

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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

PREAMBLE

1. Sections Affected

R3-4-204
R3-4-244
R3-4-245

Rulemaking Action

Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. §§ 3-201.01, 3-202, 3-203, 3-204, 3-205, 3-205.01, 3-206, 3-207, 3-209, and 3-210

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 3230, September 17, 1999; 5 A.A.R. 3710, October 8, 1999

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

Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone Number: (602) 542-0962
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5. An explanation of the rule, including the agency's reasons for initiating the rule:

R3-4-204. This rulemaking allows the Southwest Indian Agricultural Association to have a representative on the advisory committee to make recommendations to the Department in areas concerning the pink bollworm and the boll weevil complex, and clarifies the small grain planting option.

R3-4-244 and R3-4-245. This rulemaking adds the pest, giant salvinia, to the regulated, restricted, and prohibited noxious weed lists to prevent entry or further infestation in the state.

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On August 4, 1999, plants of *Salvinia molesta*, giant salvinia, were found in the Imperial National Wildlife Refuge on the Colorado River. Giant salvinia, known as “the world’s worst weed,” threatens the Colorado River, its backwaters, fish and wildlife habitat, and the Bill Williams River.

Under ideal conditions, giant salvinia can double its volume every 2.5 to 8 days, depending on the fertility and temperature of the water. In 1993, it was documented at 36 tons per acre at one lake. In quiet waters it can form a mat up to two feet thick. This could impede boat traffic along the sides of the river where eddies form as well as in the backwaters. Loss of water through evapo-transpiration from giant salvinia may be as much as 40% greater than an open body of water. This increased loss of water could lead to an additional two to three feet of water loss from the river. If permitted to grow uncontrolled for even one growing season, it could destroy the benthic community, affecting fish populations and other species that depend on the aquatic ecosystem. It could impact recreational fishing and boating, irrigation, waterfowl habitat, water availability and use, and hydroelectricity generation.

In addition to its direct impact, giant salvinia provides habitat for snails that are intermediate hosts for *Schistosoma* sp., which parasitize the human intestinal and urinary tracts. It is also an important host plant for *Mansoni* mosquitoes that serve as vectors for rural filariasis.

Giant salvinia is native to Central and South America. It has been widely distributed worldwide and sold for use in aquariums and aqua-gardens. In the United States, it was eradicated. In 1998, it was found in southern Texas and has spread to Toledo Bend Reservoir on the Louisiana/Texas border. Infestations have now been found in Florida, Georgia, Alabama, Louisiana, Texas, Arizona, and California. A recent survey in California revealed that it was being sold as an aquarium and ornamental pond plant at numerous sites, despite the fact that it is on the Federal Noxious Weed list and illegal to sell in California. It is also being sold in Arizona as a water plant.

Giant salvinia has been infesting other countries, blocking critical transportation waterways and destroying fisheries. It has caused serious problems in Australia, where officials have been using both chemicals and biological control agents.

On August 20, 1999, teams were identified to conduct a survey of the Colorado River and associated waterways. The survey concluded that the infestations are not continuous along the river but scattered over the area. Some of the backwater areas that are closed to the river are not yet infested. Infestations were found scattered along 37 miles of the Colorado River main channel, and along approximately 25 miles of the Old River Channel and the Palo Verde Irrigation Drain. Infestations were found on both Cibola and Imperial National Wildlife Refuges, with both refuges reporting that approximately 60% of their backwaters have low level infestations. No giant salvinia was found on the Colorado River above where the Old River Channel enters the Colorado River.

As a result of that survey, a Task Force was established. It was decided that a Program Plan would be prepared to describe the problem and identify alternative approaches to address this infestation. A Scientific Advisory Committee was also established. Dr. Ed Glenn represents Arizona on the Scientific Panel.

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:

R3-4-204. The rulemaking expands the advisory committee and clarifies the small grain planting option.

R3-4-244 and R3-4-245. The Bureau of Reclamation, the Bureau of Land Management, and the Fish and Wildlife Service have begun short-term control actions for giant salvinia. On October 6, 1999, the Department issued a permit to the U.S. Department of Interior, Bureau of Land Management allowing BLM to dispose of giant salvinia in an Arizona landfill. Section 10 permit applications have been submitted to the Corps of Engineers for boom placement. Some federal agencies have purchased equipment and herbicides for control of giant salvinia. California will initiate an integrated approach to remove it from the Palo Verde Irrigation District Drain in order to stop its movement downstream.

Complicating the removal of giant salvinia is the presence of endangered species of animals such as the Colorado pikeminnow, bonytail, and razorback. Giant salvinia has been documented to degrade water quality by lowering oxygen concentrations and pH and preventing mixing of water by wind action and normal gas exchange at the water surface. Access to preferred habitats for spawning and nursery areas become physically blocked. Birds such as the

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Southwestern Willow Flycatcher and Yuma Clapper Rail may suffer if the native plants that their habitat requires are affected.

The Lower Colorado River supplies nearly 10 million-acre feet of water each year for national and international users. Eight U.S. irrigation districts use irrigation water from the infested area to water eight million acres of farmland. At least 1.5 million-acre feet of water is supplied to Mexico for use on 250,000 acres of farmland. All of these facilities could be severely impacted by an infestation of giant salvinia. If giant salvinia infests Lakes Mead, Mohave, or Havasu, any failure to take action would result in the continued spread of the plant and the ultimate devastation of the Colorado River aquatic ecosystem and all species and human activities that depend on it. Ecosystem damage would include losses of submergent and emergent vegetation, benthic organisms that depend on that vegetation, and loss of food resources and habitat for fish. It would include loss of recreational opportunities, such as fishing, boating, water skiing, and shoreline recreational activities, along with related economic losses from local business that cater to those users. Blockage of irrigation intakes and eventual reduction in the available water could result.

Infestations of giant salvinia are forming as plants floating down the river get caught in slower moving waters near the shore and among emergent vegetations, particularly cattails and bulrush. As the pocket infestations grow, they expand into faster moving water where they break off and move downstream to colonize new areas.

Controlling salvinia in and among main channel shoreline emergent vegetation will be very difficult since:

1. The emergent vegetation will make it difficult to get at the pocket infestations for any kind of control;
2. Physical removal in and among dense cattails and bulrushes will be virtually impossible;
3. Chemical control could damage or kill emergent vegetation that could harm important Yuma clapper rail habitat and fish habitat, or even, perhaps, kill the fish;
4. Total removal of any infestations among shoreline vegetation may be impossible; and
5. There are already innumerable infestations, and trying to control them using physical or chemical means will be extremely costly in both manpower and materials over the long haul.

Some of the backwater areas are accessible only by canoe or kayak. Trying to get equipment into those areas for treatment will be very difficult. Wave action resulting from recreational boating will break off pieces from shoreline mats and spread them. Fishing in the backwaters will spread salvinia to uninfested areas by boats.

A. Estimated Costs and Benefits to the Arizona Cotton Research and Protection Council

R3-4-204. No enforcement changes have been made, therefore the Department will not be economically impacted by this rulemaking.

R3-4-244 and R3-4-245. The Department is currently sending notices to aquatic stores advising them that the sale of giant salvinia is illegal.

If the state becomes infested with giant salvinia, the Department will set up a quarantine program and mount an aggressive campaign to monitor and eradicate the pest. Actual costs are unknown. However, the following figures represent treatment and removal costs experienced by the giant salvinia infestation in Texas:

Hand removal of well-established salvinia infestations at 36 tons per acre could exceed \$800 per acre;

Boats and land based equipment, \$17,000 to \$100,000 each;

A conveyor system that removes the plant from an intake area, several hundred-thousand dollars per year;

Chemical costs from \$12 to \$1,400 per acre plus labor and equipment at approximately \$205 to \$927 per acre;

1. Educational costs, \$42,300:
 - a. Film costs for sub-masters used for television broadcast, \$5,000 (one time expense)
 - b. Film costs for training and meetings, \$1,050;
 - c. Labor for packaging and mailing videos, \$500;
 - d. Preparing and duplicating high quality information packets, \$12,000;
 - e. Designing and coordinating educational materials and activities, plus half-time biologist, \$20,000;
 - f. Boat ramp education and inspections, signs for posting \$1,000;
2. Conducting inspections at public boat ramps, including two full-time technicians (seasonal), \$50,000;
3. Treatments of the 12,000 miles of Toledo Bend shoreline, \$929,174:
 - a. Herbicides, \$270,000;
 - b. Salaries and fringe benefits (2 biologists and 6 technicians) \$314,235;
 - c. Operating expense (fuel, electricity, telephone, heat, safety equipment, etc.), \$104,939;
 - d. Per diem costs (500 man-days in the field), \$40,000;

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- e. Three airboats and spray equipment, \$90,000;
- f. Three boats and motors, \$60,000;
- g. Four trucks, \$50,000;
- 4. Computers and related equipment, \$10,000:
- 5. Biological releases, \$272,500:
 - a. Estimated initial testing, release, and establishment, \$100,000;
 - b. Estimated monitoring costs after establishment, \$100,000;
 - c. Equipment (1 airboat, 1 boat, 1 truck), \$72,500;
- 6. Physical barriers, \$50,000:
 - a. Estimated costs of barriers, \$40,000;
 - b. Labor \$10,000.

B. Estimated Costs and Benefits to Political Subdivisions

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

C. Businesses Directly Affected By the Rulemaking (Cotton Growers)

R3-4-204. The rulemaking will allow the Southwest Indian Agricultural Association to have a representative on the advisory committee to make recommendations to the Department in areas concerning the pink bollworm and the boll weevil complex.

Subsection (E)(4)(a) provides a grower the option to plant wheat, barley, or oats after a cotton harvest instead of tilling. This subsection also mentions that the grower may plant a similar small-grain crop if the small-grain is approved in writing by the Director. By including this additional option in the same sentence as the listed and approved small-grain crops, the growers now believe that they need to obtain the Director's approval if they want to plant any small-grain crop. Subsection (E)(4)(b) currently covers approval of small-grain crops not included in subsection (E)(4)(a), thus this option has been deleted from subsection (E)(4)(a).

R3-4-244 and R3-4-245. If aquatic stores are involved in the sale of giant salvinia to 2% of the households in the Valley, approximately 10,000 sales at \$2.00 each would be affected for a \$20,000 annual market.

D. Estimated Costs and Benefits to Private and Public Employment

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

E. Estimated Costs and Benefits to Consumers and the Public

R3-4-204. Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

R3-4-244 and R3-4-245. Eight U.S. irrigation districts use irrigation water from the infested area to water eight million acres of farmland. This irrigation water could infest irrigation ditches where blockage of irrigation intakes could result in an eventual reduction in the available water.

If giant salvinia infests Lakes Mead, Mohave, or Havasu, any failure to take action would result in the continued spread of the plant and the ultimate devastation of the Colorado River aquatic ecosystem and all species and human activities that depend on it.

If permitted to grow uncontrolled for even one growing season, the ecosystem damage would impact fishing, boating, water skiing, shoreline recreational activities, and create economic losses from local business that cater to those users.

F. Estimated Costs and Benefits to State Revenues

R3-4-204. This rulemaking will have no impact on state revenues.

R3-4-244 and R3-4-245. This rulemaking will have no impact on state revenues unless the state becomes infested with giant salvinia; then the cost would be borne by general funds.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

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Telephone Number: (602) 542-0962
Fax Number: (602) 542-5420
E-mail: shirley.conard@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:

Date: March 13, 2000
Time: 9:00 a.m.
Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4:00 p.m., March 14, 2000. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-204. Pink Bollworm and the Cotton Boll Weevil Complex
R3-4-244. Regulated and Restricted Noxious Weeds
R3-4-245. Prohibited Noxious Weeds

ARTICLE 2. QUARANTINE

R3-4-204. Pink Bollworm and the Cotton Boll Weevil Complex

- A.** No change.
- B.** No change.
- C.** No change.
- D.** No change.
- E.** Cultural practices.
 - 1. Arizona's cultural zones are:
 - a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
 - b. Zone "B" -- Cochise County, Graham County and Greenlee County.
 - c. Zone "C" -- Mohave County, La Paz County, except the Cibola Valley, and T6N, R11W, 12W, 13W; T5N, R13W; T4N, R12W, 14W, 15W; T3N, R10W, 11W; T2N, R11W.
 - d. Zone "D" -- Pima County and the following portions of Pinal County: T10S, R10E, sections 34, 35 and 36, T10S, R11E, section 31, T7S, R16E, T6S, R16E, T5S, R15E, and T4S, R14E, and the Aguila area T7N, R8W and T7N, R9W and T7N, R10W and T7N, R11W to the western boundary of section 35, 26 and 23.
 - e. Zone "E" -- The following portions of La Paz County: Cibola Valley T1N, R23W and T1N, R24W and T1S, R23W and T1S, R24W.

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- f. Zone "F" -- All portions of the State not included in Zones "A", "B", "C", "D", and "E."
2. No stub, soca, or volunteer cotton shall be grown in or allowed to grow in the state. The landowner shall be responsible for eliminating stub, soca, or volunteer cotton.
3. Tillage deadline. Except as provided in subsection (E)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier:
Zone "A", December 15;
Zone "B", March 1;
Zone "C", January 15;
Zone "D", March 1;
Zone "E", January 31;
Zone "F", February 15.
4. Rotational crop following cotton harvest.
- a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats, ~~or other similar small-grain crop approved in writing by the Director~~ instead of ~~shredding and~~ tilling as prescribed in subsection (E)(3). The small-grain crop shall be planted before the following dates:
Zone "A", December 30;
Zone "B", March 1;
Zone "C", January 30;
Zone "D", March 1;
Zone "E", January 31;
Zone "F", February 15.
- b. The Director shall approve other small-grain crops not specifically listed in subsection (E)(4)(a), if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub, soca, or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 30 days before the planting date. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
- c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (E)(3) apply.
5. Planting dates.
- a. A grower who meets the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton before the following dates:
Zone "A", February 1;
Zone "B", March 15;
Zone "C", March 1;
Zone "D", March 15;
Zone "E", March 1;
Zone "F", March 1.
- b. A grower who does not meet the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton before the following dates:
Zone "A", February 15;
Zone "B", March 15;
Zone "C", March 15;
Zone "D", March 15;
Zone "E", March 1;
Zone "F", March 1.
6. Dry planting. Any grower who uses the practice of dry planting may plant cotton 10 days before the planting date for that zone, but shall not water until the planting date.
7. An inspector shall give written notice to any landowner found in violation of subsection (E). The processes established in subsections (E)(3) and (E)(4) shall be repeated, as necessary, to destroy the pests.
- F. Advisory Committee.** The Director shall appoint an advisory committee consisting of 1 representative from each of the following organizations and the committee shall make recommendations to the Department on amendments to this Section:
The Arizona Cotton Growers Association,
The Arizona Farm Bureau Federation,
The Arizona Crop Protection Association,
The Southwest Indian Agricultural Association,
The University of Arizona Experiment Station,

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The University of Arizona Extension Service,
USDA-Research,
USDA-APHIS,
The Arizona Department of Agriculture, and
A grower from each of the 6 zones.

R3-4-244. Regulated and Restricted Noxious Weeds

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

1. "Habitat" means any aquatic area within Arizona, such as canals, drainage ditches, ponds, and lakes.

~~1-2.~~ "Infested area" means each individual container in which a pest is found or the specific area that harbors a pest.

~~2-3.~~ "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable, and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:

Cenchrus echinatus L. -- Southern sandbur,
Cenchrus incertus M.A. Curtis -- Field sandbur,
Convolvulus arvensis L. -- Field bindweed,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Medicago polymorpha L. -- Burclover,
Portulaca oleracea L. -- Common purslane,
Tribulus terrestris L. -- Puncturevine.

~~3-4.~~ "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:

Acroptilon repens (L.) DC. -- Russian knapweed,
Aegilops cylindrica Host. -- Jointed goatgrass,
Alhagi pseudalhagi Bieb.) Desv. -- Camelthorn,
Cardaria draba (L.) Desv. -- Globed-podded hoary cress (Whitetop),
Centaurea diffusa L. -- Diffuse knapweed,
Centaurea maculosa L. -- Spotted knapweed,
Centaurea solstitialis L. -- Yellow starthistle (St. Barnaby's thistle),
Cuscuta spp. -- Dodder,
Elytrigia repens (L.) Nevski -- Quackgrass,
Euryops sunbcarnosus subsp. *vulgaris* -- Sweet resinbush,
Halogeton glomeratus (M. Bieb.) C.A. Mey -- Halogeton,
Helianthus ciliaris DC. -- Texas blueweed,
Ipomoea triloba L. -- Three-lobed morning glory,
Linaria genistifolia var. *dalmatica* -- Dalmation toadflax,
Onopordum acanthium L. -- Scotch thistle;
Salvinia molesta -- Giant salvinia.

B. Area under quarantine: All infested areas within the state.

C. The following commodities are hosts or carriers of the regulated or restricted pest:

1. All plants other than those categorized as a regulated or restricted pest;
2. Forage, straw and feed grains;
3. Live and dead flower arrangements;
4. Ornamental displays; ~~and~~
5. Aquariums; and

~~5-6.~~ Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.

D. The Department may quarantine any commodity, habitat, or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.

E. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).

F. Restrictions.

1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of the pest.
2. An owner or the owner's representative shall notify the Department at least 2 working days in advance of moving contaminated equipment from an infested area.

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3. The Department may inspect all equipment within 2 working days after a request to inspect the equipment is made if the equipment:
 - a. Has been moved into or through a non-infested area,
 - b. Has not been treated, or
 - c. Has been used to harvest an infested crop within the past 12 months.

G. Treatments.

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

R3-4-245. Prohibited Noxious Weeds

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

1. "Habitat" means any aquatic area within Arizona, such as canals, drainage ditches, ponds, and lakes.
- ~~1.2.~~ "Infested area" means each individual container in which a pest is found, the specific area that harbors the pest, or any shipment that has not been released to the receiver and is infested with a pest.
- ~~2.3.~~ "Pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), that are prohibited from entering the state:
 - ~~a.~~ *Acroptilon repens* (L.) DC. -- Russian knapweed,
 - ~~b.~~ *Aegilops cylindrica* Host. -- Jointed goatgrass,
 - ~~c.~~ *Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - ~~d.~~ *Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,
 - ~~e.~~ *Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,
 - ~~f.~~ *Cardaria chalepensis* (L.) Hand-Muzz -- Lens podded hoary cress,
 - ~~g.~~ *Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - ~~h.~~ *Carduus acanthoides* L. -- Plumeless thistle,
 - ~~i.~~ *Cenchrus echinatus* L. -- Southern sandbur,
 - ~~j.~~ *Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - ~~k.~~ *Centaurea calcitrapa* L. -- Purple starthistle,
 - ~~l.~~ *Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,
 - ~~m.~~ *Centaurea squarrosa* Willd. -- Squarrose knapweed,
 - ~~n.~~ *Centaurea sulphurea* L. -- Sicilian starthistle,
 - ~~o.~~ *Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - ~~p.~~ *Centaurea diffusa* L. -- Diffuse knapweed,
 - ~~q.~~ *Centaurea maculosa* L. -- Spotted knapweed,
 - ~~r.~~ *Chondrilla juncea* L. -- Rush skeletonweed,
 - ~~s.~~ *Cirsium arvense* L. Scop. -- Canada thistle,
 - ~~t.~~ *Convolvulus arvensis* L. -- Field bindweed,
 - ~~u.~~ *Coronopus squamatus* (Forsk.) Ascherson -- Creeping wartcress (Coronopus),
 - ~~v.~~ *Cucumis melo* L. var. *Dudaim* Naudin -- Dudaim melon (Queen Anne's melon),
 - ~~w.~~ *Cuscuta* spp. -- Dodder,
 - ~~x.~~ *Drymaria arenarioides* H.B.K. -- Alfombrilla (Lightningweed),

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~~y~~: *Eichhornia azurea* (SW) Kunth. -- Anchored waterhyacinth,

~~z~~: *Elytrigia repens* (L.) Nevski -- Quackgrass,

~~aa~~: *Euphorbia esula* L. -- Leafy spurge,

~~bb~~: *Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,

~~ee~~: *Helianthus ciliaris* DC. -- Texas blueweed,

~~dd~~: *Hydrilla verticillata* Royale -- Hydrilla (Florida-elodea),

~~ee~~: *Ipomoea* spp. -- Morning glory.

All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); and *Ipomoea aborescens*, morning glory tree,

~~ff~~: *Medicago polymorpha* L. -- Burclover,

~~kk~~: *Nassella trichotoma* (Nees.) Hack. -- Serrated tussock,

~~tt~~: *Onopordum acanthium* L. -- Scotch thistle,

~~mm~~: *Orobanche ramosa* L. -- Branched broomrape,

~~nn~~: *Panicum repens* L. -- Torpedo grass,

~~oo~~: *Peganum harmala* L. -- African rue (Syrian rue),

~~pp~~: *Portulaca oleracea* L. -- Common purslane,

~~qq~~: *Rorippa austriaca* (Crantz.) Bess. -- Austrian fieldcress,

Salvinia molesta – Giant Salvinia.

~~rr~~: *Senecio jacobaea* L. -- Tansy ragwort,

~~ss~~: *Solanum carolinense* L. -- Carolina horsenettle,

~~tt~~: *Sonchus arvensis* L. -- Perennial sowthistle,

~~uu~~: *Solanum viarum* Dunal -- Tropical Soda Apple,

~~vv~~: *Stipa brachychaeta* Godr. -- Puna grass,

~~ww~~: *Striga* spp. -- Witchweed,

~~xx~~: *Trapa natans* L. -- Water-chestnut,

~~yy~~: *Tribulus terrestris* L. -- Puncturevine.

B. Area under quarantine: All states, districts, and territories of the United States except Arizona.

C. The following commodities are hosts or carriers of the pest:

1. All plants and plant parts other than those categorized as a pest;
2. Forage, straw and feed grains;
3. Live or dead flower arrangements;
4. Ornamental displays; ~~and~~
5. Aquariums; and

56. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.

D. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a pest and shall notify the owner or carrier of the methods of removing or destroying the pest from the commodity. The Department shall reject any shipment not released to the receiver and reship to the shipper.

E. Restrictions:

1. No pest or commodity infested or contaminated with a pest shall be admitted into the state unless the Director issues a permit for the transporting or propagating of ~~such~~ the pest.
2. The Department shall regulate the movement of the commodity out of a quarantined area within the state until the pest is eradicated. Any shipment or lot of a commodity infested or contaminated with a pest arriving in the state in violation of this quarantine shall, pursuant to A.R.S. § 3-205(A), be immediately reshipped from the state, or ~~be~~ treated or destroyed using ~~one~~ 1 of the following methods:
 - a. ~~Fumigating with ethylene oxide, chamber only.~~ The commodity shall be fumigated in a chamber with ethylene oxide with 1,500 mg/L for ~~four~~ 4 hours in a chamber pre-heated to 115-125°F_±.
 - b. Incinerating_±;
 - c. Burying in a sanitary landfill to a depth of ~~six~~ 6 feet_±;
 - d. Application of a herbicide_±; or
 - e. Any other treatment approved by the Director.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 14 | Amend |
| R15-5-1404 | Amend |
| R15-5-1405 | Amend |
| R15-5-1408 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 42-1005 and 42-5003
Implementing statute: A.R.S. §§ 42-5062
- 3. List of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 3235, September 17, 1999
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Ernest Powell, Supervisor
Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007
Telephone Number: (602) 542-4672
Fax Number: (602) 542-4680
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the transporting classification. As a result of the Department's 5-year review of Article 14, the Department is proposing to amend the rules to conform to current statutes and rulemaking guidelines.

R15-5-1404 and R15-5-1405 are proposed for amendment to clarify that baggage charges and demurrage charges are included in the transporting classification unless the related transporting is excluded from the classification. R15-5-1408 is amended to clarify when transporting by aircraft is taxable under the transporting classification and when it is considered taxable under the personal property rental classification as the rental of the aircraft.
- 6. Reference to any study that the agency proposes to rely on and its evaluation of or justification for 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:**
It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current statute and rulemaking guidelines, which will make the rules more accurate as well as clearer and easier to understand. In addition, the amendment of R15-5-1404 and R15-5-1405 will benefit the public by providing additional guidance regarding the taxability of excess baggage charges, demurrage charges, and transporting by aircraft. These rules only provide guidance in the application of the statute; the statute imposes the tax and establishes any deductions. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

Arizona Administrative Register
Notices of Proposed Rulemaking

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: Ernest Powell, Supervisor
Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007
Telephone Number: (602) 542-4672
Fax Number: (602) 542-4680

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:

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: March 13, 2000
Time: 9:00 a.m.
Location: Department of Revenue Building
1600 W. Monroe, Small Conference Room, B1 Floor
Phoenix, AZ 85007
Nature: Public hearing

A person may submit written comments regarding the proposed rule by submitting the comments no later than 5:00 p.m., March 13, 2000, to the person above.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

ARTICLE 14. ~~TRANSPORTING SALES TAX — RAILROADS AND AIRCRAFT CLASSIFICATION~~

Section

R15-5-1404. Excess ~~Baggage Charges~~ ~~baggage charges~~
R15-5-1405. Demurrage ~~Charges~~ ~~charges~~
R15-5-1408. Rental of ~~Aircraft~~ ~~airplanes~~

ARTICLE 14. ~~TRANSPORTING SALES TAX — RAILROADS AND AIRCRAFT CLASSIFICATION~~

R15-5-1404. Excess ~~Baggage Charges~~ ~~baggage charges~~

- A.** Gross proceeds of sales or gross income ~~Income~~ from charges for excess baggage shipped from one point to another point in this state ~~are included in the tax base under the transporting classification except as provided in subsection (B) is tax-~~ ~~able.~~
- B.** Gross proceeds of sales or gross income from charges for excess baggage shipped by motor vehicle from one point to another point in this state are not included in the tax base under the transporting classification if a light motor vehicle fee imposed under A.R.S. § 28-5492 or a motor carrier fee imposed under A.R.S. § 28-5852 is paid to the Department of Transportation on the vehicle used in the transporting.

R15-5-1405. Demurrage ~~Charges~~ charges

~~Gross proceeds of sales or gross income~~ Income from demurrage charges are included in the tax base under the transporting classification unless the transporting to which it relates is excluded from the transporting classification ~~collected on freight shipped from one point to another point in this state and demurrage charges collected on freight shipped from outside the state to a point within the state is taxable.~~

R15-5-1408. Rental of Aircraft ~~airplanes~~

- A.** ~~Gross proceeds of sales or gross income from transporting by aircraft freight or property from one point to another point in this state are included in the tax base under the transporting classification.~~
- B.** ~~A charge for the use of an aircraft when a pilot is not provided is rent. Gross proceeds of sales or gross income from the rental or leasing of aircraft are included in the tax base under the personal property rental classification unless a specific deduction or exclusion applies is taxable under the rental of personal property classification (see Article 15).~~