

## NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

### NOTICE OF EMERGENCY RULEMAKING

#### TITLE 3. AGRICULTURE

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

*Editor's Note: The following Notice of Emergency Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 144.)*

[R14-07]

#### PREAMBLE

- |   |                                 |
|---|---------------------------------|
| <b>1. <u>Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| R3-9-303  | New Section                     |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 3-1083(C)(1)  
Implementing statute: A.R.S. § 3-1086
- 3. The effective date of the rule:**  
January 10, 2014 (immediately upon filing in the Office of the Secretary of State)
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
An immediate effective date is supported by A.R.S. § 41-1032(A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation of this rule. This rule financially benefits cotton growers by providing them with an opportunity to get an extension of the tillage deadline in R3-4-204(E). Without an extension, if growers are prevented by weather conditions from meeting the tillage deadline, growers will lose any rebate of their assessments and will incur a \$100 per acre penalty. *See* A.R.S. §§ 41-1086(D) (penalty) and 41-1087(B) (rebate). The penalty is a result of A.R.S. § 3-1086(D) and A.A.C. R3-4-204(E), not this rule. Cotton producers generally have between 500 and 2,000 acres of cotton, with 700 to 1,200 acres being more common. On average, producers get about 2.9 bales of cotton from each acre. The Council sets the rebate amount, and in recent years the rebate has been \$2 per bale. Thus, a producer not in compliance will be impacted at an average rate of \$105.80 per acre when considering both the bale assessment rebate and penalty. For a producer with 1,000 acres of cotton that totally fails to comply with the tillage deadline, that producer's cost will amount to about \$105,800. The first tillage deadline for the season is January 15, so without an immediate effective date, the rule would not go into effect until after that deadline.
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable.
- 4. Citations to all related emergency notices published in the Register as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:**  
None

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**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Leighton Liesner  
Address: Arizona Cotton Research and Protection Council  
3721 E. Wier Ave.  
Phoenix, AZ 85040  
Telephone: (602) 438-0059  
Fax: (602) 438-0407  
Website: www.azcotton.org

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The rulemaking creates rule 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. Rain-fall can delay compliance by creating muddy fields that cannot effectively be tilled. Wind can delay compliance in PM10 nonattainment areas because of blowing dust concerns caused by the combination of field work and wind. Historically, the practice of granting weather related extension requests was carried out under an informal procedure whereby a producer could request an extension to the tillage deadline from the Arizona Department of Agriculture. In 2013, the Arizona Department of Agriculture updated R3-4-204, 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 SB1092 (2013) to modify A.R.S. § 3-1086 by granting the Council authority to grant weather related extensions by rule. This bill became law in September 2013. *See* Laws 2013, Ch. 161.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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

**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 this rule would be for cotton producers who are granted tillage deadline extensions. The economic impact would be to prevent forfeiture of a producer's rebate of bale assessments and avoid incurring a per acre fine of \$100 for non-compliance with the tillage deadlines established in R3-4-204. *See* A.R.S. §§ 3-1086(D) (penalty) and 3-1087(B) (rebate). Cotton producers generally have between 500 and 2,000 acres of cotton, with 700 to 1,200 acres being more common. On average, producers get about 2.9 bales of cotton from each acre. The Council sets the rebate amount, and in recent years the rebate has been \$2 per bale. Thus, a producer not in compliance will be impacted at an average rate of \$105.80 per acre when considering both the bale assessment rebate and penalty. For a producer with 1,000 acres of cotton that totally fails to comply with the tillage deadline, that producer's cost will amount to about \$105,800.

**10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:**

The Council requested permission to conduct rulemaking from the Governor's Office to comply with Executive Order 2012-03. The Governor's Office indicated that the Council did not require permission.

**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:**

No

**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

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

None

**12. An agency explanation about the situation justifying the rulemaking as an emergency rule:**

Historically, the practice of granting weather related extension requests was carried out under an informal procedure whereby a producer could request an extension to the tillage deadline from the Arizona Department of Agriculture. The number of weather related extension requests varied annually based on the actual weather conditions of the given year. For example, nine weather extensions were granted in 2010, all producers in Yuma County received a weather extension in 2011, and no weather extensions were granted in 2012. Since the Council cannot predict the weather, the Council does not know how many weather extension requests to expect this year.

In 2013, the Arizona Department of Agriculture updated R3-4-204, 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 SB1092 (2013) to modify A.R.S. § 3-1086 by granting the Council authority to grant weather related extensions by rule. This bill became law in September 2013. *See* Laws 2013, Ch. 161.

The Council has initiated regular rulemaking to create a weather extension rule. However, the first tillage deadline is January 15, which is only weeks away. Without a weather extension rule in place before the first tillage deadline, growers who are unable to comply with the deadline due to rain or wind in a PM10 nonattainment area face losing a rebate of their assessments and incurring a \$100 per acre penalty. *See* A.R.S. §§ 3-1086(D) (penalty) and 3-1087(B) (rebate). Cotton producers generally have between 500 and 2,000 acres of cotton, with 700 to 1,200 acres being more common. On average, producers get about 2.9 bales of cotton from each acre. The Council sets the rebate amount, and in recent years the rebate has been \$2 per bale. Thus, a producer not in compliance will be impacted at an average rate of \$105.80 per acre when considering both the bale assessment rebate and penalty. For a producer with 1,000 acres of cotton that totally fails to comply with the tillage deadline, that producer's cost will amount to about \$105,800.

Accordingly, this rulemaking is justified as an emergency rule because it avoids serious prejudice to the public interest or the interest of the parties concerned. A.R.S. § 41-1026(A)(5). The emergency rulemaking is also needed to meet the coming January 15 tillage deadline due to the new statutory authority that only became effective in September 2013. A.R.S. § 41-1026(A)(2).

**13. The date the Attorney General approved the rule:**

January 10, 2014

**14. The full text of the rule 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. Definitions.**

1. "Council" means the Arizona Cotton Research and Protection Council.
2. "Qualifying weather event" means substantial interference with post-harvest activities 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;
5. The number of days requested as an extension of the tillage deadline; and
6. The estimated date of completion.

**D. Submission Deadline.**

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1. Extension requests shall be postmarked 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 postmarked 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 criteria considered for extension requests shall include, as relevant and without limitation, the amount of precipitation, the soil type(s), and harvest or tillage management decisions related to the tillage deadline or estimated date of compliance.
3. 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. Decisions of the Council Staff Director shall be made available to the Council for review and action at the Council's next regularly scheduled meeting.

**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.