



Notices of Final Rulemaking

**explanation about the rulemaking:**

The proposed rulemaking creates R3-9-303 to establish a mechanism whereby a cotton producer may request an extension of the tillage deadline in R3-4-204(E) based on a qualifying weather event that has delayed or prevented compliance. Historically, the practice of granting weather related extension requests was carried out under an informal procedure whereby a producer could appeal for an extension to the tillage deadline. In 2013, the Arizona Department of Agriculture began the task of updating R3-4-204 Pink Bollworm and the Cotton Boll Weevil Complex, which had not been substantially updated since 1999. During the review of R3-4-204 it was determined that the practice of weather related extensions should be formalized in rule. At the request of the cotton industry, language was included in Laws 2013, Ch. 161 § 12 (SB 1092) modifying A.R.S. § 3-1086(C) granting the Council authority to grant weather related extensions by rule.

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

None.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The economic impact of R3-9-303 would be for cotton producers who apply and are granted extensions to tillage deadlines. The economic impact would be to prevent forfeiture of the producers rebate, and avoid incurring a per acre fine of \$100 for non-compliance (A.R.S. § 3-1086(D)), with the tillage deadlines established in R3-4-204.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

- a. corrected statutory citation in #2
- b. added A.R.S § in several areas
- c. 3a – added specificity in identifying Yuma in Zone A (R3-4-204(E)(3))
- d. 4 – put citations in proper format
- e. 5 – took out unnecessary language “include area code”
- f. 6 – specified proper session law citation for SB 1092
- g. 11 – changed response from N/A to “No comments were received.”
- h. 12 – removed unnecessary Az. Dept. of Ag. rule reference
- i. 13 – removed unnecessary web site reference and changed to N/A
- j. 14 – changed answer in order to clarify the response
- k. Changes to rule:
  1. A - Changed “Definitions” to “For the purpose of this section”
  2. A2 – added “as outlined in (E)(1)” in order to assist in determining how “substantial” and “significant” are defined.
  3. D1 and D2 – changed “postmarked” to “received”
  4. E2 – added the language, “advising whether or not the request fell within the parameters of a qualified weather event” in order to detail what factors will be considered in approval or denial of the request.

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No comments were received.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rule does not require a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable.

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**

No.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

Not applicable.

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The Council submitted a proposed rulemaking to the Secretary of State's office in October 2013. Council subsequently submitted an emergency rulemaking package to the Attorney General's office in December 2013 (20 A.A.R. 124, January 17, 2014). The Attorney General modified the rule. Council considered the changes and decided to promulgate the final rulemaking package to GRRC without the Attorney General's modifications. The Council did not feel it necessary or pertinent to review every individual extension request, and felt it appropriate to only do so when considering blanket extension requests as stated in the original rulemaking package sent to the Secretary of State's office.

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

**TITLE 3. AGRICULTURE**

**CHAPTER 9. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL COUNCILS AND COMMISSIONS**

**ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL**

Section

R3-9-303. Weather Related Extensions

**ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL**

**R3-9-303. Weather Related Extensions**

**A. For the purpose of this Section:**

1. "Council" means the Arizona Cotton Research and Protection Council.
2. "Qualifying weather event" means substantial interference with post-harvest activities as outlined in (E)(1) to detach the cotton root from the soil caused by significant rain or moisture or by sustained winds within an established PM10 nonattainment area.

**B. A cotton producer may request an extension of the tillage deadline in R3-4-204(E) based on a qualifying weather event that has delayed or prevented compliance.**

**C. A cotton producer requesting an extension shall submit the following information to the Council Staff Director:**

1. The producer's name, address, and telephone number;
2. The registered Farm Service Agency (FSA) farm names of the farms for which the extension is requested;
3. The legal description of the fields or an accurate scale farm map of the fields for which the extension is requested;
4. A detailed description of the qualifying weather events supporting the extension request, including the dates of the events; and
5. The number of days requested as an extension of the tillage deadline.

**D. Submission Deadline.**

1. Extension requests shall be received a minimum of one business day prior to the tillage deadline.
2. Extension requests that are illegible or missing information required by subsection (C) shall be considered incomplete and returned to the requestor with a written explanation of the deficiencies. Corrected extension requests shall also be received a minimum of one business day prior to the tillage deadline.

**E. Administrative Review.**

1. The Council Staff Director may amend, grant or deny a request for extension based on the information provided and any other relevant information available, including but not limited to data collected from meteorological sources, staff recommendations, field notes and photographs.
2. The Council Staff Director shall issue a written notice granting or denying an extension request within ten business days of receipt of a complete request advising whether or not the request fell within the parameters of a qualified weather event.

**F. Blanket Extensions. The Council, by vote, may authorize a blanket weather-related extension for a county, cultural zone or a subset of either based on an area-wide qualifying weather event or events.**



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this rulemaking is to implement those legislative changes to A.R.S. § 26-343(I)(4). Amending A.A.C. R8-4-107 will allow AZSERC to assess those report filing fees in a fair and equitable way with minimal hardship on the business community while continuing to implement the EPCRA.

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

The agency did not review or rely on any study relevant to the rules.

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

Not Applicable.

**9. A summary of the economic, small business, and consumer impact:**

Prior to Federal Fiscal Year (FFY) 2015, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) was funded through the Federal Emergency Management Performance Grant (EMPG) program, and the State General Fund provided two FTE positions and operating expenses for a total budget of \$438,831. Effective with FFY 2015 beginning October 1, 2014, eligible Federal EMPG funding for EPCRA activities will be reduced in cost and scope by approximately \$300,000. H.B. 2174 allows AZSERC to collect user fees for Tier II report filing to offset the loss of grant dollars from the Federal EMPG program that are decreasing and no longer able to fully support EPCRA program costs.

Proposed user fees for facilities subject to Tier II reporting will be assessed a filing fee of \$75 for the first annual report filing and \$20 for each subsequent annual report up to a maximum of \$500. For example, a business that has 300 facilities that require Tier II reports would be assessed a maximum fee of \$500 versus \$6,055. Total proposed user fees would generate approximately \$300,000 annually to fund the EPCRA and offset the reduction in the Federal Emergency Management Performance Grant.

The proposed user fees for Tier II reporting will not be sufficient to make AZSERC self-sufficient, and this was known at the time the legislation was passed. AZSERC did not wish to impose an undue hardship on the small business community and it is for that reason that higher fees are not proposed that would have assisted AZSERC in becoming self-sufficient.

Thirty-two of fifty states collect Tier II reporting fees. Their fee collection formulae vary greatly based on the type and quantity of hazardous chemicals. The average base fee per facility is approximately \$100, but this can go up to as much as \$5,000 with one state maximum set at \$13,000.

Businesses file their Tier II reports based on a threshold of how many chemicals they possess through AZSERC's online database, which is recognized as one of the best in the nation. Small businesses are exempt from reporting (e.g., local gas stations). Many businesses use the online database as their primary chemical reporting system; therefore they have not had to duplicate it, which saves businesses money.

The public (businesses and individuals) can request information to learn what hazardous chemicals are stored/used in their area and make determinations about residential, commercial, and industrial property values and purchases.

First responders (firefighters) use the system to determine what chemicals are on site when called to a fire, especially industrial sites, which helps them extinguish such fires properly and improves public safety.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

There are no substantive changes between the proposed rules and the final rules. Duplicative information was removed from the rule text, and two undefined acronyms were defined within the proposed rulemaking.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No oral or written comments were received regarding the rulemaking.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules do not require issuance of a regulatory permit or license.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

42 U.S.C. § 11001 establishes the federal requirement for States to create an Emergency Response Commission to implement the "Community Right-to-Know" reporting on hazardous and toxic chemicals. A.R.S. § 26-343(I) specifically states the "rules may not be more stringent than title III and the federal regulations adopted under

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title III, except as specifically authorized in this article.” The rules are not more stringent than corresponding federal law because the rules essentially mirror federal regulations.

- c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

These rules contain no material incorporated by reference.

- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

None of the rules were previously made, amended, or repealed as an emergency rule.

- 15. The full text of the rule follows:**

**TITLE 8. EMERGENCY AND MILITARY AFFAIRS**

**CHAPTER 4. ARIZONA EMERGENCY RESPONSE COMMISSION**

**ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW**

Section

R8-4-107. **EHS Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting**

**ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW**

**R8-4-107. EHS Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting**

- A.** The owner or operator of a facility shall comply with the extremely hazardous substance and hazardous chemical reporting requirements of 40 CFR 370, Subpart B, July 1, 2007, which is incorporated by this reference, contains no later amendments or editions, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.
- B.** As required by A.R.S. § 26-350, an owner or operator described in subsection (A) shall submit a Tier Two Emergency and Hazardous Chemical Inventory Form, using a form available from the Commission, by March 1 of each year. All facilities subject to this reporting requirement shall be subject to the Tier II Emergency and Hazardous Chemical Inventory Reporting fee schedule:
1. Each owner or operator of a facility required to file a hazardous chemical inventory report(s) (Tier II Reports) under the provisions of 42 U.S.C. § 11022 will be assessed a report filing fee of seventy-five dollars (\$75.00) for the first required facility report and an additional fee of twenty dollars (\$20.00) for each additional required facility report up to a maximum limit of five hundred dollars (\$500) per annual reporting period.
  2. Owners or operators of facilities meeting the following conditions are exempt from the reporting fee(s):
    - a. Any business or other outlet that primarily reports or sells gasoline, diesel and other motor fuel only at retail to the public.
    - b. Any business or other outlet that only files a Tier II report to claim lead acid batteries.
    - c. Any business or other outlet that only files a Tier II report to claim Diesel or Gasoline.
    - d. Any business or other outlet that resides on tribal lands or a tribal Nation and must report to a Tribal Emergency Response Commission (TERC) or Chemical-Tribal Emergency Response Commission (C-TERC).
- C.** If a facility ceases to meet the minimum reporting thresholds of 40 CFR 370, Subpart B, for EHS and hazardous chemical reporting with regard to a specific EHS or hazardous chemical, the owner or operator of the facility may submit a notice to the Commission, LEPC, and FD indicating that the specific EHS or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold.