

# NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

## NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

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

##### PREAMBLE

**1. Register citation and date for the original Notice of Proposed Rulemaking:**

Notice of Proposed Rulemaking: 6 A.A.R. 3692, September 29, 2000

**2. Sections Affected**

R3-4-248

**Rulemaking Action**

Amend

**3. 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

Implementing statute: A.R.S. § 3-201.01(A)

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

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

This rulemaking updates the ~~current~~ Japanese beetle rule to add definitions, broaden the area under quarantine and to bring the rule in line with the ~~and to ensure that pest risks are acceptably managed. The rule follows the guidelines established by the National Plant Board in the of the~~ U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998 and revised September 5, 2000.

~~This plan~~ The plan establishes a framework to encourage states to consistently and appropriately characterize Japanese beetle pest risk and infestation status based on up-to-date scientific and field information; and to pursue more uniform adoption and implementation of pest risk mitigation measures to reduce pest risk to a level acceptable to receiving states.

Adult Japanese beetles feed on foliage, flowers, and fruits of hundreds of different plants while the larvae feed on plant roots. It is an economic pest of turf, pastures, fruit trees and ornamental plantings.

Japanese beetle is univoltine, requiring 1 year to complete its life cycle in most parts of its range. Depending upon latitude and weather, adult beetles emerge from the soil to mate and feed as early as mid-May in warmer areas and as late as July in colder climates. Males emerge a few days before the females. Emerging females are sexually mature, carry an average of 20 eggs, and begin to oviposit immediately after mating.

Oviposition sites are usually selected on the basis of proximity to feeding sites, ground cover, and condition of the soil. Oviposition usually occurs near the area where the female has been feeding, preferably on grass covered soil and soil moist enough to prevent egg desiccation and loose enough to allow digging. Female beetles burrow into the soil

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and deposit 1 to 3 eggs at a time at a depth of 2 to 4 inches. Each female may produce 40 to 60 eggs in a lifetime; eggs hatch within 2 weeks of oviposition.

After hatching, larvae begin feeding on nearby rootlets and continue feeding until the rootlet is consumed. Larvae then move horizontally until a new rootlet is found. As soil temperatures cool in the fall, larvae move deeper into the soil. All activity ceases when temperatures reach about 10°C (50°F) with most larvae overwintering as third instars. When soil temperatures warm in the spring, larvae move upward again and feed for a time before entering an inactive prepupal condition. Since the species is adapted to develop in moist soil, Japanese beetle eggs must absorb water to successfully complete embryonic development. As a result, if there is not sufficient moisture in the soil, the eggs will die. The maximum temperature for incubation is approximately 30°C. And, Japanese beetle eggs are not cold hardy. In general, Japanese beetle develop from egg to adult at temperatures between 17.5 and 27.5°C.

Subsection (B). Japanese beetle infested areas include any county, parish, regional municipality, or state that is known to harbor an infestation. The determination of infested areas, and the changes made in subsection (B), quarantine area, is determined by detection and delimitation surveys of any location or area considered infested with the Japanese beetle when multiple adult Japanese beetles are detected within the same area in a single year; adult Japanese beetles are trapped at the same location for 2 or more successive years; or an alternate life stage is found associated with the detection of an adult. A state or county is considered infested if no delimitation or mitigation action is taken once Japanese beetle is detected, or after 2 consecutive years of detections. An infested area retains its infested status until eradication efforts have resulted in 2 subsequent and consecutive years of negative trap surveys conducted at the delimitation level after the first eradication treatment has been applied.

Subsection (C). Feeding damage to turf that is well maintained is usually not obvious until the density of larvae exceeds 10 per square foot; in poorly maintained turf the damage threshold is lower. Newly emerged beetles prefer low growing plants for the first few days, then switch to fruit and shade trees for the next several weeks, then return to the low growing plants. Pupation occurs after about 10 days and lasts 8 to 20 days before adult eclosion. Records have shown that although Japanese beetle has been recorded as feeding on 435 plant species, of these 47 are frequent hosts.

The free movement of Japanese beetle host commodities between and among states, and portions of states of equal pest status, is allowed when consistent with standard phytosanitary and nursery inspection practices designed to prevent artificial movement of plant pests.

The U.S. Domestic Japanese Beetle Harmonization Plan allows for 4 Japanese beetle regulatory strategies based on a state's pest classification.

- (1) Category 1—Uninfested/Quarantine Pest.
- (2) Category 2—Uninfested or Partially Infested/Regulated Non-Quarantine Pest.
- (3) Category 3—Partially or Generally Infested/No Regulatory Significance.
- (4) Category 4—Historically Not Known To Be Infested/No Regulatory Significance.

The main factors affecting the natural spread of Japanese beetle, besides availability of food and oviposition sites, are topography, temperature, rainfall, and wind. Assuming adequate soil moisture, when extensive areas of flat farming land are present, Japanese beetle spreads rapidly. However, mountainous areas of forests slow migration. Japanese beetle eggs and larvae in the soil are susceptible to desiccation. For survival, there must be rainfall or irrigation throughout the year of at least 10 inches. In the summer the soil temperature must be between 17.5°C (63.5°F) and 72.5°C (162.5°F) for development and survival. In winter, temperatures must exceed 9.4°C (15°F) to prevent larval mortality. Snow cover helps to thermally insulate the soil and prevent mortality when air temperatures reach lethal levels. The spread of Japanese beetle along its leading edge has been variously estimated to be between 2 to 15 miles per year. Predictions regarding the future spread of Japanese beetle have been based primarily on these temperature and rainfall requirements.

**6. An explanation of the substantial change which resulted in this supplemental notice:**

The rule has been modified to add Montgomery and Walker counties in Alabama to the area in quarantine. Commodities entering Arizona from areas under quarantine must be accompanied by an original certificate issued by an official of the origin state affirming compliance with listed requirements. The rule incorporates by reference the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000.

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

This rulemaking should not have adverse economic effects for the Department.

B. *Political Subdivision.*

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, railroads in state and Out-of-state shipping nurseries.~~)*

This rulemaking will have an effect on the out-of state shipping nurseries in counties not previously included in the area under quarantine. They will be required to obtain certificates from the state of origin affirming compliance with the Rules's restrictions.

D. *Private and public employment.*

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

E. *Consumers and the Public.*

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

None.

F. *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:**

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**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:**

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

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

None

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

U.S. Domestic Japanese Beetle Harmonization Plan,  
adopted by the National Plant Board on August 19, 1998,  
and revised September 5, 2000.

R3-4-248 (A) and R3-4-248 (F)

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

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION**

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ARTICLE 2. QUARANTINE

R3-4-248. Japanese beetle

ARTICLE 2. QUARANTINE

**R3-4-248. Japanese beetle**

**A.** Notice of quarantine. It has been determined that the Japanese beetle, *Popillia japonica* (Newman), is a dangerous insect pest not known to occur in the state of Arizona; that the Japanese beetle is a serious threat to forest trees, agricultural crops, turf grass and certain ornamental plants. In order to prevent the introduction into the state of Arizona, and the spread within the state of this serious pest, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona shall be governed by the following regulation:

**~~B.~~A.** Pest: Definitions.

"Bareroot" means plants with less than that amount of soil that can harbor any Japanese beetle life stage.

"Bulk density" means the dry weight in pounds of 1 cubic yard of potting media.

"Free from soil" means free from soil in amounts that could contain concealed Japanese beetle larvae or pupae life stages.

"JBHP" means the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

~~Pest: "Pest" means the Japanese beetle, *Popillia japonica* (Newman), which in the larval stage attacks the roots, and as an adult attacks the leaves and fruits of many plants.~~

"Soil" means all growing media.

**B.** Area under quarantine. ~~All states and districts in the United States.~~

**~~C.~~** Infested areas:

- ~~1. Entire states of~~ The entire states of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia, and the District of Columbia.
- ~~2. In the State of Alabama, the counties of~~ Autauga, Blount, Calhoun, Chambers, Cherokee, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Jackson, Jefferson, Lee, Limstone, Macon, Madison, Marion, Marshall, Montgomery, Morgan, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston.
- ~~3. In the State of Arkansas, the counties of~~ Benton and Washington.
- ~~4. In the State of Georgia, the counties of~~ Baldwin, Banks, Barrow, Bartow, Bibb, Burke, Butts, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clarke, Clayton, Cobb, Columbia, Coweta, Date, Dawson, DeKalb, Douglas, Elbert, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Jackson, Jasper, Jefferson, Jones, Lamar, Lincoln, Lumpkin, McDuffie, Macon, Madison, Marion, Meriwether, Monroe, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Putnam, Rabun, Richmond, Rockdale, Schley, Spaulding, Stephens, Talbot, Taliaferro, Taylor, Towns, Troup, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, White, Whitfield, Wilkes, and Wilkinson.
- ~~5. In the State of Iowa, the counties of~~ Dubuque, Linn, and Scott.
- ~~6. In the State of Kansas, the counties of~~ Crawford, Johnson, Sedgwick, Shawnee, and Wyandotte.
- ~~7. In the State of Maine, all counties except~~ Aroostook, and Washington.
- ~~8. In the State of Michigan, the counties of~~ Allegan, Barry, Berrien, Branch, Calhoun, Cass, Clare, Clinton, Eaton, Genessee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Kent, Lake, Lapeer, Lenawee, Livingston, Macomb, Mason, Monroe, Muskegon, Oakland, Oceana, Ottawa, Saginaw, Shiawassee, St. Clair, St. Joseph, Van Buren, Wash-tenaw, and Wayne
- ~~9. In the State of Minnesota, the counties of~~ Carver, Dakota, Hennepin, Ramsey, Scott and Washington.
- ~~10. In the State of Missouri, the counties of~~ Christian, Clay, Franklin, Jackson, Platte, Stone, St. Louis, and St. Louis City.
- ~~11. In the State of Nebraska, the counties of~~ Douglas and Lancaster.
- ~~12. In the State of Oklahoma, the counties of~~ Cherokee, Kay, Oklahoma, and Tulsa.
- ~~13. In the State of Tennessee, the counties of~~ Anderson, Bedford, Benton, Bledsoe, Blount, Bradely, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, De Kalb, Dickson, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lawrence, Lincoln, Loudon, Macon, Marshall, Marion, Maury, McMinn, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, White, Williamson, and Wilson.
- ~~14. In the State of Texas, the counties of~~ Collin, Dallas, Harris, Tarrant, and Van Zandt.

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15. In the State of Wisconsin, the counties of Dane, Door, Eau Claire, Fon du Lac, Kenosha, Milwaukee, Racine, Rock, Sheboygan, Walworth, Waukesha, and Wood.

1. Portions of the states listed below:

Alabama—Counties of Cleburne, Jefferson, and Lee.

Georgia—Counties of Banks, Barrow, Bartow, Bibb, Burke, Carroll, Cherokee, Clarke, Clayton, Cobb, Coweta, Columbia, Dawson, DeKalb, Douglas, Elbert, Fannin, Fayette, Forsyth, Fulton, Franklin, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jones, Lumpkin, Madison, McDuffie, Monroe, Muscogee, Murray, Newton, Oconee, Oglethorpe, Paulding, Pickens, Rabun, Richmond, Rockdale, Spalding, Stephens, Towns, Union, Walker, Walton, and White.

Illinois—Counties of Coles, Cook, DuPage, Edgar, Effingham, Fayette, Iroquois, Kankakee, LaSalle, Macon, Madison, Rock Island, St. Clair, Tazewell, Vermilion, and Will.

Indiana—Counties of Allen, Benton, Boone, Carroll, Cass, Clark, Clay, Clinton, Daviess, Dearborn, DeKalb, Delaware, Dubois, Elkhart, Franklin, Fulton, Greene, Henrieks, Huntington, Jackson, Jasper, Jefferson, Jennings, Kosciusko, LaGrange, Lake, La Porte, Lawrence, Marion, Marshall, Martin, Miami, Montgomery, Newton, Noble, Ohio, Orange, Parke, Porter, Pulaski, Putnam, St. Joseph, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Vermillion, Vanderburgh, Vigo, Wabash, Washington, Wayne, Wells, White, and Whiteley.

Kentucky—Counties of Bath, Bell, Boone, Bourbon, Boyd, Bracken, Breathitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Gallatin, Garrard, Grant, Greenup, Hardin, Harlan, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Martin, Mason, McCreary, Menifee, Montgomery, Morgan, Nicholas, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Roekcastle, Rowan, Trimble, Wayne, Whitley, Wolfe, and Woodford.

Maine—Counties of Androscoggin, Cumberland, Kennebec, Lincoln, Oxford, Sagadahoc, and York.

Michigan—Counties of Allegan, Barry, Berrien, Calhoun, Cass, Kalamazoo, Lenawee, Macomb, Monroe, Oakland, Washtenaw, and Wayne.

Missouri—City of St. Louis, County of St. Louis.

Ohio—Counties of Adams, Allen, Ashland, Ashtabula, Athens, Auglaize, Belmont, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Green, Guernsey, Hamilton, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Jefferson, Knox, Lake, Lawrence, Licking, Logan, Lorain, Lucas, Madison, Mahoning, Marion, Medina, Meigs, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Ottawa, Perry, Picaway, Preble, Pike, Portage, Putnam, Ross, Richland, Sandusky, Scioto, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Vinton, Washington, Warren, Wayne, Williams, Wood, and Wyandot.

South Carolina—Counties of Aiken, Anderson, Calhoun, Cherokee, Chester, Chesterfield, Darlington, Dillon, Fairfield, Florence, Greenville, Horry, Lancaster, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Pickens, Richland, Spartanburg, Union, and York.

Tennessee—Counties of Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Monroe, Morgan, Polk, Roane, Sevier, Sullivan, Unicoi, Washington, and Weakley.

D. Commodities covered:

1. Soil, separately or with other things (except potting soil): except when commercially treated and packaged;
2. Plants with roots (except houseplants grown in the home and not for sale, greenhouse grown plants, soil-free aquatic plants, moss, and hycopodium known as clubmoss or ground pine or running pine);
2. Humus, compost, and manure, and mulch, plant litter separately or with another commodity, except when commercially packaged;
3. Grass sod.
4. Aircraft (during months of June, July, and August whenever there is swarming of adult Japanese beetles in the area under quarantine);
4. All plants with roots, except bareroot plants free from soil;
5. Plant crowns or roots for propagation, except when free from soil;
6. Bulbs, corms, tubers, and rhizomes of ornamental plants, except when free from soil;
- 5-7. Any other products, articles, or means of conveyance, of any character whatsoever when it is determined by an inspector that they present a hazard of spread of Japanese beetle and the person in possession thereof has been so notified plant or appliance determined by an inspector to present a hazard of spreading the pest.

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- E. Restrictions. All commodities are prohibited from entering Arizona from the area under quarantine unless accompanied by an original certificate issued by an official of the origin state affirming compliance with one of the following requirements:
1. Movement of regulated articles. Regulated articles may be moved from the area under quarantine into the state of Arizona only when such articles are accompanied by a valid certificate from an authorized inspector of the state of origin or Federal Certificate issued by a United States Department of Agriculture inspector giving evidence of the following conditions:
  2. Certificates:
    - a. When, in the judgment of the inspector, they have not been exposed to infestation.
    - b. When they have been examined by the inspector and found to be free of infestation.
    - c. When they have been treated under the observation of an inspector and in accordance with a method selected by him to bring about a successful treatment for the presence of Japanese beetles.
    - d. Aircraft and other conveyances arriving in the state of Arizona from the area under quarantine, which have not been properly treated and certified at origin may be held for inspection during the months of June, July and August at the place of inspection until either found free of live Japanese beetles or treated by an approved manner and released by an inspector of the Arizona Commission of Agriculture and Horticulture.
  1. A covered commodity may be moved from the area under quarantine into Arizona only when it is accompanied by a certificate of inspection. Commodities covered shall be treated in accordance with one of the treatment methods listed in Subsection E.
  2. Plants with soil shall meet one of the following conditions: accompanied by an original certificate of inspection declaring the plants were treated within 15 days before shipment.
  3. Plants with soil shall be accompanied by an original certificate of inspection declaring 1 of the following procedures:
    - a. The greenhouse in which the plants were produced was constructed and maintained to prevent entry of the pest, the plants and greenhouses were inspected and found free from all stages of the pest, and the plants and soil were protected from subsequent infestation while being stored, packed, and shipped.
    - b. The plants were produced in an area not under quarantine, were transported into an area under quarantine in a closed conveyance or closed container, and at all times were protected from becoming infested with the pest.
    - c. The plants were produced in an area under quarantine not infested with the pest. Plants with soil meeting this criteria shall be allowed to enter the state if accompanied by a permit issued by the ~~and approval is obtained from~~ Associate Director.
  3. Exemptions.
    - a. Grass sod is prohibited from the area under quarantine unless accompanied by a permit issued by the Associate Director. ~~shall not be accepted from any state except: California, Hawaii, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington.~~
    - b. Privately-owned houseplants, grown indoors and free from the pest are exempt from this Section.
- F. Disposition of violations. Any shipment, conveyance 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 owners, his or their the owner's resp ~~A covered commodity may be moved from the area under quarantine into Arizona only when it is accompanied by a certificate of inspection.~~ on-site agents, and under the direction ~~supervision~~ of the Entomologist or his inspector.
- G. General rules. See "General Rules and Definitions, Article 1".
- F. Treatment. The following treatments conform to the guidelines established in the U.S. Domestic Japanese Beetle Harmonization Plan (JBHP) and shall be supervised by an authorized official of the origin state.
1. Dip treatment – balled and burlapped ~~potted~~, and containerized plants. Chlopyrifos (Dursban 4E or equivalent, Dursban TNP) applied at a rate of 2 pounds active ingredient (64 ounces) per 100 gallons of water for at least 2 minutes and until complete saturation occurs.
    - a. Only balled and burlapped, ~~potted~~ and containerized nursery stock with rootballs 12 inches in diameter or smaller and consisting of non-clay soil types are eligible.
    - b. Treatment shall be applied between September 15 and April 15 in the southern states and between September 1 and May 1 in the northern states as determined by the origin state's department of agriculture. Plants with soil ~~Material~~ treated from October through April shall be shipped before ~~beetle~~ adult flight period or be protected from re-infestation.
    - c. Growing media shall be at least 50°F at the time of treatment.
    - d. Treated material shall be shipped before the adult ~~beetle~~ flight period, or be protected from re-infestation.
    - e. During the adult flight period all treated plants shall be protected from re-infestation.
    - f. The treatment shall be performed no more than 15 days before shipment.
  2. Drench treatment – container plants only. Field-grown plants are not eligible for certification using this protocol. The treatment shall be performed no more than 15 days before shipment. Containers exposed to a second adult flight ~~sea-~~son period shall be retreated.

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- a. Imidacloprid (Marathon 60WP). Apply 1/2 gram of active ingredient per gallon as a prophylactic treatment just before the pest adult flight season period (June 1, or as determined by the phytosanitary official). During the adult flight season period, plants shall be retreated after 16 weeks if not shipped to assure adequate protection.
- b. Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of 20 ounces per 100 gallons of water. Apply, as a drench, approximately 8 ounces of tank mix per 6 inches of container diameter.
3. Media (Granule) incorporation – container plants only. All pesticides used for media incorporation shall be mixed before potting and plants shall be potted at least 30 days before shipment. Field-grown ~~potted~~ plants are not eligible for treatment. Containers exposed to a second flight season period shall be repotted with a granule incorporated mix or retreated using one of the drench treatments listed in subsection (F)(2).
  - a. Imidacloprid (Marathon 1G). Mix at the rate of 5 pounds per cubic yard.
  - b. Bifenthrin (Talstar Nursery Granular or Talstar T&O Granular (0.2G)). Mix at the rate of 25 ppm or one-third+~~1~~ 3 (0.33) of a pound per cubic yard based on a potting media bulk density of 200.
  - c. Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.
4. Methyl bromide fumigation. Methyl bromide fumigation at (NAP), chamber or tarpaulin, for nursery stock.
  - a. Long term exposure:
    - 24 g/m<sup>3</sup> (1 1/2 lb/1000 ft<sup>3</sup>) for 2 1/2 hours at 23.8°C (75°F) or above
      - (18 g (oz) minimum gas concentration at 1/2 hour)
      - (12 g (oz) minimum gas concentration at 2 1/2 hours)
    - 32 g/m<sup>3</sup> (2 lb/1000 ft<sup>3</sup>) for 2 1/2 hours at 21°-23.3°C (70°-74°F)
      - (24 g (oz) minimum gas concentration at 1/2 hour)
      - (16 g (oz) minimum gas concentration at 2 1/2 hours)
    - 40 g/m<sup>3</sup> (2 1/2 lb/1000 ft<sup>3</sup>) for 3 hours at 15.5°-20.5°C (60°-69°F)
      - (30 g (oz) minimum gas concentration at 1/2 hour)
      - (20 g (oz) minimum gas concentration at 3 hours)
    - 48 g/m<sup>3</sup> (3 lb/1000 ft<sup>3</sup>) for 4 hours at 10°-15°C (50°-59°F)
      - (36 g (oz) minimum gas concentration at 1/2 hour)
      - (24 g (oz) minimum gas concentration at 4 hours)
    - 56 g/m<sup>3</sup> (3 1/2 lb/1000 ft<sup>3</sup>) for 4 1/2 hours at 4.4°-9.4°C (40°-49°F)
      - (42 g (oz) minimum gas concentration at 1/2 hour)
      - (28 g (oz) minimum gas concentration at 4 1/2 hours)
  - b. Short term exposure:
    - 48 g/m<sup>3</sup> (3 lb/1000 ft<sup>3</sup>) for 2 1/2 hours at 15.5°-20.5°C (60°-69°F)
      - (36 g (oz) minimum gas concentration at 1/2 hour)
      - (24 g (oz) minimum gas concentration at 2 1/2 hours)
    - 64 g/m<sup>3</sup> (4 lb/1000 ft<sup>3</sup>) for 2 1/2 hours at 10°-15°C (50°-59°F)
      - (48 g (oz) minimum gas concentration at 1/2 hour)
      - (32 g (oz) minimum gas concentration at 2 1/2 hours)
    - 80 g/m<sup>3</sup> (5 lb/1000 ft<sup>3</sup>) for 2 1/2 hours at 4.4°-9.4°C (40°-49°F)
      - (60 g (oz) minimum gas concentration at 1/2 hour)
      - (40 g (oz) minimum gas concentration at 2 1/2 hours)
5. Additional treatments may be accepted if the proposed product is appropriately labeled, effectively controls the pest, and is approved by the Associate Director.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

**1. Register citation and date for the original Notice of Proposed Rulemaking:**

6 A.A.R. 4490, December 1, 2000

Notices of Supplemental Proposed Rulemaking

**2. Sections Affected**

R17-4-506

**Rulemaking Action**

Amend

**3. 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. § 28-366

Implementing statutes: A.R.S. §§ 28-3306(A)(3)

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

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

In November 2000 the Arizona Department of Transportation, Motor Vehicle Division (Division) proposed to make the driver point system rule more clear, concise, and understandable. The Division also proposed to make precise adjustments in the Division's suspensions of drivers who accumulate demerit points.

At the end of January 2001, the Division recognized that its notice assigning drivers to traffic survival school does not list traffic survival schools licensed by the Division and does not state that a traffic survival school will charge a fee. The Division determined the following:

- Any past listing of licensed traffic survival schools in the Division's notice was provided for the convenience of drivers assigned to traffic survival school,
- The Division now licenses over 40 traffic survival schools,
- Drivers assigned to traffic survival school can readily obtain a list of licensed schools from the Division's Customer Service Guide and Driver License Manual and from the Division's web site, and
- A.R.S. § 28-3307(C) informs the public regarding a traffic survival school charge.

The Division now proposes to delete from the driver point system rule the provision for listing licensed traffic survival schools on the assignment notice and the provision for stating on the assignment notice that a licensed traffic survival school will charge a fee. The Division recognizes that some traffic survival schools want a listing of schools on the assignment notice sent to drivers. Therefore, the Division supplements its proposed rule and schedules an oral proceeding by video conference.

In this supplemental notice, rule text shown with a strikethrough as well as underlining (~~rule text~~) indicates originally proposed new text deleted by the Division for this supplemental notice. As supplemented, the driver point system rule will:

- Simplify the language of existing definitions and number all definitions;
- Delete the definition of "fee;"
- Add definitions of "gore area," "[36]-month period," "[12]-month period," and "[24]-month period;"
- Reverse the order of traffic survival school and suspension in subsection (B), sentence 1;
- Reverse the order of subsections (C) and (D);
- Change the text of subsection (C), paragraph 1, line 2 from "a 12-month period" to "the 12-month period defined in subsection (A)(10);"
- Change the text of subsection (C), paragraph 1, line 3 from "24 months before the date of the violation resulting in the accumulation of 8 to 12 points" to "the 24-month period defined in subsection (A)(11);"
- Substitute "subsection (C)(2)" for "R17-4-506(D)(2);"

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- Delete subsections (C)(1)(a) and (C)(1)(b) dealing with listing licensed traffic survival schools and stating that a licensed traffic survival school will charge a fee and reletter the text remaining in subsection (C)(1) as subsections (C)(1)(a) and (C)(1)(b);
- Change the text of subsection (C)(1)(b) from “the Division’s issuing” to “the Division issuing;”
- Change the text of subsection (C)(2)(a) from “the driver’s successful completion of the curriculum” to “the driver successfully completed the curriculum;”
- Reletter subsection (C)(3)(c) as subsection (C)(4) and change the text from “on the order of suspension” to “on an order of suspension;”
- Reletter subsections (C)(3)(c)(ii) and (C)(3)(c)(iii) as subsection (C)(4)(a) and (C)(4)(b) and delete the word “time” from subsection (C)(4)(a);
- Simplify subsection (D)(1) by substituting “Comes under subsection (B) and does not come under subsection (C)” for “(a) Accumulates at least 13 points in any 12-month period, or (b) Completed traffic survival school within 24 months before the date of the violation resulting in the order of suspension.”
- Increase the upper limit of demerit point accumulation for a 3-month suspension in subsection (D)(2)(a);
- Increase the lower and upper limits of demerit point accumulation for a 6-month suspension in subsection (D)(2)(b);
- Increase the lower limit of demerit point accumulation for a 12-month suspension in subsection (D)(2)(c);
- Change the text of subsections (D)(2)(a) and (D)(2)(b) from “any 12-month period” to “the 12-month period defined in subsection (A)(10);”
- Change the text of subsection (D)(2)(c) “any 12-month period” to “the 36-month period defined in subsection (A)(8);”
- Add subsection (D)(2)(d) “A 3-month suspension for accumulation of 8 to 12 points in the 12-month period defined in subsection (A)(10) and traffic survival school successfully completed in the 24-month period defined in subsection (A)(11);” and
- Delete the word “time” from subsection (D)(3)(a).

Under the point system rule as supplemented, the Division will continue to order drivers to improve their safety and driving habits by successfully completing the curriculum of a traffic survival school licensed by the Division. The Division will continue to remove unsafe drivers from the Arizona roads. The rule as supplemented will fine-tune the Division’s actions for curbing unsafe driving behavior and increasing the safety of the Arizona roads. The rule as supplemented will also reflect the Division’s current shorter notice of assignment to traffic survival school. Finally, the rule as supplemented will make non-substantial stylistic changes from the rule as originally proposed.

**6. An explanation of the substantial change which resulted in this supplemental notice:**

The Division proposes to delete from the driver point system rule the text relating to a list of licensed traffic survival schools on the notice of assignment sent to drivers. This deletion reflects the Division’s current shorter notice of assignment. Any past listing of licensed traffic survival schools on the notice of assignment was for the convenience of drivers assigned to traffic survival school. The Division now licenses over 40 traffic survival schools, and drivers can readily obtain a list of licensed traffic survival schools from the Division’s Customer Service Guide and Driver License Manual and from the Division’s web site. The Division recognizes that some traffic survival schools want a listing of schools on the assignment notice sent to drivers.

**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:**

For the driver point system rule that became effective March 9, 2000, the Division described the point system’s economic cost to certain state agencies, including the Division; to drivers who accumulate demerit points; to the Administrative Office of the Courts; and to Arizona courts. The Division also described the benefits to the public from safer roads and to licensed traffic survival schools from fees paid by drivers ordered to complete the traffic survival school curriculum. Finally, the Division determined that Arizona law enforcement agencies must stay current with, but incur no costs from, the driver point system.

For the amendments to the driver point system rule as originally proposed, the Division determined that the costs to drivers who accumulate demerit points, to the Administrative Office of the Courts, and to Arizona courts will remain

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unchanged. The benefits to the public and to licensed traffic survival schools will also remain unchanged. Finally, Arizona law enforcement agencies will continue to incur no costs from the rule.

The Division determined that the amendments to the driver point system rule as originally proposed will produce the following economic impacts in addition to those impacts described for the rule that became effective March 9, 2000:

- The Division will incur additional rulemaking costs,
- The Governor's Regulatory Review Council will incur additional rule review costs, and
- The Secretary of State will incur additional rule publication costs.

The Division notes a general increase in point-accumulation suspensions issued over the last decade, with the increase in Arizona's population certainly a factor in this trend. Throughout the decade, the Division issued many more 3-month point-accumulation suspensions than 6-month and 12-month point-accumulation suspensions. Fluctuations within the general trend may be attributed to a number of factors, such as:

- The resources and priorities of Arizona law enforcement agencies,
- The legislature's 1998 enactment of new traffic offenses, and
- The Division's assignment of high points for conviction of violating several of the new traffic offenses.

For this supplemental rulemaking, the Division determined that some licensed traffic survival schools may incur marketing costs from the shorter notice of assignment, without a listing of licensed traffic survival schools, sent to drivers. Any past listing of licensed traffic survival schools on the notice of assignment was for the convenience of drivers assigned to traffic survival school. The Division now licenses over 40 traffic survival schools, and drivers can readily obtain a list of licensed traffic survival schools from the Division's Customer Service Guide and Driver License Manual and from the Division's web site. Like any business, a traffic survival school's marketing costs are normal costs of doing business.

The Division determined that the benefits to public safety and to licensed traffic survival schools from this driver point system rule as supplemented continue to outweigh the costs.

**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: Lynn S. Golder  
Hearing Officer II

Address: Arizona Department of Transportation  
Motor Vehicle Division, Mail Drop 507M  
3737 North 7th Street, Suite 160  
Phoenix, Arizona 85014-5017

Telephone: (602)712-7941

Fax: (602)241-1624

E-mail: lgolder@dot.state.az.us

**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:**

Written comments on the supplemental proposed rulemaking or preliminary summary of the economic, small business, and consumer impact should be submitted to the person specified in question # 4 no later than the close of the record at 5:00 p.m., April 17, 2001.

An oral proceeding by video conference is scheduled as follows:

Date: Tuesday, April 17, 2001

Time: 2:00 p.m.

Locations:

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<b>Flagstaff</b>	<b>Phoenix</b>	<b>Tucson</b>
Arizona Department of Transportation District Office Board Room 1801 South Milton Road Flagstaff, Arizona 86001	Arizona Department of Transportation Headquarters Green Room, Conference Room 186 206 South 17th Avenue Phoenix, Arizona 85007	Arizona Department of Transportation District Office Board Room 1221 South 2nd Avenue Tucson, Arizona 85713

**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 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION**

**ARTICLE 5. DRIVER LICENSES**

R17-4-506. Driver Point System

**ARTICLE 5. DRIVER LICENSES**

**R17-4-506. Driver Point System**

**A.** In this Section, unless the context otherwise requires:

1. "Civil traffic violation" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-121(B).
2. "Conviction" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-101(12).
3. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
4. "Driver" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-101(18).
5. "Fee" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-3307(C).
6. ~~5.~~ "Gore area" means the area that is between a through roadway and an entrance ramp or exit ramp and that is defined by two wide solid white lines that guide traffic entering or exiting a roadway. Gore area does not include a safety zone. A.R.S. § 28-644.
7. ~~6.~~ "Judgment" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-3001(11).
8. ~~7.~~ "Suspension" ~~has the meaning prescribed~~ is defined in A.R.S. § 28-3001(16).
9. ~~8.~~ "Thirty-six month period" means the time period measured:
  - a. ~~From the violation date of the most recent violation with assigned points for which a driver is convicted~~ has a conviction or judgment, and
  - b. ~~To that day and month 3 years before the violation date of the violation under subsection (A)(8)(a).~~
10. ~~9.~~ "Traffic survival school" ~~has the meaning prescribed~~ is defined in A.R.S. § 32-2351(4)(b).
11. ~~10.~~ "Twelve-month period" means the time period measured:
  - a. ~~From the violation date of the most recent violation with assigned points for which a driver is convicted~~ has a conviction or judgment, and
  - b. ~~To that day and month 1 year before the violation date of the violation under subsection (A)(10)(a).~~
12. ~~11.~~ "Twenty-four month period" means the time period measured:
  - a. ~~From the violation date of the most recent violation with assigned points for which a driver is convicted~~ has a conviction or judgment, and
  - b. ~~To that day and month 2 years before the violation date of the violation under subsection (A)(11)(a).~~

**B.** Under A.R.S. § 28-3306(A)(3), if a driver accumulates at least 8 points in a 12-month period, the Division shall ~~suspend the driver's Arizona driver license and Arizona driving privilege, suspend the Arizona driving privilege of a driver not licensed by the Division, or order the driver to successfully complete the curriculum of a licensed traffic survival school, suspend the driver's Arizona driver license and driving privilege, or suspend the Arizona driving privilege of a driver not licensed by the Division.~~ The Division shall assign points to a driver as follows:

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Points

- |   |   |
|---|---|
| 1. Conviction of violating A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs;   | 8 |
| 2. Conviction of violating A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor;  | 8 |
| 3. Conviction of violating A.R.S. § 28-693, reckless driving;   | 8 |
| 4. Conviction of violating A.R.S. § 28-708, racing on highways;   | 8 |
| 5. Conviction of violating A.R.S. § 28-695, aggressive driving;   | 8 |
| 6. Conviction or judgment of violating A.R.S. §§ 28-662, 28-663, 28-664, 28-665, leaving the scene of an accident;  | 6 |
| 7. Conviction or judgment of violating A.R.S. § 28-672, failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, or failure to comply with a stop sign or yield sign, and the failure results in an accident causing death to another person;                   | 6 |
| 8. Conviction or judgment of violating A.R.S. § 28-672, failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, or failure to comply with a stop sign or yield sign, and the failure results in an accident causing serious physical injury to another person; | 4 |
| 9. Conviction or judgment of violating A.R.S. § 28-701, speeding;   | 3 |
| 10. Conviction or judgment of violating A.R.S. § 28-644, driving over or across, or parking in any part of a gore area; and   | 3 |
| 11. Conviction or judgment of violating any other traffic regulation that governs a vehicle moving under its own power.   | 2 |

~~D.C.~~ The Division shall send a dated order of assignment to traffic survival school under A.R.S. § 28-3318 to a driver with 8 to 12 points in ~~a~~ the 12-month period defined in subsection (A)(10), who did not complete traffic survival school ~~within 24 months before the date of the violation resulting in the accumulation of 8 to 12 points in a the 24-month period defined in subsection (A)(11).~~

1. The order of assignment shall:
  - a. ~~List the names, addresses, and telephone numbers of the licensed traffic survival schools:~~
    - i. ~~In the driver's Arizona county of residence;~~
    - ii. ~~In a neighboring Arizona county, if the driver's county of residence does not have a traffic survival school;~~
    - ~~or~~
    - iii. ~~For a nonresident driver, state the Division telephone number to call about complying with the order of assignment;~~
  - b. ~~State that a licensed traffic survival school will charge a fee;~~
  - ~~e.a.~~ Instruct the driver to submit any hearing request to the Division within 15 days after the date of the order of assignment; and
  - ~~e.b.~~ Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the ~~Division's~~ Division issuing a 6-month order of suspension.
2. The Division shall record that a driver completed traffic survival school when:
  - a. A licensed traffic survival school reports the ~~driver's successful completion of~~ driver successfully completed the curriculum, or
  - b. The driver presents to the Division an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
3. The Division shall send a driver a 6-month order of suspension under A.R.S. § 28-3318 when:
  - a. The driver does not establish completion of traffic survival school under ~~R17-4-506(D)(2)~~ subsection (C)(2), and
  - b. At least 61 days pass after the date of the order of assignment.
- ~~e.4.~~ The Division shall specify on ~~the an~~ order of suspension:
  - ~~i.a.~~ The ~~time~~ period within which a hearing request to the Division may be made, and
  - ~~ii.b.~~ The effective date of the suspension.

~~E.D.~~ The Division shall:

1. Send a driver an order of suspension under A.R.S. § 28-3318 when the driver:
  - a. ~~Accumulates at least 13 points in any 12-month period, or~~
  - b. ~~Completed traffic survival school within 24 months before the date of the violation resulting in the order of suspension~~  
comes under subsection (B) and does not come under subsection (C);
2. Specify, on the order of suspension, the length of the suspension as follows:
  - a. A 3-month suspension for accumulation of ~~8~~ 13 to 14 ~~14~~ 17 points in ~~any a~~ the 12-month period defined in subsection (A)(10),

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- b. A 6-month suspension for accumulation of ~~15~~ 18 to ~~19~~ 23 points in ~~any a~~ the 12-month period defined in subsection (A)(10),
  - c. A 12-month suspension for accumulation of ~~20~~ 24 or more points in ~~any 12-month a~~ the 36-month period; defined in subsection (A)(8), and
  - d. A 3-month suspension for accumulation of 8 to 12 points in a the 12-month period defined in subsection (A)(10) and traffic survival school successfully completed in a the 24-month period defined in subsection (A)(11); and
3. Specify, on the order of suspension:
- a. The ~~time~~ period within which a hearing request to the Division may be made, and
  - b. The effective date of the suspension.
- E.** No change.
  - F.** No change.
  - G.** No change.
  - H.** No change.
  - I.** No change.