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 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[R06-123]

PREAMBLE

1. Sections Affected | **Rulemaking Action**
R3-2-801 | Amend

2. 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. §§ 3-603(A).

Implementing statute: A.R.S. § 3-667.

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:
Notice of Rulemaking Docket Opening: 12 A.A.R. 486, February 17, 2006

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

Name:	Rebecca A. Nichols, 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:	rnichols@azda.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:
To update the reference from the 2001 revision to the 2003 Revision of the *Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2001 Revision.*

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:
None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable

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

A. *The Arizona Department of Agriculture*.
The Department will incur modest expenses related to educating staff and the regulated community regarding the new revision to the Pasteurized Milk Ordinance.

B. *Political Subdivision.*
None

C. *Businesses Directly Affected by the Rulemaking.*
No businesses should be affected by this 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: Rebecca A. Nichols, 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: rnichols@azda.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 is not scheduled for these proposed rules. 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 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on May 22nd, 2006.

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:

The *Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2001 Revision*, is incorporated by reference in the definition of "PMO".

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section
R3-2-801. Definitions

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State.

"C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

"Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

"Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

"Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

"Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

"Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the require-

ments of R3-2-805.

"Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization.

"Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

~~"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.~~

~~"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.~~

"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

"Plate line" means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.

"PMO" means the Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, ~~2001~~ 2003 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department. ~~and the Office of the Secretary of State.~~

"Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

[R06-125]

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R3-4-220	Amend
R3-4-226	Amend
R3-4-238	Amend

2. 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 statute: A.R.S. § 3-201.01 and 3-202

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1341, April 21, 2006

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

Name: Rebecca A. Nichols, 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: rnichols@azda.gov

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

R3-4-220 is being amended to accomplish the following:

(1) Remove Vein Enation from the list of "Viral diseases" since it is no longer considered a threat to the Arizona citrus industry.
(2) Remove all whitefly and scale pests from the list of "Arthropods", now covered in R3-4-226 and R3-4-238.
(3) Revise the language of the "Restriction" section in order to clarify the requirements and bring them into harmony with other states' quarantines.

R3-4-226 is being amended to accomplish the following:

(1) To allow flexibility in treatment options. Currently, the chemicals used for regulatory treatments are listed in rule, which does not allow for rapid changes in options when more effective treatments become available. With this rule amendment, rather than being restricted to a chemical listed in rule, a specific chemical used for treatment will be approved by the Director prior to shipment.
(2) If the commodity originates from a nursery with a pest management program recognized and monitored by the origin state and approved by the Director, the commodity may enter the state without treatment prior to shipment.

R3-4-238 is being amended to accomplish the following:

(a) Remove the common names from the list of regulated commodities;
(b) Allow for certification of certain commodities by visual inspection;
(c) Allow flexibility in treatment options. Currently, the chemicals used for regulatory treatments are listed in rule, which does not allow for rapid changes in options when more effective treatments are available. With this rule amendment, rather than being restricted to a chemical listed in rule, a specific chemical used for treatment will be approved by the Director prior to shipment.
(d) Harmonize this rule with similar host lists contained in other rules.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:

None

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

Not applicable

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

A. *The Arizona Department of Agriculture*.
The Department will incur modest expenses related to educating staff and the regulated community regarding the new regulations.

B. *Political Subdivision.*
None

C. *Businesses Directly Affected by the Rulemaking.*
Out-of-state nurseries will incur modest expenses to meet the certification process outlined in these rules. These expenses will include the cost of chemical treatment, virus testing, and implementation of pest management programs. The cost to in-state nurseries would be negligible.

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:	Rebecca A. Nichols, 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:	rnichols@azda.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 is not scheduled for these proposed rules. 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 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on May 22nd, 2006.

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 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-220. Citrus Nursery Stock Pests
R3-4-226. Scale Insect ~~Pest~~ Pests
R3-4-238. Whitefly Pests

ARTICLE 2. QUARANTINE

R3-4-220. Citrus Nursery Stock Pests

A. Definitions. "Pest" means any of the following viral diseases or arthropods:
1. Viral diseases:
Cachexia (CVd-II)
Citrus Exocortis Virus (CEVd)
Citrus Psorosis Virus (CPsV)
Citrus Tristeza Virus (CTV).
~~Vein Enation, also known as Woody Gall, or~~
2. Arthropods. All life stages of:
Aceria sheldoni, Citrus bud mite
~~Aleurothrixus floccosus, Woolly whitefly;~~
~~Aonidiella aurantii, California red scale;~~
~~Aonidiella citrina, Yellow scale;~~
~~Chrysomphalus aonidum, Florida red scale;~~
~~Dialeurodes citri, Citrus whitefly;~~
~~Dialeurodes citrifolii, Cloudy-winged whitefly~~;
Maconellicoccus hirsutus, Pink hibiscus mealybug
Phyllocoptruta oleivora, Citrus rust mite
Pseudococcus comstocki, Comstock mealybug~~; or~~.
~~Pulvinaria psidii, Green shield scale.~~

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

C. Regulated commodities and appliances.
1. Commodities. A plant or plant part, except seed or attached green fruit, of all species, varieties, or hybrids of the genera Citrus, Eremocitrus, Fortunella, Poncirus, and Microcitrus.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to handle citrus nursery stock listed in subsection (C) (1).

D. Restrictions.
1. A person may ship a regulated commodity into Arizona from an area under quarantine if the regulated commodity is accompanied by ~~an original~~ a certificate, issued by a plant regulatory official ~~of the state of~~ from the origin state, attesting that the commodity:
~~a. The regulated commodity originated from an area:~~
~~i. Designated free from every disease listed in subsection (A)(1); or~~
~~ii. Where a designated suppression or eradication program for the diseases listed in subsection (A)(1) exists; and~~
~~b. The regulated commodity:~~
~~i. Originated from a source tree that was tested annually at a state-of-origin approved laboratory;~~

~~ii. Is free from every disease listed in subsection (A)(1);~~
~~iii. Was propagated from a bud, cutting, or scion from a tested and disease-free source tree; and~~
~~iv. Is free from every arthropod listed in subsection (A)(2), in accordance with a method approved by the Director.~~

a. Originates from an area not under quarantine for citrus tristeza virus, and
b. Originates from a source tree:
   i. Tested for Cachexia, citrus exocortis virus and citrus psorosis virus, or
   ii. That originates from budwood tested for Cachexia, citrus exocortis virus, and citrus psorosis virus, and
   iii Tested annually for citrus tristeza virus, and
c. Was treated within 5 days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the commodity is free of all live life stages of the arthropod pests listed in subsection (A)(2).

2. A person shall not ship a Meyer lemon plant or plant part, except fruit, into Arizona. An exception is allowed for the selection Improved Meyer lemon plant or plant part, which may be shipped into Arizona in compliance with this Section.
3. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant part, or to each individual container containing a plant or plant part, that is intended for resale by an Arizona receiver. The tag or label shall contain the following information separately provided for each scion variety grafted to a single rootstock:
   a. Name and address of the nursery that propagated the plant,
   b. Scion variety name,
   c. Scion variety registration number, and
   d. Rootstock variety name.
4. A person shipping a regulated commodity into Arizona shall ensure the commodity is also in compliance with the entry requirements prescribed in R3-4-226 (Scale Insect Pests) and R3-4-238 (Whitefly Pests).
5. A person may ship a regulated appliance into Arizona, provided that the appliance is accompanied by a certificate issued by a plant regulatory official from the origin state. The certificate must state that the appliance was treated within 5 days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the appliance is free of all live life stages of the arthropod pests listed in subsection (A)(2).

E. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out of state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

R3-4-226. Scale Insect ~~Pest~~ Pests

A. Definitions.
"Pest" means all life stages of the following:
Aonidiella aurantii, California red scale;
Aonidiella citrine, Yellow scale;
Chrysomphalus aonidum, Florida red scale; or
Pulvinaria psidi, Green shield scale.

B. Area under quarantine. The entire states of Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, and Texas, and the Commonwealth of Puerto Rico.

C. Regulated commodities. Plants and all plant parts, except seed, of the genera listed below:
Camellia ~~spp.,~~
Chrysalidocarpus ~~spp.,~~
Citrus ~~spp.,~~
Cycas ~~spp.~~,
Dracaena ~~spp.,~~
Eremocitrus ~~spp.,~~
Euonymus ~~spp.~~,
Ficus ~~spp.,~~
Fortunella ~~spp.,~~
Ilex ~~spp.,~~
Ligustrum ~~spp.,~~
Microcitrus ~~spp.,~~
Poncirus ~~spp., and~~
Rosa ~~spp.~~

D. Restrictions. A person ~~shall not~~ may ship ~~into Arizona~~ a regulated commodity to Arizona from an area under quarantine ~~unless~~ if each shipment is accompanied by ~~an original~~ a certificate issued by a plant regulatory official of the origin state ~~or commonwealth of origin~~ attesting that ~~the commodity was treated as prescribed in subsection (F).~~ within 5 days before shipment:

1. A regulated commodity of the genera *Citrus, Eremocitrus, Fortunella, Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
2. A regulated commodity not listed in subsection (D)(1):
   a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
   b. Originated from a nursery with a pest management program recognized and monitored by the origin state to control the pests listed in subsection (A), and was visually inspected and found to be free of all live life stages of the pests listed in subsection (A).

~~**E.** Exemptions.~~

~~1. A bare root rose free of all soil and foliage is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pests in subsection (A).~~

~~2. A miniature rose is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pest.~~

~~3. The Director shall issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (F) if:~~

~~a. A plant regulatory official of the state or commonwealth of origin attests that the area is free from the pests in subsection (A) based on a detection survey, and~~

~~b. The applicant complies with all conditions of the permit.~~

~~**F.** Treatment. A foliar application of a narrow range oil and one of the following chemicals, applied at label rates:~~

~~1. Acephate,~~
~~2. Buprofezin,~~
~~3. Imidacloprid,~~
~~4. Pyriproxyfen, or~~
~~5. Thiamethoxam.~~

~~**G**~~ **E.** Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out of state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

R3-4-238. Whitefly Pests

A. Definition.
"Pest" means:
1. Citrus whitefly, Dialeurodes citri (Ashm.);
2. Cloudy-winged whitefly, Dialeurodes citrifolii (Morgan);
3. Woolly whitefly, Aleurothrixus floccosus (Maskell).

B. Area under quarantine. Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

C. Commodities covered. Plants and all plant parts, except fruit and seed, of the following genera and species:

Ailanthus ~~spp. (Tree of Heaven),~~
Amplopsis ~~spp. (Boston Ivy),~~
Bignonia capreolata ~~spp. (Cross Vine),~~
Choisya ternata ~~(Mexican Orange),~~
Citrus ~~spp.,~~
Diospyros ~~spp.~~ ~~(Persimmon),~~
Eremocitrus
Feijoa ~~spp.~~ ~~(Pineapple guava),~~
Ficus macrophyll ~~(Ficus),~~
Fortunella ~~spp. (Kumquat),~~
Gardenia ~~spp. (Gardenia or Cape Jasmine),~~
Ilex ~~spp. (Holly),~~
Jasminum ~~spp. (Jasmine),~~
Lagerstroemia ~~spp. (Crape Myrtle),~~
Ligustrum ~~spp. (Privet),~~
Maclura pomifera ~~(Osage Orange),~~
Melia ~~spp. (Chinaberry),~~
Microcitrus

Musa ~~spp. (Banana Shrub),~~
Osmanthus ~~(Osmanthus) (Not tolerant to methyl bromide fumigation),~~
Plumaria ~~spp. (Frangipani, temple tree),~~
Poncirus ~~spp. (Trifoliate orange),~~
Prunus caroliniana ~~(Carolina Cherry Laurel),~~
Psidum ~~spp. (Guava),~~
Punica granatum ~~(Pomegranate),~~
Pyrus communis ~~(Pear),~~
Sapindus mukorossi ~~(Chinese Soapberry),~~
Smilax ~~spp. (Sarsparilla),~~
Syringa vulgaris ~~(Common Lilac), and~~
Viburnum ~~spp. (Viburnum)~~.

D. Restrictions. A person may ship a regulated commodity to Arizona from an area under quarantine if each shipment is accompanied by a certificate issued by a plant regulatory official of the state of origin attesting that within 5 days before shipment:

~~1. All covered commodities with foliage listed in subsection (C) shall be treated as prescribed in subsection (E) immediately before shipment and certified by an authorized official from the state of origin; or~~

~~2. The Director may issue a permit admitting a covered commodity subject to specific limitations, conditions, and provisions which eliminate the risk of the pest.~~

1. A regulated commodity of the genera *Citrus, Eremocitrus, Fortunella, Microcitrus,* and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
2. A regulated commodity not listed in subsection (D)(1):
   a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
   b. Originated from a nursery with a pest management program recognized and monitored by the origin state and to control the pests listed in subsection (A), and was visually inspected and found to be free of all live life stages of the pests listed in subsection (A), or
   c. The regulated commodity is completely devoid of foliage and is exempt from treatment for the pests listed in subsection (A).

~~**E.** Treatment.~~

~~1. Methyl bromide fumigation. 2 1/2 pounds of methyl bromide per 1000 cu. ft. of chamber space for two hours at 80° F or more.~~

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

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

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

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

~~c. Methods of treatment:~~

~~i. Dip. Totally submerge plant material for two minutes, remove for one minute, and submerge again for one minute. Then remove and let dry.~~

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

E. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out of state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R06-114]

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R4-23-110	Amend
R4-23-410	Amend
R4-23-670	Amend

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

Authorizing statutes: A.R.S. § 32-1904(A)(1)

Implementing statutes: A.R.S. § 32-1904(B)(3) and (5)

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 693, March 3, 2006

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

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

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

During the June 16, 2005, Board meeting, Board President Linda McCoy appointed a task force committee headed by Board members, Tom Van Hassel and Ridge Schmidt, to look at the 2004 changes made to *USP General Chapter 797 Pharmaceutical Compounding--Sterile Preparations* and recommend how the Board should address those changes in the pharmacy rules. The 797 Task Force Committee met four times on August 16, 2005, September 28, 2005, November 17, 2005, and January 26, 2006. The 797 Task Force Committee present their recommended rule changes to the Board at the March 15, 2006, Board meeting. The proposed rules are a result of the work of the 797 Task Force Committee. The proposed rules amend R4-23-110 (Definitions) by adding new definitions for: buffer zone, ISO class 5 environment, ISO class 7 environment, standard-risk sterile pharmaceutical product, and substantial-risk sterile pharmaceutical product and delete the definition for class 100 environment. The proposed rules amend R4-23-410 (Current Good Compounding Practices) and R4-23-670 (Sterile Pharmaceutical Products) to implement the recommendations of the 797 Task Force Committee. The proposed rules make minor changes to R4-23-410 to require a compounding pharmacy to comply with its policies and procedures. The proposed changes in R4-23-670 require an increase in the minimum square footage of the sterile pharmaceutical product compounding area from 60 square feet to 100 square feet and include a grandfather clause for existing pharmacies. Additional changes to R4-23-670 include changes to the required policies and procedures and new subsections describing the requirements for standard-risk and substantial-risk sterile pharmaceutical compounding. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the overall standards for compounding and the specific standards for sterile pharmaceutical product compounding.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:

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 proposed rules will impact the Board, pharmacies, pharmacists, and the public. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The Board estimates the proposed rules will have minimal to moderate economic impact on pharmacies, and pharmacists. Pharmacies must already have a minimum 60 square foot area for sterile pharmaceutical compounding within the pharmacy if the pharmacy compounds sterile pharmaceutical products. The proposed rules will require that the sterile compounding area meet the new ISO Class 7 environment standard, and some pharmacies may need to upgrade their area to meet the new cleanroom standard which will have an economic impact on the pharmacy. The Board estimates the cost to upgrade will range from zero to less than $10,000. The majority of the upgrades will involve simply adding HEPA filters to bring the area into compliance with the new cleanroom standard. The proposed rules have no economic impact on the public.

The public, Board, pharmacies, and pharmacists benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public and the pharmacy community by clearly establishing the overall standards for compounding and the specific standards for sterile pharmaceutical product compounding.

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

Name:	Dean Wright, Compliance Officer
Address:	Board of Pharmacy 4425 W. Olive Ave., Suite 140 Glendale, AZ 85302
Telephone:	(623) 463-2727, ext. 131
Fax:	(623) 934-0583
E-mail:	rxcop@cox.net

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:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Tuesday, May 23, 2006. An oral proceeding is scheduled for:

Date:	May 23, 2006
Time:	10:00 a.m.
Location:	4425 W. Olive Ave., Suite 140 Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person in item #9.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

Section
R4-23-410. Current Good Compounding Practices

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-670. Sterile Pharmaceutical Products

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to 4 A.A.C. 23:

"Active ingredient" No change

"Alternate physician" No change

"Approved course in pharmacy law" No change

"Approved Provider" No change

"Authentication of product history" No change

"Batch" No change

"Beyond-use date" No change

"Biological safety cabinet" No change

"Care-giver" No change

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

"Community pharmacy" No change

"Component" No change

"Compounding and dispensing counter" No change

"Computer system" No change

"Computer system audit" No change

"Contact hour" No change

"Container" No change

"Continuing education" No change

"Continuing education activity" No change

"Continuing education unit" or "CEU" No change

"Correctional facility" No change

"CRT" No change

"Current good compounding practices" No change

"Current good manufacturing practice" No change

"Cytotoxic" No change

"Day" No change

"DEA" No change

"Delinquent license" No change

"Dietary supplement" No change

"Dispensing pharmacist" No change

"Drug sample" No change

"Drug therapy management" No change

"Drug therapy management agreement" No change

"Eligible patient" No change

"Extreme emergency" No change

"FDA" No change

"Immediate notice" No change

"Inactive ingredient" No change

"Internal test assessment" No change

"ISO Class 5 environment" means an atmospheric environment in compliance with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

"ISO Class 7 environment" means an atmospheric environment in compliance with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

"Limited-service correctional pharmacy" No change

"Limited-service long-term care pharmacy" No change

"Limited-service mail-order pharmacy" No change

"Limited-service nuclear pharmacy" No change

"Limited-service pharmacy permittee" No change

"Limited-service sterile pharmaceutical products pharmacy" No change

"Long-term care consultant pharmacist" No change

"Long-term care facility" or "LTCF" No change

"Lot" No change

"Lot number" or "control number" No change

"Materials approval unit" No change

"Mediated instruction" No change

"MPJE" No change

"NABP" No change

"NABPLEX" No change

"NAPLEX" No change

"Other designated personnel" No change

"Outpatient" No change

"Outpatient setting" No change

"Patient profile" No change

"Pharmaceutical patient care services" No change

"Pharmaceutical product" No change

"Pharmacist-administered immunizations training program" No change

"Pharmacy counter working area" No change

"Pharmacy law continuing education" No change

"Pharmacy permittee" No change

"Prepackaged drug" No change

"Prep area" means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

"Proprietor" No change

"Provider pharmacy" No change

"Radiopharmaceutical" No change

"Radiopharmaceutical quality assurance" No change

"Radiopharmaceutical services" No change

"Red C stamp" No change

"Refill" No change

"Remodel" No change

"Remote drug storage area" No change

"Resident" No change

"Responsible person" No change

"Score transfer" No change

"Sight-readable" No change

"Single-drug audit" No change

"Single-drug usage report" No change

"Standard-risk sterile pharmaceutical product" means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical otic or ophthalmic product compounded from non-sterile ingredients.

"Sterile pharmaceutical product" No change

"Strength" No change

"Substantial-risk sterile pharmaceutical product" means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

"Supervision" No change

"Supervisory physician" No change

"Supplying" No change

"Support personnel" No change

"Transfill" No change

"Wholesale distribution" No change

"Wholesale distributor" No change

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-410. Current Good Compounding Practices

A. No change

B. A pharmacy permittee shall ensure compliance with the provisions in this subsection.

1. All substances for compounding that are received, stored, or used by the pharmacy permittee:
   a. No change
   b. No change
   c. Are obtained from a source that, in the professional ~~judgement~~ judgment of the pharmacist, is acceptable and reliable.
2. No change
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
4. No change

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
2. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change

D. No change
1. No change
2. No change

E. No change
1. No change
   a. No change
   b. No change
2. No change
3. No change

F. No change
1. No change
2. No change
3. No change
4. No change
5. No change

G. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, ~~and~~ implements, and complies with procedures to prevent cross-contamination when pharmaceutical products that require special precautions to prevent cross-contamination, such as penicillin, are used in a compounding procedure. The procedures shall include either the dedication of equipment or the meticulous cleaning of contaminated equipment before its use in compounding other pharmaceutical products.

H. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, ~~and~~ implements, and complies with control procedures for components and pharmaceutical product containers and closures, either written or electronically stored with printable documentation, that conform with the standards in this subsection.
1. No change
   a. No change
   b. No change
   c. No change
2. No change
3. No change

I. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, ~~and~~ implements, and complies with pharmaceutical product compounding controls that conform with the standards in this subsection.
1. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
2. No change
   a. No change
   b. No change
3. No change
4. No change
   a. No change
   b. No change

5. No change
6. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change

J. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
2. No change

K. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, ~~and~~ implements, and complies with record-keeping procedures that comply with this subsection:
1. No change
2. No change

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-670. Sterile Pharmaceutical Products

A. In addition to the minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, ~~a pharmacy permittee, limited-service pharmacy permittee, or applicant~~ any pharmacy permit issued or pharmacy remodeled after November 1, 2006, shall provide a minimum sterile pharmaceutical product compounding area that is not less than ~~60~~ 100 square feet of contiguous floor area. The pharmacy permittee or the pharmacist-in-charge shall ensure that the sterile pharmaceutical product compounding area:
1. Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
2. Is isolated from other pharmacy functions;
3. Restricts entry or access;
4. Is free from unnecessary disturbances in air flow; ~~and~~
5. Is made of non-porous and cleanable floor, wall, and ceiling material; and
6. Meets the minimum air cleanliness standards of an ISO Class 7 environment as defined in R4-23-110, except an ISO class 7 environment is not required when all sterile pharmaceutical product compounding occurs within an ISO class 5 environment isolator, such as a glove box, pharmaceutical isolator, barrier isolator, pharmacy isolator, or hospital pharmacy isolator.

B. In addition to the equipment requirements in R4-23-611 and R4-23-612 or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:
1. Environmental control devices capable of maintaining a compounding area environment equivalent to ~~a "class 100~~ an "ISO class 5 environment" as defined in R4-23-110. Devices capable of meeting these standards include: laminar airflow hoods, hepa filtered zonal airflow devices, glove boxes, pharmaceutical isolators, barrier isolators, pharmacy isolators, hospital pharmacy isolators, and biological safety cabinets;
2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
3. Freezer storage units with thermostatic control and thermometer, if applicable;
4. Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
5. Infusion devices and accessories, if applicable; and
6. In addition to the reference library requirements of R4-23-612, a current reference pertinent to the preparation of sterile pharmaceutical products.

C. Before compounding a sterile pharmaceutical product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:
1. Prepare, ~~and~~ implement, and comply with policies and procedures for compounding and dispensing sterile pharmaceutical products,
2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1),
3. Document the review required under subsection (C)(2),

4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or ~~it's~~ its designee.

D. The assembled policies and procedures shall include, where applicable, the following subjects:
1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
2. Clinical services and drug monitoring procedures for:
   a. Patient drug utilization reviews;
   b. Inventory audits;
   c. Patient outcome monitoring;
   d. Drug information; and
   e. Education of pharmacy and other health professionals;
3. Controlled substances;
4. Supervisory controls and verification procedures for:
   a. Cytotoxics handling, storage, and disposal;
   b. Disposal of unused supplies and pharmaceutical products; and
   c. Handling and disposal of infectious wastes;
5. Pharmaceutical product administration, including guidelines for the first dosing of a pharmaceutical product;
6. Drug and component procurement;
7. Pharmaceutical product compounding, dispensing, and storage;
8. Duties and qualifications of professional and support staff;
9. Equipment maintenance;
10. Infusion devices and pharmaceutical product delivery systems;
11. Investigational drugs and their protocols;
12. Patient profiles;
13. Patient education and safety;
14. Quality management procedures for:
   a. Adverse drug reactions;
   b. Drug recalls;
   c. Expired ~~and beyond-use-date~~ pharmaceutical products;
   d. Beyond-use-dating for both standard-risk and substantial-risk sterile pharmaceutical products consistent with the requirements of R4-23-410(B)(3)(d);
   ~~d.~~e. Temperature and other environmental controls;
   ~~e.~~f. Documented process and product validation testing; and
   ~~f.~~g. ~~Annual~~ Semi-annual certification of the laminar air flow hood or other ISO class ~~100~~ 5 environment, other equipment, and the ISO class 7 environment, including documentation of routine ~~hood~~ cleaning and maintenance for each hood, equipment, and environment; and
15. Sterile pharmaceutical product delivery requirements for:
   a. Shipment to the patient;
   b. Security; and
   c. Maintaining official compendial storage conditions.

E. Standard-risk sterile pharmaceutical product compounding. Before compounding a standard-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding occurs only in an ISO class 5 environment within an ISO class 7 environment, and the ISO class 7 environment may have a specified prep area inside the environment;
2. Compounding sterile pharmaceutical products from sterile commercial drugs or sterile pharmaceutical otic or ophthalmic products from non-sterile ingredients occurs using procedures that involve only a few closed-system, basic, simple aseptic transfers and manipulations;
3. Compounding personnel wear adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Compounding personnel are not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
4. Each person who compounds completes an annual media-fill test to validate proper aseptic technique.

F. Substantial-risk sterile pharmaceutical product compounding. Before compounding a substantial-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding parenteral or injectable sterile pharmaceutical products from non-sterile ingredients occurs only in an ISO class 5 environment within an ISO class 7 environment and the ISO class 7 environment shall not have a prep area inside the environment;

2. Compounding personnel wear adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Compounding personnel are not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
3. Each person who compounds completes a semi-annual media-fill test that simulates the most challenging or stressful conditions using dry non-sterile media to validate proper aseptic technique.

Editor's Note: The following notice is being published as is with regard to capitalization of defined terms. The Commission has notified the Office of the Secretary of State that it may make extensive changes to the capitalization of these terms throughout the rules before filing the Notice of Final Rulemaking.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

[R06-122]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R14-2-1801	New Section
R14-2-1802	New Section
R14-2-1803	New Section
R14-2-1804	New Section
R14-2-1805	New Section
R14-2-1806	New Section
R14-2-1807	New Section
R14-2-1808	New Section
R14-2-1809	New Section
R14-2-1810	New Section
R14-2-1811	New Section
R14-2-1812	New Section
R14-2-1813	New Section
R14-2-1814	New Section
R14-2-1815	New Section
Appendix A	New Appendix

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

Authorizing statute: Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes

Implementing statute: Not applicable

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1344, April 21, 2006

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

Name: Ray T. Williamson, Utilities Electrical Engineer

Address: Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-0828

Fax: (602) 542-0766

E-mail: rwilliamson@azcc.gov

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

The Commission initiated this rulemaking to promote its goals to protect the environment and increase renewable energy resources for diversity of the fuel supply, to enhance system reliability and safety in a post 9/11 era, and to mitigate against volatility in non-renewable fuel prices.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:

Not applicable

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

Not applicable

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

The public at large would benefit from a renewable energy standard that encourages a larger portion of the electricity sold in Arizona to be produced from renewable energy resources. Producing electricity from renewable energy resources has fewer adverse impacts on air, land, and water than producing electricity from conventional energy sources.

The cost to consumers of electric service would be $0.004988 per kilowatt-hour of retail electricity purchased by the consumer with caps of $1.05 per service per month for residential customers, $39.00 per service per month for non-residential consumers whose demand is less than 3,000 kilowatts per month, and $117.00 per service per month for non-residential consumers whose demand is 3,000 kilowatts or more per month.

Manufacturers and distributors of eligible renewable technologies would benefit because load-serving entities could meet a portion of their portfolio requirement through the installation of those eligible renewable technologies. Employees of those firms would be expected to have increased job opportunities.

A cost to load-serving entities would be the cost of complying with the reporting requirements, of filing plans, as well as the cost of procuring the renewable resources.

Probable costs to the Commission of the proposed rule would include costs associated with reviewing plans, coordination of working group activities, review of associated filings, and participation in related Commission hearings and meetings.

Adoption of the proposed rule would increase the portion of electricity sold in Arizona that is produced from renewable energy resources.

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:	Ray T. Williamson, Utilities Electrical Engineer
Address:	Arizona Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-0828
Fax:	(602) 542-0766
E-mail:	rwilliamson@azcc.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:

Comments may be written or presented orally. Written comments will be received through May 23, 2006, at the address listed in item #9. An oral proceeding is scheduled for:

Date:	May 23, 2006
Time:	10:00 a.m.
Location:	Arizona Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
Nature:	Public Comment Hearing

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 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES

ARTICLE 18. ~~RESERVED~~ RENEWABLE ENERGY STANDARD AND TARIFF

Section

ARTICLE 18. ~~RESERVED~~ RENEWABLE ENERGY STANDARD AND TARIFF

R14-2-1801. Definitions

A. "Affected Utility" means a public service corporation serving retail electric load in Arizona, but excluding any utility distribution company with more than half of its customers located outside of Arizona.

B. "Annual Renewable Energy Requirement" means the portion of an affected utility's annual retail electricity sales that must come from eligible renewable energy resources.

C. "Conventional Energy Resource" means an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not renewable energy resources.

D. "Customer Self-Directed Renewable Energy Option" means a Commission-approved program under which an eligible customer may self-direct the use of its allocation of funds collected pursuant to an affected utility's tariff.

E. "Distributed Generation" means electric generation sited at a customer premises, providing electric energy to the customer load on that site or providing wholesale capacity and energy to the local utility distribution company for use by multiple customers in contiguous distribution substation service areas. The generator size and transmission needs shall be such that the plant or associated transmission lines do not require a Certificate of Environmental Compatibility from the Corporation Commission.

F. "Distributed Renewable Energy Requirement" means a portion of the annual renewable energy requirement that must be met with renewable energy credits derived from resources that qualify as distributed renewable energy resources pursuant to R14-2-1802(B).

G. "Distributed Solar Electric Generator" means electric generation sited at a customer premises, providing electric energy from solar electric resources to the customer load on that site or providing wholesale capacity and energy to the local utility distribution company for use by multiple customers in contiguous distribution substation service areas. The generator size and transmission needs shall be such that the plant or associated transmission lines do not require a Certificate of Environmental Compatibility from the Corporation Commission.

H. "Eligible Customer" means an entity that pays tariff funds of at least $25,000 annually for any number of related accounts or services within an affected utility's service area.

I. "Extra Credit Multiplier" means a way to increase the renewable energy credits attributable to specific eligible renewable

energy resources in order to encourage specific renewable applications.

J. "Green Pricing" means a rate option in which a customer elects to pay a tariffed rate premium for electricity derived from eligible renewable energy resources.

K. "Market Cost of Comparable Conventional Generation" means the affected utility's energy and capacity cost of producing or procuring the incremental electricity that would be avoided by the resources used to meet the annual renewable energy requirement, taking into account hourly, seasonal, and long-term supply and demand circumstances. Avoided costs include any avoided transmission and distribution costs and any avoided environmental compliance costs.

L. "Net Billing" means a system of billing a customer who installs an eligible renewable energy resource generator on the customer's premises for retail electricity purchased at retail rates while crediting the customer's bill for any customer-generated electricity sold to the affected utility at avoided cost.

M. "Net Metering" means a system of metering electricity by which the affected utility credits the customer at the full retail rate for each kilowatt-hour of electricity produced by an eligible renewable energy resource system installed on the customer-generator's side of the electric meter, up to the total amount of electricity used by that customer during an annualized period, and which compensates the customer-generator at the end of the annualized period for any excess credits at a rate equal to the affected utility's avoided cost of wholesale power. The affected utility does not charge the customer-generator any additional fees or charges or impose any equipment or other requirements unless the same is imposed on customers in the same rate class that the customer-generator would qualify for if the customer-generator did not have generation equipment.

N. "Renewable Energy Credit" means the unit created to track kWh derived from an eligible renewable energy resource or kWh equivalent of conventional energy resources displaced by distributed renewable energy resources.

O. "Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.

P. "Tariff" means a Commission-approved rate designed to recover an affected utility's reasonable and prudent costs of complying with these rules.

Q. "Utility Distribution Company" means a public service corporation that operates, constructs, or maintains a distribution system for the delivery of power to retail customers.

R. "Wholesale Distributed Generation Component" means non-utility owners of eligible renewable energy resources that are located within the distribution system and that do not require a transmission line over 69 kv to deliver power at wholesale to an affected utility to meet its annual renewable energy requirements.

R14-2-1802. Eligible Renewable Energy Resources

A. "Eligible Renewable Energy Resources" are applications of the following defined technologies that displace conventional energy resources that would otherwise be used to provide electricity to an affected utility's Arizona customers:

1. "Biogas Electricity Generator" is a generator that produces electricity from gases that are derived from plant-derived organic matter, agricultural food and feed matter, wood wastes, aquatic plants, animal wastes, vegetative wastes, or wastewater treatment facilities using anaerobic digestion or from municipal solid waste through a digester process, an oxidation process, or other gasification process.
2. "Biomass Electricity Generator" is an electricity generator that uses any raw or processed plant-derived organic matter available on a renewable basis, including: dedicated energy crops and trees; agricultural food and feed crops; agricultural crop wastes and residues; wood wastes and residues, including landscape waste, right-of-way tree trimmings, or small diameter forest thinnings that are 12" in diameter or less; dead and downed forest products; aquatic plants; animal wastes; other vegetative waste materials; non-hazardous plant matter waste material that is segregated from other waste; forest-related resources, such as harvesting and mill residue, pre-commercial thinnings, slash, and brush; miscellaneous waste, such as waste pellets, crates, and dunnage; and recycled paper fibers that are no longer suitable for recycled paper production, but not including painted, treated, or pressurized wood, wood contaminated with plastics or metals, tires, or recyclable post-consumer waste paper.
3. "Distributed Renewable Energy Resources" as defined in subsection (B).
4. "Eligible Hydropower Facilities" are hydropower generators that were in existence prior to 1997 and that satisfy one of the following two criteria:
   a. New Increased Capacity of Existing Hydropower Facilities: A hydropower facility that increases capacity due to improved technological or operational efficiencies or operational improvements resulting from improved or modified turbine design, improved or modified wicket gate assembly design, improved hydrological flow conditions, improved generator windings, improved electrical excitation systems, increases in transformation capacity, and improved system control and operating limit modifications. The electricity kWh that are eligible to meet the annual renewable energy requirements shall be limited to the new, incremental kWh output resulting from the capacity increase that is delivered to Arizona customers to meet the annual renewable energy requirement.
   b. Generation from pre-1997 hydropower facilities that is used to firm or regulate the output of other eligible, intermittent renewable resources. The electricity kWh that are eligible to meet the annual renewable energy requirements shall be limited to the kWh actually generated to firm or regulate the output of eligible intermittent

renewable energy resources and that are delivered to Arizona customers to meet the annual renewable energy requirements.

5. "Fuel Cells that Use Only Renewable Fuels" are fuel cell electricity generators that operate on renewable fuels, such as hydrogen created from water by eligible renewable energy resources. Hydrogen created from non-renewable energy resources, such as natural gas or petroleum products, is not a renewable fuel.
6. "Geothermal Generator" is an electricity generator that uses heat from within the earth's surface to produce electricity.
7. "Hybrid Wind and Solar Electric Generator" is a system in which a wind generator and a solar electric generator are combined to provide electricity.
8. "Landfill Gas Generator" is an electricity generator that uses methane gas obtained from landfills to produce electricity.
9. "New Hydropower Generator of 10 MW or Less" is a generator, installed after January 1, 2006, that produces 10 MW or less and is either:
   a. A low-head, micro hydro run-of-the-river system that does not require any new damming of the flow of the stream; or
   b. An existing dam that adds power generation equipment without requiring a new dam, diversion structures, or a change in water flow that will adversely impact fish, wildlife, or water quality; or
   c. Generation using canals or other irrigation systems.
10. "Solar Electricity Resources" use sunlight to produce electricity by either photovoltaic devices or solar thermal electric resources.
11. "Wind Generator" is a mechanical device that is driven by wind to produce electricity.

B. "Distributed Renewable Energy Resources" are applications of the following defined technologies that are located at a customer's premises and that displace conventional energy resources that would otherwise be used to provide electricity to Arizona customers:

1. "Biogas Electricity Generator," "Biomass Electricity Generator," "Geothermal Generator," "Fuel Cells that Use Only Renewable Fuels," "New Hydropower Generator of 10 MW or Less," or "Solar Electricity Resources," as each of those terms is defined in subsections (A)(1), (A)(2), (A)(5), (A)(6), (A)(9), and (A)(10).
2. "Biomass Thermal Systems" and "Biogas Thermal Systems" are systems which use fuels as defined in subsections (A)(1) and (A)(2) to produce thermal energy and that comply with Environmental Protection Agency Certification Programs or are permitted by state, county, or local air quality authorities. For purposes of this definition "biomass thermal systems" and "biogas thermal systems" do not include biomass and wood stoves, furnaces, and fireplaces.
3. "Commercial Solar Pool Heaters" are devices that use solar energy to heat commercial or municipal swimming pools.
4. "Geothermal Space Heating and Process Heating Systems" are systems that use heat from within the earth's surface for space heating or for process heating.
5. "Renewable Combined Heat and Power System" is a distributed generation system, fueled by an eligible renewable energy resource, that produces both electricity and useful renewable process heat. Both the electricity and renewable process heat may be used to meet the distributed renewable energy requirement.
6. "Solar Daylighting" is the non-residential application of a device specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.
7. "Solar Heating, Ventilation, and Air Conditioning" ("HVAC") is the combination of solar space cooling and solar space heating as part of one system.
8. "Solar Industrial Process Heating and Cooling" is the use of solar thermal energy for industrial or commercial manufacturing or processing applications.
9. "Solar Space Cooling" is a technology that uses solar thermal energy absent the generation of electricity to drive a mechanical refrigeration machine that provides for space cooling in a building.
10. "Solar Space Heating" is a method whereby a mechanical system is used to collect solar energy to provide space heating for buildings.
11. "Solar Water Heater" is a device that uses solar energy rather than electricity or fossil fuel to heat water for residential, commercial, or industrial purposes.
12. "Wind Generator of 1 MW or Less" is a mechanical device, with an output of 1 MW or less, that is driven by wind to produce electricity.

C. Except as provided in subsection (A)(4), eligible renewable energy resources shall not include facilities installed before January 1, 1997.

D. The Commission may adopt pilot programs in which additional technologies are established as eligible renewable energy resources. Any such additional technologies shall be renewable energy resources that produce electricity, replace electricity generated by conventional energy resources, or replace the use of fossil fuels with renewable energy resources. Energy conservation products, energy management products, energy efficiency products, or products that use non-renewable fuels shall not be eligible for these pilot programs.

R14-2-1803. Renewable Energy Credits

A. One renewable energy credit shall be created for each kWh derived from an eligible renewable energy resource.

B. For distributed renewable energy resources, one renewable energy credit shall be created for each 3,415 British Thermal Units of heat produced by a solar water heating system, a solar industrial process heating and cooling system, solar space cooling system, biomass thermal system, biogas thermal system, or a solar space heating system.

C. An affected utility may transfer renewable energy credits to another party and may acquire renewable energy credits from another party. A renewable energy credit is owned by the owner of the eligible renewable energy resource from which it was derived unless specifically transferred.

D. All transfers of renewable energy credits shall be appropriately documented. Any sales contract of kWh by a system owner shall explicitly describe the transfer of rights of both electricity and its renewable energy credits. Affected utilities must document the delivery of the renewable electricity to its customers by providing proof that the necessary transmission rights were reserved and utilized, if transmission is required, and that the appropriate control area operators scheduled the renewable electricity for delivery to the affected utility's customers.

R14-2-1804. Annual Renewable Energy Requirement

A. In order to ensure reliable electric service at reasonable rates, each affected utility shall be required to satisfy an annual renewable energy requirement by obtaining renewable energy credits from eligible renewable energy resources.

B. An affected utility's annual renewable energy requirement shall be calculated each calendar year by applying the following applicable annual percentage to the retail kWh sold by the affected utility during that calendar year:

2006	1.25%
2007	1.50%
2008	1.75%
2009	2.00%
2010	2.50%
2011	3.00%
2012	3.50%
2013	4.00%
2014	4.50%
2015	5.00%
2016	6.00%
2017	7.00%
2018	8.00%
2019	9.00%
2020	10.00%
2021	11.00%
2022	12.00%
2023	13.00%
2024	14.00%
After 2024	15.00%

C. An affected utility may use renewable energy credits acquired in any year to meet its annual renewable energy requirement.

D. Once a renewable energy credit is used by any affected utility to satisfy these requirements, the credit is retired and cannot be subsequently used to satisfy these rules or any other regulatory requirement.

E. If an affected utility trades or sells environmental pollution reduction credits or any other environmental attributes associated with kWh produced by an eligible renewable energy resource, the affected utility may not apply renewable energy credits derived from that same kWh to satisfy the requirements of these rules.

F. No more than 20 percent of an affected utility's may be met with renewable energy credits derived pursuant to R14-2-1807.

G. An affected utility may ask the Commission to preapprove agreements to purchase energy or renewable energy credits from eligible renewable energy resources.

R14-2-1805. Distributed Renewable Energy Requirement

A. In order to improve system reliability, each affected utility shall be required to satisfy a distributed renewable energy requirement by obtaining renewable energy credits from distributed renewable energy resources.

B. An affected utility's distributed renewable energy requirement shall be calculated each calendar year by applying the following applicable annual percentage to the affected utility's annual renewable energy requirement:

2007	5%
2008	10%
2009	15%
2010	20%
2011	25%
After 2011	30%

C. An affected utility may use renewable energy credits acquired in any year to meet its distributed renewable energy requirement. Once a renewable energy credit is used by any affected utility to satisfy these requirements, the credit is retired.

D. An affected utility shall meet one-half of its annual distributed renewable energy requirement from residential applications and the remaining one-half from non-residential, non-utility applications.

E. An affected utility may satisfy no more than 10 percent of its annual distributed renewable energy requirement from renewable energy credits derived from distributed renewable energy resources that are non-utility owned generators that sell electricity at wholesale to affected utilities. This wholesale distributed generation component shall qualify for the non-residential portion of the distributed renewable energy requirement.

R14-2-1806. Extra Credit Multipliers

A. Renewable energy credits derived from eligible renewable energy resources installed after December 31, 2005, shall not be eligible for extra credit multipliers.

B. The extra renewable energy credits resulting from any applicable multiplier shall be added to the renewable energy credits produced by the eligible renewable energy resource to determine the total renewable energy credits that may be used to meet an affected utility's annual renewable energy requirement.

C. Early Installation Extra Credit Multiplier. Affected utilities acquiring renewable energy credits from a solar electricity resource, a solar water heater, a solar space cooling system, a landfill gas generator, a wind generator, or a biomass electricity generator that was installed and began operations between January 1, 2001, and December 31, 2003, shall be eligible for an early installation extra credit multiplier. Renewable energy credits derived from such facilities and acquired by affected utilities shall be eligible for five years following the facility's operational start-up. The multiplier shall vary according to the year in which the system began operating:

2001	.3
2002	.2
2003	.1

D. In-State Power Plant Installation Extra Credit Multiplier. Affected utilities acquiring renewable energy credits from a solar electricity resource that was installed in Arizona on or before December 31, 2005, shall be eligible for an in-state power plant installation extra credit multiplier. The renewable energy credits derived from such a facility and acquired by an affected utility shall be multiplied by .5 annually for the life of the facility. The extra renewable energy credits resulting from the multiplier shall be added to the renewable energy credits produced by the eligible renewable energy resource to determine the total renewable energy credits that may be used to meet an affected utility's annual renewable energy requirement.

E. In-State Manufacturing and Installation Content Extra Credit Multiplier. Affected utilities acquiring renewable energy credits from a solar electricity resource, a solar water heater, a solar space cooling system, a landfill gas generator, a wind generator, or a biomass electricity generator that was installed in Arizona on or before December 31, 2005, and that contains components manufactured in Arizona shall be eligible for an in-state manufacturing and installation content extra credit multiplier. The renewable energy credits derived from such a facility and acquired by an affected utility shall be multiplied annually for the life of the facility by a factor determined by multiplying .5 times the percent of Arizona content of the total installed plant.

F. Distributed Solar Electric Generator and Solar Incentive Program Extra Credit Multiplier. Affected utilities acquiring renewable energy credits from a distributed solar electric generator that was installed in Arizona on or before December 31, 2005, shall be eligible for a distributed solar electric generator and solar incentive program extra credit multiplier if the facility meets at least two of the following criteria:

1. The facility is installed on customer premises,
2. The facility is included in any affected utility's approved green pricing program,
3. The facility is included in any affected utility's approved net metering or net billing program,

4. The facility is included in any affected utility's approved solar leasing program, or
5. The facility is owned by and located on an affected utility's property or customer property. The renewable energy credits derived from such a facility and acquired by an affected utility shall be multiplied by .5 annually for the life of the facility. Meters will be attached to each solar electric generator and read at least once annually to verify solar performance.

G. All multipliers are additive, except that the maximum combined extra credit multiplier shall not exceed 2.0.

R14-2-1807. Manufacturing Partial Credit

A. An affected utility may acquire renewable energy credits to apply to the non-distributed portion of its annual renewable energy requirement if it or its affiliate owns or makes a significant investment in any solar electric manufacturing plant located in Arizona or if it or its affiliate provides incentives to a manufacturer of solar electric products to locate a manufacturing facility in Arizona.

B. The renewable energy credits shall be equal to the nameplate capacity of the solar electric generators produced and sold in a calendar year times 2,190 hours, which approximates a 25 percent capacity factor.

C. Extra credit multipliers shall not apply to renewable energy credits created by this Section.

R14-2-1808. Tariff

A. Within 60 days of the effective date of these rules, each affected utility shall file with the Commission a tariff that proposes methods for recovering the reasonable and prudent costs of complying with these rules.

B. The affected utility's tariff filing shall provide the following information:
1. Financial information and supporting data sufficient to allow the Commission to determine the affected utility's fair value for purposes of evaluating the affected utility's proposed tariff,
2. A discussion of the suitability of the sample tariff set forth in Appendix A for recovering the affected utility's reasonable and prudent costs of complying with these rules,
3. Data to support the level of costs that the affected utility contends will be incurred in order to comply with these rules,
4. Data to demonstrate that the affected utility's proposed tariff is designed to recover only the costs in excess of the market cost of conventional generation, and
5. Any other information that the Commission believes will be relevant to the Commission's consideration of the tariff filing.

C. The Commission will approve, modify, or deny a tariff proposed pursuant to subsection (A) within 180 days after the tariff has been filed. The Commission may suspend this deadline or adopt an alternative procedural schedule for good cause.

D. If an affected utility has an adjustor mechanism for the recovery of costs related to renewable energy requirements, the affected utility may file a request to reset its adjustor mechanism in lieu of a tariff pursuant to subsection (A). The affected utility's filing shall provide all the information required by subsection (B), except that it may omit information specifically related to the fair value determination.

E. An affected utility may file a rate case pursuant to R14-2-103 in lieu of a tariff pursuant to subsection (A). The affected utility's filing shall provide all information required by subsection (B).

R14-2-1809. Customer Self-Directed Renewable Energy Option

A. By January 1, 2007, each affected utility shall file with Docket Control a tariff by which an eligible customer may apply to an affected utility to receive funds to install distributed renewable energy resources. The funds annually received by an eligible customer pursuant to this tariff may not exceed the amount annually paid by the pursuant to the affected utility's tariff.

B. An eligible customer seeking to participate in this program shall submit to the affected utility a written application that describes the renewable energy resources that it proposes to install and the projected cost of the project. An eligible customer shall provide at least half of the funding necessary to complete the project described in its application.

C. All renewable energy credits derived from the project, including generation and extra credit multipliers, shall be applied to satisfy the affected utility's annual renewable energy requirement.

R14-2-1810. Uniform Credit Purchase Program

A. The Director of the Utilities Division shall establish a Uniform Credit Purchase Program Working Group, which will study issues related to implementing distributed renewable energy resources. The working group shall address the consumer participation process, budgets, incentive levels, eligible technologies, system requirements, installation requirements, and any other issues that are relevant to encouraging the implementation of distributed renewable energy resources. No later than March 1, 2007, the Director of the Utilities Division shall file a staff report with recommendations for utility credit purchase programs.

B. No later than July 1, 2007, each affected utility shall file a Credit Purchase Program for Commission review and approval.

R14-2-1811. Net Metering and Interconnection Standards

The Commission Staff shall host a series of workshops addressing the issues of rate design including net metering and interconnection standards. Upon completion of this task, and the adoption of rules or standards, if appropriate, each affected utility

shall file conforming net metering tariffs and interconnection standards in Docket Control.

R14-2-1812. Compliance Reports

A. Beginning April 1, 2007, and every April 1st thereafter, each affected utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year. The affected utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is suitable for posting on the Commission's web site.

B. The compliance report shall include the following information:
1. The actual kWh of energy or equivalent obtained from eligible renewable energy resources;
2. The kWh of energy or equivalent obtained from eligible renewable energy resources normalized to reflect a full year's production;
3. The kW of generation capacity, disaggregated by technology type;
4. A breakdown of the renewable energy credits used to satisfy both the annual renewable energy requirement and the distributed renewable energy requirement and appropriate documentation of the affected utility's receipt of those renewable energy credits; and
5. A description of the affected utility's procedures for choosing eligible renewable energy resources and a certification from an independent auditor that those procedures are fair and unbiased and have been appropriately applied.

C. The Commission may hold a hearing to determine whether an affected utility's compliance report satisfies the requirements of these rules.

R14-2-1813. Implementation Plans

A. Beginning July 1, 2007, and every July 1st thereafter, each affected utility shall file with Docket Control a plan that describes how it intends to comply with these rules for the next calendar year. The affected utility shall also transmit an electronic copy of this plan that is suitable for posting on the Commission's web site to the Director of the Utilities Division.

B. The implementation plan shall include the following information:
1. A description of the eligible renewable energy resources, identified by technology, proposed to be added by year for the next five years and a description of the kW and kWh to be obtained from each of those resources;
2. The estimated cost of each eligible renewable energy resource proposed to be added, including cost per kWh and total cost per year;
3. A description of the method by which each eligible renewable energy resource is to be obtained, such as self-build, customer installation, or request for proposals;
4. A proposal that evaluates whether the affected utility's existing rates allow for the ongoing recovery of the reasonable and prudent costs of complying with these rules, including a tariff application that meets the requirements of R14-2-1808 and addresses the sample tariff set forth in Appendix A if necessary; and
5. A line item budget that allocates specific funding for distributed renewable energy resources, for the customer self-directed renewable energy option, for power purchase agreements, for utility-owned systems, and for each eligible renewable energy resource described in the affected utility's implementation plan.

C. The Commission may hold a hearing to determine whether an affected utility's implementation plan satisfies the requirements of these rules.

R14-2-1814. Electric Power Cooperatives

A. Within 60 days of the effective date of these rules, every electric cooperative that is an affected utility shall file with Docket Control an appropriate plan for acquiring renewable energy credits from eligible renewable energy resources for the next calendar year and a tariff that proposes methods for recovering the reasonable and prudent costs of complying with its proposed plan and addresses the sample tariff set forth in Appendix A. The cooperative shall also transmit electronic copies of these filings that are suitable for posting on the Commission's web site to the Director of the Utilities Division. Upon Commission approval of this plan, its provisions shall substitute for the requirements of R14-2-1804 and R14-2-1805 for the electric power cooperative proposing the plan.

B. Beginning July 1, 2007, and every July 1st thereafter, every electric cooperative that is an affected utility shall file with Docket Control an appropriate plan for acquiring renewable energy credits from eligible renewable energy resources for the next calendar year. The cooperative shall also transmit an electronic copy of this plan that is suitable for posting on the Commission's web site to the Director of the Utilities Division.

R14-2-1815. Enforcement and Penalties

A. If an affected utility fails to meet the annual requirements set forth in R14-2-1804 and R14-2-1805, it shall include with its annual compliance report a notice of noncompliance.

B. The notice of noncompliance shall provide the following information:
1. A computation of the difference between the renewable energy credits required by R14-2-1804 and R14-2-1805 and the amount actually obtained,

2. A plan describing how the affected utility intends to meet the shortfall from the previous calendar year in the current calendar year, and
3. An estimate of the costs of meeting the shortfall.

C. An affected utility shall not recover the costs of meeting the shortfall described in subsection (B) in rates unless otherwise ordered by the Commission after affording the affected utility notice and an opportunity to be heard.

D. An affected utility may ask the Commission to waive its compliance with any provision of these rules for good cause.

E. Nothing herein is intended to limit the actions the Commission may take or the penalties the Commission may impose pursuant to Arizona Revised Statutes, Chapter 2, Article 9. An affected utility is entitled to notice and an opportunity to be heard prior to Commission action or imposition of penalties.

Appendix A. Sample Tariff

Unless otherwise ordered by the Commission, the renewable energy standard surcharge shall be assessed monthly to every retail electric service. This monthly assessment will be the lesser of $0.004988 per kWh or:

1. For residential customers, $1.05 per service;
2. For non-residential customers, $39.00 per service;
3. For non-residential customers whose metered demand is 3,000 kW or more for three consecutive months, $117.00 per service;
4. For non-metered services, the lesser of the load profile or otherwise estimated kWh required to provide the service in question, or the service's contract kWh shall be used in the calculation of the surcharge.