

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 the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and 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: 8 A.A.R. 4834, November 22, 2002

2. Sections Affected

R3-4-239

Rulemaking Action

Amend

3. The statutory 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(A)(1)

Implementing statutes: A.R.S. §§ 3-201.01 and 3-211

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

Name: Sherry D. Blatner, Rules Analyst

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 updates the areas under quarantine, removes the need for a receiver to apply for a compliance agreement to have an approved holding area, and clarifies existing language.

The Department committed to update this rule in the 1998 five-year review report presented by the Plant Services Division to the Governor's Regulatory Review Council.

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

On February 5, 2003, an updated interim rule amending 7 CFR 301.81-3 was published in the Federal Register. This material is incorporated by reference at subsection (B), and the Department wishes to incorporate the most current revision.

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 Department of Agriculture.*

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

B. *Political Subdivision.*

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

Notices of Supplemental Proposed Rulemaking

C. *Businesses Directly Affected by the Rulemaking.*

Nurseries in an area not previously under quarantine that ship regulated commodities into Arizona will be required to ship only to Arizona receivers with approved holding areas.

Arizona businesses that receive regulated commodities from an area not previously under quarantine will need to become familiar with the expanded list of areas. The majority of nursery stock shipped to Arizona from areas under quarantine originates from California, Florida, and Texas.

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 Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007
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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 is not scheduled for this proposed rule. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. on April 1, 2003.

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:

7 CFR 301.83-3, amended 68 FR 5794, February 5, 2003, at subsection (B)

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-239. Imported Fire Ants

ARTICLE 2. QUARANTINE

R3-4-239. Imported Fire Ants

A. Definitions.

“Pest” means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*.

“Pine straw” means baled, loose, or bulk pine needles.

B. Area under quarantine. ~~All states~~ A state or portion of ~~any a~~ state listed in 7 CFR 301.81-3, amended ~~January 1, 1998~~ 68 FR 5794, February 5, 2003, and any area declared infested by a state ~~as being infested with the pest, or any area known to be infested with the pest.~~ This material is incorporated by reference, on file with the Department and the Office of the Secretary State, and does not include any later amendments or editions of the incorporated matter.

C. ~~Commodities covered.~~ Regulated commodities.

~~1. Pine straw;~~

~~2. Beehives;~~

~~3.~~ 1. Soil, except potting soil shipped in original containers in which the potting soil is packaged after commercial preparation; and

~~4.~~ 2. All plants associated with soil, except:

a. ~~Indoor-grown house plants not for sale~~ Plants that are maintained indoors year-round in a home or office environment, and are not for sale; and

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

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

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

This rulemaking redefines the pest, limits the area under quarantine to certain counties in Florida and to the Commonwealth of Puerto Rico, and updates the list of regulated commodities. Unnecessary language pertaining to treating infested areas or surveying uninfested areas is deleted. Entry requirements for regulated commodities are modified.

The Department committed to update this rule in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.

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

Subsection (D)(2) in the Notice of Proposed Rulemaking has been deleted. The subsection provided an exemption for certain regulated commodities from an area under quarantine to enter Arizona if they were produced by a conventional method and commercially packed.

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 Department of Agriculture.*

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

B. *Political Subdivision.*

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

C. *Businesses Directly Affected by the Rulemaking.*

Companies that ship regulated commodities to Arizona will need to become familiar with the revised area under quarantine, list of regulated commodities, treatment schedule, and elimination of the exemption for certain untreated product.

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 Analyst
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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 is not scheduled for this proposed rule. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. on April 1, 2003.

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 rule:

None

13. The full text of the changes follows:

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TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-246. Caribbean Fruit fly pests Fly

ARTICLE 2. QUARANTINE

R3-4-246. Caribbean Fruit fly pests Fly

~~A.~~ Notice of quarantine: It has been determined that there are economically dangerous fruit fly pests not known to occur in the state of Arizona; that these pests are a serious threat to the agricultural industry of the state of Arizona and to the thousands of ornamental fruit trees and garden plants in home plantings. In order to prevent the introduction into the state of Arizona, and the spread within the state of these dangerous pests, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona, or the movement within the state, shall be governed by the following rule.

~~B.A.~~ Pests: Any species of the fruit fly genera *Anastrepha*, *Ceratitis* or *Dacus*, belonging to the Family Tephritidae. Definitions.
The following term applies to this Section:

"Pest" means all life stages of the Caribbean fruit fly, *Anastrepha suspensa*.

~~C.B.~~ Area under quarantine. The quarantined area shall include all areas outside of the state of Arizona and any areas found infested within the state of Arizona. An infested area may be declared by the State Entomologist within the area under quarantine whenever any insect covered by this rule becomes established in any such area, and represents a known infestation. Any infested area within the area under quarantine as declared by the State Entomologist for any pest covered by this rule, together with a list of host commodities which may harbor or be the carrier of such pest, shall be incorporated herein and made a part of this rule.

1. In the state of Florida, the following counties: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Duval, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia.
2. The Commonwealth of Puerto Rico.

~~D.C.~~ Commodities covered: Regulated commodities. All commodities listed in this rule which have been declared by the State Entomologist as capable of being infested by, or harboring, any pest covered by this rule.

1. The fresh fruit of the following plants:
Actinidia chinensis (Kiwi),
Annona glabra (Pond Apple),
Annona hybrid,
Annona squamosa (Sugar Apple),
Atalantia citriodes,
Averrhoa carambola (Carambola),
Blighia sapida (Akee),
Canella winteriana (Wild Cinnamon),
Capsicum frutesceas (Bell Pepper),
Carica papaya (Papaya),
Carissa grandiflora (Natal Plum),
Casimiroa edulis (White Sapote),
Chrysobalanus icaco (Cocoplum),
Citrus aurantiifolia (Lime),
Citrus aurantium (Sour Orange),
Citrus limonia (Rangpur Lime),
Citrus nobilis 'unshu' x *Fotunella* sp. (Jack Orangequat),
Citrus paradisi (Grapefruit),
Citrus paradisi x *C. reticulata* (Tangelo),
Citrus reticulata (Tangerine),
Citrus sinensis (Sweet Orange),
Citrus sinensis x *C. reticulata* (Temple Orange),
Clausena lansium (Wampi),
Dimocarpus longan (Longan),
Diospyros blancoi (Velvet Apple or Velvet Persimmon),
Diospyros khaki (Japanese Persimmon),
Dovyalis caffra (Kei Apple),

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Dovyalis hebecarpa (Ceylon Gooseberry),
Drypetes lateriflora (Guiana Plum),
Eriobotrya japonica (Loquat),
Eugenia aggregata (Cherry of the Rio Grande),
Eugenia brasiliensis (Grumichama),
Eugenia coronata,
Eugenia ligustrina,
Eugenia luschnathiana (Pitomba),
Eugenia uniflora (Surinam Cherry),
Ficus altissima,
Ficus carica (Fig),
Flacourtia indica (Governor's Plum),
Fortunella spp. (Kumquat),
Garcinia livingstonei (Imbe),
Garcinia xanthochymus,
Litchi chinensis (Lychee),
Lycopersicon esculentum (Tomato),
Malpighia glabra (Barbados Cherry),
Malus sylvestris (Apple),
Mangifera indica (Mango),
Manilkara jaimiqui spp. Emarginata (Wild Dilly),
Manilkara roxburghiana,
Manilkara zapota (Sapodilla),
Momordica charantia (Wild Balsam Apple),
Muntingia calabura (Calbur),
Murraya paniculata (Orange Jasmine),
Myciaria cauliflora (Jaboticaba),
Myrcianthes fragrans,
Myricaria glomerata,
Persea americana (Avocado),
Pimenta dioica (Allspice),
Pouteria campechiana (Egg Fruit),
Prunus persica (Nectarine),
Prunus persica (Peach),
Pseudanmomis umbellulifera,
Psidium spp. (Guava),
Punica granatum (Pomegranate),
Pyrus cummunis (Pear),
Pyrus pyrifolia (Japanese Pear),
Pyrus pyrifolia x Pyrus communis (Kieffer Pear),
Rheedia aristata,
Rubus hybrid (Blackberry),
Severinia buxifolia (Box Orange),
Spondias cytherea (Otaheite Apple),
Synsepalum dulcificum (Miracle Fruit),
Syzygium cumini (Jambolan Plum),
Syzygium jambos (Rose Apple),
Syzygium samarangense (Java Apple),
Terminalia catappa (Tropical Almond),
Terminalia muelleri,
Trevisia palmata,
Triphasia trifolia (Limeberry),
X Citrofortunella floridana (Limequat), and
X Citrofortunella mitis (Calamondin).

2. Soil or planting media within the drip area of plants producing, or that have produced, a regulated commodity.

E.D. Restrictions: All commodities listed in this rule shall be admitted to the state of Arizona from any infested area declared by the State Entomologist, only when each lot or shipment meets the requirements listed in subsections (F) or (G) of this rule.

A regulated commodity produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one

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of the following:

1. Citrus fruit (*Citrus* spp. and *Fortunella* spp.) has been fumigated with methyl bromide ("Q" label only) for a minimum of two hours under the following conditions:

<u>Pulp Temperature</u>	<u>Rate per 1000 cu. ft.</u>
No less than 60° F to 79° F	3 pounds
80° F or above	2 1/2 pounds

2. Non-citrus fruit has been treated in compliance with a treatment plan approved by the Director.

F. Treatment: Commodities meet the treatment provision of this rule when the requirements of subsection (F)(4) and (5) have been satisfied and the commodity has been treated in 1 of the manners set forth in subsection (F)(1), (2) or (3) for the appropriate commodity and type of fruit fly.

1. Fruits or vegetables treated in the manner specified for the appropriate fruit fly genus and commodity listed in either:
 - a. The USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine Treatment Manual, as amended April 1987, which is incorporated herein by reference and on file with the Office of the Secretary of State. Treatments specified by USDA for export only are not acceptable for delivery in the USA. Treatment schedules listed by USDA for Hawaiian commodities may also be used for fruits and vegetables originating in other areas infested with fruit flies of the genera *Dacus* and *Ceratitis*; or,
 - b. *A Guide to Commodity Treatment in California*, California Department of Food and Agriculture, Division of Plant Industry, as amended November 15, 1983, incorporated herein by reference and on file with the Office of the Secretary of State, with the exception of the use of ethylene dibromide which is prohibited.
2. Citrus fruit treated for Caribbean Fruit Fly (*Anastrepha suspensa*) by fumigation at atmospheric pressure in a gastight semitrailer or chamber using methyl bromide gas for a period of 2 hours at a pulp temperature of 21° C (70° F.) or above, using 40 g/m³ (2-1/2 lbs/1000 cu. ft.). The load cannot exceed 80% of the volume of the semitrailer or chamber.
3. All soil, garbage or other material, which could be a carrier of fruit fly, shall be treated with 1/4 pound of actual Diazinon per 100 gallons of water, or 1/2 pound 50% Diazinon wettable powder per 100 gallons of water.
4. All commodities treated in accordance with subsection (F)(1) or (2) and (3) above for entry into the state of Arizona must be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that the treatment was done under his supervision, and provided that each and every container and sub-container bears a stamp with the state or area name where the treatment was made, and with the words, "Processed in Accordance with Arizona Requirements".
5. Commodities shall be treated only with those pesticides registered for use on the commodity in the state, county or commonwealth where treatment is made.

G. Requirements for Caribbean fruit fly free area designation: Commercially grown grapefruit and oranges meet the requirements of this rule for Caribbean fruit fly (*Anastrepha suspensa*) if they have originated in an area designated by an agricultural agency of the United States, state, county or commonwealth as a Caribbean fruit fly free area. The commodities shall be accompanied by a certificate signed by an agricultural official of the United States, state, county or commonwealth certifying that they originate in a designated area which is free of Caribbean fruit fly. Each and every container and sub-container shall bear a stamp with the words "Designated area". The designation of an area as free of Caribbean fruit fly shall be based upon the following minimum criteria:

1. Negative trapping:
 - a. No more than 6 target plants with fruit shall be found within 3 miles of the perimeter of the designated area. The target plants are common guava, cattley guava, Surinam cherry, rose apple, and loquat.
 - b. Should 1 to 6 target plants with fruit be found within the subject buffer zone, ground or aerial bait spray shall be applied at 9- to 10-day intervals, beginning 30 days prior to harvest and continuing until the end of harvest.
 - c. The minimum size of the designated area shall be 300 acres.
 - d. The designated area shall be surrounded by a buffer zone of 1 1/2 miles.
 - e. Trap surveys shall be conducted as follows:
 - i. McPhail traps shall be set in the designated area and in the 1 1/2 mile buffer zone adjoining the designated area at the density of 15 traps per square mile. It is not required that areas without target plants such as pastures and marshlands (i.e., McPhail trap densities shall be concentrated in areas where target plants exist) be trapped.
 - ii. The attractant used in the McPhail trap shall be 4 or 5 yeast-borax tablets dissolved in 1/2 liter of water and shall be changed weekly.
 - iii. Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.
 - f. Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:
 - i. If the Caribbean fruit fly is found as a result of the trap survey, Commission shall be notified within 1 work-

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- ing day of fruit fly identification.
 - ii. If 2 adults, within 1 1/2 miles of each other during a life cycle (30 days) are found during the trap survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly free area shall be withdrawn. The area can be redesignated as a Caribbean fruit fly free area if a 1/4 mile area around the trap catches is treated by aerial bait spray at 9 to 10 day intervals for 30 days with negative trapping.
 - iii. If either 1 or more larva or pupa is found during the survey in the designated area or in the surrounding buffer zone, the designation as a Caribbean fruit fly free area shall be withdrawn for the entire season.
2. Bait sprays:
- a. The minimum size of the designated area shall be 40 acres with an additional 300 feet buffer zone. The buffer zone shall not contain any target plants. The target plants are common guava, cattley guava, Surinom cherry, rose apple, and loquat.
 - b. No more than 6 target plants with fruit shall be found within 1 mile of the perimeter of the designated area.
 - c. McPhail traps shall be established in the designated area and 300 feet buffer zone at the density of 15 traps per square mile (a minimum of 4 traps shall be required).
 - d. The attractant used in the McPhail trap shall be 4 or 5 yeast borax tablets dissolved in 1/2 liter of water and shall be changed weekly.
 - e. Trap servicing shall be conducted weekly from 30 days before harvest until the end of harvest.
 - f. There shall be a 30 day negative trapping period in the designated area and buffer zone prior to the area becoming eligible for designation as a Caribbean fruit fly free area.
 - g. In addition, aerial bait sprays are to be applied beginning 7 days prior to harvest and throughout the harvest period.
 - h. Measures to be taken if Caribbean fruit fly is found in a designated area or its buffer zone are as follows:
 - i. If a Caribbean fruit fly is found before spraying begins, the area involved shall be ineligible for designation as a Caribbean fruit fly free area.
 - (1) The designation as a Caribbean fruit fly free area shall be reinstated if the area is sprayed for a 30 day (one life cycle) period and no additional flies are found. Spraying is to be continued throughout the harvest period after designation is restored.
 - (2) If an additional fly is found during the 30 day preharvest spray period or during the harvest period after reinstatement, the area shall be ineligible for designation as a Caribbean fruit fly free area for the balance of the season.
 - ii. If Caribbean fruit fly is found after spraying begins, the area shall be ineligible for designation as a Caribbean fruit fly free area.
 - (1) The area may be redesignated as a Caribbean fruit fly free area after 30 days if no additional flies are trapped. Spraying is to be continued during the 30 day period and throughout the harvest period after designation is restored.
 - (2) If additional flies are found during the 30 day spray period, or during harvest after redesignation, the area shall be ineligible for designation as a Caribbean fruit fly free area for the balance of the season.
3. Bait spray formulations:
- a. Aerial bait spray shall consist of a mixture of 2.4 oz. (71.04 ml) 91% malathion and 9.6 oz. (284.16 ml) Staley's bait (Nulure) per acre.
 - b. Ground bait spray shall consist of 1 oz. (29.6 ml) Staley's bait (Nulure) and 1 oz. 56.44% EC malathion (Cythion -EPA Reg. No. 5905-196) per 1 gallon of water.

H.E. Disposition of violations commodity not in compliance: Any material or article which has been brought into the state of Arizona, or moved within the state of Arizona, in violation of this quarantine regulation shall immediately be sent out of the state, or returned to origin, or destroyed at the option and at the expense of the owner or owners, or their responsible agent, and under the direction of the State Entomologist or his inspectors. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

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

J. Pursuant to authority provided in subsection (C) of this rule, the State Entomologist hereby declares the state of Florida as an infested area for Caribbean fruit fly, *Anastrepha suspensa*, and lists the following commodities capable of being infested by, or harboring any stage of development, of said pest.

K. Commodities: All fruit and vegetables of the following:

- 1. The fruit of:

Apple	Malus sylvestris
Avocado	Persea americana
Balsam apple	Marmodia charantia
Barbados cherry	Malpighia glabra
Bell pepper	Capsicum frutescens
Box orange	Severinia buxifolia
Calamondin	Citrus mitis

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Carambola	<i>Averrhoa carambola</i>
Ceylon-gooseberry	<i>Dovyalis hebecarpa</i>
Cherry of the Rio Grande	<i>Eugenia aggregata</i>
Coco-plum	<i>Chrysobalanus icaco</i>
Common guava	<i>Psidium guajava</i>
Egg fruit	<i>Pouteria campechiana</i>
Governor's plum	<i>Flacourtia indica</i>
Grapefruit	<i>Citrus paradisi</i>
Grumichama	<i>Eugenia brasiliensis</i>
Guiana-plum	<i>Drypetes lateriflora</i>
Imbe	<i>Garcinia livingstonei</i>
Jaboticaba	<i>Myciaria cauliflora</i>
-----	<i>Myciaria glomerata</i>
Kei apple	<i>Dovyalis caffra</i>
Kumquat	<i>Fortunella japonica</i>
Kumquat (oval)	<i>Fortunella margarita</i>
Lime	<i>Citrus aurantifolia</i>
Lime berry	<i>Triphasia trifolia</i>
Litchi	<i>Litchi chinensis</i>
Loquat	<i>Eriobotrya japonica</i>
Mango	<i>Mangifera indica</i>
Miracle fruit	<i>Synsepalum dulcificum</i>
Natal plum	<i>Carissa grandiflora</i>
Orange-jasmine	<i>Murraya paniculata</i>
Paraguava	<i>Britoa acida</i>
Peach	<i>Prunus persica</i>
Pear	<i>Pyrus communis</i>
Pitomba	<i>Eugenia lusehnathiana</i>
Pomegranate	<i>Punica granatum</i>
Rose apple	<i>Syzygium jambos</i>
Sapidolla	<i>Aehras zapota</i>
Sour orange	<i>Citrus aurantium</i>
Strawberry guava	<i>Psidium cattleianum</i>
Sugar apple	<i>Annona squamosa</i>
Surinam cherry	<i>Eugenia uniflora</i>
Sweet orange	<i>Citrus sinensis</i>
Tangelo	<i>Citrus paradisi x C. reticulata</i>
Tangerine	<i>Citrus reticulata</i>
Temple orange	<i>Citrus sinensis x C. reticulata</i>
Tomato	<i>Lycopersicon esculentum</i>
Tropical almond	<i>Terminalia catappa</i>
Wampi	<i>Clausena lansium</i>
Water apple	<i>Syzygium samarangense</i>
White sapote	<i>Casimiroa edulis</i>
-----	<i>Pseudanmomis umbellifera</i>

2. Avocados, mangoes, litchis, bell peppers and tomatoes may be shipped to Arizona without fumigation if commercially grown and packed. If not commercially grown and packed, these fruits must be certified as having been fumigated.

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NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

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

Notice of Proposed Rulemaking: 8 A.A.R. 5074, December 13, 2002

2. Sections Affected

R17-5-402

Rulemaking Action

Amend

3. The statutory 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. §§ 28-4362 and 28-5005

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

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

R17-5-402 identifies the specific bonding amounts necessary to accompany license applications for motor vehicle dealers, recyclers, and brokers, as prescribed in A.R.S. § 28-4362. The Division has determined that dividing R17-5-402 into two rules provides clarity and understandability in the motor vehicle business license bonding process. R17-5-402, "Bond Amounts. Motor Vehicle Business Licenses," is prescribed by A.R.S. § 28-4362. R17-5-403, "Bond Amount. Title Services Motor Vehicle Business License," is prescribed by A.R.S. § 28-5005. This rulemaking action also incorporates the changes to the old dealer-and-wrecker-bond-amount rule proposed in the five-year review report, docket #F-98-0401, approved by the Governor's Regulatory Review Council on May 5, 1998. Both R17-5-402 and R17-5-403 meet the stylistic requirements of the Governor's Regulatory Review Council and the Secretary of State.

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

R17-5-402(A)(2) and R17-5-402(A)(3). The Division determined that the bond amount of \$50,000 for wholesale motor vehicle dealers and wholesale motor vehicle auction dealers was excessive since these types of businesses do not sell vehicles to the public and are merely the go-between for dealer to dealer sales. As a result, the Division reduced the bond amount for wholesale motor vehicle dealers and wholesale motor vehicle auction dealers to \$25,000.

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 motor vehicle business must provide a bond in an amount prescribed by these rules when applying to the Division for a business license. License applicants will pay a premium to a surety company to obtain the correct bond amount, which varies by the type of motor vehicle business. The Division bears the cost of licensure that includes confirmation of the validity and correctness of a bond, the decision-making process for licensure, and resolving customer claims against a business and its bond.

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: Troy A. Walters

Notices of Supplemental Proposed Rulemaking

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-6722

Fax: (602) 241-1624

E-mail: twalters@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:

An oral proceeding is not scheduled for this supplemental proposed rulemaking. To request an oral proceeding or to submit written, faxed, or internet comments, please contact the rules analyst listed in item #4 between the times of 8:00 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays. The rulemaking public record will close on April 4, 2003, at 4:30 p.m.

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

Not applicable

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

None

13. The full text of the changes follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

Section

R17-5-402. ~~Dealer and Wrecker Bond Amounts~~ Bond Amounts. Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

ARTICLE 4. DEALERS

R17-5-402. ~~Dealer and Wrecker Bond Amounts~~ Bond Amounts. Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

Title 28, Chapter 8, Article 1, Arizona Revised Statute provides that every application for a license to engage in business of a motor vehicle dealer, motor dealer or wrecker shall be accompanied by a bond in a form to be approved by the Assistant Director and shall be in such amount, not less than \$1000, as the Assistant Director prescribes.

1. The minimum amount of such bonds shall be as follows:
 - a. ~~Motor Vehicle Dealer dealing in motor vehicles other than motorcycles, motor driven cycles or trailers with an unladen weight not exceeding 1500 lbs., \$25,000.~~
 - b. ~~Motor Vehicle Dealer dealing only in motorcycles, motor driven cycles or trailers with an unladen weight not exceeding 1500 lbs., \$10,000.~~
 - c. ~~Motor Dealer -- \$5,000.~~
 - d. ~~Wrecker -- \$5,000.~~
2. This Order to be effective as bonds accompanying applications filed for the calendar year 1982 and thereafter.

A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:

1. \$100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles;
2. \$25,000 from a wholesale motor vehicle dealer;
3. \$25,000 from a wholesale motor vehicle auction dealer;
4. \$25,000 from a motor vehicle broker; and
5. \$20,000 from an automotive recycler.

B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.