (B) above until such shipment has been inspected by an inspector and a Certificate of Release issued to the common carrier, except as specified in (D)(2) below.
 2. The Entomologist, inspectors or employees of the Commission may give permission to a common carrier to deliver regulated commodities to a consignee for inspection at the final destination.
- E.** Postmasters' responsibilities:
1. The "Terminal Inspection Act" (March 4, 1915, as amended, 38 Stat. 1113, 7 U.S.C. 166) grants authority to states desiring it to request the U.S. Postal Service to hold for state inspection mail containing plants or plant material en route to destinations within the state. The Arizona Commission of Agriculture and Horticulture has registered its desire for terminal inspection at post offices within this state in order to protect itself by quarantining against plants and plant products from other states arriving through the mail.

2. Postmasters at bulk mail facilities are required to hold all parcels containing plants or plant products for inspection. All such parcels are not to be released until an agent or inspector of the Arizona Commission of Agriculture and Horticulture has made an inspection and stamped the parcel "Inspected and Released".
 3. Postmasters at other post offices throughout the state are also required to intercept any parcel containing plants or plant products which do not have an imprint of the stamp "Inspected and Released" placed on it. All such parcels must be held and the agent or inspector notified at the nearest Class "A", "B", "C" or "D" inspection point.
- F.** Consignees' responsibilities: Any person who receives a shipment of a product listed in (B) above at any post office, United Parcel terminal point of delivery, or from any common carrier with such shipment not having a tag, sticker, or stamp bearing the following, "Arizona Commission of Agriculture and Horticulture— Inspected and Released", shall immediately notify the local inspector or the Office of the State Entomologist before shipment is used, moved, or disposed of in any manner and shall present the products for inspection in such a manner that an adequate inspection can be made.
- G.** Private carriers' responsibilities: Private carriers are required to hold and not use, deliver, or dispose of any product listed in (B) above until such product has been inspected and released by inspector.
- H.** Reporting to inspection stations: Upon arrival in the state of Arizona at any quarantine inspection station, or any properly signed temporary quarantine inspection station, established by the Commission, the driver of any common or private carrier, passenger vehicles, recreational vehicles and buses, shall stop and offer the contents of his common or private carrier, passenger vehicles, recreational vehicles and buses, for inspection in the following manner:
1. Present to the inspector the freight bills covering the load; or
 2. Present to the inspector an itemized manifest covering the load; or
 3. Present to the inspector a short form manifest approved by the Commission containing a statement that the load contains no live plants, trees, shrubs, fruits, vegetables, seed, cotton, used beekeeping equipment, or other agricultural products or equipment subject to inspection under Arizona law; or that the load does contain such articles and lists the articles and destination. The statement must be signed by the authorized agent of the company having the responsibility of loading the truck or the foreman supervising the loading; or
 4. Open the vehicle and expose the contents for complete inspection and assist the inspector in gaining access to any material requiring inspection;
 5. Answer truthfully the questions of the inspector in regard to the carrying of products or equipment subject to inspection, origin of such products and final destination.
- I.** Products entering Arizona:
1. If any or all of the material or equipment requiring inspection is consigned to Arizona and cannot be adequately inspected at an inspection station, the inspector may:
 - a. Issue a "Warning-Hold for Agricultural Inspection": notice requiring the carrier to report with the shipment to the inspector nearest the point of deliv-

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ery for inspection. The driver's copy will be attached to the freight bill or manifest covering the shipment or shipments.

b. Seal the truck with Commission seals; instruct the driver of the common or private carrier not to break the seals except in the presence of an inspector, or after permission has been granted by an inspector or employer of the Commission.

2. If the material requiring inspection is consigned to, or destined to, a point outside the state of Arizona, and this fact is confirmed by either a short form manifest or freight bill or other means, the inspector shall give the driver a notice in writing, or by transit stamp, that this load is under quarantine while in the state, and it is unlawful to dispose of it in any way unless it is inspected and released by a quarantine inspector of the Commission. The vehicle need not be sealed when inspected at the border inspection station. The driver of the vehicle will be required to check out at the inspection station nearest his point of departure from the state of Arizona, if he is so instructed in writing by the issuing inspector.

3. The Entomologist may exempt certain carriers from the sealing requirements listed in (I)(1)(b), when there is no likelihood of spreading harmful pests.

J. Rejected products moving through or out of Arizona under quarantine: When an operator of any type of vehicle is in possession of, or responsible for, any load of agricultural products or equipment a commodity covered by this regulation which has been inspected by an inspector of the Commission and found to be in violation of Arizona quarantine laws:

1. The operator of a common or private carrier shall secure a "Warning Hold for Agricultural Inspection" notice from the inspector who placed the agricultural products or equipment under quarantine and have it in his possession until the product is removed from the state of Arizona through a border inspection station designated by the inspector, and such removal noted on said notice.

2. The operator of a common or private carrier shall surrender the "Warning Hold for Agricultural Inspection" notice (Driver's copy) at the specified border inspection station.

3. The operator of a passenger vehicle, recreational vehicle or bus shall secure a Warning Transit Card from the inspector who placed the product under quarantine and have it in his possession until the product has been transported to a point outside the state of Arizona and his copy of the card will then be mailed to the Commission office at Phoenix.

K. Actions when violations occur: Any person who violates the provisions of this regulation by failing to comply with the requirements of the "Warning Hold for Agricultural Inspection" notice, or the Warning Transit Card, or who violates the instructions of the enforcing officer or breaks the seals of the sealed vehicle or delivers product under quarantine before it has been released by an inspector of the Arizona Commission of Agriculture and Horticulture, shall be required to submit all loads for total inspection at a border quarantine inspection station, or other location where apprehended, as required by the Entomologist.

L. Inspection points: The following classes of inspection points are maintained by the state of Arizona. The names of the communities which constitute an inspection point, and the class of each location is designated below:

1. Class "A" inspection points—Highway inspection stations which inspect vehicles entering the state of Arizona. Such stations are maintained on a 24-hour-a-day basis and will perform all types of inspection:

Cameron	Sanders
Douglas	San Simon
Ehrenberg	Solomon
Kingman	Springerville
Parker	Yuma

2. Class "B" inspection points—Points where full time inspectors are located and where inspection will be made during regular working hours, or after working hours by special arrangements with the district supervisor:

Casa Grande	Safford
Nogales	Tucson
Parker	Willeox
Phoenix	Yuma

3. Class "C" inspection points—Points where part time inspectors are located, and where inspections will be made during regular working hours upon call:

Bisbee	Show Low
Cottonwood	Sierra Vista
Flagstaff	Superior
Lake Havasu City	Wickenburg
Preseott	

4. Class "D" inspection points—Points where inspectors will make calls to make inspections upon request made to the nearest Class "A", "B", "C" inspection point:

Bowie	Inspiration
Buckeye	Mesa
Central	Miami
Chandler	Marana
Clarkdale	Peoria
Claypool	Pima
Coolidge	Poston
Duncan	Stanfield
Eagar	Somerton
Eloy	Sun City
Florence	Tempe
Gilbert	Thatcher
Globe	Warren
Glendale	

M. Forwarding shipments to designated inspection points: All shipments of plants, plant products, other agricultural products, or equipment entering Arizona which are subject to inspection must be inspected at an "A", "B", "C" or "D" inspection point, except railroad earload shipments which may be inspected at destination upon request (see (N)). Less than railroad earload shipments consigned to a point in Arizona not listed as an inspection point will be forwarded to the nearest inspection point for inspection at the expense of the consignee or the shipper. The Federal Terminal Inspection Act, which applies to parcel post shipments and postal regulations pertaining to the forwarding of such shipments, will be in force.

N. Railroad earload shipments: Railroad earload shipments will be inspected at destination. However, if destination is not listed as an inspection point, the Office of the State Entomologist must be notified in sufficient time to make arrangements to have an inspector at the point of destination.

O. Transportation of materials subject to inspection within the state: Common or private carriers will not transport shipments containing articles which require inspection from Points "A", "B", "C" or "D" to a point not listed as an inspec-

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tion point unless the shipment bears a tag, sticker or stamped, "Arizona Commission of Agriculture and Horticulture—Inspected and Released". Shipments which require inspection shall never be released to the consignee until the common or private carrier has in his possession a Certificate of Release issued by an inspector of the Arizona Commission of Agriculture and Horticulture, except as provided by (D)(2).

P. Inspection certificates and permits from other states: Inspection certificates, treatment certificates and permits issued by plant quarantine officials of other States are not valid as Certificates of Release within the state of Arizona.

Q. Nursery stock labeling:

1. All nursery stock or plants shipped into the state of Arizona, or from one point to another within the state of Arizona, shall be labeled with the following information:
 - a. Name and address of shipper
 - b. Name and address of consignee
 - c. Certificate of Inspection executed by an authorized inspector of the state of origin
 - d. State or country where grown
 - e. The botanical name or common name of all plants. (When a number of each species or variety of plants is included in one shipment to one consignee, only one of each species or variety need be labeled, but when only one of each species or variety is labeled, a statement of the number of each variety or species must accompany the shipment.)
2. The above labeling requirements are general in nature and are required in addition to certificates required by separate quarantine regulations.

R. Responsibilities of Arizona inspectors:

1. Arizona inspectors will, upon request and by appointment, inspect noncommercial parcels of nursery stock or plants being shipped by mail, express or any other common carrier. A Certificate of Inspection will be issued by the inspector for each parcel to be shipped provided it is free of insect pests and diseases and meets the requirements of the state of destination. These provisions apply only to individuals desiring to make shipments and not to nurseries or firms engaged in the business of growing or shipping plants.
2. Inspectors of the Commission are not authorized to attempt to separate apparently uninfested or uninfected plants or trees from a shipment found to be infested or infected with a plant pest.
3. Inspectors of the Commission will not attempt to determine whether surface pests are dead or alive. The presence of dangerous pests will be cause for rejection unless plants, plant products, or other agricultural products or equipment are treated and properly certified.
4. If, after treatment, examination reveals that the pests are still alive, the produce may be held under quarantine for further treatment, destruction or shipment out of state.

S. Postal laws and regulations: All United States Postal Service Plant Quarantines and the associated rules and regulations will be followed for all United States mail shipments.

T. General rules: See "General Rules and Definitions, Article 1."

R3-4-202. Packaging, sealing, waxing and coating of nursery stock Repealed

A. Notice of quarantine: It has been determined that the packaging, sealing, waxing and coating of nursery stock, plants and plant parts in such a manner as to prevent adequate inspection as required by Title 3, Chapter 2, Article 1, Section 3-209,

Arizona Revised Statutes, constitutes a menace to the state of Arizona in that plants cannot be adequately inspected to determine the presence of dangerous crop pests. In order to prevent the introduction into the state of Arizona of dangerous plant pests, it is hereby ordered and declared that the packaging, sealing, waxing and coating of nursery stock shipped into the state of Arizona shall be governed by the following regulation:

B. Packaging of plants:

1. Nursery stock, plants and plant parts intended for planting or propagation which are shipped into or transported into the state of Arizona from any state or territorial possession of the United States must be packaged, boxed or otherwise wrapped in such a manner as to permit the free and unhampered inspection by inspectors of the Commission.
2. The following types of packages, and other similar types, shall be considered a violation of subsection (B):
 - a. Plants packaged in containers which cannot be opened without destroying the package to the extent that the plants can be repackaged or rewrapped to give adequate protection to the viability without supplying additional packing material and moisture to the package.
 - b. Plants packaged or sealed with wire or seals which cannot be opened and resealed without special tools or equipment.
 - c. Plants packaged in individual packages which cannot be readily and quickly opened for inspection without unnecessary loss of inspection time.

C. Waxes, coatings and films:

1. Nursery stock, plants and plant parts intended for propagation which are shipped into or otherwise transported into the state of Arizona from any state or territorial possession of the United States must be free of waxes, coatings, films or other materials which, because of their opacity, thickness or color, interfere with or prohibit the free and unhampered inspection by inspectors of the Commission.
2. The following types of coatings, and other similar types, will be considered in violation of paragraph (C)(1):
 - a. Heavy waxes which coat the aerial parts of a plant and prevent inspection;
 - b. Colored waxes or other materials which coat the aerial parts of the plant and change the appearance of the plant surface so as to prevent adequate inspection;
 - c. Plastic films hermetically sealed over the entire plant.

D. Disposition of plant material: Upon arrival of plants or plant materials in the state of Arizona which do not meet the requirements of subsections (B) and (C), an inspector will place the plants under quarantine and will notify the shipper in writing, giving the following options:

- a. Reship the plants or plant parts out of the state of Arizona.
- b. Furnish the necessary labor and material to open the plants for inspection and repackage the plants after inspection.
- c. Treat the plants or plant parts in such a manner as to abate any plant pests or diseases which could be present on the plants or plant parts under the supervision and at the direction of an inspector.
- d. Have the shipment destroyed under the supervision of an inspector.

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E. General rules: See “General Rules and Definitions, Article 1.”

R3-4-201. Transportation and Packaging

A. Any commodity shipped or transported into the state shall be inspected and determined free of any pest subject to federal and state laws and rules.

B. Each commodity shipped or transported into the state shall display the following information on a bill-of-lading, manifest, freight bill, or on the outside of the carton:

1. The name and address of the shipper and receiver;
2. A certificate of inspection for nursery stock, if applicable;
3. The botanical or common name of the commodity;
4. The quantity of each type of commodity;
5. The state or foreign country where each commodity originated;
6. Any other certificate required by this Article.

C. Packaging.

1. Any commodity shipped or transported into the state shall be packaged or wrapped in a manner to allow inspection by an inspector.
2. The following and other similar types of packages are prohibited:
 - a. Packages that cannot be opened without destroying either the package or its contents;
 - b. Packages that cannot, once opened, be resealed after inspection without the inspector supplying additional packing material to protect the contents;
 - c. Commodities that are packaged or sealed with wire or seals that cannot be opened and resealed without special tools or equipment;
 - d. Clear or colored waxes applied to a commodity which prevents inspection.

D. Restrictions.

1. Nursery stock shipments shall not enter Arizona between 8:00 a.m. Friday and 12:01 a.m. Monday, or during a legal holiday.
2. Common and private carriers. All commodities shall be declared at a port-of-entry.
 - a. All common and private carriers shall hold a commodity until the shipment is inspected by an inspector and a Certificate of Release, pursuant to A.R.S. § 3-209, is issued. The Director may authorize a common carrier to deliver a commodity to a consignee before the inspection.
 - i. If the commodity requiring inspection cannot be adequately inspected, the inspector may place the commodity under a Warning-Hold for Agricultural Inspection.
 - ii. The inspector may seal the truck to prevent the likelihood of spreading harmful pests.
 - b. When a common or private carrier enters the state at a port-of-entry where agricultural inspections are performed, the driver shall:
 - i. Provide the inspector with the bill-of-lading, manifest, or a short-form manifest signed by the company’s authorized agent who is responsible for supervising the loading of the contents in the shipment.
 - ii. Open the vehicle and expose the contents for inspection;
 - iii. Assist the inspector in gaining access to the contents.
 - c. When a common or private carrier enters the state at a port-of-entry where no agricultural inspections

are performed, the common or private carrier shall provide the following information on a Load Report form, proceed to destination for inspection, and follow the procedures specified in subsection (D)(3)(b)(i) through (D)(3)(b)(iii):

- i. The name, address, and telephone number of the shipper;
- ii. The name, address, and telephone number of the primary receiver;
- iii. The name and address of the carrier;
- iv. The tractor unit number, and trailer license number;
- v. The name and address of additional receivers, if any.

3. Bulk mail facility. All commodities entering a bulk mail facility shall be held for inspection. The commodity shall not be released until an inspector has inspected the commodity and issued a Certificate of Release.

4. Railroad. Any commodity shipped by railroad shall be inspected at destination. The responsible party shall notify the Director in advance to schedule an inspection of the commodity.

5. Out-of-state destination. If the commodity requiring inspection is consigned to, or destined to, a point outside the state, and is confirmed by a short-form manifest, freight bill or bill-of-lading, the inspector shall give the driver a notice in writing, or by transit stamp, that this shipment is under quarantine while in the state, and it is unlawful to dispose of it in any way unless it is inspected and released by an inspector.

6. Certificate of Release. Any person receiving a commodity from a post office, United Parcel Service terminal, or from any common carrier without a Certificate of Release shall immediately notify the Department and request an inspection.

E. Disposition of commodity. When a carrier is in possession of, or responsible for, a commodity that has been inspected by an inspector and found in violation of Arizona quarantine laws, and elects to ship the commodity out-of-state:

1. The inspector shall issue a Warning-Hold for Agricultural Inspection to the carrier. The carrier shall hold the notice until the commodity is removed from the state through a port-of-entry designated by the inspector and the removal is noted on the notice.
2. The common or private carrier shall surrender the Warning-Hold for Agricultural Inspection notice (driver’s copy) at the port-of-entry specified on the Warning-Hold notice.

F. Violations.

1. The inspector shall place any commodities not meeting the requirements of subsections (C)(1) and (C)(2) under quarantine and notify the shipper in writing of the following options:

- a. Reship the commodity out-of-state;
- b. Provide the necessary labor and material to open the package and reseal it after inspection; or
- c. Under the supervision of an inspector, destroy the shipment.

2. Any person who violates any of the following provisions shall submit the load for complete inspection at a port-of-entry, or where apprehended:

- a. Fails to comply with the requirements on the Warning-Hold for Agricultural Inspection,
- b. Fails to comply with the inspector’s instructions,
- c. Break the seals of a sealed vehicle.

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the infested area are kept and in which no Citrus Whitefly exists.

~~4.1. Certified treated restricted plants with foliage shall be from all points. Restricted plants or parts thereof with foliage from any point within the quarantined area which do not comply with paragraphs (1) — (3) herein shall be admitted only if they have been treated immediately prior to shipment and certified by an authorized official of the state of origin in the manner provided under R3-4-238(G). All covered commodities with foliage listed in subsection (C) shall be treated as prescribed in subsection (E) immediately before shipment and certified by an authorized official from the state of origin; or~~

~~5.2. Products admitted under permit. The State Entomologist Director may issue a permits admitting restricted products a covered commodity subject to the specific limitations, conditions, and provisions which eliminate the risk of the pest which he may prescribe therein.~~

F. Disposition of violations:

~~1. Any shipment or lot of quarantined articles as herein defined arriving in Arizona in violation of this quarantine shall be immediately sent out of the state or destroyed at the option and expense of the owner or the owner's responsible agents and under the direction of the State Entomologist or his inspectors.~~

~~2. If any shipment of restricted plants or plants parts which has been certified in accordance with paragraph (E)(3) is found infested with living whiteflies by inspectors of the Arizona Commission of Agriculture and Horticulture, all subsequent shipments into Arizona of restricted plants or plant parts from that shipper shall be denied until evidence acceptable to the State Entomologist is received demonstrating the complete eradication of Whiteflies from the premises of that shipper.~~

~~**G.E.** Treatment and issuance of treatment certificates. As a condition of entry of restricted plants and parts thereof treated as herein required, the Entomologist shall have approved in writing the construction, equipment, and operation of the fumigation chamber. Treatment certificates shall be issued only provided the restricted plants or parts thereof being certified were treated under official supervision. Any of the treatment techniques listed below is acceptable.~~

~~1. Methyl bromide fumigation: 2 ½ pounds of methyl bromide formulation registered for such use per 1000 cu. ft. of chamber space for 2 hours at a temperature of 80°F or above more for a period of 2 hours.~~

~~2. Sodium cyanide 99% chamber fumigation: 25cc HCN gas per 100 cu. ft. for 1 hour at not less than 18.3° (60°F) or more than 29.4°C (85°). See label for method of generating HCN gas from sodium cyanide. Circulation shall be maintained during the entire fumigation period. Fruit fumigated with HCN gas shall be dry.~~

~~3. Chlorpyrifos in a Chlorpyrifos. 4 lb. per gallon of Chlorpyrifos (4E) formulation registered for such use, in an emulsion of narrow range spray-oil (petroleum) oil, NR-415, emulsive.~~

~~a. 4.7 ml of Chlorpyrifos Chlorpyrifos (4E), plus 19 ml of narrow range 415 oil per gallon of water, or~~

~~b. 16 fluid ounces fl. oz. of Chlorpyrifos Chlorpyrifos (4E), plus 64 fluid ounces fl. oz. narrow range 415 oil per 100 gallons of water.~~

~~c. Methods of treatment:~~

~~i. Dip. Totally submerge plant material for two 2 minutes, remove for one 1 minute, and sub-~~

~~merge again for one 1 minute. Then remove and let dry.~~

~~ii. Spray. Apply to all plant parts, so as to thoroughly Thoroughly drench all surfaces of leaves, and all other aerial plant parts.~~

~~**H.** General rules: See "General Rules and Definitions, Article 4".~~

R3-4-239. Imported fire ants Fire Ants

~~**A.** Jurisdiction. The movement of quarantined commodities within the state of Arizona shall be governed by the following rule:~~

~~**B.** Pests covered. Any species of imported fire ants, including but not limited to *Solenopsis invicta*, *Solenopsis richteri*.~~

~~**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.~~

~~**C.** Area under quarantine. All areas in the state of Arizona which receive commodities covered in subsection (E) of this rule from any known infested areas listed in subsection (D) of this rule:~~

~~**D.B.** Infested areas. States known to be infested with these pests are: Area under quarantine. All states or portion of any state listed in 7 CFR 301.81-3, amended January 1, 1998, any area declared 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 Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter.~~

Alabama	Mississippi
Arkansas	North Carolina
Florida	South Carolina
Georgia	Texas
Louisiana	

~~**E.C.** Commodities covered. The commodities covered by this quarantine are soil and all genera, species and varieties of nursery stock associated with that soil.~~

~~1. Pine straw;~~

~~2. Beehives;~~

~~3. Soil, except potting soil shipped in original containers in which the potting soil was packaged after commercial preparation;~~

~~4. All plants associated with soil, except:~~

~~a. Indoor-grown house plants that are not for sale, and~~

~~b. Plants shipped bare-root and free from all soil.~~

~~**F.** Exemptions. The following commodities are exempt from the requirements of this quarantine rule:~~

~~1. Aquatic plants grown in soil free material.~~

~~2. c. Shipments of 25 or less indoor grown Indoor-grown house plants that have been maintained in a home and are not for sale.~~

~~3. d. Plants shipped bare-root and free from all soil.~~

~~**G.D.** Restrictions. This quarantine rule applies to all Arizona nurseries which receive any commodities described in subsection (E) of this rule from any infested areas listed in subsection (D) of this rule.~~

~~1. Upon the arrival of a shipment covered by this rule, the receiving nursery shall notify the Commission.~~

~~2. The commodities covered by this rule shall be held in a designated quarantine area for the inspection by an Inspector of the Commission.~~

~~3. The covered commodities shall be kept undisturbed in the designated quarantine area for a minimum of five working days, and none of these commodities shall be~~

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moved from the quarantine area until they are inspected and released by an Inspector of the Commission.

4. While being held in the quarantine area, no pesticide or other chemicals shall be applied to the quarantined commodities.

1. Pine straw shall be fumigated with 3-9 lbs./1,000 ft³ methyl bromide for 16-24 hours before entering the state and shall be accompanied by an original treatment certificate issued by an 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.
b. The type of barrier used to prevent the public from entering the holding area, and
c. How the holding area will be posted.

3. The following criteria shall be met by the receiver 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 location shall be at least 15 ft. from all plants not part of a shipment being held.

4. All covered commodities, except beehives, shall be unloaded at destination into a quarantine holding area until released by an inspector and held undisturbed for at least 5 calendar days, except pine straw and covered commodities originating in areas not regulated by R3-4-234, Nematode Pests, which shall be held at least 3 calendar days.

5. No pesticide or other chemical shall be applied to the covered commodity while in the quarantine holding area except under the direction and supervision of an inspector.

6. Beehives shall be allowed into Arizona if accompanied by a certificate demonstrating that the beehives have been inspected and found free of the pest. The inspection shall include the interior of each individual hive and:

- a. In palletized hives, the interior of each hive and those areas where the hive bodies come into contact with each other; and
b. Verification that hive pallets and bottom boards are free from soil.

- H.** Description of quarantine area. In order to receive any commodities from any infested areas listed in this rule, a nursery shall establish a quarantine area as described in the following paragraphs. When a nursery has established such a quarantine area, that area shall be inspected and approved by an Inspector of the Commission:

1. The quarantine area shall be of adequate size to accommodate all covered commodities expected to be received by that nursery in any seven day period.
2. The quarantine area shall be located at least 15 feet from the nearest plants outside the quarantine area and at least 15 feet from the nearest public walkway or nursery employee work area.
3. The quarantine area shall be plainly designated by signs or notices and shall be totally surrounded by a fence, wire, rope, ribbon or other barrier arranged to prevent the public from entering the quarantine area.

4. The quarantine area shall have a floor composed of soil, sand, gravel, humus or other permeable material. Floors composed of concrete, brick, tile, block, wood asphalt or other impervious material are not acceptable for the quarantine area.

- I.E.** Disposition of violations. Any commodities covered by this rule which are shipped into the state of Arizona or moved within the state of Arizona and are in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director and supervision of an Inspector of the Commission.

R3-4-242. Brown Citrus Aphid

- A.** Area Under Quarantine. Hawaii and any county in Florida that, by notification from the Florida Department of Agriculture and Consumer Services, is infested with the brown citrus aphid.

- B.** Commodities covered. All plants, except seed and fruit.

- C.** Restrictions.

1. The species, subspecies, varieties, ornamental forms and any hybrid having at least 1 ancestor of the following genera are prohibited from entering the state:

- a. *Citrus*.
b. *Fortunella*.
c. *Poncirus*.

2. All other covered commodities, whether moved directly from the area under quarantine or by diversion or re-shipment from any other point, are prohibited from entering Arizona unless the following requirements are met:

- a. Aquatic plants are accompanied by an original certificate affirming that the commodity was inspected and found free of the pest within 5 days before the shipment.
b. Terrestrial plants are accompanied by an original certificate affirming that the commodity was treated, as prescribed in subsection (E), within 5 days before the shipment.
c. The certificate shall indicate:
i. The common chemical name of the product's active ingredient,
ii. The rate at which the product was applied, and
iii. The treatment date.

- D.** The Director may issue a permit admitting a covered commodity subject to specific limitations, conditions, and provisions which eliminate the risk of the pest.

- E.** Treatment.

1. An application of a pesticide labeled for the treatment of aphids applied according to label instructions, or
2. Any other treatment approved by the director.

R3-4-244. Regulated and Restricted Noxious Weeds

- A.** Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following terms apply to this Section:

1. "Infested area" means each individual container in which the pest is found or the specific area that harbors a pest.
2. "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:
a. *Cenchrus echinatus* L. -- Southern sandbur,
b. *Cenchrus incertus* M.A. Curtis -- Field sandbur,

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- e- *Convolvulus arvensis* L. -- Field bindweed,
 - Ⓔ *Eichhornia crassipes* (Mart.) Solms -- Floating waterhyacinth,
 - e- *Medicago polymorpha* L. -- Burclover,
 - Ⓕ *Portulaca oleracea* L. -- Common purslane,
 - Ⓖ *Tribulus terrestris* L. -- Puncturevine.
3. "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:
- Ⓐ *Acroptilon repens* (L.) DC. -- Russian knapweed,
 - Ⓑ *Aegilops cylindrica* Host. -- Jointed goatgrass,
 - e- *Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - Ⓓ *Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - e- *Centaurea diffusa* L. -- Diffuse knapweed,
 - Ⓕ *Centaurea maculosa* L. -- Spotted knapweed,
 - Ⓖ *Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - Ⓕ *Cuscuta* spp. -- Dodder,
 - Ⓕ *Elytrigia repens* (L.) Nevski -- Quackgrass,
 - Euryops sunbucarnosus* subsp. *vulgaris* -- Sweet resinbush.
 - Ⓕ *Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,
 - Ⓕ *Helianthus ciliaris* DC. -- Texas blueweed,
 - Ⓕ *Ipomoea triloba* L. -- Three-lobed morning glory,
 - Ⓕ *Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,
 - Ⓕ *Onopordum acanthium* L. -- Scotch thistle.

- B.** Area under quarantine: All infested areas within the state.
- C.** The following commodities are hosts or carriers of the regulated or restricted pest:
1. All plants ~~and plant parts~~ other than those categorized as a regulated or restricted pest;
 2. Forage, straw and feed grains;
 3. Live and dead flower arrangements;
 4. Ornamental displays; and
 5. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D.** The Department may quarantine any commodity or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.
- E.** The Department shall quarantine any commodity or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).
- F.** Restrictions.
1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of ~~such~~ the pest.
 2. The owner or the owner's representative shall notify the Department at least ~~two~~ 2 working days in advance of moving contaminated equipment from the infested area.

3. The Department may inspect all equipment within ~~two~~ 2 working days after the request to inspect the equipment is made.

- G.** Treatments.
1. The owner or the owner's representative shall treat all soil and debris from the equipment used in the quarantined area to such a degree that it is free of the regulated or restricted pest before the equipment is moved from the infested area. Removal or destruction of the weed and weed seed shall be accomplished through ~~one~~ 1 of the following methods:
 - a. Autoclaving.
 - i. Dry heat. The commodity shall be heated for 15 minutes at 212°F.
 - ii. Steam heat. The commodity shall be heated for 15 minutes at 212°F.
 - b. Fumigating with ethylene oxide, chamber only; The commodity shall be fumigated with 1,500 mg/L for ~~four~~ 4 hours in a chamber pre-heated to 115-125°F.
 - c. High pressure water spray;
 - d. Crushing;
 - e. Incinerating; or
 - f. Burying in a sanitary landfill to a depth of ~~six~~ 6 feet.
 2. The owner or the owner's representative shall treat the infested area, including the area within the crop, rangeland, ditchbank, roadside, private property or body of water, with treatments based on an integrated pest management program appropriate to the commodity. The treatments shall take place under the direction of an inspector and shall include:
 - a. Reshipment from the state;
 - b. Manual removal;
 - c. Application of a herbicide;
 - d. Biological control including insects, fungi, nematodes or microbes; or
 - e. Any other treatment approved by the Director.

ARTICLE 6 - ARIZONA NATIVE PLANTS

R3-4-601. Definitions
~~In this Article unless the context otherwise requires:~~ In addition to the definitions provided in A.R.S. § 3-901, the following terms apply to this Article:

1. "Agent" means ~~one~~ a person authorized to manage, represent and act for the landowner.
2. "Blue seal" means a blue metal seal, stamped with the letters ADA, issued by the Department to identify plants which are of the protected native plant families, genera or species which are to be moved from locations which are not their original growing sites.
- 3.2. "Cord" means a specific type ~~cord~~ string or small rope issued by the Department ~~and used to attach native plant for attaching tags or~~ and seals to protected native plants.
- 4.3. "Destroy" means to cause the death of any protected native plant ~~by any means~~.
5. "Device, equipment or vehicle" means any implement which is used to unlawfully take, destroy, mutilate, dig, transport or possess any protected plant, plant part, or woody parts.
6. "Imported plants" means any plant not grown in Arizona, but which is of the protected native plant families, genera, or species, as referenced in A.R.S. § 3-903(B), and listed in Appendix A.

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7. ~~“Inaccessible” means protected native plants that are not easy to approach by conventional transportation.~~
- 8-4. ~~“Landowner” means a person who holds fee title to a parcel of land.~~
9. ~~“Mutilate” means to maim, damage or disfigure any protected native plant.~~
- 10-5. ~~“Original growing site” means the a place in the wild where the plant is growing wild and is rooted to the ground or any property owned by the same landowner where the protected native plant is relocated or transplanted.~~
11. ~~“Permit” means Native Plant Removal and Transportation Permit issued by the Department.~~
- 12-6. ~~“Permittee” means any person who is issued a valid Native Plant Removal and Transportation Permit by the Department permit for the removal removing and transportation of transporting protected native plants.~~
- 13-7. ~~“Protected native plants” means any living plant or plant part listed in Appendix A and of the species growing wild in the State of Arizona which are referenced in A.R.S. § 3-903(B), and listed in Appendix A;~~
14. ~~“Red seal” means a red metal seal, stamped with the letters ADA, issued by the Department to identify protected saguaro cacti.~~
- 15-8. ~~“Scientific or educational collection” means protected native plants used in a controlled experimental project of protected native plants carried on within established guidelines conducted by qualified individuals intended to address specific questions or to publicly display the plants for educational purposes.~~
- 16-9. ~~“Securely affixed” means to fasten in a tight and secure manner to prevent removal of native plant tags, seals or string cord.~~
17. ~~“Simple survey” means the process by which a parcel of land is examined for the presence of protected native plants without a determination being made of the kind and number of each species.~~
- 18-10. ~~“Survey” means the process by which a parcel of land is examined for the presence of protected native plants to determine the kind and number of each species.~~
 - a. Simple survey determines only if protected native plants are present;
 - b. Complete survey establishes the kind and number of each species.
19. ~~“Unsalvageable protected native plant” means a native plant which, due to an inaccessible location, severe growing conditions, its size, or the presence of disease or injury, has no economic value or public use.~~
20. ~~“White seal” means a white metal seal, stamped with the letters ADA, used to identify all protected native plants, except saguaro cacti.~~
- 21-11. ~~“White tag” means a white tag issued by the Department to identify any saguaro cactus being moved from its original growing site.~~
- 22-12. ~~“Yellow tag” means a yellow tag issued by the Department to identify any protected native plant, except a saguaro cactus, being moved from its original growing site.~~

R3-4-602. Notice of Intent: written or oral Repealed

- A.** All landowners shall submit a Notice of Intent to the Department before a protected native plant is destroyed, pursuant to A.R.S. § 3-904. The Notice of Intent shall consist of the following information:
1. The name, address and telephone number of the landowner;

2. The name, address and telephone number of the landowner’s agent in this state who can be contacted by the Department about the destruction or salvage of the protected native plant if the landowner is not a resident of this state or is otherwise unavailable;
 3. The most recent tax parcel ID number of the permit site, or other tax assessment documents indicating land ownership;
 4. A legal description, assessor’s parcel number, map, address or other adequate description of the area and the surrounding land for ½ mile in each direction in which the protected native plants subject to the destruction are located;
 5. The earliest date that the plant destruction will begin;
 6. The landowner’s intentions for the disposal or salvage of native plants on the private land.
- B.** Landowners who will destroy protected native plants over an area of one acre or less may submit all of the above information prescribed orally in lieu of written notification to the Department, as prescribed by A.R.S. 3-904(C)(2).

R3-4-603. Confirmation of Notice of Intent Repealed

- A.** Upon receipt of a Notice of Intent, either written or oral, a confirmation copy of the Notice of Intent shall be mailed by the Department to the landowner or agent.
- B.** The landowner may not proceed with the destruction until the landowner receives the confirmation copy of the Notice of Intent from the Department, and the time prescribed under A.R.S. § 3-904(A) has elapsed.

R3-4-604. Public Notice: Posting and Mailing List; Fee Repealed

When the Department receives notice from the landowner of the planned destruction of protected native plants the Department shall:

1. Give notice to the public, pursuant to A.R.S. § 3-904(E), and shall post the notice in a conspicuous location in the public area of the division office in the county where the protected native plants are located.
2. Give notice by mail to any person requesting such information. Such person may obtain the information from the Department by completing an official Department request form, or by giving their name, address, and telephone number, and paying an annual non refundable fee of \$25.00 to the Department at the time the request is submitted.

R3-4-602. Protected Native Plant Destruction

A. Department notification.

1. Before any protected native plant is destroyed, the landowner shall submit the following information to the Department on the Notice of Intent form:
 - a. The name, address, and telephone number of the landowner;
 - b. The name, address, and telephone number of the landowner’s agent if the landowner is not a resident of this state or is otherwise unavailable;
 - c. The most recent tax parcel identification number or other tax assessment document indicating land ownership;
 - d. A legal description, assessor’s parcel number, map, address, or other description of the area in which the protected native plants subject to the destruction are located;
 - e. The earliest date of the plant destruction; and
 - f. The landowner’s intentions for the disposal or salvage of protected native plants on the private land.

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2. A landowner who will destroy protected native plants over an area less than 1 acre may orally submit the information required in subsection (A)(1).
- B.** The landowner shall not proceed with the destruction of protected native plants until a written confirmation notice is received from the Department and the time prescribed under A.R.S. § 3-904(A)(3) has elapsed.
- C.** Any salvage operator or interested person may obtain protected native plant destruction notice information by providing that person's name, address, and telephone number and an annual nonrefundable \$25.00 fee.

R3-4-605, R3-4-603, State Agencies—Disposal and Salvage of Protected Native Plants by a State Agency

- A.** To preserve protected native plants on state land, a state agency shall notify the Department, pursuant to A.R.S. § 3-905, and may dispose of the protected native plants using any of the following methods:
 1. The plants may be sold at a public auction;
 2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state;
 3. The state agency may obtain permits for removal of the plants for revegetation projects;
 4. The plants may be donated to scientific, educational, research, and charitable institutions;
 5. The plants may be donated to other state agencies or municipalities;
 6. The plants may be salvaged by the general public or commercial dealers.
- B.** Pursuant to A.R.S. § 3-905(C), the Department shall require that a survey be conducted, as prescribed by R3-4-606, to determine the kinds and approximate number of plants involved in the salvage or harvest.

R3-4-604. Protected Native Plant Permits; Tags; Fees

- A.** No person shall collect, transport, possess, sell, offer for sale, dispose or salvage protected native plants unless that person is 18 years of age or older and holds a permit.
- B.** A permit applicant shall submit the following information to the Department, if applicable:
 1. The name, business name, address, telephone number, social security number, and signature of the applicant;
 2. The name and number of plants to be removed;
 3. The purpose of the plant removal;
 4. Whether the applicant has had a previous conviction of a state or federal statute regarding the protection of native plants within the previous 5 years.
 5. Except for salvage assessed native plants:
 - a. The name, address, telephone number, and signature of the landowner;
 - b. The location of the permit site and size of acreage;
 - c. The destination address where the plants will be transplanted;
 - d. The legal and physical description of the location of the original growing site;
 - e. The most recent tax parcel identification number available for the permit site, or other tax assessment documents indicating land ownership.
- C.** Permit fees.
 1. Any person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:
 - a. Salvage-assessed native plants, annual use, \$25.00;
 - b. Harvest-restricted native plants, annual use, \$25.00;

- c. All other native plants, one-time use, \$5.00.
2. Exemptions. The following protected native plants are exempt from fees if:
 - a. The protected native plants intended for personal use by the landowner are taken from 1 piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner and are not sold or offered for sale;
 - b. The protected native plants are collected for scientific purposes; or
 - c. The landowner donates the protected native plant to a scientific, educational or charitable institution.

D. Tag fees.

1. Any person obtaining a white tag or yellow tag shall submit the following applicable fee to the Department at the time the tag is obtained:
 - a. Saguaro, \$6.00 per plant;
 - b. Trees cut for firewood and listed in the harvest restricted category, \$4.00 per cord;
 - c. Coryphantha, mammillaria, and pincushion cactus, \$.50 per plant;
 - d. All other protected native plants referenced in A.R.S. § 3-903(B) and listed in Appendix A, \$4.00 per plant.
 2. Harvested restricted native plants, of *nolina* and *yucca* parts is \$4.00 per ton.
- E.** Salvage assessed permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

R3-4-605. Scientific Permits

- A.** No person shall collect protected native plants for research projects unless that person holds a scientific permit.
- B.** A permit applicant shall submit the following information to the Department:
 1. The name, address and telephone number of the company or research facility applying for the permit;
 2. The name and title of the person conducting the project;
 3. The purpose and intent of the project;
 4. Whether the results of the research will be published and if yes, the media used to publish the results;
 5. What kind of controls will be used;
 6. What variables will be considered;
 7. How long will the project take;
 8. What are the expected results;
 9. The type of reports and record keeping used to monitor the project;
 10. What type of funding will be used;
 11. How is the company or research facility funded;
 12. Written approval for collection from the legal owner of the plants;
 13. The date of the application; and
 14. The signature of the person authorized on behalf of the company or research facility affirming that the plants collected will not be sold or used for personal interests.
- C.** Scientific research permits shall be issued if all of the following are met:
 1. The native plant removal site is restored to a natural appearance and the site restoration is approved by the site owner;
 2. The removal and movement of the native plants are accomplished by persons equipped and experienced in native plant removal and transplantation;
 3. The native plants used in the project are accessible to the scientific and regulatory communities;

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4. The ecology of the project site is beneficial to the growth of the specific plants entered in the project;
5. Arrangements have been made for a suitable permanent planting site for the surviving plants after the project's completion; and
6. Security is provided at the project site to prevent the destruction of theft of native plants used in the experiment.

D. Scientific permits are valid for the calendar year in which they are issued.

R3-4-606. Protected Native Plant Surveys; Fee

A. Pursuant to A.R.S. § 3-910(B), written reports of plant survey results shall be required prior to the issuance of a permit, except for permits issued for the salvage of salvage assessed native plants, as set forth in A.R.S. § 3-906(C). Except for permits issued for salvage assessed native plants, any person harvesting protected native plants shall conduct a survey and provide a written report of the plant survey results before a permit is issued.

B. The landowner, permittee, or agent shall have the option to may conduct the survey or to request that the survey be conducted by the Department.

C. 1. If the landowner, permittee or agent chooses to conduct the survey, the following survey information shall be completed on a survey form furnished by the Department:

1. a. The name, address, telephone number, and signature of the landowner, permittee, or agent performing the survey;
2. b. The date the survey was performed;
3. c. The survey results including the names and numbers of plants;

D. 2. The Department upon request shall conduct If the Department conducts the survey, which the survey shall be completed within 20 working days. Upon completion of the survey, the Department shall mail a letter of confirmation to notify the landowner or agent which shall include of:

1. a. The date the survey was performed;
2. b. The amount of the survey fee payable to the Department;
3. c. The name of Department personnel performing the survey;
4. d. The survey results including the names and numbers of protected native plants.

E. There shall be no fee for conducting a simple survey.

F.C. The following fees for a department conducted survey shall be paid to the Department within 30 days from the date of the letter of confirmation.

1. Simple survey, no fee;
2. Fees established for a Department conducted survey shall include but not be limited to time, as prescribed by A.R.S. § 38-611(B), and travel, as prescribed by A.R.S. § 38-623(C) and (D), shall be paid to the Department by the permittee requesting the survey, pursuant to A.R.S. § 3-910. Complete survey, includes time and travel, as prescribed under A.R.S. §§ 38-611(B) and 38-623(C) and (D).

G. All fees shall be paid to the Department within 30 days from the date of the letter of confirmation.

R3-4-607. Seminars, Training Courses, Pamphlets and Printed Material; Fee Repealed

A. The Department shall charge a \$5.00 fee per session to a person who attends a seminar or training class.

B. Schools, law enforcement agencies and government entities shall be exempt from fees for seminars or training classes offered by the Department.

C. The time, date and location of the training class shall be set by the Department.

D. The Department shall charge an additional fee for printed material or pamphlets based on document printing and mailing costs.

R3-4-608. Native Plant Law Educational Classes; Fee Repealed

A. A person convicted of violating the Arizona native plant statutes or rules and ordered by the court to attend a native plant law educational class, pursuant to A.R.S. § 3-911, shall pay a non-refundable fee of \$15.00 to the Department prior to class.

B. The time, date and location of the educational class shall be set by the Department.

C. The Department shall provide written confirmation to those persons who have satisfactorily completed the native plant law educational class.

R3-4-609. Permits Repealed

A. Upon completion of the permit requirements, the Department shall issue Native Plant Removal and Transportation Permits which authorize the permittee to remove and transport protected native plants for highly safeguarded, salvage restricted, salvage assessed and harvest restricted native plant categories, pursuant to A.R.S. § 3-903(B), and listed in Appendix A. This permit shall include:

1. The name or business name, address, telephone number and signature of the permittee;
2. The name of the landowner, except for salvage assessed native plants;
3. The destination address where the plants will be transported, except for salvage assessed native plants;
4. The legal and physical description of the location of the original growing site, except for salvage assessed native plants;
5. The name and number of plants to be removed;
6. The purpose for plant removal;
7. The date and place of permit issue;
8. The date of permit expiration;
9. The number of each tag or wood receipt issued under permit by the Department;
10. The fee assessed by the Department for the tags or wood receipts;
11. The name and title of the Department employee issuing the permit, tags or wood receipts.

B. Salvage assessed permits and plant tags are valid for the calendar year in which they are issued. The tags shall expire unless the permit is renewed.

R3-4-610. Qualifications for Permit Applicants Repealed

A. Applicants for a permit shall:

1. Submit an application to the Department which shall include:
 - a. The name, business name, address, telephone number and signature of the applicant;
 - b. The name, address and telephone number of the landowner, except salvage assessed native plants;
 - c. The location of the permit site and size of acreage, except salvage assessed native plants;
 - d. The most recent tax parcel ID number available for the permit site, or other tax assessment documents indicating land ownership, except salvage assessed native plants;

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- e. The name and number of plants to be removed;
- f. The purpose for plant removal.
- 2. Be 18 years of age or older.
- 3. Inform the Department of any previous conviction of a state or federal statute regarding the protection of native plants within the previous five years.
- B. The Director may refuse to issue or may revoke a permit for any of the following acts:
 - 1. A violation of the Arizona native plant statute, A.R.S. Title 3, Chapter 7, Article 1 and 2, Arizona Revised Statutes, its rules, or any federal native plant statute;
 - 2. Failure of an applicant or permittee to submit a complete and accurate permit application;
 - 3. Misuse of a permit, tags or metal seals.
- C. The permittee may request in writing that the Department provide an administrative hearing to appeal any refusal or revocation of a permit, pursuant to A.R.S. § 41-1061, et seq.

R3-4-611. Qualifications for Salvage Assessed Native Plant Permits Repealed

- A. All applicants for a permit to collect, transport, and possess salvage assessed native plants shall comply with the application requirements in R3-4-610.
- B. The Director may refuse to issue or may revoke a permit for any of the following acts:
 - 1. Failure of a permittee to submit a complete and accurate transaction report, as defined in subsection (D);
 - 2. Failure to obtain written approval by the landowner or agent for the removal of a plant;
 - 3. Failure to allow the Department to inspect transaction records;
 - 4. Failure of a permittee to have transaction records, as defined in subsection (D), available to Department inspectors to inspect at permittee's address listed on permit.
- C. Pursuant to A.R.S. § 3-910(B), each permittee shall keep, for a period of two years from the date of each transaction, a complete record of each plant removed under the annual permit. The transaction record shall include:
 - 1. The date plants were removed;
 - 2. The permit and tag numbers.
- D. Prior to January 31st of the following calendar year, the permittee shall submit a copy of each transaction that took place during the prior calendar year.
- E. Transaction records shall be kept by the permittee and the permittee shall allow inspection of the records by the Department during normal business hours.

R3-4-612. Qualifications for Annual Permits for Harvest Restricted Native Plants; Fee Repealed

- A. All applicants for a permit to collect, transport, and possess harvest restricted native plants shall comply with the application requirements in R3-4-610 and R3-4-611, with the exception of R3-4-611(E).
- B. After issuance of the permit, the permittee shall weigh all unprocessed *nolina* and *yucca* fiber at an approved bonded scale.
- C. The permittee shall mail the weight certificates and shall pay a \$3.00 non-refundable fee, as prescribed by R3-4-614, to the Department no later than the 10th day of each month following harvest.
- D. No later than the 10th day of each month following harvest, the permittee shall submit the transaction records to the Department for each month that a transaction took place or shall submit a written statement that no transaction was conducted for that month.

R3-4-613. Native Plant Permit Fees; Exemptions Repealed

- A. Any person wishing to collect protected native plants shall submit the following applicable fee to the Department with the permit application prescribed in R3-4-610:
 - 1. Salvage-assessed native plants, annual use; \$25.00.
 - 2. Harvest-restricted native plants, annual use; \$25.00.
 - 3. All other native plants, one-time use; \$5.00.
- B. The Department shall exempt from permit fees plants for personal use by a landowner or plants relocated to a scientific and educational collection provided that:
 - 1. The plants intended for personal use by the landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain the property of the landowner, and are not sold or offered for sale; or
 - 2. The plants intended for scientific and educational purposes are relocated to a scientific and educational collection

R3-4-614. Native Plant Tag Assessments and Receipt Fees Repealed

- A. Any person wishing to obtain white or yellow tags shall submit the following applicable fee to the Department with the permit application prescribed in R3-4-610 at the time the tag is obtained:
 - 1. Saguaro; \$5.00 per plant
 - 2. Trees cut for firewood and listed in the harvest restricted category; \$3.00 per cord.
 - 3. *Coryphantha*, *mammillaria* and *pineushion* cactus; \$5.00 per plant.
 - 4. All other protected native plants referenced in A.R.S. § 3-903(B) and listed in Appendix A; \$3.00 per plant.
- B. Assessment fees for harvested restricted native plants of *nolina* and *yucca* parts shall be paid to the Department at \$3.00 per ton no later than the 10th day of the month following each harvest.

R3-4-615. Procedures for Attaching Tags, Metal Seals and Cord to Protected Native Plants Repealed

- A. The permittee shall obtain all requisite tags, red and white metal seals and cord from the Department after paying the required fees and use them in the following manner:
 - 1. The cord shall be securely affixed around the middle of the plant and knotted with tag attached.
 - 2. The cord shall be placed on the plant so that it cannot be removed without breaking the seal or cutting the cord.
 - 3. The metal seal shall be placed directly over the knot and snapped firmly closed.
 - 4. A tag used to identify a specific native plant shall be attached to the plant before being transported from the permitted property.
 - 5. Upon loading the plant, every effort shall be made to make the tag visible during transporting.
- B. No rope, string, twine or wire shall be used to attach metal seals or tags to a protected native plant except for the cord provided by the Department at the time the permit, tags, and metal seals are obtained by the permittee

R3-4-616. R3-4-607. Use of Metal Seals, Movement Permit; Tags, Metal Seals, and Cord Use

- A. Any person wishing to move moving a protected native plant that has previously been transplanted from its original growing site in Arizona and will be transplanted transplanting it to another location shall apply to the Department for a Movement Permit. The property landowner where the plant is being moved from shall provide the following information on the permit application. The Movement Permit shall contain:

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1. ~~The property owner's name, and telephone number, and signature of the landowner;~~
 2. The location of the plant;
 3. The name, address, and telephone number of the receiver;
 4. The name, address, and telephone number of the carrier;
 5. The number, species, and description of the plants ~~to be~~ being removed;
 - ~~5-6. The signature of the property owner~~ The tax parcel identification number; and
 - ~~6-7. The date of the application.~~
- B. Movement of protected native plants obtained outside Arizona.**
1. ~~Any person wishing to move~~ moving a protected native plant ~~that has been~~ obtained outside Arizona and ~~will be transported~~ transporting and ~~planted~~ planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under quarantine Warning Hold to the nearest district office.
 2. ~~If no agricultural station is in operation at the port of entry, the person shall declare the protected native plant at the nearest district office.~~
 3. ~~The person shall obtain a yellow seal and a movement permit at the nearest district office. If no agricultural inspection station is in operation at the port of entry, the person shall declare the protected native plant at the nearest district office, and obtain the yellow seal and Movement Permit. After the plants have been declared, the district office shall issue a Movement Permit and a green seal.~~
- C. Any person ~~wishing to move~~ moving protected native plants shall obtain, at cost, the following appropriate metal seals from the Department and securely attach them to each protected native plant:**
1. ~~Blue seals, which have a one-time use, shall be securely attached to identify each protected native plant described in subsection (A). Blue seals identify protected native plants that will be moved from locations that are not their original growing sites.~~
 2. ~~White seals, which have a one-time use, shall be securely attached to identify protected native plants, other than saguaro cacti, before taking or removing the plants from their original growing sites. White seals identify the protected saguaro cactus.~~
 3. ~~Red seals, which have a one-time use, shall be securely attached to identify protected saguaro cacti before taking or removing the plants from their original growing sites; Green seals identify all imported protected native plants.~~
 4. ~~Yellow seals, which have a one-time use, shall be securely attached to identify protected native plants described in subsection (B). Yellow seals identify all protected native plants, except the protected saguaro cactus.~~
- D. Tag, metal seal, and cord attachment.**
1. A tag shall be attached to each protected native plant taken from its original growing site, using cord provided by the Department, before being transported. No other type of rope, string, twine or wire is allowed.
 2. The cord shall be securely affixed around the plant and knotted with the tag attached so that it cannot be removed without breaking the seal or cutting the cord.
3. The metal seal shall be placed directly over the knot and snapped firmly closed.
 4. Upon loading the plant, every effort shall be made to make the tag visible during transporting.
- R3-4-617. Misuse of Permits, Tags, or Metal Seals Repealed**
- A.** Pursuant to A.R.S. § 3-912, the Department may suspend, revoke, or refuse to renew a permit and may confiscate permits, tags or metal seals for any of the following acts:
1. ~~Taking of plants from areas other than locations listed on the permit, or taking of plants not specified on the permit;~~
 2. ~~Allowing use of the permit, tags or metal seals by anyone except the permittee or designated agent;~~
 3. ~~Using tags other than those numbered and listed on the permit;~~
 4. ~~Removing native plant tags or metal seals for reuse after delivery of plants to the final owner;~~
 5. ~~Using permits, tags or metal seals past their expiration date;~~
 6. ~~Selling permits, tags or metal seals to anyone;~~
 7. ~~Failing to comply with the Arizona native plant statute, its rules, or any federal native plant statute;~~
 8. ~~Giving false statements on applications;~~
 9. ~~Making copies of permits for use by persons other than the permittee or designated agent.~~
- B.** ~~The permittee may request, in writing, that the Department provide an administrative hearing, pursuant to A.R.S. § 41-1061, et seq, to appeal action taken against renewal of a permit, or confiscation of a permit, tag or metal seal.~~
- R3-4-608. Salvage Assessed and Harvest Restricted Native Plants**
- A. Harvest restricted native plants.**
1. Unprocessed *nolina* and *yucca* fiber shall be weighed at a state-certified bonded scale;
 2. Payment and weigh certificates are due to the Department no later than the 10th day of the month following each harvest.
- B. Recordkeeping.**
1. Salvage Assessed Native Plants.
 - a. A permittee shall maintain a record of each protected native plant removed under the annual permit for 2 years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed, and the permit and tag numbers.
 - b. Before January 31st, the permittee shall submit to the Department a copy of each transaction during the prior calendar year.
 2. Harvest Restricted Native Plants. No later than the 10th day of each month following harvest, the permittee shall submit the transaction records for each month that a transaction took place, or a written statement that no transaction was conducted for that month.
- R3-4-609. Arizona Native Plant Law Education**
- A.** Seminars and training courses shall be scheduled on an as needed basis.
- B.** In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon the document printing and mailing costs:

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1. Any person attending a seminar or training course in Arizona native plant law shall pay a nonrefundable fee of \$5.00 to the Department before the class.
 2. Any person convicted of violating the Arizona native plant statutes or rules and ordered by the court to attend a native plant law educational class shall pay a nonrefundable fee of \$15.00 to the Department before the class.
 3. Schools, law enforcement agencies, and government entities are exempt from seminar and training course fees.
- C.** The Department shall provide written confirmation of satisfactory completion to any person order by the court to attend the class.

R3-4-610. Permit Denial, Revocation, and Suspension

- A.** In addition to the prohibited acts listed in A.R.S. § 3-908(A), the Director may deny, revoke, or suspend a permit for any of the following:
1. A violation of 3 A.R.S. 7; 3 A.A.C. 4, Article 6; or any federal native plant law;
 2. Misuse of a permit, tag or metal seal;
 3. Failure of an applicant or permittee to submit a complete and accurate permit application or a transaction report;
 4. Failure to allow the Department to inspect transaction records.
- B.** The applicant or permittee may request in writing that the Department provide an administrative hearing pursuant to 41 A.R.S. 6, Article 10, to appeal any denial, revocation, or suspension of a permit.

~~R3-4-618, R3-4-611.~~ Confiscation of Plants, Plant Parts, Wood, or Fiber, or Artifacts as Evidence

- A.** Following any determination by a court or the Department that a native plant law has been violated, all protected native plants, plant parts, wood, or fiber, or artifacts confiscated and held as evidence shall become the property of the state, unless the court or the Department orders otherwise.
- ~~B.~~** ~~Following a final decision by a court or the Department that a native plant law has been violated, confiscated items needed as evidence shall be held pending appeal. If the defendant appeals the conviction, the confiscated evidence shall be held by the Department pending ruling by the appellate court.~~
- ~~C, B.~~** ~~All confiscated evidence which that becomes the property of the state shall be disposed of by the Department in the best interest of the state.~~

APPENDIX A

PROTECTED NATIVE PLANTS BY CATEGORIES

- A.** Highly Safeguarded Protected Native Plants
The following list includes those species of native plants and parts of plants, including the seeds and fruit, whose prospects for survival in Arizona are in jeopardy or which are in danger of extinction.

AGAVACEAE Agave Family (including Nolinaceae)

- Agave arizonica* Gentry & Weber—Arizona agave
- Agave delamateri* Hodgson & Slauson
- Agave murpheyi* Gibson—Hohokam agave
- Agave parviflora* Torr.—Santa Cruz striped agave, Small-flowered agave
- Agave schottii* Engelm. var. *treleasei* (Toumey) Kearney & Peebles

APIACEAE Parsley Family. [= Umbelliferae]

Lilaeopsis schaffneriana (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter—Cienega false rush, Huachuca water umbel.
Syn.: *Lilaeopsis recurva* A. W. Hill

APOCYNACEAE Dogbane Family

Amsonia kearneyana Woods.—Kearney's bluestar
Cycladenia humilis Benth. var. *jonesii* (Eastw.) Welsh & Atwood—~~Jone's~~ Jones' cycladenia

ASCLEPIADACEAE Milkweed Family

Asclepias welshii N. & P. Holmgren—Welsh's milkweed

ASTERACEAE Sunflower Family [= Compositae]

Erigeron lemmonii Gray—Lemmon fleabane
Senecio franciscanus Greene—San Francisco Peaks groundsel
Senecio huachucanus Gray—Huachuca groundsel

BURSERACEAE Torch Wood Family

Bursera fagaroides (H.B.K.) Engler—Fragrant bursera

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose—Saguaro: 'Crested' or 'Fan-top' form only
Syn.: *Cereus giganteus* Engelm.

Coryphantha recurvata (Engelm.) Britt. & Rose—Golden-chested beehive cactus
Syn.: *Mammillaria recurvata* Engelm.

Coryphantha robbinsorum (W. H. Earle) A. Zimmerman—Cochise pincushion cactus, Robbin's cory cactus.

Syn.: *Cochiseia robbinsorum* W.H. Earle

Coryphantha scheeri (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson—Scheer's strong-spined cory cactus.

Syn.: *Mammillaria robustispina* Schott

Echinocactus horizontalonius Lemaire var. *nicholii* L. Benson—Nichol's Turk's head cactus

Echinocereus triglochidiatus Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson—Arizona hedgehog cactus

Echinomastus erectocentrus (Coult.) Britt. & Rose var. *acunensis* (W.T. Marshall) L. Benson—Acuna cactus

Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson

Pediocactus bradyi L. Benson—Brady's pincushion cactus

Pediocactus paradinei B. W. Benson—Paradine plains cactus

Pediocactus peeblesianus (Croizat) L. Benson var. *fickeiseniae* L. Benson

Pediocactus peeblesianus (Croizat) L. Benson var. *peeblesianus* Peebles' Navajo cactus, Navajo plains cactus

Syn.: *Navajoa peeblesiana* Croizat

Pediocactus sileri (Engelm.) L. Benson—Siler pincushion cactus

Syn.: *Utahia sileri* (Engelm.) Britt. & Rose

COCHLOSPERMACEAE Cochlospermum Family

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Amoreuxia gonzalezii Sprague & Riley

CYPERACEAE Sedge Family

Carex specuicola J. T. Howell–Navajo sedge

FABACEAE Pea Family [=Leguminosae]

Astragalus cremnophylax Barneby var. *cremnophylax* Sentry milk vetch

Astragalus holmgreniorum Barneby–Holmgren milk-vetch

Dalea tentaculoides Gentry–Gentry indigo bush

LENNOACEAE Lennoa Family

Pholisma arenarium Nutt.–Scaly-stemmed sand plant

Pholisma sonora (Torr. ex Gray) Yatskievych–Sandfood, sandroot

Syn.: *Ammobroma sonora* Torr. ex Gray

LILIACEAE Lily Family

Allium goodingii Ownbey–Gooding’s onion

ORCHIDACEAE Orchid Family

Cypripedium calceolus L. var. *pubescens* (Willd.) Correll–Yellow lady’s slipper

Hexalectris warnockii Ames & Correll–Texas purple spike

Spiranthes delitescens C. Sheviak

POACEAE Grass Family [=Gramineae]

Puccinellia parishii A.S. Hitchc.–Parish alkali grass

POLYGONACEAE Buckwheat Family

Rumex orthoneurus Rech. f.

PSILOTACEAE Psilotum Family

Psilotum nudum (L.) Beauv. Bush Moss, Whisk Fern

RANUNCULACEAE Buttercup Family

Cimicifuga arizonica Wats.–Arizona bugbane

Clematis hirsutissima Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower

ROSACEAE Rose Family

Purshia subintegra (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose

Syn.: *Cowania subintegra* Kearney

SALICACEAE Willow Family

Salix arizonica Dorn–Arizona willow

SCROPHULARIACEAE Figwort Family

Penstemon discolor Keck–Variegated beardtongue

B. Salvage Restricted Protected Native Plants.

The following list includes those species of native plants that are not included in the highly safeguarded category but are subject to damage by theft or vandalism. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants.

AGAVACEAE Agave Family (including Nolinaceae)

Agave chrysantha Peebles

Agave deserti Engelm. ssp. *simplex* Gentry–Desert agave

Agave mckelveyana Gentry

Agave palmeri Engelm.

Agave parryi Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles

Agave parryi Engelm. var. *huachuensis* (Baker) Little ex L. Benson
Syn.: *Agave huachuensis* Baker

Agave parryi Engelm. var. *parryi*

Agave schottii Engelm. var. *schottii* – Shindigger

Agave toumeyana Trel. ssp. *bella* (Breitung) Gentry

Agave toumeyana Trel. ssp. *toumeyana*

Agave utahensis Engelm. spp. *kaibabensis* (McKelvey) Gentry

Syn.: *Agave kaibabensis* McKelvey

Agave utahensis Engelm. var. *utahensis*

Dasyllirion wheeleri Wats.–Sotol, desert spoon

Nolina bigelovii (Torr.)Wats.–Bigelow’s nolina

Nolina microcarpa Wats.–Beargrass, sacahuista

Nolina parryi Wats.–Parry’s nolina

Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

Yucca angustissima Engelm. var. *angustissima*

Yucca angustissima Engelm. var. *kanabensis* (McKelvey) Reveal

Syn.: *Yucca kanabensis* McKelvey

Yucca arizonica McKelvey

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca baccata Torr. var. *vespertina* McKelvey

Yucca baileyi Woot. & Standl. var. *intermedia* (McKelvey) Reveal

Syn.: *Yucca navajoa* Webber

Yucca brevifolia Engelm. var. *brevifolia*–Joshua tree

Yucca brevifolia Engelm. var. *jaegeriana* McKelvey

Yucca elata Engelm. var. *elata*–Soaptree yucca, palmilla

Yucca elata Engelm. var. *utahensis* (McKelvey) Reveal

Syn.: *Yucca utahensis* McKelvey

Yucca elata Engelm. var. *verdiensis* (McKelvey) Reveal

Syn.: *Yucca verdiensis* McKelvey

Yucca harrimaniae Trel.

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

Yucca schottii Engelm.–Hairy yucca

Yucca thornberi McKelvey

Yucca whipplei Torr. var. *whipplei*–Our Lord’s candle

Syn.: *Yucca newberryi* McKelvey

AMARYLLIDACEAE Amaryllis Family

Zephyranthes longifolia Hemsl.–Plains Rain Lily

ANACARDIACEAE Sumac Family

Rhus kearneyi Barkley–Kearney Sumac

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ARECACEAE Palm Family [=Palmae]

Washingtonia filifera (Linden ex Andre) H. Wendl.–California fan palm

ASTERACEAE Sunflower Family [=Compositae]

Cirsium parryi (Gray) Petrak ssp. *mogollonicum* Schaak

Cirsium virginensis Welsh–Virgin thistle

Erigeron kuschei Eastw.–Chiricahua fleabane

Erigeron piscaticus Nesom–Fish Creek fleabane

Flaveria macdougalii Theroux, Pinkava & Keil

Perityle ajoensis Todson–Ajo rock daisy

Perityle cochisensis (Niles) Powell–Chiricahua rock daisy

Senecio quaerens Greene–Gila groundsel

BURSERACEAE Torch-Wood Family

Bursera microphylla Gray–Elephant tree, torote

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose–Saguaro

Syn.: *Cereus giganteus* Engelm.

Coryphantha missouriensis (Sweet) Britt. & Rose

Coryphantha missouriensis (Sweet) Britt. & Rose var. *marstonii* (Clover) L. Benson

Coryphantha scheeri (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson

Coryphantha strobiliformis (Poselger) var. *orcuttii* (Rose) L. Benson

Coryphantha strobiliformis (Poselger) var. *strobiliformis*

Coryphantha vivipara (Nutt.) Britt. & Rose var. *alversonii* (Coul.) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall
Syn.: *Mammillaria arizonica* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall
Syn.: *Mammillaria chlorantha* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson

Echinocactus polycephalus Engelm. & Bigel. var. *polycephalus*

Echinocactus polycephalus Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.

Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *armatus* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *engelmannii*

Echinocereus engelmannii (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *fasciculatus*

Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *bonkeriae* (Thornber & Bonker) L. Benson.

Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkeriae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkeriae* (Thornber & Bonker) L. Benson

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson

Syn.: *Echinocereus boyce-thompsonii* Orcutt

Echinocereus fendleri (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson

Echinocereus fendleri (Engelm.) Rümpler var. *fendleri*

Echinocereus fendleri (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson

Echinocereus ledingii Peebles

Echinocereus nicholii (L. Benson) Parfitt.

Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson

Echinocereus pectinatus (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor

Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coul.) L. Benson

Echinocereus polyacanthus Engelm. (1848) var. *polyacanthus*

Echinocereus pseudopectinatus (N. P. Taylor) N. P. Taylor

Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.

Echinocereus rigidissimus (Engelm.) Hort. F. A. Haage.

Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus

Echinocereus triglochidiatus Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.

Echinocereus triglochidiatus Engelm. var. *melanacanthus* (Engelm.) L. Benson

Syn.: *Mammillaria aggregata* Engelm.

Echinocereus triglochidiatus Engelm. var. *mojavensis* (Engelm.) L. Benson

Echinocereus triglochidiatus Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.

Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson

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- Echinocereus triglochidiatus* Engelm. var. *triglochidiatus*
- Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *erectocentrus*
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*
- Echinomastus intertextus* (Engelm.) Britt. & Rose
Syn.: *Neolloydia intertexta* (Engelg.) L. Benson
- Echinomastus johnsonii* (Parry) Baxter–Beehive cactus
Syn.: *Neolloydia johnsonii* (Parry) L. Benson
- Epithelantha micromeris* (Engelm.) Weber ex Britt. & Rose
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; *Ferocactus eastwoodiae* (L. Benson) L. Benson
- Ferocactus cylindraceus* (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *lecontei* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose
- Ferocactus emoryi* (Engelm.) Orcutt–Barrel cactus
Syn.: *Ferocactus covillei* Britt. & Rose
- Ferocactus wislizenii* (Engelm.) Britt. & Rose–Barrel cactus
- Lophocereus schottii* (Engelm.) Britt. & Rose–Senita
- Mammillaria grahamii* Engelm. var. *grahamii*
- Mammillaria grahamii* Engelm. var. *oliviae* (Orcutt) L. Benson
Syn.: *Mammillaria oliviae* Orcutt
- Mammillaria heyderi* Mühlenpf. var. *heyderi*
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson
- Mammillaria heyderi* Mühlenpf. var. *macdougalii* (Rose) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose
- Mammillaria heyderi* Mühlenpf. var. *meiacantha* (Engelm.) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson
- Mammillaria lasiacantha* Engelm.
- Mammillaria mainiae* K. Brand.
- Mammillaria microcarpa* Engelm.
- Mammillaria tetrancistra* Engelm.
- Mammillaria thornberi* Orcutt
- Mammillaria viridiflora* (Britt. & Rose) Bödeker.
Syn.: *Mammillaria oestra* L. Benson
- Mammillaria wrightii* Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall
Syn.: *Mammillaria wilcoxii* Toumey
- Mammillaria wrightii* Engelm. var. *wrightii*
- Opuntia acanthocarpa* Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla
- Opuntia acanthocarpa* Engelm. & Bigel. var. *coloradensis* L. Benson
- Opuntia acanthocarpa* Engelm. & Bigel. var. *major* L. Benson
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel var. *ramosa* Peebles
- Opuntia acanthocarpa* Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson
Syn.: *Opuntia thornberi* Thornber & Bonker
- Opuntia arbuscula* Engelm.–Pencil cholla
- Opuntia basilaris* Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail
Syn.: *Opuntia aurea* Baxter
- Opuntia basilaris* Engelm. & Bigel. var. *basilaris*–Beavertail cactus
- Opuntia basilaris* Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson
- Opuntia basilaris* Engelm. & Bigel. var. *treleasei* (Coult.) Toumey
- Opuntia bigelovii* Engelm.–Teddy-bear cholla
- Opuntia campii* ined.
- Opuntia canada* Griffiths (*O. phaeacantha* Engelm. var. *laevis* X *major* and *O. gilvescens* Griffiths).
- Opuntia chlorotica* Engelm. & Bigel.–Pancake prickly-pear
- Opuntia clavata* Engelm.–Club cholla
- Opuntia curvospina* Griffiths
- Opuntia echinocarpa* Engelm. & Bigel–Silver cholla
- Opuntia emoryi* Engelm.–Devil cholla
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann’s prickly-pear
Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *flavospina* (L. Benson) Parfitt & Pinkava
Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson
- Opuntia erinacea* Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear
- Opuntia erinacea* Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson
Syn.: *Opuntia hystricina* Engelm. & Bigel.
- Opuntia erinacea* Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear
Syn.: *Opuntia ursina* Weber
- Opuntia erinacea* Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson
Syn.: *Opuntia rhodantha* Schum.
- Opuntia fragilis* Nutt. var. *brachyartha* (Engelm. & Bigel.) Coult.

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- Opuntia fragilis* Nutt. var. *fragilis*—Little prickly-pear
- Opuntia fulgida* Engelm. var. *fulgida*—Jumping chain-fruit cholla
- Opuntia fulgida* Engelm. var. *mammillata* (Schott) Coult.
- Opuntia imbricata* (Haw.) DC.—Tree cholla
- Opuntia X kelvinensis* V. & K. Grant pro sp.
Syn.: *Opuntia kelvinensis* V. & K. Grant
- Opuntia kleiniae* DC. var. *tetracantha* (Toumey) W. T. Marshall
Syn.: *Opuntia tetrancistra* Toumey
- Opuntia kunzei* Rose.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter
- Opuntia leptocaulis* DC.—Desert Christmas cactus, Pencil cholla
- Opuntia littoralis* (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington
- Opuntia macrocentra* Engelm.—Purple prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*
- Opuntia macrorhiza* Engelm. var. *macrorhiza*—Plains prickly-pear
Syn.: *Opuntia plumbea* Rose
- Opuntia macrorhiza* Engelm. var. *pottsii* (Salm-Dyck) L. Benson
- Opuntia martiniana* (L. Benson) Parfitt
Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana* L. Benson
- Opuntia nicholii* L. Benson—Navajo Bridge prickly-pear
- Opuntia parishii* Orcutt.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson
- Opuntia phaeacantha* Engelm. var. *laevis* (Coult.) L. Benson
Syn.: *Opuntia laevis* Coult.
- Opuntia phaeacantha* Engelm. var. *major* Engelm.
- Opuntia phaeacantha* Engelm. var. *phaeacantha*
- Opuntia phaeacantha* Engelm. var. *superbospina* (Griffiths) L. Benson
- Opuntia polyacantha* Haw. var. *juniperina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *rufispina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson
- Opuntia pulchella* Engelm.—Sand cholla
- Opuntia ramosissima* Engelm.—Diamond cholla
- Opuntia santa-rita* (Griffiths & Hare) Rose—Santa Rita prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson
- Opuntia spinosior* (Engelm.) Toumey—Cane cholla
- Opuntia versicolor* Engelm.—Staghorn cholla
- Opuntia vivipara* Engelm.
- Opuntia whipplei* Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson
- Opuntia whipplei* Engelm. & Bigel. var. *whipplei*—Whipple cholla
- Opuntia wigginsii* L. Benson
- Pediocactus papyracanthus* (Engelm.) L. Benson
Grama grass cactus
Syn.: *Toumeyia papyracanthus* (Engelm.) Britt. & Rose
- Pediocactus simpsonii* (Engelm.) Britt & Rose var. *simpsonii*
- Peniocereus greggii* (Engelm.) Britt. & Rose var. *greggii*—Night-blooming cereus
Syn.: *Cereus greggii* Engelm.
- Peniocereus greggii* (Engelm.) Britt & Rose var. *transmontanus*—Queen-of-the-Night
- Peniocereus striatus* (Brandegee) Buxbaum.
Syn.: *Neoevansia striata* (Brandegee) Sanchez-Mejorada; *Cereus striatus* Brandegee; *Wilcoxia diguetii* (Webber) Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson
Syn.: *Sclerocactus intermedius* Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *parviflorus*
Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson
- Sclerocactus pubispinus* (Engelm.) L. Peebles
- Sclerocactus spinosior* (Engelm.) Woodruff & L. Benson
Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson
- Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose
- Stenocereus thurberi* (Engelm.) F. Buxbaum—Organ pipe cactus
Syn.: *Cereus thurberi* Engelm.; *Lemaireocereus thurberi* (Engelm.) Britt. & Rose
- CAMPANULACEAE Bellflower Family
- Lobelia cardinalis* L. ssp. *graminea* (Lam.) McVaugh—Cardinal flower
- Lobelia fenestralis* Cav.—Leafy lobelia
- Lobelia laxiflora* H. B. K. var. *angustifolia* A. DC.
- CAPPARACEAE Cappar Family [=Capparidaceae]
- Cleome multicaulis* DC.—Playa spiderflower
- CHENOPODIACEAE Goosefoot Family
- Atriplex hymenelytra* (Torr.) Wats.
- CRASSULACEAE Stonecrop Family
- Dudleya arizonica* (Nutt.) Britt. & Rose
Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey
- Dudleya saxosa* (M.E. Jones) Britt. & Rose ssp. *collomiae* (Rose) Moran

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- Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles
Graptopetalum bartramii Rose
Syn.: *Echeveria bartramii* (Rose) K. & P.
Graptopetalum bartramii Rose–Bartram’s stonecrop, Bartram’s live-forever
Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles
Graptopetalum rusbyi (Greene) Rose
Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.
Sedum cockerellii Britt.
Sedum griffithsii Rose
Sedum lanceolatum Torr.
Syn.: *Sedum stenopetalum* Pursh
Sedum rhodanthum Gray
Sedum stelliforme Wats.
- CROSSOSOMATAEAE Crossosoma Family
Apacheria chiricahuensis C. T. Mason–Chiricahua rock flower
- CUCURBITACEAE Gourd Family
Tumamoca macdougalii Rose–Tumamoc globe-berry
- EUPHORBIACEAE Spurge Family
Euphorbia plummerae Wats.–Woodland spurge
Sapium biloculare (Wats.) Pax–Mexican jumping-bean
- FABACEAE Pea Family [=Leguminosae]
Astragalus corbrensis Gray var. *maguirei* Kearney
Astragalus cremnophylax Barneby var. *myriorrhapis* Barneby–Cliff milk-vetch
Astragalus hypoxylum Wats.–Huachuca milk-vetch
Astragalus nutriosensis Sanderson–Nutrioso milk-vetch
Astragalus xiphoides (Barneby) Barneby–Gladia-tor milk-vetch
Cercis occidentalis Torr.–California redbud
Errazurizia rotundata (Woot.) Barneby
Syn.: *Parryella rotundata* Woot.
Lysiloma microphylla Benth. var. *thorneri* (Britt. & Rose) Isely–Feather bush
Syn.: *Lysiloma thornberi* Britt. & Rose
~~*Parkinsonia aculeata* L. Jerusalem Thorn~~
Phaseolus supinus Wiggins & Rollins
- FOUQUIERIACEAE Ocotillo Family
Fouquieria splendens Engelm.–Ocotillo, coach-whip, monkey-tail
- GENTIANACEAE Gentian Family
Gentianella wislizenii (Engelm.) J. Gillett
Syn.: *Gentiana wislizenii* Engelm.
- LAMIACEAE Mint Family
Hedeoma diffusum Green–Flagstaff pennyroyal
Salvia dorrii ssp. *mearnsii*
Trichostema micranthum Gray
- LILIACEAE Lily Family
Allium acuminatum Hook.
Allium bigelovii Wats.
Allium biseprum Wats. var. *palmeri* (Wats.) Cronq.
Syn.: *Allium palmeri* Wats.
Allium cernuum Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion
Allium cernuum Roth. var. *obtusum* Ckll.
Allium geyeri Wats. var. *geyeri*
Allium geyeri Wats. var. *tenerum* Jones
Allium kunthii Don
Allium macropetalum Rydb.
Allium nevadense Wats. var. *cristatum* (Wats.) Ownbey
Allium nevadense Wats. var. *nevadense*
Allium parishii Wats.
Allium plummerae Wats.
Allium rhizomatum Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles
Androstephium breviflorum Wats.–Funnel-lily
Calochortus ambiguus (Jones) Ownbey
Calochortus aureus Wats.
Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey
Calochortus flexuosus Wats.–Stragglng mariposa
Calochortus gunnisonii Wats.
Calochortus kennedyi Porter var. *kennedyi*–Desert mariposa
Calochortus kennedyi Porter var. *munzii* Jeps.
Dichelostemma pulchellum (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover
Disporum trachycarpum (Wats.) Benth. & Hook. var. *subglabrum* Kelso
Disporum trachycarpum (Wats.) Benth. & Hook. var. *trachycarpum*
Echeandia flavescens (Schultes & Schultes) Cruden
Syn.: *Anthericum torreyi* Baker
Eremocrinum albomarginatum Jones
Fritillaria atropurpurea Nutt.
Hesperocallis undulata Gray–Ajo lily
Lilium parryi Wats.–Lemon lily
Lilium umbellatum Pursh
Maianthemum racemosum (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie
Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.
Maianthemum racemosum (L.) Link ssp. *racemosum*–False Solomon’s seal
Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.
Maianthemum stellatum (L.) Link
Syn.: *Smilacina stellata* (L.) Desf.–Starflower
Milla biflora Cav.–Mexican star

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- Nothoscordum texanum* Jones
Polygonatum cobrense (Woot. & Standl.) Gates
Streptopus amplexifolius (L.) DC.—Twisted stalk
Triteleia lemmonae (Wats.) Greene
Triteleiopsis palmeri (Wats.) Hoover
Veratrum californicum Durand.—False hellebore
Zephyranthes longifolia Hemsl.—Plains rain lily
Zigadenus elegans Pursh—White camas, alkali-grass
Zigadenus paniculatus (Nutt.) Wats.—Sand-corn
Zigadenus virescens (H. B. K.) Macbr.
- MALVACEAE** Mallow Family
Abutilon parishii Wats.—Tucson Indian mallow
Abutilon thurberi Gray—Baboquivari Indian mallow
- ONAGRACEAE** Evening Primrose Family
Camissonia exilis (Raven) Raven
- ORCHIDACEAE** Orchid Family
Calypso bulbosa (L.) Oakes var. *americana* (R. Br.) Luer
Coeloglossum viride (L.) Hartmann var. *virescens* (Muhl.) Luer
Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray
Corallorhiza maculata Raf.—Spotted coral root
Corallorhiza striata Lindl.—Striped coral root
Corallorhiza wisteriana Conrad—Spring coral root
Epipactis gigantea Douglas ex Hook.—Giant helleborine
Goodyera oblongifolia Raf.
Goodyera repens (L.) R. Br.
Hexaletris spicata (Walt.) Barnhart—Crested coral root
Listera convallarioides (Swartz) Nutt.—Broad-leaved twayblade
Malaxis corymbosa (S. Wats.) Kuntze
Malaxis ehrenbergii (Reichb. f.) Kuntze
Malaxis macrostachya (Lexarza) Kuntze—Mountain malaxia
Syn.: *Malaxis soulei* L. O. Williams
Malaxis tenuis (S. Wats.) Ames
Platanthera hyperborea (L.) Lindley var. *gracilis* (Lindley) Luer
Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll
Platanthera hyperborea (L.) Lindley var. *hyperborea*—Northern green orchid
Syn.: *Habenaria hyperborea* (L.) R. Br.
Platanthera limosa Lindl.—Thurber's bog orchid
Syn.: *Habenaria limosa* (Lindley) Hemsley
Platanthera sparsiflora (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer
Platanthera sparsiflora (Wats.) var. *laxiflora* (Rydb.) Correll
Platanthera sparsiflora (Wats.) Schlechter var. *sparsiflora*—Sparsely-flowered bog orchid
Syn.: *Habenaria sparsiflora* Wats.
Platanthera stricta Lindl.—Slender bog orchid
Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten
Platanthera viridis (L.) R. Br. var. *bracteata* (Muhl.) Gray—Long-bracted habenaria
Spiranthes michauxiana (La Llave & Lex.) Hemsl.
Spiranthes parasitica A. Rich. & Gal.
Spiranthes romanzoffiana Cham.—Hooded ladies tresses
- PAPAVERACEAE** Poppy Family
Arctomecon californica Torr. & Frém.—Golden-bear poppy, Yellow-flowered desert poppy
- PINACEAE** Pine Family
Pinus aristata Engelm.—Bristlecone pine
- POLYGONACEAE** Buckwheat Family
Eriogonum apachense Reveal
Eriogonum capillare Small
Eriogonum mortonianum Reveal—Morton's buckwheat
Eriogonum ripleyi J. T. Howell—Ripley's wild buckwheat, Frazier's Well buckwheat
Eriogonum thompsonae Wats. var. *atwoodii* Reveal—Atwood's buckwheat
- PORTULACACEAE** Purslane Family
Talinum humile Greene—Pinos Altos flame flower
Talinum marginatum Greene
Talinum validulum Greene—Tusayan flame flower
- PRIMULACEAE** Primrose Family
Dodecatheon alpinum (Gray) Greene ssp. *majus* H. J. Thompson
Dodecatheon dentatum Hook. ssp. *ellisiae* (Standl.) H. J. Thompson
Dodecatheon pulchellum (Raf.) Merrill
Primula hunnewellii Fern.
Primula rusbyi Greene
Primula specuicola Rydb.
- RANUNCULACEAE** Buttercup Family
Aquilegia caerulea James ssp. *pinetorum* (Tidest.) Payson—Rocky Mountain Columbine
Aquilegia chrysantha Gray
Aquilegia desertorum (Jones) Ckll.—Desert columbine, Mogollon columbine
Aquilegia elegantula Greene
Aquilegia longissima Gray—Long Spur Columbine
Aquilegia micrantha Eastw.
Aquilegia triternata Payson
- ROSACEAE** Rose Family
Rosa stellata Woot.—ssp. *abyssa* A. Phillips Grand Canyon rose
Vauquelinia californica (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson—Few-flowered Arizona rosewood

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SCROPHULARIACEAE Figwort Family

- Castilleja mogollonica* Pennell
- Penstemon albomarginatus* Jones
- Penstemon bicolor* (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck
- Penstemon clutei* A. Nels.
- Penstemon distans* N. Holmgren–Mt. Trumbull beardtongue
- Penstemon linarioides* spp. *maguirei*

SIMAROUBACEAE Simarouba Family

- Castela emoryi* (Gray) Moran & Felger–Crucifixion thorn
- Syn.: *Holacantha emoryi* Gray

STERCULIACEAE Cacao Family

- Fremontodendron californicum* (Torr.) Coville–Flannel bush

C. Salvage Assessed Protected Native Plants.

The following list includes those species of native plants that are not included in either the highly safeguarded or salvage restricted category but have a sufficient value if salvaged to support the cost of salvage.

BIGNONIACEAE Bignonia Family

- Chilopsis linearis* (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow
- Chilopsis linearis* (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg

FABACEAE Pea Family [=Leguminosae]

- Cercidium floridum* Benth.–Blue palo verde
- Cercidium microphyllum* (Torr.) Rose & Johnst.–Foothill palo verde
- Olneya tesota* Gray–Desert ironwood
- Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite
- Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.
- Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

Psoralea argophylla (Gray) Barneby–Smoke tree.

Syn.: *Dalea spinosa* Gray

D. Harvest Restricted Protected Native Plants.

The following list includes those species of native plants that are not included in the highly safeguarded category but are subject to excessive harvesting or overcutting because of their intrinsic value.

AGAVACEAE Agave Family (including Nolinaceae)

Nolina bigelovii (Torr.) Wats.–Bigelow's nolina

Nolina microcarpa Wats.–Beargrass, sacahuista

Nolina parryi Wats.–Parry's nolina

Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

FABACEAE Pea Family [=Leguminosae]

Olneya tesota Gray–Desert ironwood

Prosopis glandulosa Torr. var. *glandulosa*–Honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

Prosopis glandulosa Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected

- R4-23-110
- R4-23-403
- R4-23-610

Rulemaking Action

- Amend
- Amend
- 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. § 32-1904(A)(1).

Implementing statutes: A.R.S. §§ 32-1904(B)(5) and (7).

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 1 A.A.R. 200, March 17, 1995.

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

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015
Telephone: (602) 255-5125, Ext. 131
Fax: (602) 255-5740

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

This rule was initiated at the request of the Arizona Pharmacy Association. The Arizona Pharmacy Association represents pharmacies and pharmacists in the state of Arizona. In the fall of 1994, a committee consisting of members from the Arizona Pharmacy Association and the Board staff worked together to identify possible changes in existing rule that are formalized in these proposed rules.

The rule includes new definitions for "certified pharmacy technician", "other designated personnel", "pharmacy technician", and "support personnel". The rule amends the definition for "supervision" and deletes the definition for "supportive personnel". The rule also incorporates the use of "graduate intern". Recent statutory changes created the "graduate intern" designation and the rule incorporates the term where applicable. The rule addresses format and style changes necessary under the current administrative procedures act and other necessary language changes to provide a clear, concise, and understandable document.

The heading of R4-23-403 is changed from "Supportive personnel" to "Pharmacy technicians and certified pharmacy technicians". The rule makes changes to R4-23-403 that address the activities of pharmacy technicians and certified pharmacy technicians. Specifically, the rule adds language that:

- a. Changes the minimum requirements for working as a pharmacy technician or certified pharmacy technician including age, education, training, and documentation;
- b. Addresses off site training and includes a grandfather clause;
- c. Addresses the current 2:1 ratio of technicians to pharmacists in the pharmacy area by allowing 3 technicians in the pharmacy area per pharmacist if at least 1 of the 3 technicians is certified;
- d. Changes the list of permissible activities of a pharmacy technician by deleting items 1, 7, and 9 (accepting a new written prescription order, counting, pouring or reconstituting medications, and filing prescription orders);
- e. Renumbers the list to items 1 through 8 and makes changes that clarify technician activities;
- f. Defines the permissible activities of certified pharmacy technicians;
- g. Addresses the employment and termination notification requirements imposed on the pharmacist-in-charge of the pharmacy; and
- h. Requires development and implementation of written policies and procedures and a training program for pharmacy technicians and certified pharmacy technicians.

The rule makes changes to R4-23-610 that address community pharmacy personnel and security procedures. The rule expands and clarifies the duties of the pharmacist-in-charge related to the written policies and procedures for technicians, the technician training program, the designation of personnel permitted in the pharmacy, and the security of the drugs received by the pharmacy.

The Board believes that adoption of these rules will benefit the public health and safety by establishing clear standards governing community pharmacy practice. Specifically, the duties of pharmacy technicians, and certified pharmacy technicians. The Board further believes that regulation and enforcement are necessary to regulate and control the rapidly evolving role of pharmacists and technicians in a dynamic healthcare system.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable.

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 preliminary summary of the economic, small business, and consumer impact:

The principal impact of the rule will be on pharmacists, technicians, pharmacies, and patients. For pharmacists-in-charge, the rule will place additional responsibility on them for writing and reviewing a policy and procedure manual and technician training program. The upside for the pharmacist-in-charge will be better control of their pharmacy practice through established written policy and procedure and better trained technicians. The actual impact on most pharmacists-in-charge will be minimal because most chain pharmacies already have established policies and procedures and technician training programs. The rule

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provides the means to increase the quality and training of technicians.

For staff pharmacists, the rule will provide more qualified and better trained technicians. This will give the pharmacist more time to evaluate drug use, counsel patients, and ultimately provide better health care for Arizona citizens.

For technicians, the rule will define a definite career path through certification. Technicians who become certified can look forward to increased income and prestige. All technicians will benefit from the establishment of minimum standards of education and training. Job opportunity for technicians will increase with the increase in technician to pharmacist ratio.

The majority of pharmacies in Arizona are chain pharmacies. Chain pharmacy representatives helped write the new standards. The chain pharmacies have already moved to increase the number of certified pharmacy technicians they employ. These pharmacies realize that using better trained technicians will decrease costs by lowering employee turnover rates and increasing employee efficiency. When appropriate, the use of a 3 technician to 1 pharmacist ratio will decrease payroll costs and improve efficiency and patient care. These cost savings should offset the increased cost of higher wages for certified pharmacy technicians. The rulemaking allows for the continued employment of existing technicians who may not meet the new standards, thus not unduly penalizing either employee or employer. Most independent pharmacies will not use the 3 to 1 ratio, but they will receive the other benefits of using better trained technicians. Since using certified pharmacy technicians is not mandatory, except for the 3 to 1 ratio, the rulemaking will have minimal impact on independent pharmacies.

The rulemaking indirectly benefits consumers by establishing higher minimum standards for pharmacy technicians and certified pharmacy technicians. These minimum standards will provide more qualified and better trained technicians. The use of well trained technicians will give the pharmacist more time to evaluate drug use, counsel patients, and ultimately provide better pharmaceutical care for Arizona citizens.

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: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015
Telephone: (602) 255-5125, Ext. 131
Fax: (602) 255-5740

10. The time, place, and nature of the proceedings for the adoption, 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:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Monday, May 17, 1999. An oral proceeding is scheduled for:

Date: May 17, 1999
Time: 10 a.m.
Location: 5060 North 19th Avenue Suite 101
Phoenix, Arizona 85015

A person may request information about the oral proceeding by contacting the person listed above.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

12. Incorporations by reference and their location in the rules:
None.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-403. Pharmacy Technicians and Certified Pharmacy Technicians Supportive Personnel

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-610. Community Pharmacy Personnel and Security Procedures

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or

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that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“AZPLEX” means an Arizona pharmacy law examination written and administered by the Board staff or a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means a date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinet, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board and the office of the Secretary of State.

“Certified pharmacy technician” means an individual who receives a passing grade on a certification examination for pharmacy technicians recognized by the Arizona State Board of Pharmacy and meets the requirements of a pharmacy technician as defined in this Section.

“Class 100 environment” means an atmospheric environment in compliance with the Federal Standard 209 Clean Room and Work Station Requirements: Controlled Environment, publication FED-STD-209D, U.S. Government Services Administration 450 Golden Gate Avenue, San Francisco, CA, June 15, 1988 edition which includes January 28, 1991, changes, (and no future amendments or editions), incorporated by reference and on file with the of the Secretary of State.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“Delinquent license” means a pharmacist or intern license the Board suspends for failure to renew or pay all required fees on or before the date the renewal is due.

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug. No person shall sell, purchase, or trade or offer to sell, purchase, or trade a drug sample.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

 Holds a current Board permit under A.R.S. § 32-1931;

 Is located in a correctional facility; and

 Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long term care facility.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures it uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

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“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control, packaging, and distribution of a batch or lot of a drug can be determined.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

“NAPLEX” means North American Pharmacist Licensure Examination.

“Other designated personnel” means a non-pharmacist person who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as, trash removal, floor maintenance, telephone or computer repair.

“Outpatient” means a person who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical care” means the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes, related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy technician” means an individual, qualified under R4-23-403(A)(1) and (2), who, during and after completing the training required in R4-23-403(A)(3), performs, under the supervision of a pharmacist, activities related to the preparation and distribution of prescription medications consistent with policies and procedures required in R4-23-403(J) and state and federal law.

“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Provider pharmacist” means a pharmacist who supplies medication to a long term care facility and maintains patient profiles.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing

salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means the performance and interpretation of appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, record-keeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least 1 inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Remodel” means to structurally alter the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means a person admitted to and residing in a long term care facility.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Sterile pharmaceutical product” means a dosage form free from living micro-organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Supervision” means ~~at the~~ pharmacist ~~is shall be~~ present, assumes legal responsibility, and ~~has direct~~ ~~have personal~~ oversight of activities relating to the acquisition, preparation, distribution, and sale of prescription medications by pharmacy interns, graduate interns, supportive personnel, pharmacy technicians, or certified pharmacy technicians.

“Supplying” means selling, transferring, or delivering to a patient or a patient's agent 1 or more doses of:

A nonprescription drug in the manufacturer's original container for subsequent use by the patient, or

A compressed medical gas in the manufacturer's or compressed medical gas distributor's original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy including cashiering, bookkeeping, pricing, stocking, delivery, nonprofessional telephone inquires, and documentation of 3rd-party

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reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or certified pharmacy technician.

“Supportive personnel” means an individual trained to perform activities related to the preparation and distribution of prescription medications, under the supervision of a pharmacist and consistent with policy and procedures as required in R4-23-403.

“Transfill” means a manufacturing process by which 1 or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;
Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug pursuant to a prescription;

Distributing a drug sample by a manufacturers' or distributors' representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means anyone engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-403. Pharmacy Technicians and Certified Pharmacy Technicians Supportive Personnel

A. Before~~Prior to~~ working as a pharmacy ~~supportive person,~~ technician or certified pharmacy technician, an individual shall:

1. Be 18 years of age or older;
2. Have a high school diploma or equivalent;
3. Complete a training program at the pharmacy of employment. The training program shall be developed by or in cooperation with the pharmacist-in-charge based on the needs of the individual pharmacy. The training program shall be implemented by the pharmacist-in-charge and include written guidelines that define the specific tasks the technician is expected to perform and how the technician's competency is to be assessed. A copy of the training guidelines shall be available within the pharmacy for reference by pharmacy technicians or certified pharmacy technicians and inspection by the Board or its designee. The pharmacist-in-charge shall certify that the technician has successfully completed the training program. Pharmacy technicians and certified pharmacy technicians shall perform only those tasks, listed in subsections (D) and (E), for which they have been trained and in which competency has been demonstrated;

4. ~~Have~~ Read and discussed, with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning ~~supportive personnel~~ pharmacy techni-

~~cians and certified pharmacy technicians, the supportive personnel~~ the pharmacy technician or certified pharmacy technician job description, and policy and procedure manual of that pharmacy; and

5.2. Date and sign a statement affirming their understanding of the Board of Pharmacy rules for pharmacy technician or certified pharmacy technician, ~~supportive personnel~~ and the pharmacy's job description and policy and procedure manual.

~~B.~~ ~~Procedures. Supportive personnel shall function in accordance with written procedures prepared by the pharmacist in charge. These procedures shall specify functions and supervisory controls designed to assure the quality and safety of pharmaceutical service. A function is suitable to be performed by supportive personnel if written quality control procedures are developed, and a verification procedure is documented by the pharmacist in charge to assure the quality of product and service. Supportive personnel shall wear a badge indicating his or her name and title.~~

B. Nothing in subsection (A) shall prevent additional off site training of a pharmacy technician or certified pharmacy technician. Any pharmacy technician or certified pharmacy technician actively employed before the effective date of this rule shall be exempt from R4-23-403 (A)(1) and (2).

C. In accordance with the space requirement set forth at R4-23-609(A), the pharmacist-in-charge shall ensure that there are no more than 2 pharmacy technicians in the pharmacy area per pharmacist except if an additional 3rd pharmacy technician is certified, there may be 3 pharmacy technicians per pharmacist in the pharmacy area.

~~DC.~~ Permissible activities of a pharmacy technician. Acting in compliance with R4-23-402(A) all applicable statutes and rules and under the supervision of a pharmacist, supportive personnel pharmacy technicians may assist a graduate intern, pharmacy intern, or a pharmacist ~~in~~with the following:

1. ~~Accepting a new written prescription order;~~
- 2.1. Receive a request, from a patient or patient's agent, to refill a patient's ~~Receiving requests for refilling~~ prescription medication by serial number;
- 3.2. Recording on the front of an original prescription order the prescription ~~serial number and date dispensed;~~
- 4.3. Initiate or accepting verbal or electronic refill authorization from a medical practitioner or the medical practitioner's agent thereof and recording, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
- 5.4. Recording information in the refill record or family prescription order record patient profile;
- 6.5. Type~~Typing~~ and affixing labels for prescription medications; or entering~~raising~~ information for new or refill prescription medication ~~to be entered into a computer,~~ provided ~~at~~ the pharmacist shall verify the accuracy and personally initial in handwriting the finished label prepared by a technician ~~supportive personnel~~ before the prescription medication is dispensed to the patient;
7. Counting, pouring or reconstituting medications, provided the pharmacist checks the ingredients and procedure prior to any reconstitution and provided the original containers are beside the medication for verification by the pharmacist;
6. Reconstitute prescription medications, provided a pharmacist shall check the ingredients and procedure before

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- reconstitution and verify the final product after reconstitution;
7. Retrieve, count, or pour prescription medications, provided a pharmacist shall verify the contents of the prescription medication against the original prescription medication container or by alternative drug identification methods approved by the Board or its designee; and
 8. Prepackage/prepackaging drugs in accordance with R4-23-402(A); and,
 9. Filing prescription orders.
- ED.** Permissible activities of certified pharmacy technician. Acting in compliance with all applicable statutes and rules, after completing a compounding training program developed by or in cooperation with the pharmacist-in-charge pursuant to subsection (A)(3), and under the supervision of a pharmacist, a certified pharmacy technician may, in addition to the activities listed in subsection (D), assist a pharmacist, graduate intern, or pharmacy intern in compounding prescription medications in accordance with written policies and procedures by which the preparation, accuracy, and safety of the final product is verified by a pharmacist before it is dispensed to the patient.
- FD.** Prohibited activities. Pharmacy technicians and certified pharmacy technicians supportive personnel are shall not authorized to perform functions reserved for a pharmacist, graduate intern, or pharmacy intern in accordance with R4-23-402.
- E.** Notification. The pharmacist in charge shall notify the Arizona State Board of Pharmacy within ten days of employing a supportive person. Such notice shall indicate that the individual has signed the statement prescribed in R4-23-403(A) and the statement is available for review by a Board of Pharmacy Compliance Officer. At the discretion of the Executive Director of the Arizona State Board of Pharmacy, this notification may be by written statement, telephone, or personal appearance. The Executive Director shall maintain a file of supportive personnel.
- G.** Employment notification. On a form supplied by the Board, the pharmacist-in-charge shall notify the Board:
1. Within 30 days of employing or terminating a pharmacy technician or certified pharmacy technician, and
 2. Within 10 days of a technician's satisfactory completion of the training requirements in subsection (A).
- H.** A pharmacy technician or certified pharmacy technician shall wear a badge indicating name and title while on duty.
- I.** The pharmacist-in-charge shall:
1. Develop or cooperate in the development of written policies and procedures specifying permissible activities a pharmacy technician or certified pharmacy technician may perform under subsections (D) and (E) and supervisory controls and verification procedures ensuring the quality and safety of pharmaceutical service.
 2. Implement the written policies and procedures.
 3. Review and revise the policies and procedures biennially, and
 4. Make the policies and procedures available as a manual or by other methods approved by the Board or its designee within the pharmacy for reference by pharmacy technicians or certified pharmacy technicians and inspection by the Board or its designee.
- J.** The policies and procedures shall include the following:
1. Performance expectations of pharmacy technician and certified pharmacy technician,
 2. Prescription dispensing procedures for:
 - a. Accepting a new written prescription,
 - b. Accepting a refill request,
 - c. Drug product selection,
 - d. Counting and pouring,
 - e. Labeling, and
 - f. Refill authorization.
3. Computer data entry procedures for:
 - a. New and refill prescriptions,
 - b. Drug allergies,
 - c. Drug-drug interactions,
 - d. Drug-food interactions,
 - e. Drug-disease state contraindications,
 - f. Refill frequency,
 - g. Disease or medical condition,
 - h. Patient age or date of birth and gender, and
 - i. Patient profile maintenance.
 4. Compounding procedures for certified pharmacy technicians,
 5. Supervisory controls and verification procedures,
 6. Pharmacist and patient communication,
 7. Quality management procedures for:
 - a. Competency review and evaluation,
 - b. Continuing education,
 - c. Drug recall,
 - d. Drug storage,
 - e. Expired and beyond-use-date drugs,
 - f. Medication and dispensing errors,
 8. Security procedures for:
 - a. Confidentiality of patient prescription records, and
 - b. The pharmacy area.
 9. Automated medication distribution systems,
 10. Support personnel,
 11. Sanitation, and
 12. Brief overview of state and federal pharmacy statutes and rules.
- KF.** Hospital pharmacies. Nothing in this rule shall prevent hospital pharmacies from using/utilizing supportive personnel pharmacy technicians and certified pharmacy technicians in accordance with regulations pertaining specifically to hospital pharmacies.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-610. Community Pharmacy Personnel and Security Procedures

- A.** Pharmacist in charge: Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge".
1. Every pharmacy shall have a pharmacist designated as the "pharmacist in charge". The pharmacist-in-charge shall ensure that directives from the Board are communicated to the management, other pharmacists, and interns, and technicians of the pharmacy and that they are followed/complied with.
 2. The pharmacist-in-charge shall develop or cooperate in the development of prepare a policies and procedures manual as instructed in R4-23-403(J) to include the job description and list of functions supportive personnel may be expected to perform. The job description and function shall conform to this Chapter. The manual shall be available within the pharmacy and available for reference by supportive personnel and for inspection by the Board or its designee. A model of the manual is available on request from the Board office.
 3. The pharmacist-in-charge shall develop or cooperate in the development of a technician training program as instructed in R4-23-403(A).
 4. The pharmacist-in-charge shall:

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- a. Conduct a biennial review and revision of all policies and procedures, and
- b. Make all policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.
- 5. The pharmacist-in-charge shall ensure that the ratio of technicians to pharmacist working in the pharmacy does not exceed the maximum set forth in R4-23-403(C).
- B. Personnel permitted in pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy interns, compliance officers, drug inspectors, peace officers when acting in their official capacity, pharmacy technicians, certified pharmacy technicians and, supportive personnel, and other designated personnel. Interns, pharmacy technicians, certified pharmacy technicians, and supportive personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency. No more than two supportive personnel are permitted in the pharmacy area per pharmacist.
 - 1. The pharmacist-in-charge shall comply with the area requirements as described in R4-23-609 for minimum areas both of a community pharmacy and of the area for the compounding and dispensing counter.
 - 2. All pharmacists employed by a pharmacy shall be responsible for physical and electronic pharmacy security while on duty.
- C. ~~Pharmacy area and storage shall be kept locked:~~ In a community pharmacy, the pharmacy area, and any additional storage area for drugs restricted to a pharmacist, except in an extreme emergency, shall be kept locked when a pharmacist is not on duty.
- D. ~~Only pharmacist permitted to unlock pharmacy:~~ The pharmacist shall be the only person permitted to unlock the pharmacy area or any additional storage area for drugs restricted to a pharmacist, except in an extreme emergency.
- E. Prescription-only drugs and controlled substances received in an area outside the pharmacy area shall be immediately transferred, unopened, to the pharmacy area. Prescription-only drug and controlled substance shipments shall be opened and marked in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern. Receiving and checking area for drugs. The area where prescription only drugs, narcotics, other controlled substances, and drugs which are primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors thereof are opened and marked shall be under the immediate supervision of a pharmacist, or pharmacy intern and immediately thereafter be kept or moved into the secured area of the pharmacy.
- F. ~~Leaving prescription orders:~~ Written prescription orders or prescription medication containers to be refilled may be left in the prescription area through a small opening or slot when the pharmacist is not in attendance, providing the name, address, and telephone number (if available) are checked to see that it is legible.
- G. ~~Prescription medication to be left in pharmacy area or delivered:~~ To avoid mistakes in identity, errors in directions, and lack of professional consultation, prescription medication shall either be delivered to the patient or be kept locked in the prescription area when the pharmacist is not present. Prescription medication shall not be left outside the prescription area to be picked up by the patient when the pharmacist is not in attendance.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

PREAMBLE

- 1. **Sections Affected** **Rulemaking Action**
R4-46-401 Amendment
- 2. **The specific authority for the rulemaking, including the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-3605 (A)
Implementing statute: A.R.S. § 32-3605 (B)(1)
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 765, March 12, 1999.
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Elaine LeTarte, Executive Director
Address: Board of Appraisal
1400 West Washington, Room 360
Phoenix, Arizona 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598 (fax)
E-mail: LeTarte_Elaine@pop.state.az.us
- 5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
This rule establishes the minimum standards of professional appraisal practice to be the revised standards contained in the Uni-

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form Standards of Professional Appraisal Practice, 1999 edition, effective March 31, 1999.

6. **A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, 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:**
The proposed amendment to the rule will not diminish a previous grant of authority of a political subdivision of this state.
8. **The preliminary summary of the economic, small business and consumer impact:**
The proposed amendment to the rule will not have a significant economic, small business or consumer impact.
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: Elaine LeTarte, Executive Director
Address: Board of Appraisal
1400 West Washington, Room 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mails: LeTarte_Elaine@pop.state.az.us
10. **The time, place and nature of the proceedings for the 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:**
Oral proceedings are scheduled as follows:
Date: May 19, 1999
Time: 1:30 p.m.
Location: 1400 West Washington, 3rd floor conference room
Phoenix Arizona 85007
11. **Any other matters prescribed by statute that are applicable to the specific agency:**
None.
12. **Incorporations by reference and their location in the rule:**
The Uniform Standards of Professional Appraisal Practice 1999 edition (USPAP99), effective March 31, 1999, is published by the Appraisal Foundation and incorporated by reference in R46-4-401.
13. **Full text of the rule follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section
R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every state-licensed or certified Appraiser, in performing the acts and services of a state-licensed or certified Appraiser, shall com-

ply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~1998~~ 1999 edition, published by the Appraisal Foundation, which are incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP may be obtained from the Appraisal Foundation.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

PREAMBLE

- | | |
|--|---|
| 1. <u>Sections Affected</u>
R18-2-732
Table 1
Table 2
R18-2-901 | <u>Rulemaking Action</u>
New Section
New Section
New Section
Amend |
|--|---|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing and implementing statutes: A.R.S. §§ 49-424, 49-425, and 49-426
- 3. List of all previous notices appearing in the register addressing the proposed rule:**
Notice of Docket Opening: 4 A.A.R. 1137, May 15, 1998.
Notice of Docket Opening: 4 A.A.R. 1349, June 12, 1998.
Notice of Public Information: 4 A.A.R. 4187, December 18, 1998.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Primary Contact:

Name: Deborah K. Blacik or Martha Seaman
Address: Department of Environmental Quality
3033 North Central, 8th Floor
Phoenix, Arizona 85012
Telephone: (602) 207-2223, (800) 234-5677, Ext. 2223 (Arizona only)
Fax: (602) 207-2251
TTD: (602) 207-4829

Secondary Contact:

Name: Theresa Pella, Air Quality Planning Section
Address: Department of Environmental Quality
3033 North Central, 8th Floor
Phoenix, Arizona 85012
Telephone: (602) 207-4480, (800) 234-5677, Ext. 4480 (Arizona only)

- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

A. Background for these proposed rules

This proposed rule is the result of federal requirements imposed on the states by the Clean Air Act Amendments of 1990 (CAAA). Section 129 of the CAAA directed the Environmental Protection Agency (EPA) to promulgate rules regulating various categories of waste incinerators, including hospital/medical/infectious waste incinerators (HMIWI).

In the September 15, 1997, *Federal Register*, EPA published new source performance standards (NSPS) and emission guidelines (EG) to reduce air emissions from HMIWI (62 FR 48348). These standards and guidelines are based on the CAAA requirements, EPA research, and public comment. Specifically, EPA added subpart Ec, NSPS for new HMIWI (40 CFR 60.50c, et al.), and subpart Ce, EG for existing HMIWI (40 CFR 60.30e, et al.), to 40 CFR 60. The standards and guidelines apply to units whose primary purpose is the incineration of hospital/medical/infectious waste.

The NSPS are federal requirements that apply to all new HMIWI that commence construction after June 20, 1996, or to existing HMIWI units that commence modification after March 16, 1998. States are required to adopt the standards contained in 40 CFR 60.50c, et al., for new HMIWI in their entirety. The EG are unique in that, unlike the NSPS, the guidelines are not a direct federal requirements, although it requires states to develop CAAA Section 111(d)/129 state plans to regulate existing HMIWI built on or before June 20, 1996. These state plans must be submitted to EPA for approval and must be at least as protective as the standards and emission limitations found in 40 CFR 60.30e, et al. The state's proposed rule will be the legal instrument to enforce the EG and the NSPS, as described in the draft section 111(d)/129 State Plan, currently under development. The Plan will be submitted to EPA for approval before September 15, 1999.

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To carry out the federal mandates, the proposed rulemaking incorporates by reference in R18-2-901 the federal NSPS for HMIWI built after June 20, 1996, or to existing HMIWI that commence modification after March 16, 1998. R18-2-901 incorporates by reference standards specifying emission limitations, operator training and qualification, siting requirements, waste management, compliance, performance testing and monitoring, and reporting and recordkeeping. The proposed rulemaking also implements the EG for existing HMIWI built before June 20, 1996, by creating a new section, R18-2-732. The standards and emission limitations set forth in R18-2-732 are no less stringent nor more stringent than those contained in 40 CFR 60.30e et al. R18-2-732 sets forth requirements for operator training and qualification, waste management, inspections, compliance, performance testing and monitoring, and reporting and recordkeeping.

Incorporating by reference the NSPS for new HMIWI assures the continued delegation of authority from EPA to ADEQ to enforce the federal standards. The EG requirements for existing HMIWI creates an enforceable mechanism for carrying out the federal regulations and for completing the required element of the state Plan that ADEQ will be submitting to EPA.

This proposed rulemaking is authorized by A.R.S. § 49-425, which requires the director of ADEQ to adopt rules that are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and to adopt, modify, and amend reasonable standards for the quality of, and emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution.

Because the proposed rule is based on federal standards and guidelines, a brief description of these standards and guidelines and how they were derived is provided as follows.

The federal standards and guidelines contain numerical limitations for HMIWI for certain designated pollutants. The designated pollutants are: particulate matter (PM), opacity, sulfur dioxide (SO₂), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins and dibenzofurans (dioxins/furans). EPA determined that some of the pollutants being regulated are considered carcinogens and at sufficient concentrations can cause toxic effects following exposure. The CAAA required that the standards and guidelines reflect the maximum degree of reduction in emissions of air pollutants, taking into consideration the cost of achieving the emission reductions, any nonair-quality health and environmental impacts, and energy requirements that the EPA Administrator determines are achievable for a particular category of sources. This control level is referred to as the "maximum achievable control technology" or "MACT."

The CAAA also requires that standards for new sources may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. This is referred to as the "MACT floor" for new HMIWI. Additionally, the CAAA provides that the emission limitations in the guidelines for existing HMIWI may not be less stringent than the average emission limitation achieved by the best performing 12% of units in the category (the "MACT floor" for existing HMIWI). Thus, 88% of the existing HMIWI in the United States must be modified to comply with the federal standards.

In formulating the regulatory options for HMIWI, EPA divided the HMIWI source category into 3 subcategories based on waste burning capacity: small (≤ 200 lb/hr), medium ($>200 \leq 500$ lb/hr) and large (>500 lb/hr). A number of regulatory options were considered for each size classification. The regulatory options for the 3 selected size classifications did not specify a particular control technology; rather, they specified emission limits that facilities would be required to meet. For the most part, the final federal standards and guidelines reflect the MACT floor. In 2 instances (medium new units and small existing units), EPA set MACT at a level more stringent than the MACT floor.

The ADEQ has identified approximately 10 HMIWI under its jurisdiction that are affected by the EG and NSPS.

B. Specific Section-by-Section Explanation of this Proposal:

R18-2-732. Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators

The proposed rule contains emission limits (MACT floor) for existing HMIWI. The proposed rule also establishes the following requirements for existing HMIWI:

1. Operator training and qualification:

Complete HMIWI operator training course; qualify operators; maintain information regarding HMIWI operating procedures; maintain operator qualification by completing and passing an annual review or refresher course.

2. Waste management plans:

Identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste.

3. Equipment Inspection:

Any rural HMIWI must undergo an initial equipment inspection within 1 year following EPA's approval of the State Plan. In addition, each rural HMIWI must undergo an equipment inspection annually.

4. Compliance and performance testing:

Conduct an initial performance test to determine compliance with the emission limits and opacity limit, and establish operating parameters. Conduct annual tests to determine compliance with the opacity limit. In addition, nonrural HMIWI must conduct annual performance tests to determine compliance with the emission limits.

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5. Monitoring:

Install and maintain equipment to continuously monitor operating parameters. Record monitoring data at all times during HMIWI operation.

6. Reporting and recordkeeping:

Maintain for 5 years records of results from the initial performance test and all subsequent performance tests, operating parameters, maintenance activities; submit to ADEQ the results of the initial performance test and all subsequent performance tests, submit reports on emission rates or operating parameters that have not been recorded or that have exceeded applicable limits.

R18-2-901. Standards of Performance for New Stationary Sources

By incorporating federal new source performance standards by reference, the proposed rule contains emission limits (MACT floor) for new HMIWI. The proposed rule also establishes the following requirements for new HMIWI:

1. Operator training and qualification:

Complete HMIWI operator training course; qualify operators; maintain information regarding HMIWI operating procedures; maintain operator qualification by completing and passing an annual review or refresher course.

2. Siting:

Prepare a siting analysis that considers air pollution control alternatives that minimize, on a site-specific basis and to the maximum extent practicable, potential risks to public health and the environment.

3. Waste management plans:

Identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste.

4. Compliance and performance testing:

Conduct an initial and annual performance test to determine compliance with the emission limits and opacity limit, and establish operating parameters.

5. Monitoring:

Install and maintain equipment to continuously monitor operating parameters. Record monitoring data at all times during HMIWI operation.

6. Reporting and recordkeeping:

Maintain for 5 years records of results from the initial performance test and all subsequent performance tests, operating parameters, maintenance activities; submit to ADEQ the results of the initial performance test and all subsequent performance tests, submit reports on emission rates or operating parameters that have not been recorded or that have exceeded applicable limits.

6. **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.

7. **A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

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

A. Rule Identification

A.A.C. Title 18; Chapter 2; Articles 7 and 9 (amended).

This proposed rule implements federal standards and guidelines established to control emissions of air pollutants emitted from new and existing facilities that incinerate hospital/medical/infectious waste. Control levels are based on either the MACT floor or a floor that is more stringent. Refer to Section 5.A. and to Table 1, "Emission Levels for Facilities Incinerating Waste and National Impact Forecasts." This proposed rule also implements standards for fugitive fly ash and bottom ash emissions, as well as requirements for operator training/qualification, siting, inspection, compliance/performance testing, monitoring, reporting/recordkeeping, and waste management plans.

ADEQ requests comments about the compliance burdens of this rule, or any other aspect of this preliminary Economic Impact Statement (EIS), including economic analysis assumptions and economic impacts on small businesses in this state. Additional data pertaining to Arizona's facilities, if available, will be incorporated into the final EIS.

B. Background Information

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The national purpose of these federal standards and guidelines is to replace poorly controlled incinerators with cost-effective alternatives that will significantly reduce toxic emissions in the U.S. Realistically, an end result very likely will be the closure of most of these incinerators and the halting of most of the projected new incinerators in the U.S. EPA analyzed impacts in terms of 3 compliance scenarios. This way, costs could be compared between not switching to alternative treatment/disposal methods (scenario A), switching with waste segregation (scenario B), and switching without waste segregation (scenario C). Proper waste segregation is a practice that could further decrease waste-disposal costs.

EPA predicts that 64% to 78% of the approximate 2,400 existing incinerators will cease to operate (1,530-1,844), and of the 245 new incinerators projected to be built in absence of these new standards, less than 5% to 30% would be constructed under scenarios B and C. According to these EPA scenarios, none of the small-or medium-sized incinerators would be constructed, 0 to 100% of the large-sized incinerators would be constructed, and all 10 of the commercial incinerators would be built. However, EPA believes the compliance costs associated with scenario A are overstated and unrealistic compared to what probably will happen. The basic assumption of this scenario A is that all projected incinerators would be built and all existing incinerators would install retrofit technology (see 62 FR 48365, and 48370, September 15, 1997).

Refer to Tables 2 and 3 that show pollution limits for both new and existing facilities and the percent of reduction required for hydrogen chloride, lead, cadmium, and mercury. One key point is that most emissions reductions will result from facilities ceasing to operate.

Another key point is that ADEQ is incorporating already effective federal air quality requirements into state rules. Because the federal law is being implemented without change, this proposed rule imposes no additional impacts.

C. Affected Entities (classes of persons impacted)

Although Arizona has a variety of health-care providers, such as hospitals, nursing homes, laboratories, physicians' and dentists' offices, clinics, blood banks, and facilities located in various institutions (including the armed services), whose numbers easily could be in excess of 7,000, ADEQ expects an extremely small proportion to be adversely affected by this proposed rule (1/10 of 1%). These are the facilities, which may be public or private entities, that incinerate hospital/medical/infectious waste in small-, medium-, or large-sized incinerators. Part of the proposed rule's impact is reduced because many facilities have already ceased to incinerate this type of waste; however, much of the waste now is being treated in commercial incinerators in Arizona and elsewhere.

Other entities potentially affected include: political subdivisions acting as regulators (Maricopa, Pima, and Pinal Counties), commercial treaters (off-site treatment/disposal companies), vendors of air pollution control devices (add-on systems), vendors of incinerators, vendors of alternative waste-treatment technologies, ADEQ (implementing agency), consumers of health-care services, and the general public.

D. Probable Costs and Benefits to Facilities Incinerating Hospital/Medical/Infectious Waste

On a national level, EPA estimates compliance costs to reach \$65 million annually for the 1,025 existing small-sized incinerators. Dividing this cost by the estimated number of facilities results in an average cost of more than \$63,000; however, rather than being faced with such increases in costs, these facilities are expected to switch to an alternative means of waste treatment/disposal. Simply stated, the option of switching to an alternative means of disposal would be less than the economic impact of retrofitting. In this case, the estimated cost would range from \$6 to 20 million. Most medium-sized incinerators are expected to switch because of potential costs, in addition to the fact that they probably would not reclassify themselves as small-sized incinerators since the emissions level for this type of incinerator is only slightly less stringent than for medium-sized incinerators. Thus, according to EPA, the majority of emissions-reduction benefits actually will come from medium-sized incinerators switching to alternative means of waste treatment/disposal. The estimated cost would range \$4 to 30 million (see 62 FR 48361, 48370, September 15, 1997).

EPA also estimated an annual cost of \$59 million for scenario B (switching with waste segregation) and \$120 million for scenario C (switching without waste segregation). Additionally, EPA estimated annual costs for new facilities to be \$12.1 million for scenario B (no new large-sized facilities but 10 commercial) and \$26.2 million for scenario C. Thus, overall costs for scenarios B and C, respectively, are \$71 million and \$146 million (see 62 FR 48365, 48366, 48376, September 15, 1997).

According to ADEQ and other Arizona regulating agency records, permits have been issued to 8 facilities that operate small-sized incinerators (2 may qualify as rural) and 2 medium-sized incinerators. These facilities are located in Bullhead City, Douglas, Flagstaff, Morenci, Prescott, Ft. Huachuca, Florence, Kearny, and San Manuel. None of these incinerators have emissions controls. Most facilities permitted by ADEQ that previously incinerated hospital/medical/infectious waste have ceased to operate.

If all of these facilities continue to operate, the overall impact could reach \$300,000 per year. In addition to retrofitting the incinerators, the facilities would have compliance costs for the other requirements, such as operator training/qualification, compliance/performance testing, inspecting, recordkeeping/reporting, and preparing waste management plans. Therefore, some of these facilities may find it economically advantageous to switch to alternative means of waste treatment/disposal.

Existing facilities that qualify as "rural" should be impacted the least because the rule does not require as stringent controls for these facilities as for facilities located in "urban" areas. EPA has recognized that rural facilities have fewer cost-effective options for treatment/disposal. The MACT floor for this category of incinerators, therefore, is good combustion and pollution prevention practices to reduce emissions (see Table 1). The intent is to reduce the impacts on facilities that operate incinerators

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in remote areas.

According to EPA, it costs about \$35,000 per year to operate an existing, small-sized incinerator that uses good combustion practices only. An air pollution control device will add \$10,000 per year to the facility's operating costs. In addition, the least expensive monitoring option, which relies on operating parameters, costs an additional \$10,000 per year to operate. Operating parameters are selected by the facility at the time of the initial performance test that demonstrates compliance with the emission limits. Thus, monitoring of the operating parameters is the only means of determining compliance on a continuous basis (see 62 FR 48361, September 15, 1997).

Specific impacts and the ratio of benefits to costs in Arizona are unknown at this time. However, because of the likely potential for reduced emissions to benefit public health and welfare, ADEQ expects probable benefits to exceed probable costs.

E. Potential Impacts to Political Subdivisions

Maricopa, Pima, and Pinal Counties, as regulators of facilities that incinerate hospital/medical/infectious waste, are expected to be impacted indirectly by this rule. At this time, ADEQ has not included potential costs or benefits to these political subdivisions of the state. In addition, as operators of hospital/medical/infectious waste incinerators, some political subdivisions could be negatively impacted.

F. Probable Impacts to Other Entities

Commercial treaters that incinerate waste are expected to be impacted indirectly through their regulation by political subdivision (county regulators). Even though a large incinerator would have to meet the new federal standards, direct regulation will not come from ADEQ. Increased prices for their services potentially could occur, but the percent of increase is unknown. These companies may not have to increase prices to off-set any compliance costs to remain profitable. Potentially, these incinerators could experience an increased demand for services (increase in revenues) as the national shift from smaller to larger incinerators takes place.

Vendors of air pollution control devices (retrofitting equipment) could experience an increased demand for their products. However, because of the limited number of incinerators regulated by ADEQ, most being regulated by political subdivisions, increased revenues could be considered an indirect impact of this rule. Small incinerator vendors potentially could be adversely impacted by this rule, but demand for vendors of alternative waste treatment technologies could increase.

Another key point is that ADEQ is incorporating already effective federal air quality requirements into state rules. Because ADEQ is proposing to implement federal law without change, this proposed rule imposes no additional impacts to affected entities.

G. Probable Impact to Consumers and General Public

Although it is conceivable that increased compliance costs for some health-care providers could result in increased prices for health-care services, cost-effective alternatives are available. Hence, affected facilities could weigh the advantages of continuing incinerating with increased compliance costs or switching to alternative means of waste treatment/disposal. According to EPA, hospitals would have to increase their costs by \$0.30 for each hospital-patient day to recover annual control costs (see 62 FR 48373, September 15, 1997). Additionally, these facilities could incorporate other cost-saving benefits, such as improved waste segregation and more effective recycling programs.

Off-site waste disposal could be indirectly affected with an increase in waste disposal fees. According to EPA, commercial treaters would have to increase costs by 2.6% to recover annual control costs. But ADEQ expects this would represent an upper limit in Arizona. Price increases, if any, probably would be less.

Finally, the general public is expected to benefit from anticipated reductions in emissions that have harmful effects on both human health and the environment (see subsection B. above).

H. General Impact on Small Businesses and Reduction of Impacts

ADEQ is sensitive to the concerns of small businesses and the impact this proposed rulemaking could have upon them. Accordingly, ADEQ has considered each of the methods prescribed in A.R.S. § 41-1035 for reducing the impact on small businesses. Likewise, it has considered each of the methods prescribed in A.R.S. § 41-1055(B)(5)(c). For example, A.R.S. § 41-1035 requires agencies implementing rules to reduce the impacts on small businesses by using certain methods where legal and feasible. Methods that may be used include the following: (1) exempt them from any or all rule requirements, (2) establish performance standards that would replace any design or operational standards, or (3) institute reduced compliance or reporting requirements. The latter method could be accomplished by establishing less stringent requirements, consolidating or simplifying them, or by setting less stringent schedules or deadlines.

ADEQ may not provide additional regulatory relief for small businesses beyond that established by the federal requirements (see subsection I. below). ADEQ has no authority to exempt a small business, or even to establish a less stringent standard or schedule from compliance or reporting requirements.

I. Alternative Rulemaking Provisions

ADEQ could not find any less costly or less intrusive rule provisions of achieving the goals and objectives of this proposed rulemaking because rule provisions represent the adoption of federal requirements. However, the federal requirements do contain

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provisions that reduce burdens and provide cost-saving benefits. For instance, the MACT floor emission level established for existing, small-sized incinerators provides for good combustion alone. Potentially, this means that most of these facilities could continue to operate without a significant impact.

J. Employment/Revenues and Secondary Impact Summary

ADEQ does not expect this rulemaking to impact short- or long-run employment, production, or industrial growth in Arizona. Even though some facilities could be adversely affected, ADEQ does not expect this rule to impact energy, water usage, job creation, or international competitiveness of goods and services. In addition, ADEQ does not expect that profitability or capital availability will be affected. Finally, this rulemaking is not expected to have an impact on state revenues.

For some facilities, compliance could result in expenditures for consulting services and capital expenditures for air pollution control devices. In most cases, the impact will be minimal. However, due to the potential for this proposed rule to impose real-resource costs upon a few facilities, some revenues may be affected, but they could be off-set by increased costs for health-care services. Expenditures by some facilities, however, would represent revenues for other entities, such as service and equipment providers (consultants, contractors, and suppliers of air pollution control devices).

Table 1. Emission Levels for Facilities Incinerating Waste and National Impact Forecasts*

FACILITY SOURCE (Incinerator Type)	EMISSION LEVEL (Control Level)	BASIS FOR ACHIEVING EMISSION STANDARDS	GENERAL IMPACT FORECAST (Nationally)
NEW SMALL ¹	MACT Floor	Good combustion and a moderate efficiency wet scrubber air pollution control device (APCD).	Potentially, very few, if any, of the projected facilities will be constructed due to the substantial increase in cost and available alternative means of waste disposal/treatment.
NEW LARGE ²	MACT Floor	Good combustion and a combined dry/wet scrubber with activated carbon APCD. No other APCD could achieve lower emissions.	It is unknown how many of the projected 70 facilities will be constructed. This includes 10 commercial facilities.
NEW MEDIUM ³	MACT > MACT Floor	Good combustion and a combined dry/wet scrubber with activated carbon APCD.	Potentially, very few, if any, of the projected facilities will be constructed.
EXISTING SMALL ⁴	MACT >MACT Floor	Good combustion and a low efficiency wet scrubber APCD.	Potentially, most facilities will switch to an alternative means of waste treatment/disposal (93-100%).
EXISTING SMALL (RURAL CRITERIA ⁵)	MACT Floor	Good combustion alone.	Potentially, most facilities will continue to operate.
EXISTING LARGE ⁶	MACT Floor	Good combustion and a high efficiency dry or wet scrubber APCD.	Potentially, most facilities will continue to operate, but as many as 35% could close.
EXISTING MEDIUM ⁷	MACT Floor	Good combustion and a moderate efficiency dry or wet scrubber APCD.	Potentially, most facilities will switch to an alternative means of waste treatment/disposal (60-95%).

Source: Adapted from 62 FR 48351, 48363-48372.

* Emission levels represent the most cost-effective and achievable standards. The emission levels are not based on the exclusive use of a wet or dry scrubber APCD (dry scrubbers normally cost more than wet scrubbers); replacing a wet scrubber APCD on an existing incinerator with a dry scrubber APCD, and vice versa, would be very expensive. EPA may not set emission limitations less stringent than the MACT floor, but it may set standards and guidelines more stringent than the MACT floor (see § 129 CAA).

APCD=air pollution control device; CAA=Clean Air Act (1990 amendments); CDD/CDF=dioxin/furan (polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans); MACT=maximum achievable control technology; MACT floor=standards for new facilities may not be less stringent than emissions control achieved by the best controlled similar facilities and guidelines for existing facilities may not be less stringent than the average emissions limitation achieved by the best performing

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12% of facilities in the category; and PM=particulate matter.

Notes to Table 1 follow:

¹ Under scenarios B and C, none of the projected 85 small facilities (in absence of new standards) would be constructed. EPA considers the projected 85 new facilities to be an unrealistic scenario.

² Under scenario B, none of the projected 60 large facilities (in absence of new standards) would be constructed; however, the 10 projected commercial facilities probably would be constructed. But under scenario C, it is unknown how many of the projected 60 large and 10 commercial facilities would be constructed.

³ Under scenarios B and C, none of the projected 90 medium facilities (in absence of new standards) would be constructed. EPA considers the projected 90 new facilities to be an unrealistic scenario. Note that the addition of activated carbon to a combined dry/wet APCD would increase capital costs by < 4%, but it would result in a significant reduction in CDD/CDF emissions.

⁴ The use of a moderate or high efficiency wet scrubber APCD would increase the capital cost by 15-42% but would result in only a slight decrease in PM emissions.

⁵ The purpose of the “rural criteria” category is to provide a more cost-effective option for facilities operating in remote areas. Emission guidelines based on a wet scrubber APCD could cause a financial hardship for most of these facilities. However, to meet the “rural criteria” category, a facility must be located at least 50 miles from the nearest SMSA boundary and must not incinerate more than 2,000 lbs. per week. EPA estimates that less than 1% of waste will be burned in these facilities. Over 90% of existing, small-sized incinerators would remain subject to guidelines based on a wet scrubber APCD.

⁶ Guidelines based on the use of a combined dry/wet scrubber APCD were not considered for medium- or large-sized incinerators because the APCD is very expensive and would result in small additional reductions in emissions.

⁷ Because the emissions level for small-sized incinerators (that is, good combustion and low efficiency wet scrubber) is only slightly less stringent than for medium-sized incinerators (that is, good combustion and moderate efficiency wet scrubbers), the incentive for medium-sized facilities to reclassify themselves as small is quashed. If the emissions level for small-sized incinerators was considerably less stringent, medium-sized facilities would have an economic incentive to reclassify. Note also that the use of a high efficiency wet scrubber APCD would have increased costs 15-25%, but it would have resulted in only a slight decrease in PM emissions.

Table 2 Pollutant Emission Limits for New Facilities: Small, Medium, and Large Incinerators*

POLLUTANT	SMALL (waste-burning capacity ≤ 200 lbs./hr.)	MEDIUM (waste-burning capacity > 200 ≤ 500 lbs./hr.)	LARGE (waste-burning capacity > 500 lbs./hr.)
particulate matter	69 mg/dscm	34 mg/dscm	34 mg/dscm
carbon monoxide	40 ppmv	40 ppmv	40 ppmv
dioxins/furans	125 ng/dscm total	125 ng/dscm total	125 ng/dscm total
hydrogen chloride	15 ppmv or 99%	15 ppmv or 99%	15 ppmv or 99%
sulfur dioxide	55 ppmv (no test req)	55 ppmv (no test req)	55 ppmv (no test req)
nitrogen oxides	250 ppmv (no test req)	250 ppmv (no test req)	250 ppmv (no test req)
lead	1.2 mg/dscm or 70%	0.07 mg/dscm or 98%	0.07 mg/dscm or 98%
cadmium	0.16 mg/dscm or 65%	0.04 mg/dscm or 90%	0.04 mg/dscm or 90%
mercury	0.55 mg/dscm or 85%	0.55 mg/dscm or 85%	0.55 mg/dscm or 85%

Source: Adapted from 62 FR 48362, 48367, 48385.

* These emissions include hazardous air pollutants--known as HAPs--(cadmium, hydrogen chloride, lead, and mercury) and criteria air pollutants (particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides).

dscf=dry standard cubic feet (14.7 psi @ 68°F); dscm=dry standard cubic meters (14.7 psi @ 68°F); gr=grains; mg=milligrams; ng=nanogram (10⁻⁹ grams); ppmv=parts per million by volume; and req=required.

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Table 3 Pollutant Emission Limits for Existing Facilities: Small, Medium, and Large Incinerators*

POLLUTANT	SMALL (waste-burning capacity ≤ 200 lbs./hr.)	MEDIUM (waste-burning capacity > 200 ≤ 500 lbs./hr.)	LARGE (waste-burning capacity > 500 lbs./hr.)
particulate matter	115 mg/dscm	69 mg/dscm	34 mg/dscm
carbon monoxide	40 ppmv	40 ppmv	40 ppmv
dioxins/furans	125 ng/dscm total	125 ng/dscm total	125 ng/dscm total
hydrogen chloride	100 ppmv or 93%	100 ppmv or 93%	100 ppmv or 93%
sulfur dioxide	55 ppmv (no test req)	55 ppmv (no test req)	55 ppmv (no test req)
nitrogen oxides	250 ppmv (no test req)	250 ppmv (no test req)	250 ppmv (no test req)
lead	1.2 mg/dscm or 70%	1.2 mg/dscm or 70%	1.2 mg/dscm or 70%
cadmium	0.16 mg/dscm or 65%	0.16 mg/dscm or 65%	0.16 mg/dscm or 65%
mercury	0.55 mg/dscm or 85%	0.55 mg/dscm or 85%	0.55 mg/dscm or 85%

Source: Adapted from 62 FR 48367-48368.

These emissions include hazardous air pollutants--known as HAPs--(cadmium, hydrogen chloride, lead, and mercury) and criteria air pollutants (particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides).

dscf=dry standard cubic feet (14.7 psi @ 68°F); dscm=dry standard cubic meters (14.7 psi @ 68°F); gr=grains; mg=milligrams; ng=nanogram (10⁻⁹ grams); ppmv=parts per million by volume; and req=required.

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: David Lillie
Address: Arizona Department of Environmental Quality
3033 North Central, 8th Floor
Phoenix, Arizona 85012-2809
Telephone: (602) 207-4436 or 800-234-5677, Ext. 4436 (Arizona only)
TTD: (602) 207-4829
Fax: (602) 207-2251

10. The time, place and nature of the proceedings for the adoption, 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:

Date: May 18, 1999
Time: 10 a.m.
Location: Arizona Department of Environmental Quality, Room 1706
3033 North Central
Phoenix, Arizona 85012
Date: May 18, 1999
Time: 1:30 p.m.
Location: Arizona Department of Environmental Quality, Suite F
1515 East Cedar Avenue
Flagstaff, Arizona 86004
Date: May 19, 1999
Time: 2 p.m.
Location: Arizona Department of Environmental Quality, Room 131
400 West Congress
Tucson, Arizona 85701
Date: May 20, 1999

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Time: 11 a.m.
Location: Sierra Vista Public Library
2600 East Tacoma
Sierra Vista, Arizona 85635

(Please call (602) 207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

Nature: Public hearings on the proposed rules, with opportunity for formal comments on the record.

The close of written comment is May 24, 1999, at 5 p.m.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules.**
Not applicable.
12. **Incorporations by reference and their location in the rules.**
40 CFR part 60, Subpart Ec R18-2-901
13. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

**ARTICLE 7. EXISTING STATIONARY SOURCE
PERFORMANCE STANDARDS**

Sections

R18-2-732. Standards of Performance for Existing Hospital/
Medical/Infectious Waste Incinerators

Table 1. Emission Limitations for Small, Medium, and
Large HMIWI

Table 2. Emissions Limitations for Rural HMIWI

**ARTICLE 9. NEW SOURCE PERFORMANCE
STANDARDS**

Sections

R18-2-901. Standards of Performance for New Stationary
Sources

**ARTICLE 7. EXISTING STATIONARY SOURCE
PERFORMANCE STANDARDS**

**R18-2-732. Standards of Performance for Existing Hospi-
tal/Medical/Infectious Waste Incinerators**

A. This Section applies to any hospital/medical/infectious waste incinerator (HMIWI) that commenced construction on or before June 20, 1996. An incinerator subject to this Section is not subject to R18-2-704. The following types of incinerators are not subject to this Section:

1. An incinerator during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, if the owner or operator of the incinerator does both of the following:
 - a. Notifies the Director of an exemption claim; and
 - b. Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned.
2. Any co-fired incinerator if the owner or operator of the incinerator:
 - a. Notifies the Director of an exemption claim;
 - b. Provides an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels or wastes to be burned; and
 - c. Keeps records on a calendar quarter basis of the weight of hospital waste and medical/infectious

waste burned, and the weight of all other fuels and wastes burned at the co-fired incinerator.

3. Any incinerator required to have a permit under Section 3005 of the Solid Waste Disposal Act.

4. Any incinerator subject to 40 CFR 60, Subparts Cb, Ea, or Eb (standards or guidelines for certain municipal waste incinerators) as incorporated by reference in R18-2-901.

5. Any pyrolysis unit, as defined in 40 CFR 60.51c.

6. Cement kilns firing hospital waste or medical/infectious waste.

B. A physical or operational change made to an existing HMIWI unit solely for the purpose of complying with emission limitations under this Section is not considered a modification and does not result in an existing HMIWI unit becoming subject to the provisions of R18-2-901(9).

C. In addition to the definitions provided in 40 CFR 60.51c as incorporated by reference in R18-2-901, the following definitions apply to this Section:

1. "Hospital/medical/infectious waste incinerator" or "HMIWI" or "HMIWI unit" means any device that combusts any amount of hospital waste or medical/infectious waste.

2. "Rural HMIWI" means any HMIWI that is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and that burns less than 2,000 pounds per week of hospital waste and medical/infectious waste. The 2,000 pounds per week limitation does not apply during performance tests.

3. "Standard Metropolitan Statistical Area" or "SMSA" means any area listed in Office of Management and Budget (OMB) Bulletin 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993.

4. "State Plan" means the plan that 40 CFR 60 subpart Ce requires states to develop to regulate existing HMIWI built on or before June 20, 1996.

D. Beginning September 15, 2000, an HMIWI shall operate under a Class I permit.

E. An owner or operator of an HMIWI shall comply with the following emissions limitations:

1. The emissions limitations in Table 1, unless the HMIWI is a rural HMIWI;

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2. The emissions limitations in Table 2, if the HMIWI is a rural HMIWI.
 3. An owner or operator of an HMIWI shall not cause to be discharged into the atmosphere from the stack of that HMIWI any gases that exhibit greater than 10% opacity (6-minute block average).
 4. An owner or operator of a large existing HMIWI shall comply with the opacity requirements in 40 CFR 60.52c (c), (d), and (e).
- E.** An owner or operator of an HMIWI shall comply with the operator training requirements found in 40 CFR 60.53c as incorporated by reference in R18-2-901 within 1 year following approval of the State Plan.
- G.** An owner or operator of an HMIWI shall comply with the waste management requirements found in 40 CFR 60.33c as incorporated by reference in R18-2-901.
- H.** An owner or operator of a rural HMIWI shall comply with the following inspection requirements:
1. The owner or operator shall conduct or hire another party to conduct an initial equipment inspection within 1 year following approval of the State Plan.
 2. At a minimum, an inspection shall include the following:
 - a. Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation. Clean pilot flame sensor, as necessary.
 - b. Inspect adjustment of primary and secondary chamber combustion air, and adjust as necessary.
 - c. Inspect hinges and door latches, and lubricate as necessary.
 - d. Inspect dampers, fans, and blowers for proper operation.
 - e. Inspect HMIWI door and door gaskets for proper sealing.
 - f. Inspect motors for proper operation.
 - g. Inspect primary chamber refractory lining. Clean and repair or replace lining as necessary.
 - h. Inspect incinerator shell for corrosion or hot spots.
 - i. Inspect secondary/tertiary chamber and stack, clean as necessary.
 - j. Inspect mechanical loader, including limit switches, for proper operation, if applicable.
 - k. Visually inspect waste bed (grates), and repair or seal, as appropriate.
 - l. For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments.
 - m. Inspect each air pollution control device for proper operation, if applicable.
 - n. Inspect waste heat boiler systems to ensure proper operation, if applicable.
 - o. Inspect bypass stack components.
 - p. Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment.
 - q. Generally observe that the equipment is maintained in good operating condition.
 3. Within 10 operating days following an equipment inspection the owner or operator shall complete all necessary repairs unless the owner or operator obtains written approval from the Director establishing a date by which all necessary repairs of the facility shall be completed.
 4. The owner or operator of any rural HMIWI shall conduct or hire another party to conduct an equipment inspection annually (no more than 12 months following the previous annual equipment inspection), as outlined in subsections (2) and (3).
- I.** An owner or operator of an HMIWI shall comply with the following compliance, performance testing, and monitoring requirements:
1. Except as provided in subsection (2), existing HMIWI shall meet the requirements for compliance and performance testing in 40 CFR 60.56c excluding the fugitive emissions testing requirements under subsections 60.56c(b)(12) and (c)(3).
 2. A rural HMIWI shall meet the following compliance and performance testing requirements:
 - a. Conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11) (Hg only), and (c)(1). The 2,000 lb/week limitation under 40 CFR 60.33e(b) does not apply during performance tests.
 - b. Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limitations.
 - c. Ensure that the facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter.
 - d. Except as provided in (2)(e), operating the facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3-hour rolling average) simultaneously constitutes a violation of the PM, CO, and dioxin/furan emission limitations.
 - e. The owner or operator may conduct a repeat performance test within 30 days after violation of any applicable operating parameter to demonstrate that the facility is not in violation of any applicable emission limit. Repeat performance tests conducted under this paragraph must be conducted using the identical operating parameters that indicated a violation under (2)(d).
 3. The owner or operator shall comply with the monitoring requirements listed in 40 CFR 60.57c of subpart Ec, except as provided for under subsection (4).
 4. A rural HMIWI shall meet the following monitoring requirements:
 - a. Install, calibrate (to manufacturer's specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.
 - b. Install, calibrate (to manufacturer's specifications), maintain, and operate a device that automatically measures and records the date, time, and weight of each charge fed into the HMIWI.
 - c. Shall obtain monitoring data at all times during HMIWI operation except during periods of moni-

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toring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75% of the operating hours per day and for 90% of the operating hours per calendar quarter that the facility is incinerating hospital waste or medical/infectious waste.

- I.** An owner or operator of an HMIWI shall comply with the following reporting and recordkeeping requirements:
1. Each HMIWI shall comply with the requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) (fugitive emissions) and (b)(7) (siting).
 2. Each rural HMIWI shall perform all the following:
 - a. Maintain records of the annual equipment inspections, any required maintenance, and any repairs

not completed within 10 days after an inspection or the time-frame established by the Director.

- b. Submit an annual report to ADEQ, Air Quality Division, (T5109B), 3003 North Central Avenue, Phoenix, Arizona 85012. The report shall contain information recorded under subsection (2)(a) and be submitted no later than 60 days following the year in which data were collected. The owner or operator shall send subsequent reports no later than 12 calendar months following the previous report (after receiving a Class I permit, the owner or operator shall submit these reports semiannually). The facility's manager shall sign the report.

Table 1. Emission Limitations for Small, Medium, and Large HMIWI

<u>Pollutant</u>	<u>Units (7% oxygen, dry basis)</u>	<u>Emission Limitation</u>		
		<u>Small HMIWI</u>	<u>Medium HMIWI</u>	<u>Large HMIWI</u>
<u>Particulate matter</u>	<u>Milligrams per dry standard cubic meter (grains per dry standard cubic foot)</u>	<u>115(0.05)</u>	<u>69 (0.03)</u>	<u>34(0.015)</u>
<u>Carbon monoxide</u>	<u>Parts per million by volume</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>Dioxin/furans</u>	<u>Nanograms per dry standard cubic meter total dioxin/furans(grains per billion dry standard cubic feet)or nanograms per dry standard cubic meter toxic equivalent quantity (grains per billion dry standard cubic feet)</u>	<u>125(55) or 2.3(1.0)</u>	<u>125 (55) (1.0)or 2.3</u>	<u>125(55)or 2.3(1.0)</u>
<u>Hydrogen chloride</u>	<u>Parts per million by volume or percent reduction</u>	<u>100 or 93%</u>	<u>100 or 93%</u>	<u>100 or 93%</u>
<u>Sulfur dioxide</u>	<u>Parts per million by volume</u>	<u>55</u>	<u>55</u>	<u>55</u>
<u>Nitrogen oxides</u>	<u>Parts per million by volume</u>	<u>250</u>	<u>250</u>	<u>250</u>
<u>Lead</u>	<u>Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction</u>	<u>1.2(0.52) or 70%</u>	<u>1.2(0.52) or 70%</u>	<u>1.2(0.52) or 70%</u>
<u>Cadmium</u>	<u>Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction</u>	<u>0.16(0.07) or 65%</u>	<u>0.16(0.07) or 65%</u>	<u>0.16(0.07) or 65%</u>
<u>Mercury</u>	<u>Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction</u>	<u>0.55(0.24) or 85%</u>	<u>0.55(0.24) or 85%</u>	<u>0.55(0.24) or 85%</u>

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Table 2. Emissions Limitations for Rural HMIWI

<u>Pollutant</u>	<u>Units (7% oxygen, dry basis)</u>	<u>Emission Limitation</u>
<u>Particulate matter</u>	<u>Milligrams per dry standard cubic meter</u> <u>(grains per dry standard cubic foot)</u>	<u>197 (0.086)</u>
<u>Carbon monoxide</u>	<u>Parts per million by volume</u>	<u>40</u>
<u>Dioxin/furans</u>	<u>Nanograms per dry standard cubic meter total dioxin/</u> <u>furans (grains per billion dry standard</u> <u>cubic feet) or nanograms per dry standard cubic</u> <u>meter toxic equivalent quantity</u> <u>(grains per billion dry standard cubic feet)</u>	<u>800 (350) or</u> <u>15 (6.6)</u>
<u>Hydrogen chloride</u>	<u>Parts per million by volume</u>	<u>3100</u>
<u>Sulfur dioxide</u>	<u>Parts per million by volume</u>	<u>55</u>
<u>Nitrogen oxides</u>	<u>Parts per million by volume</u>	<u>250</u>
<u>Lead</u>	<u>Milligrams per dry standard cubic meter</u> <u>(grains per thousand dry standard cubic feet)</u>	<u>10(4.4)</u>
<u>Cadmium</u>	<u>Milligrams per dry standard cubic meter</u> <u>(grains per thousand dry standard cubic feet)</u>	<u>4(1.7)</u>
<u>Mercury</u>	<u>Milligrams per dry standard cubic meter</u> <u>(grains per thousand dry standard cubic feet)</u>	<u>7.5(3.3)</u>

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of July 1, 1997, and no future editions or amendments, except for adoption date specified below, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.

1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. No Change.
6. No Change.
7. No Change.
8. No Change.
9. Subpart Ec - Standards of Performance for Hospital/ Medical/Infectious Waste Incinerators for which construction commenced after June 20, 1996 or for which modification commenced after March 16, 1998, adopted September 15, 1997 (62 FR 48347).
10. No Change.
11. No Change.
12. No Change.
13. No Change.
14. No Change.
15. No Change.
16. No Change.
17. No Change.

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~~72-73.~~ No Change.
~~73-74.~~ No Change.