

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first 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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS

##### PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R3-9-201                    | Re-number                |
| R3-9-201                    | New Section              |
| R3-9-202                    | Re-number                |
| R3-9-202                    | Amend                    |
| R3-9-203                    | New Section              |
| R3-9-204                    | New Section              |
- 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. § 3-584(C)  
Implementing statute: A.R.S. §§ 3-584, 3-586, 3-587, 3-591, and 3-592
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 8 A.A.R. 2398, May 31, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Sherry D. Blatner, Rules Specialist  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
This rulemaking modernizes the existing rule by deleting outdated incorporations by reference and adding the material into the rule, adding a definition Section, adding a Section establishing a hearing process in conformance with procedures of the Office of Administrative Hearings, and adding a Section advising the public of the location of Council records and how to access the records. Language usage is conformed to the current publication standards of the Office of the Secretary of State.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:**  
None

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**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. *The Arizona Grain Research and Promotion Council and the Arizona Department of Agriculture.*

The Council and the Department will incur modest expenses related to educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Council and the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Sellers and purchasers of grain sold through commercial channels are regulated by these rules. The amendments provide stylistic changes, no change will result in any economic consequence.

The regulated community the Council serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

**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: Sherry D. Blatner, Rules Specialist

Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

**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:**

The Council 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:**

None

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

**TITLE 3. AGRICULTURE**

**CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS**

**ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL**

Section

R3-9-201.        Definitions

~~R3-9-201.~~ R3-9-202. Fees - Grain Assessment and Refund

R3-9-203.        Hearings

R3-9-204.        Records

**ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL**

**R3-9-201.        Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“Department” means the Arizona Department of Agriculture.

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**R3-9-201, R3-9-202, Fees - ; Grain Assessment and Refund**

- A. The fee payable to the Arizona Grain Research and Promotion Council for each hundredweight of grain sold in Arizona shall be at the rate of 2¢ per hundredweight as provided in A.R.S. § 3-587. A fee of two cents per hundredweight of grain sold in Arizona is payable to the Council.
- B. The first buyer shall remit the fee to the Arizona Department of Agriculture Phoenix Office. The first buyer shall include with the fee the End of Month First Buyer and Remittance Report Form, approved by the Arizona Grain Research and Promotion Council, amended February 9, 1993. The form, which is incorporated herein by reference, does not include any later amendments or editions of the incorporated matter and is on file with the Office of the Secretary of State or may be obtained from the Arizona Department of Agriculture Phoenix Office. The form shall be signed by the first buyer or by a person who the first buyer has designated in a document filed with the Department. The first buyer shall remit the grain assessment fee to the Council and shall provide the following information on a form obtained from the Department:
1. First buyer's name, address, and telephone number;
  2. Report date and months covered by the report;
  3. Total amount remitted to the Council;
  4. Producer's name and mailing address;
  5. Type of grain and tonnage by grain type; and
  6. First buyer's or designee's signature.
- C. To request a refund, a producer shall submit a notarized Refund Request Form to the Arizona Department of Agriculture Phoenix Office. This form, approved by the Council and amended February 9, 1993, is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter. The form is on file with the Office of the Secretary of State or may be obtained from the Arizona Department of Agriculture Phoenix Office. The refund request shall be accompanied by a notarized purchase statement which has been signed by the first buyer or by a person who the first buyer has designated in a document filed with the Department.

Refund.

1. To request a refund, a producer shall provide the following information to the Council on a form obtained from the Department:
  - a. Producer's name, address, telephone number, and signature;
  - b. Name of the first buyer;
  - c. Amount of grain sold subject to the refund request; and
  - d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the Council.
2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592.

**R3-9-203, Hearings**

- A. The Council shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the Council.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The Council shall grant a rehearing or review of an administrative law judge's decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law.
  2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
  3. One or more of the following has deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the Council, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise which could not have been prevented by ordinary prudence.
  4. Excessive or insufficient sanction.
- D. The Council may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

**R3-9-204, Records**

The Department shall retain the Council's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided in accordance with the Department's public record request policy.

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**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R18-13-A2101                       | New Section                     |
| R18-13-A2102                       | New Section                     |
| R18-13-A2103                       | New Section                     |
  
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 49-104  
Implementing statute: A.R.S. § 49-747
  
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 2401, May 31, 2002
  
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barry Abbott, Program Supervisor  
Address: Arizona Department of Environmental Quality  
Waste Programs Division, Solid Waste Section  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-2226 or (800) 234-5677, enter 771-2226 (toll free in Arizona only)  
TTD: (602) 771-4829  
Fax: (602) 771-2383  
E-mail: [abbott.barry@ev.state.az.us](mailto:abbott.barry@ev.state.az.us)
  
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Reason for initiating the rule:

Arizona Revised Statutes (A.R.S.) § 49-747 requires each landfill to register annually with the Arizona Department of Environmental Quality (Department), and pay an annual registration fee. The fee is deposited into the Solid Waste Fee Fund, to help offset the Department's cost to administer the landfill inspection and compliance program. The registration fees for municipal solid waste landfills (MSWLFs) are population sensitive, in that each landfill's fee is based on the population served by that landfill during the preceding calendar year. By contrast, the registration fee for construction debris and industrial waste landfills is a flat fee of \$1,500 per landfill per year.

The accuracy with which the population served can be estimated has changed since A.R.S. § 49-747 was enacted in 1990. At that time, local governments operated most MSWLFs, to comply with A.R.S. § 49-741. Then, the population served by each MSWLF was approximated by that jurisdiction's census population. Only about a third of those landfills remain open, and about a quarter of the remaining operating landfills were sold to private companies. As a result, many of the local governments no longer operate their own landfills. Census population is no longer an accurate estimate of population served.

The method for estimating population served should reflect current waste management industry practices. Although some communities still haul their own waste, many have contracted out this service to private waste haulers. Now, the waste typically is hauled either to the nearest landfill that will accept the waste, to the nearest landfill charging the lowest tipping fee, or to a landfill that the hauler owns or operates. Where the waste is hauled is subject to change at any time in a year. In addition, some landfills accept waste from other states. Furthermore, most landfills receive varying amounts of waste generated by tourists, whom the census figures do not include. The approach that the Department currently uses is an ineffective way to audit the accuracy of the registration fees that the landfill operators are paying.

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Table I was prepared to illustrate the probable inequities introduced by the current method of estimating population served. Table I reveals inconsistent correlations between the reported tonnage of waste landfilled in 1999 and the corresponding registration fees paid for several of the MSWLFs for the year 2000. For example, the Apache Junction MSWLF operator paid a registration fee of \$5,000 for the year 2000, based on the estimated census population it serves, while landfilling 104,316.10 tons of waste in 1999. By comparison, the Adamsville MSWLF operator paid a \$1,500 registration fee, based on the estimated census population it serves, while landfilling 157,883.95 tons of waste; and the Copper Mountain MSWLF operator paid a registration fee of \$750, based on the estimated census population of Yuma County minus the populations of the county's cities and towns, while landfilling 407,076.00 tons of waste.

The examples in Table I show that a landfill registration fee based on census population introduces inequities and places some landfills at a competitive disadvantage. To correct the inequities in the current landfill registration fees, the Department proposes a new approach for determining the population served. This rule will enable the Department and MSWLF operators to determine the population each landfill serves by dividing the amount of waste deposited in the MSWLF by an average per person per day waste disposal rate. Adopting this rule will provide a more accurate reporting of the population served by each MSWLF, and will also reflect tourist waste and out-of-state waste which is landfilled in Arizona. These results will translate into a more equitable annual registration fee for MSWLFs in Arizona. In addition, the Department will be able to more accurately audit the annual landfill registration fees.

Table I. Comparison of Fees for Year 2000, and Fees Based on Three Different Waste Generation Rates.

MSWLF	Tons Land-filled	Population Served as Reported by Landfill	Fee Paid for 2000	Population Served and Registration Fee Based on Waste Generation Rate of:					
				4.44 Federal Rate		5.86 Recycling Report Rate		6.17 Proposed Disposal Rate	
				Pop. Served	Fee	Pop. Served	Fee	Pop. Served	Fee
Allied Waste-Apache Junction	104,316.10	>200K	\$5,000	128,738	\$3,000	97,542	\$2,000	92,641	\$2,000
Allied Waste-Lake Havasu City	59,368.61	25K-<50K	\$1,000	73,267	\$2,000	55,513	\$2,000	52,724	\$2,000
Allied Waste-Queen Creek	160,370.60	>200K	\$5,000	197,915	\$3,000	149,956	\$3,000	142,421	\$3,000
Allied Waste-Southwest Regional	287,980.48	>200K	\$5,000	355,400	\$5,000	269,279	\$5,000	255,749	\$5,000
Apache County - Blue Hills Regional	20,392.82	<10K	\$500	25,167	\$1,000	19,069	\$750	18,110	\$750
Arizona Strip	4,470.96	<10K	\$500	5,518	\$500	4,181	\$500	3,970	\$500
(City of) Casa Grande - Casa Grande	62,248.69	10K-<25K	\$750	76,822	\$2,000	58,206	\$2,000	55,281	\$2,000
(City of) Chandler -McQueen	86,464.31	100K-<200K	\$3,000	106,707	\$3,000	80,849	\$2,000	76,787	\$2,000
Cochise County - Elfrida/Eastern Regional	62,969.89	100K-<200K	\$3,000	77,712	\$2,000	58,881	\$2,000	55,922	\$2,000
(City of) Eloy - Eloy	31,029.76	10K-<25K	\$750	38,294	\$1,000	29,015	\$1,000	27,556	\$1,000
(City of) Flagstaff -Cinder Lake	239,608.63	50K-<100K	\$2,000	295,704	\$5,000	224,048	\$5,000	212,791	\$5,000
Gambi Disposal - Cerbat	51,011.07	25K-<50K	\$1,000	62,953	\$2,000	47,698	\$1,000	45,302	\$1,000

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Gila County - Buckhead Mesa/Payson	25,436.20	25K-<50K	\$1,000	31,391	\$1,000	23,784	\$750	22,589	\$750
Gila County - Russell Gulch/Globe	16,939.70	10K-<25K	\$750	20,905	\$750	15,840	\$750	15,043	\$750
(City of) Glendale -Glendale	313,093.49	>200K	\$5,000	386,392	\$5,000	292,761	\$5,000	278,051	\$5,000
Graham County - Graham County Regional	26,473.00	25K-<50K	\$1,000	32,671	\$1,000	24,754	\$750	23,510	\$750
(City of) Huachuca City - Huachuca City	31,821.27	10K-<25K	\$750	39,271	\$1,000	29,755	\$1,000	28,259	\$1,000
La Paz County -La Paz County	40,681.12	10K-<25K	\$750	50,205	\$2,000	38,039	\$1,000	36,128	\$1,000
Mohave County - Mohave Valley	57,184.75	25K-<50K	\$1,000	70,572	\$2,000	53,471	\$2,000	50,784	\$2,000
(City of) Phoenix - Skunk Creek	813,172.95	>200K	\$5,000	1,003,546	\$5,000	760,366	\$5,000	722,162	\$5,000
Pima County - Sahuarita	32,905.02	10K-<25K	\$750	40,608	\$1,000	30,768	\$1,000	29,222	\$1,000
Pima County - Tangerine Road	79,233.94	100K-<200K	\$3,000	97,783	\$2,000	74,088	\$2,000	70,366	\$2,000
Santa Cruz County - Rio Rico	42,687.34	25K-<50K	\$1,000	52,681	\$2,000	39,915	\$1,000	37,909	\$1,000
Santa Cruz County - Sonoita/Elgin	1,144.00	<10K	\$500	1,412	\$500	1,070	\$500	1,015	\$500
(City of) Tucson - Los Reales	479,567.00	>200K	\$5,000	591,839	\$5,000	448,424	\$5,000	425,893	\$5,000
Waste Management -Adamsville	157,843.95	25K-<50K	\$1,500	194,797	\$3,000	147,594	\$3,000	140,178	\$3,000
Waste Management -Butterfield Station	976,106.74	100K-<200K	\$3,000	1,204,624	\$5,000	912,718	\$5,000	866,860	\$5,000
Waste Management -Copper Mountain	407,076.00	10K-<25K	\$750	502,377	\$5,000	3,987,585	\$5,000	361,516	\$5,000
Waste Management -Dudleyville	14,072.82	25K-<50K	\$1,500	17,367	\$750	13,159	\$750	12,497	\$750
Waste Management -Grey Wolf	188,858.00	100K-<200K	\$3,000	233,072	\$5,000	176,594	\$3,000	167,720	\$3,000
Waste Management -Northwest Regional	621,167.82	>200K	\$5,000	766,590	\$5,000	580,829	\$5,000	551,646	\$5,000

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Waste Management -Pen Rob	97,781.42	25K-<50K	\$1,000	120,673	\$3,000	91,432	\$2,000	86,837	\$2,000
<b>Totals</b>	5,593,478.45		\$68,750	6,902,973	\$84,500	5,230,239	\$75,750	4,967,439	\$75,750

Explanation of the rule:

This rule proposes three landfill registration categories for MSWLFs. For two of the categories, the minimum fee specified in A.R.S. § 49-747 is used. For the third category, the rule establishes procedures for the Department to calculate the annual registration fee for a MSWLF based on the amount of waste disposed at that MSWLF. The rule also establishes the fee for registering a MSWLF that did not operate over the entire year.

Methodology for determining population served:

Under this proposed rule, the Department will convert the amount of waste disposed at a MSWLF, as reported on that MSWLF's quarterly landfill disposal fee invoices required by A.R.S. § 49-836, into the population served by that MSWLF. To convert the amount of waste into population served, the Department will use an average waste disposal rate, that is, the average amount of solid waste produced by a person each day. The simplest way to calculate this rate would seem to be by dividing the total waste landfilled at all operating Arizona MSWLFs in a recent time-frame by the total Arizona population for that period, and convert the units to obtain pounds per person per day.

Unfortunately, because of a number of complicating factors, this simple approach will not yield the most realistic average waste disposal rate for Arizona. Therefore, the Department adjusted the landfilled waste and population figures to account for these factors. These adjustments are discussed in detail in a report prepared by the Department's Solid Waste Section in January 2001, entitled "Calculating Population Served by Using a Waste Disposal Rate." They can be categorized into the three following general categories:

1. Non-Arizona residents' waste (excluded from study);
2. Specific MSWLFs excluded from study; and
3. Waste from Scottsdale, Mesa, and Chandler (included in study).

Proposed waste disposal rate:

The Department proposes a solid waste disposal rate of 6.17 pounds of waste per person per day. The proposed waste disposal rate was developed from the Department's own study of waste being landfilled in 32 Arizona MSWLFs. In conducting its study, the Department relied heavily on: existing data available from the Arizona Department of Economic Security's (DES) Population Statistics Unit, quarterly landfill disposal reports submitted to the Department by the MSWLFs, tourism statistics from the State Tourism Office, information contained in the Department's Recycling Program Annual Report for FY99, and information obtained from a telephone interview with staff of the U.S. Indian Health Service.

Calculating the proposed waste disposal rate:

The formula used to calculate the proposed waste disposal rate of 6.17 pounds per person per day is presented below:

$$(\text{Net Tons SW Landfilled/Year}) \times (2000 \text{ Pounds/Ton})$$

$$\text{Disposal Rate (pounds/person/day)} = \frac{\text{Net Tons SW Landfilled/Year} \times (2000 \text{ Pounds/Ton})}{(\text{Net Population}) \times (365 \text{ Days/Year})}$$

Where:

Net Tons SW Landfilled/Year = 5,316,477.98

Net Population = 4,720,671

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The figure for Net Tons SW Landfilled/Year in the formula was derived by adjusting the total tons of waste landfilled (5,593,478.45 tons) in the 32 MSWLFs used in the Department's study for 1999, as reported by the landfill operators, by subtracting the tons of out-of-state waste (422,395 tons) and tourist waste (249,118.63 tons) for 1999, and adding the tons of waste generated by Scottsdale, Mesa, and Gilbert (398,513.16 tons) for the same period. (These three jurisdictions dispose of their waste at a landfill which is located on an Indian Reservation. Because the Department does not receive tonnage figures from landfills on Indian land, it was necessary to add the amount of waste generated by those cities to the total amount of solid waste landfilled.) The resulting sum (5,316,477.98 tons) is the total adjusted amount of waste used in the Department's calculations to arrive at the 6.17 pounds per person per day waste disposal rate.

The Department derived the figure used for Net Population in the above formula by adjusting the state's total population (4,842,987 persons), as reported by DES for 1999. The populations of the communities served by the Ajo, Blue, Loma Linda, Patagonia, and Grand Canyon South Rim MSWLFs were subtracted from the state's total population, as reported by DES. The populations of the six Indian reservations served by the five Indian-operated MSWLFs, and the figures for the Navajo Indian population that were excluded from the Department's survey, were subtracted from the state's total population, to arrive at the adjusted population for the Department's study of 4,720,671 persons.

**Waste generation rates considered and rejected:**

The U.S. Environmental Protection Agency (EPA) calculated a national average waste generation, for municipal waste, of 4.44 pounds per person per day. The federal government based its calculations on the sale of products rather than on how much waste was landfilled, and considered only those products most likely to result only in municipal waste. Since MSWLFs in Arizona accept municipal waste, construction debris, industrial waste, and agricultural waste, only a waste generation rate predicated on disposal of all of these types of waste would represent the waste generation or disposal rate for the general population of Arizona. Furthermore, the federal rate does not necessarily exclude waste from nonresidents, such as tourists and winter visitors. Nor does any waste generation rate necessarily reflect the amount of waste that is disposed because of reuse and recycling efforts. For these reasons, the federal waste generation rate of 4.44 pounds per person per day is considered inappropriate to use for determining a waste disposal rate for Arizona.

According to the Department's "Recycling Program Annual Report" for FY99, Arizonans produce 5.86 pounds of municipal waste per person per day. Unlike the federal study, the Recycling Program's calculations were based on actual municipal waste landfilled in Arizona plus the amount of waste recycled or otherwise diverted from the landfill. Because construction debris and industrial waste were not included and tourist waste was not excluded from the waste figures used to generate the Recycling Program's waste generation rate of 5.86 pounds per person per day, this rate is also considered inappropriate for determining an equitable registration fee.

**Resulting fee amounts:**

Table I lists the 32 MSWLF used in Department's study, the amount of waste landfilled in 1999 at each of the MSWLFs, the corresponding population served according to the landfill operator, and the annual registration fee paid for the year 2000. Table I also shows the landfill registration fees that would have been paid for each landfill for the year 2000, had the proposed waste disposal rate of 6.17 pounds per person per day been used to calculate the fees. The theoretical impact on landfill registration fees paid for each landfill was determined by comparing the actual fee paid for each landfill for the year 2000 (based on the landfill operators' figures for populations served) to the fee that would have been paid for each landfill had the population served been determined using the 6.17 waste disposal rate. The total theoretical impact of using the proposed waste disposal rate of 6.17 pounds per person per day was determined by totaling the figures for the individual theoretical economic impact for each landfill. From Table I, using the proposed waste disposal rate of 6.17 pounds per person per day would have resulted in a net increase of \$7,000 in registration fees collected for the year 2000.

**Conclusions:**

The result of using a higher waste disposal rate to extrapolate the population served by any given landfill facility is a lower calculated population served. Because the annual registration fee for a MSWLF is based on population served, the resulting registration fee will decline as the waste disposal rate increases.

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The Department believes the proposed waste disposal rate of 6.17 pounds per person per day is fair and reasonable because it includes all the waste types currently being accepted in Arizona MSWLFs. It further believes the adjustments made to the waste and population figures used in the calculation of the proposed waste disposal rate were necessary and reasonable, and that the resulting proposed waste disposal rate of 6.17 pounds per person per day is more realistic than either the federal generation rate of 4.44 pounds per person per day or the Recycling Program generation rate of 5.86 pounds per person per day, for the purpose of calculating registration fees based on population served. Finally, the proposed waste disposal rate will result in more equitable annual landfill registration fees with no significant economic impact to the landfill operators either collectively or individually.

It should also be noted that a landfill has the potential to lower their registration fees by initiating or improving on a reduce, reuse and recycling program. By diverting waste from the landfill, the amount of waste landfilled is reduced, which could have the net effect of placing the landfill into a lower population served category.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the proposed rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study, and other supporting material:**

- a. Arizona Department of Environmental Quality, Solid Waste Section. "Calculating Population Served by Using a Waste Disposal Rate." January, 2001.
- b. Arizona Department of Environmental Quality, Solid Waste Section. "Recycling Program Annual Report." December, 1999.

**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; this 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:**

Identification of the proposed rulemaking:

This rulemaking pertains to the annual registration fees that Municipal Solid Waste Landfills pay, as required by A.R.S. § 49-747. The rulemaking creates new rules to be codified in Title 18, Chapter 13, Article 21.

Brief summary of the information included in the economic impact statement:

Introduction:

In accordance with A.R.S. § 41-1055(C), the Department acknowledges that adequate data are not reasonably available to accurately assess economic, small business and consumer impact. This is due to the difficulty of estimating how waste disposal fees are set by each MSWLF, and the extent to which the MSWLF will pass the changes in fees to their direct customers and extended customer base. The following describes the limitations of the data and the methods employed in the attempt to estimate costs and the probable impacts of the proposed rule on: landfill owners and operators, small businesses, and consumers. The Department welcomes suggestions that may increase the accuracy of this economic, small business and consumer impact statement. Any such suggestions should be directed to the person listed in item #4.

Landfill owners and operators:

Table I compares the actual fee paid for each of the 32 landfills for the year 2000 to the fee that would have been paid for each landfill had the population served been determined using the proposed 6.17 waste disposal rate. Table I shows the economic impact of using the proposed waste disposal rate of 6.17 pounds per person per day on these 32 landfills would have been a net increase of \$7,000 in registration fees collected for the year 2000.

This \$7,000 would be a nine-percent increase in the total fees collected. As Table I shows, the increased fees would not be distributed evenly across Arizona's MSWLFs. The greatest fee increase would be \$5,000, and the greatest decrease would be \$3,000. On average, the fee would increase \$218.75, based on the 32 landfills used in the study.

Table I does not account for all the MSWLFs in Arizona. As of July 1, 2002, 46 MSWLFs are required by A.R.S. § 49-747 to register annually and pay an annual registration fee. This includes the 32 MSWLFs in the study, seven closed MSWLFs, who pay the minimum fee of \$500, four MSWLFs that were excluded from the study because they

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did not report the information needed for the study, two federal MSWLFs and one landfill which has opened since the survey was conducted.

The cost to operate an MSWLF includes many factors, only one of which is the annual fee. It is unlikely that the change in fees will have a significant impact on the operations of an MSWLF.

Small businesses

One category of small businesses that might be impacted by a change in how MSWLF fees are determined is waste haulers. MSWLFs may or may not pass increases to waste haulers, in the form of tipping fees. Tipping fees are determined by considering many factors, only one of which is the MSWLF's annual fee. The number of solid waste haulers in Arizona is not tracked. Further, it is difficult to estimate or predict when a specific hauler would use a particular MSWLF. An additional limitation on estimating costs, in compliance with A.R.S. § 41-1055(B), is the impossibility of determining how many of the waste haulers are small businesses. The Department was unable to estimate the impact of this proposed rulemaking on waste haulers who are small businesses.

Another category of small businesses that might be impacted by a change in how MSWLF fees are determined is small businesses who pay waste haulers to remove their waste. Waste haulers may or may not pass the change in tipping fees that they pay to their customers, including customers who are small businesses. The uncertainties in estimating the impacts of this rulemaking on waste haulers makes it impossible to predict how small businesses who are the customers of waste haulers will be impacted.

Consumers:

The Department is unable to estimate the impact of this rulemaking on consumers. In part, this is because it is impossible to determine the number of consumers, because of the overlap in their use of MSWLFs. The MSWLFs customer base includes residents, businesses, and organizations with offices in the state. Many consumers exist in more than one of these categories, and so the impact on them would be different than the impact on a consumer who existed in only one of the categories.

Conclusion:

In spite of the difficulty in estimating the number of consumers and small businesses impacted by this rulemaking, the Department believes that the impact on an individual consumer or small business will be very small. This is because the net difference in actual fees and the MSWLF fees that would have been paid had this rule been in effect in 2000 is only \$7,000. If this \$7,000 were distributed equally across the 4,734,198 population used to calculate the waste disposal rate, the result is only pennies per year.

The proposed change in how MSWLF annual fees are determined will benefit the state by a more accurate reporting of the population served by each MSWLF, and will also reflect tourist waste and out-of-state waste which is landfilled in Arizona. Both of these should translate into the collection of more equitable annual registration fees from the MSWLFs. In addition, the Department will be able to more accurately audit the annual landfill registration fees.

Another potential benefit is to environmental quality. The current fee assumptions favor landfills in unpopulated areas, which slants land use decisions. If these decisions were based on a site's geologic setting or proximity to population served, rather than on fees, the environment would benefit. Favoring landfills in unpopulated areas contributes to longer hauling distances than would otherwise be, which in turn wastes fuel, contributes to air pollution and burdens roadways and traffic.

**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: Barry Abbott, Program Supervisor  
Address: Arizona Department of Environmental Quality  
Waste Programs Division, Solid Waste Section  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-2226 or (800) 234-5677, enter 771-2226 (toll free in Arizona only)

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TTD: (602) 771-4829  
Fax: (602) 771-2383  
E-mail: [abbott.barry@ev.state.az.us](mailto:abbott.barry@ev.state.az.us)

**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: October 1, 2002  
Time: 2:30 p.m. to 3:30 p.m.  
Location: Hall of Fame (Carnegie Library), 1101 W. Washington, Phoenix, AZ  
Nature: Public hearings on the proposed rules, with opportunity for formal comments on the record. (Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

The close of the written comment period is 5:00 p.m. on October 4, 2002.

**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:**

Not applicable

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

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

**ARTICLE 21. ~~RESERVED~~ MUNICIPAL SOLID WASTE LANDFILLS**

**PART A. MUNICIPAL SOLID WASTE LANDFILL (MSWLF) REGISTRATION FEE**

Section

R18-13-A2101. Definitions  
R18-13-A2102. Formula for Calculating Annual Registration Fees  
R18-13-A2103. Annual Landfill Registration: Date Due and Fees

**ARTICLE 21. ~~RESERVED~~ MUNICIPAL SOLID WASTE LANDFILLS**

**PART A. MUNICIPAL SOLID WASTE LANDFILL (MSWLF) REGISTRATION FEE**

**R18-13-A2101. Definitions**

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Part, the terms used in this Part have the following meanings:

1. “Defined time period” means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. “Disposal fee invoice” means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. “Full quarter” means any of the standard fiscal quarters of the defined time period for which a MSWLF accepted waste on or before the first day of the quarter and on or after the last day of that quarter.
4. “Waste disposal rate” means the average amount of waste disposed by a person daily, which the Department has calculated to be 6.17 pounds per person per day.

**R18-13-A2102. Formula for Calculating Annual Registration Fees**

**A.** For an existing MSWLF, except those described in subsection (C), the Department shall specify the annual registration fee after calculating the population served by that MSWLF, as outlined in the following steps:

1. Multiply the waste disposal rate by the number of days in the defined time period.
2. Divide the total number of pounds received by the MSWLF by the product from subsection (A)(1).

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- B.** The Department shall determine the number of pounds received by the MSWLF by one of the following methods:
1. For an MSWLF that accepted waste over the entire defined time period, the Department shall calculate the number of pounds received by that MSWLF using one of the following methods:
    - a. For an MSWLF that reported tons of solid waste received on the disposal fee invoice, multiply the number of reported tons by 2,000.
    - b. For an MSWLF that reported units of compacted or uncompacted solid waste received on the disposal fee invoice, multiply the volume of solid waste reported for the fee required under A.R.S. § 49-836(A)(1) by 2,000.
  2. For an MSWLF that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would be received by the landfill over the entire defined time period, using one of the following methods:
    - a. For an MSWLF that reported receiving waste for a full three quarters, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three.
    - b. For an MSWLF that reported receiving waste for a full two quarters, then the amount of waste for the remaining two quarters is the same as the total amount of waste reported for two full quarters.
    - c. For an MSWLF that reported receiving waste for a full quarter, then the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
- C.** For an MSWLF that accepted waste for less than a full quarter, the annual landfill registration fee is the minimum fee specified in A.R.S. § 49-747(C).

**R18-13-A2103. Annual Landfill Registration: Date Due and Fees**

- A.** An operator of a new MSWLF shall register the MSWLF and pay the landfill registration fee as follows:
1. The initial landfill registration fee shall be paid within 30 days of the date that the Department approved the facility plan. The initial landfill registration fee shall be the minimum fee specified in A.R.S. § 49-747(C).
  2. If the landfill was initially registered during the months of October, November or December of one calendar year, then the next landfill registration due date shall be December 31 of the following calendar year, and annually thereafter until released from the annual landfill registration requirement as specified in subsection (C).
  3. The annual registration fee shall remain the minimum fee rate until the first annual registration period after the MSWLF begins accepting waste for a full quarter of the defined time period.
- B.** After the MSWLF begins accepting waste as specified in subsection (A)(3), the Department shall calculate the annual registration fee according to R18-13-A2103, and specify that fee on the Department's annual landfill registration invoice for that MSWLF. The annual landfill registration fee shall continue to be calculated annually by the Department until the first registration period after the MSWLF stops accepting waste for less than the first full quarter of the defined time period.
- C.** After the MSWLF stops accepting waste as specified in subsection (B), the annual registration fee is the minimum fee specified in A.R.S. § 49-747(C). The annual registration fee remains at the minimum rate until the owner or operator of the MSWLF is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

- |   |  |
|---|--|
| <p><b>1. <u>Sections Affected</u></b><br/>R20-5-628</p>   | <p><b><u>Rulemaking Action</u></b><br/>New Section</p> |
| <p><b>2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b><br/>Authorizing statute: A.R.S. § 23-405(4)<br/>Implementing statute: A.R.S. § 23-410</p> |  |
| <p><b>3. <u>A list of all previous notices appearing in the Register addressing the proposed rule:</u></b><br/>Notice of Rulemaking Docket Opening: 8 A.A.R. 1838, April 12, 2002</p>   |  |

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

Name: Patrick Ryan  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington, Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: pat.ryan@osha.gov

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

**R20-5-628:** The Division of Occupational Safety and Health is proposing prohibiting the use of Polyvinyl Chloride (PVC) Piping for the transportation of compressed air and other gases in aboveground installations. The use of PVC Piping in aboveground installations presents a serious hazard to employees when PVC Piping systems fail or become damaged, sending sharp pieces of piping material through the air, with great force and velocity. In the past, the Division has issued citations to employers who have used PVC Piping for the transportation of compressed air in their facility. The basis of the citation was the employer failed to follow manufacturer's recommendations and industry safe practices to protect employees from being seriously injured. The Division currently issues citations to employers who use PVC Piping for the transportation and distribution of compressed air, citing the "General Duty Clause" A.R.S. § 23-403(A). The Division believes employers would be better informed about the hazards associated with using the PVC Piping with a more specific rule prohibiting its use.

**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:**

The Arizona Division of Occupational Safety and Health has determined that this new rule will have minimal impact for all affected industry groups and has determined the new rule to be economically feasible for all industries including small business.

**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: Patrick Ryan  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington, Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: pat.ryan@osha.gov

**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:**

An oral proceeding has been scheduled as follows:

Date: October 2, 2002  
Time: 10:00 a.m.

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Location:           Hearing Room A  
                          Industrial Commission of Arizona  
                          800 W. Washington  
                          Phoenix, AZ 85007

Written comments may be submitted on or before 10:00 a.m., October 2, 2002.

**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. Incorporation by reference and their location in the rules:**

None

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

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS**

Section

R20-5-628.       ~~Reserved~~ Safe Transportation of Compressed Air

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS**

**R20-5-628.       ~~Reserved~~ Safe Transportation of Compressed Air**

The use of Polyvinyl Chloride (PVC) Piping for the transportation and distribution of compressed air and other gases is prohibited in aboveground installation.