



## **Replacement Check List**

For rules filed within the  
2nd Quarter  
April 1 – June 30, 2016

# THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 3. Agriculture**

### **Chapter 9. Department of Agriculture - Agricultural Councils and Commissions**

Supplement Release Quarter: 16-2

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R3-9-105

REMOVE Supp. 15-4  
Pages: 1 - 10

REPLACE with Supp. 16-2  
Pages: 1 - 10

*The contact who can answer questions about expired rules in Supp. 16-2:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402  
Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may have changed and is provided as a public courtesy.*

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
June 30, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

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### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit, should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1., R1-1-113.

*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS

Chapter 9 heading amended by final rulemaking at 5 A.A.R. 4439, effective November 3, 1999 (Supp. 99-4).

Former Title 3, Chapter 9, Articles 1 through 7, Sections 3-9-101 through R3-9-703, renumbered to Title 3, Chapter 2, Articles 1 through 7, Sections 3-2-101 through R3-2-703 (Supp. 91-4).

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

Article 1, consisting of Sections R3-9-101 through R3-9-106, made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

Table with 2 columns: Section and Page Number. Rows include R3-9-101 Definitions (2), R3-9-102 Elections (2), R3-9-103 Hearings and Rehearings (2), R3-9-104 Annual Report (2), R3-9-105 Expired (2), R3-9-106 Grants (2).

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

(Authority: A.R.S. § 3-581 et seq.)

Article 2, consisting of Section R3-9-201, renumbered from Title 3, Chapter 13, Article 2, Section R3-13-201 (Supp. 91-4).

Table with 2 columns: Section and Page Number. Rows include R3-9-201 Definitions (3), R3-9-202 Fees; Grain Assessment and Refund (3), R3-9-203 Hearings (4), R3-9-204 Records (4), R3-9-205 Grants (4).

ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

(Authority: A.R.S. § 3-1083)

Article 3, consisting of Section R3-9-301, renumbered from Title 3, Chapter 12, Article 2, Section R3-12-201 (Supp. 91-4).

Table with 2 columns: Section and Page Number. Rows include R3-9-301 Ginning and Remittance Forms (5), R3-9-302 Non-Bt Cotton Acreage Registration Form (5), R3-9-303 Weather Related Extensions (6).

ARTICLE 4. EXPIRED

Article 4, consisting of Sections R3-9-401 through R3-9-405, formerly the rules for the Arizona Wine Commission expired under A.R.S. § 41-1056(E). The rules are no longer authorized as the

Commission was terminated on July 1, 2004, under A.R.S. § 41-3004.18. The statutes under which the Commission operated, A.R.S. §§ 3-551 through 3-557, added by Laws 1993, Ch. 40, § 1, were repealed on January 1, 2005, by A.R.S. § 41-3004.18. Accordingly, under A.R.S. § 41-1011(C), the rules of this agency have been removed from the Code. The rescinded Article is on file in the Office of the Secretary of State (Supp. 05-2).

Article 4, consisting of Sections R3-9-401 through R3-9-405, made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1).

Table with 2 columns: Section and Page Number. Rows include R3-9-401 Expired (6), R3-9-402 Expired (6), R3-9-403 Expired (6), R3-9-404 Expired (6), R3-9-405 Expired (6).

ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL

Article 5, consisting of Sections R3-9-501 through R3-9-505, made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

Table with 2 columns: Section and Page Number. Rows include R3-9-501 Definitions (6), R3-9-502 Elections (7), R3-9-503 Hearings (7), R3-9-504 Annual Report (7), R3-9-505 Records (7), R3-9-506 Grants (7).

ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE

Article 6, consisting of Sections R3-9-601 through R3-9-606, made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4).

Table with 2 columns: Section and Page Number. Rows include R3-9-601 Definitions (8), R3-9-602 Best Practices; LGMA Compliance (8), R3-9-603 Service Mark Usage (9), R3-9-604 Loss of Use of Service Mark (9), R3-9-605 Violation Levels; Repeated Violations (9), R3-9-606 Corrective Action Plans (10).

## ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

### R3-9-101. Definitions

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "AILRC" means the Arizona Iceberg Lettuce Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the AILRC awards grant funds for research on a specific project.
4. "Department" means the Arizona Department of Agriculture.
5. "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
6. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-526.02(B) and (C)(5).
7. "Grant award agreement" means a document that advises an applicant of the amount of money awarded following receipt by the AILRC of the applicant's signed acceptance.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

### R3-9-102. Elections

- A. The AILRC shall elect officers as specified in A.R.S. § 3-526.02(A)(2) during the first quarter of each calendar year.
- B. Officers continue in office until the next annual election.
- C. An officer may be reelected successively.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

### R3-9-103. Hearings and Rehearings

- A. The AILRC shall follow the Uniform Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, for a hearing before the AILRC.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AILRC shall grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
  1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the AILRC, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.

- D. The AILRC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

### R3-9-104. Annual Report

The AILRC shall prepare a report according to A.R.S. § 3-526.02(A)(5), by October 31 of each year.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

### R3-9-105. Expired

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective January 31, 2016 (Supp. 16-2).

### R3-9-106. Grants

- A. Grant application process.
  1. The AILRC shall award grants according to the competitive grant solicitation requirements of this Article.
  2. The AILRC shall post the grant application and manual on the AILRC's web site at least four weeks before the due date of a grant application.
  3. The AILRC shall ensure that the grant application manual contains the following items:
    - a. Grant topics related to AILRC programs specified by A.R.S. § 3-526.02(B) and (C)(5);
    - b. A statement that the information contained in an application is not confidential;
    - c. A statement that the AILRC funding source is primarily from per carton assessments on iceberg lettuce grown in Arizona;
    - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
    - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
    - f. The criteria that the AILRC shall use to evaluate an application;
    - g. The date and time by which the applicant shall submit an application;
    - h. The anticipated date of the AILRC award;
    - i. A copy of the AILRC grant solicitation rules; and
    - j. Any other information necessary for the grant application.
  4. The AILRC shall not consider an application received by the AILRC after the due date and time.
- B. Criteria. The AILRC shall consider the following when reviewing a grant application and deciding whether to award AILRC funds:
  1. The applicant's successful completion of prior research projects,
  2. The extent to which the proposed project identifies solutions to current issues facing the iceberg lettuce industry,
  3. The extent to which the proposed project addresses future issues facing the iceberg lettuce industry,

4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
  5. The appropriateness of the budget request in achieving the project objectives,
  6. The appropriateness of the proposal time-frame to the stated project objectives, and
  7. Relevant experience and qualifications of the applicant.
- C. Public participation.**
1. The AILRC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the AILRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- D. Evaluation of grant applications.**
1. The AILRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The AILRC may modify an applicant's proposed project in awarding funding.
  3. The AILRC shall notify an applicant in writing of the AILRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AILRC decision. The AILRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- E. Awards and project monitoring.**
1. Before releasing grant funds, the AILRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AILRC to monitor the progress of the project by signing a grant award agreement.
  2. The AILRC shall pay no more than 50% of the grant in the initial payment to the awardee.
  3. During the term of the project, the awardee shall inform the AILRC of changes to the awardee's address, telephone number, or other contact information.
  4. The AILRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
  5. The AILRC shall not award grant funds remaining after the initial payment until the awardee submits to the AILRC:
    - a. A final research report, and
    - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
  6. The AILRC shall make research findings and reports resulting from any grant awarded by the AILRC available to Arizona iceberg lettuce producers.
- F. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AILRC.
- G. Governmental units.**
1. The AILRC may request one or more governmental units to submit grant applications as prescribed in subsection (G)(3), without regard to subsections (A), (E)(2), and (E)(5).
  2. The AILRC may issue grants to governmental units without regard to subsections (A), (E)(2), and (E)(5).
  3. A governmental unit may apply to the AILRC for a grant when there is no pending request for grant applications under subsection (A) under the following conditions:
    - a. The application shall include a description of the project, the scope of work to be performed, a budget

that does not include overhead expenses, and an authorized signature.

- b. The application shall be available for public inspection upon receipt by the AILRC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL**

**R3-9-201. Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

"AGRPC" means the Arizona Grain Research and Promotion Council.

"Department" means the Arizona Department of Agriculture.

**Historical Note**

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

**R3-9-202. Fees; Grain Assessment and Refund**

**A.** The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.

- B.** The person who pays the fee required under subsection (A) shall ensure that:
1. The grain assessment fee is remitted to the AGRPC; and
  2. The following information is provided to the AGRPC on a form obtained from the Department:
    - a. First buyer's name, address, and telephone number;
    - b. Report date and months covered by the report;
    - c. Total amount remitted to the AGRPC for the reporting period;
    - d. Producer's name, address, and telephone number;
    - e. Type of grain and tonnage by grain type; and
    - f. First buyer's or designee's signature.

**C. Refund.**

1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
  - a. Producer's name, address, telephone number, and signature;
  - b. Name of the first buyer;
  - c. Amount of grain sold subject to the refund request; and
  - d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

**Historical Note**

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final

rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

### R3-9-203. Hearings

- A. The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
  1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise which could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.
- D. The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

### R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

### R3-9-205. Grants

- A. Definitions.
 

“Authorized signature” means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

“Awardee” means an applicant to whom the AGRPC awards grant funds for a proposed project.

“Governmental unit” means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

“Grant” means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

“Grant award agreement” means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

- B. Grant application process.
  1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
  2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
  3. The AGRPC shall ensure that the grant application and manual contain the following items:
    - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
    - b. A statement that the information contained in a grant application is not confidential;
    - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
    - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
    - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
    - f. The criteria that the AGRPC shall use to evaluate an application;
    - g. The date and time by which the applicant shall submit an application;
    - h. The anticipated date of the AGRPC award;
    - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
    - j. Any other information necessary for the grant application.
  4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.
- C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:
  1. The applicant's successful completion of prior research projects, if applicable;
  2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
  3. The extent to which the proposed project addresses future issues facing the grain industry;
  4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
  5. The appropriateness of the budget request in achieving the project objectives;
  6. The appropriateness of the proposal time-frame to the stated project objectives; and
  7. Relevant experience and qualifications of the applicant.
- D. Public participation.
  1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The AGRPC may modify an applicant's proposed project in awarding funding.
  3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- F. Awards and project monitoring.**
1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
  2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
  3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
  4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
  5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
    - a. A final research report, and
    - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
  6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H. Governmental units.**
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
  2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
  3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
    - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
    - b. The application shall be available for public inspection upon receipt by the AGRPC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

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

**R3-9-301. Ginning and Remittance Forms**

- A.** Each September the Arizona Cotton Research and Protection Council shall send the ginning and remittance report forms and a fee schedule to the operator of each gin for which a report

was made during the previous year. A gin operator who has not submitted a report in the previous year may obtain the report forms and a fee schedule from the Arizona Cotton Research and Protection Council office.

- B.** Each gin operator who gins for Arizona producers during the current crop year shall complete the following reports and submit them with the appropriate fees, to the Arizona Cotton Research and Protection Council within the times specified below:
1. On or before February 15 of each year:
    - a. The name and number of the reporting gin;
    - b. The business mailing address, telephone number, and county of the reporting gin;
    - c. The name of the authorized agent for the gin;
    - d. The crop year;
    - e. The name and mailing address of each crop producer;
    - f. The Farm Service Agency (FSA) farm number;
    - g. An estimate of the number of bales to be ginned by March 15 from cotton grown at or below 2,700 feet elevation; and
    - h. An estimate of the number of bales to be ginned by March 15 from cotton grown above 2,700 feet elevation;
  2. On or before March 15 of each year:
    - a. The information in subsections (B)(1)(a) through (f),
    - b. The total number of bales actually ginned and the certification number issued by the Department for meeting the tillage deadline for cotton grown at or below 2,700 feet elevation, and
    - c. The total number of bales actually ginned from cotton grown above 2,700 feet elevation.

**Historical Note**

Adopted as an emergency effective September 10, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Adopted as a permanent rule effective March 7, 1985 (Supp. 85-2). Amended subsection (A) as an emergency effective November 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Amended subsection (A) as permanent action effective February 5, 1986 (Supp. 86-1). Amended subsection (A) effective September 24, 1986 (Supp. 86-5). Former Section R3-12-201 repealed and a new Section R3-12-201 adopted effective December 2, 1987 (Supp. 87-4). Section 3-9-301 renumbered from R3-12-201 (Supp. 91-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 4439, effective November 3, 1999 (Supp. 99-4).

**R3-9-302. Non-Bt Cotton Acreage Registration Form**

- A.** Each December the Arizona Cotton Research and Protection Council shall mail the Non-Bt Cotton Acreage Registration Form and a fee schedule to cotton producers who certify cotton acreage with the Farm Service Agency during the year. A producer who did not certify cotton acreage with the Farm Service Agency may obtain the report form and a fee schedule from the Arizona Cotton Research and Protection Council office.
- B.** Within 30 days after the tillage deadline in R3-4-204 a producer shall complete and submit Non-Bt Cotton Acreage Registration Form to the Arizona Cotton Research and Protection Council. The producer shall provide the following information:
1. The producer name, mailing address, telephone and facsimile number;

2. The Farm Service Agency farm number;
3. The cultural zone;
4. The crop year;
5. The intended non-Bt cotton acreage.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4741, effective January 1, 2005 (Supp. 04-4).

### 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.

#### Historical Note

Section made by emergency rulemaking at 20 A.A.R. 124, effective January 10, 2014, for 180 days (Supp. 14-1). Emergency expired; new Section made by final rulemaking at 20 A.A.R. 2521, effective August 18, 2014 (Supp. 14-3).

### ARTICLE 4. EXPIRED

*Article 4, consisting of Sections R3-9-401 through R3-9-405, formerly the rules for the Arizona Wine Commission expired under A.R.S. § 41-1056(E). The rules are no longer authorized as the Commission was terminated on July 1, 2004, under A.R.S. § 41-3004.18. The statutes under which the Commission operated, A.R.S. §§ 3-551 through 3-557, added by Laws 1993, Ch. 40, § 1, were repealed on January 1, 2005, by A.R.S. § 41-3004.18. Accordingly, under A.R.S. § 41-1011(C), the rules of this agency have been removed from the Code. The rescinded Article is on file in the Office of the Secretary of State (Supp. 05-2).*

*Article 4, consisting of Sections R3-9-401 through R3-9-405, made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1).*

#### R3-9-401. Expired

##### Historical Note

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

#### R3-9-402. Expired

##### Historical Note

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

#### R3-9-403. Expired

##### Historical Note

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

#### R3-9-404. Expired

##### Historical Note

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

#### R3-9-405. Expired

##### Historical Note

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

### ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL

*Article 5, consisting of Sections R3-9-501 through R3-9-505, made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).*

#### R3-9-501. Definitions

“Department” means the Arizona department of agriculture.  
A.R.S. § 3-468(3).

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548,  
effective December 2, 2004 (Supp. 03-4).

**R3-9-502. Elections**

- A. The Council shall elect officers during the first quarter of each calendar year.
- B. Officers shall continue in office until the next annual election is held.
- C. An officer may be successively reelected.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548,  
effective December 2, 2004 (Supp. 03-4).

**R3-9-503. Hearings**

- A. The Council shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the Council.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The Council shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party’s rights:
  1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the Council, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.
- D. The Council may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548,  
effective December 2, 2004 (Supp. 03-4).

**R3-9-504. Annual Report**

The Council shall prepare an annual report as prescribed under A.R.S. § 3-468.02(A)(5), by October 31.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548,  
effective December 2, 2004 (Supp. 03-4).

**R3-9-505. Records**

The Department shall retain the Council’s records as authorized by A.R.S. § 3-468.02(A)(4). A record may be reviewed at the Department’s main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record shall be provided according to the provisions of A.R.S. § 39-121 et seq.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548,

effective December 2, 2004 (Supp. 03-4).

**R3-9-506. Grants**

- A. Definitions.
  1. “ACRC” means the Arizona Citrus Research Council.
  2. “Authorized signature” means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant’s project.
  3. “Awardee” means a successful applicant to whom the ACRC awards grant funds for research on a specific project.
  4. “Governmental unit” means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
  5. “Grant” means an award of financial support to an applicant according to A.R.S. § 3-468.02(B) and (C)(5).
  6. “Grant award agreement” means a document advising the applicant of the amount of money awarded following receipt by the ACRC of the applicant’s signed acceptance.
- B. Grant application process.
  1. The ACRC shall award grants according to the competitive grant solicitation requirements of this Article.
  2. The ACRC shall post the grant application and manual on the ACRC’s web site at least four weeks before the due date of a grant application.
  3. The ACRC shall ensure that the grant application manual contains the following items:
    - a. Grant topics related to ACRC programs specified by A.R.S. § 3-468.02(B) and (C)(5);
    - b. A statement that the information contained in an application is not confidential;
    - c. A statement that the ACRC funding source is primarily from per carton assessments on citrus grown in Arizona;
    - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
    - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
    - f. The criteria that the ACRC shall use to evaluate an application;
    - g. The date and time by which the applicant shall submit an application;
    - h. The anticipated date of the ACRC award;
    - i. A copy of the ACRC grant solicitation rules; and
    - j. Any other information necessary for the grant application.
  4. The ACRC shall not consider an application received by the ACRC after the due date and time.
- C. Criteria. The ACRC shall consider the following when reviewing a grant application and deciding whether to award ACRC funds:
  1. The applicant’s successful completion of prior research projects,
  2. The extent to which the proposed project identifies solutions to current issues facing the citrus industry,
  3. The extent to which the proposed project addresses future issues facing the citrus industry,

4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
  5. The appropriateness of the budget request in achieving the project objectives,
  6. The appropriateness of the proposal time-frame to the stated project objectives, and
  7. Relevant experience and qualifications of the applicant.
- D. Public participation.**
1. The ACRC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the ACRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.**
1. The ACRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The ACRC may modify an applicant's proposed project in awarding funding.
  3. The ACRC shall notify an applicant in writing of the ACRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the ACRC decision. The ACRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- F. Awards and project monitoring.**
1. Before releasing grant funds, the ACRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the ACRC to monitor the progress of the project by signing a grant award agreement.
  2. The ACRC shall pay no more than 50% of the grant in the initial payment to the awardee.
  3. During the term of the project, the awardee shall inform the ACRC of changes to the awardee's address, telephone number, or other contact information.
  4. The ACRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
  5. The ACRC shall not award the grant funds remaining after the initial payment until the awardee submits to the ACRC:
    - a. A final research report, and
    - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
  6. The ACRC shall make research findings and reports resulting from any grant awarded by the ACRC available to Arizona citrus producers.
- G. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of written request by the ACRC.
- H. Governmental units.**
1. The ACRC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
  2. The ACRC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
  3. A governmental unit may apply to the ACRC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
    - a. The application shall include a description of the project, the scope of work to be performed, a budget

that does not include overhead expenses, and an authorized signature.

- b. The application shall be available for public inspection upon receipt by the ACRC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 176, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3665, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE**

**R3-9-601. Definitions**

"Act" means A.R.S. Title 3, Chapter 3, Article 1.

"Auditor" or "Inspector" means a state or federal agricultural regulatory agency or their designee(s), or a private entity contracted by the Committee to perform inspections authorized by the Act.

"Best practices" means the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 9 - Arizona" dated August 25, 2015. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at <http://www.arizonaleafygreens.org/#!/guidelines/c221s> and at the Arizona Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007.

"Committee" means the Leafy Greens Food Safety Committee established pursuant to the Marketing Agreement.

"LGMA" or "Marketing Agreement" means the Arizona Leafy Green Products Shipper Marketing Agreement, as amended effective October 1, 2015, that was approved pursuant to the Act. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at <http://www.azlgma.gov/members/resources.asp> and at the Arizona Department of Agriculture, 1688 W. Adams, Phoenix, Arizona 85007.

"SOP" means standard operating procedure.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 1767, effective August 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt rulemaking at 18 A.A.R. 2928, effective August 1, 2012 (Supp. 12-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4). Amended by final exempt rulemaking pursuant to A.R.S. § 3-414(C)(11) at 21 A.A.R. 3082, effective August 25, 2015 (Supp. 15-4).

**R3-9-602. Best Practices; LGMA Compliance**

- A.** Signatories shall comply with the best practices, maintain a trace-back system, and be subject to periodic audit by an auditor.
- B.** Signatories shall only buy, consign, or otherwise accept or handle leafy green products (grown in Arizona) from a shipper or producer who is in compliance with the best practices (including recordkeeping requirements), maintains a trace-back system, and is subject to periodic audit by an auditor.
- C.** When the best practices require a SOP, there shall be an appropriate SOP and that SOP shall be followed.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R.

2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

### R3-9-603. Service Mark Usage

- A. A signatory's compliance with the LGMA and R3-9-602 is a condition precedent and subsequent to the signatory's privilege to use the service mark.
- B. An authorized signatory may use the service mark on all bills of lading and on other documents.
- C. A signatory shall:
  1. Use the service mark without reference to a private brand or label.
  2. Provide reasonable assurances that the signatory has a system in place to comply with this Section, maintain records sufficient to audit the system for the duration of the LGMA, and make those records available to the Committee upon request.
- D. A signatory shall not:
  1. Use the service mark on packaging or product or as a certification mark to certify product.
  2. Use the service mark as the signatory's own mark or as the exclusive representation of its business entity.
  3. Insert within or overlap the boundaries of the service mark with the signatory's name or trademark.
  4. Alter the service mark in any way other than proportionately adjusting the size of the service mark.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4).

### R3-9-604. Loss of Use of Service Mark

- A. A signatory shall lose the privilege to use the service mark if the signatory:
  1. Commits a flagrant violation or repeated major deviation;
  2. Fails to comply with R3-9-603;
  3. Has not paid assessments due for the prior fiscal year; or
  4. Withdraws from participation in the LGMA pursuant to Article XVI, section C of the LGMA.
- B. The first flagrant violation or repeated major deviation shall result in a suspension of the privilege to use the service mark for a minimum two-week period.
- C. A flagrant violation or repeated major deviation following the first flagrant violation or repeated major deviation shall result in an indefinite suspension of the privilege to use the service mark.
- D. A flagrant violation or repeated major deviation following a suspension pursuant to subsection (C) shall result in an indefinite revocation of the privilege to use the service mark. The privilege to use the service mark shall not be restored to the signatory for a minimum of two years unless the signatory demonstrates to the satisfaction of the auditor and the Committee a significant change in management and brand.
- E. A signatory whose privilege to use the service mark is suspended or revoked pursuant to subsections (B) through (D) shall not use the service mark until the signatory has undergone at least one new audit without the finding of any major deviations or flagrant violations and has evidenced that the signatory has corrected any minor deviations found.
- F. At least two weeks of any suspension of the privilege to use the service mark under subsections (B) through (D) shall occur between December 1 and March 31.

- G. The Committee may accelerate the progression of penalties under this Section if the signatory's product seriously affects a person's health and the signatory handled the product with intentional, knowing or reckless disregard for the signatory's obligations under the LGMA and best practices.
- H. A signatory shall not lose the privilege to use the service mark under subsections (A)(1) and (2) without an opportunity for a hearing under A.R.S. Title 41, Chapter 6, Article 10, except if the Committee finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Committee may order summary suspension of a signatory's privilege to use the service mark.
- I. A signatory that loses the privilege to use the mark under subsection (A)(3) shall pay all assessments due from prior fiscal years, including penalties and interest, before regaining the privilege to use the service mark.
- J. The Committee may publish a list of signatories whose privilege to use the service mark has been suspended.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

### R3-9-605. Violation Levels; Repeated Violations

- A. Violations of R3-9-602 fall into four levels: flagrant violations, major deviations, minor deviations, and minor infractions. The Committee or its designee shall determine the level of a violation consistent with this Section.
- B. A flagrant violation occurs when a signatory buys, consigns, or otherwise accepts or handles a leafy green product and knows or should have known the product was grown, packed, shipped, processed or handled in violation of R3-9-602 and the violation:
  1. Significantly increases the risk of delivering unsafe product into commerce;
  2. Affects the integrity of the LGMA's food safety program; or
  3. In the Committee's judgment, merits more serious treatment than a major deviation based on the consideration of, as relevant:
    - a. The position of the employee responsible for the violation,
    - b. Whether the employee responsible for the violation knowingly committed the violation,
    - c. The circumstances surrounding the violation,
    - d. Whether the signatory took prompt corrective action,
    - e. Whether the signatory has committed the same or a similar violation previously, and
    - f. Any other relevant facts.
- C. A major deviation is a violation of R3-9-602 that may inhibit the maintenance of food safety, but that does not necessarily result in unsafe product.
- D. The following violations constitute at least major deviations and are potentially flagrant violations:
  1. Falsification of any record for any reason;
  2. Spitting in the field;
  3. Unclean sanitation facilities, including the presence of soiled toilet paper;
  4. Failure to:
    - a. Properly wash hands after using a restroom or returning to the field;

- b. Follow the best practices with respect to feces or fecal matter found in the field;
  - c. Follow the best practices with respect to the use of compost or animal manure, including creating and maintaining proper records related to that use;
  - d. Have a trace-back system;
  - e. Sanitize gloves and knives;
  - f. Follow a work health practices program concerning the transfer of human pathogens by workers; or
  - g. Provide a Compliance Plan, as defined in the best practices, to an auditor;
- 5. Refusing an audit; and
  - 6. Conditions for which an automatic “unsatisfactory” would be assessed by USDA if performing a GAP/GHP audit.
- E.** Violations constituting flagrant violations or major deviations are not limited to those listed in subsection (D).
  - F.** A minor deviation is a violation of R3-9-602 that the signatory can correct within five business days of the audit and that does not necessarily increase the risk of a food borne illness.
  - G.** A minor infraction is a violation of R3-9-602 that the signatory corrects before the auditor leaves the audited premises and that does not necessarily increase the risk of a food borne illness.
  - H.** The Committee or its designee may assess a signatory with a major deviation if an auditor discovers several minor deviations or minor infractions of the same type or if a signatory fails to timely submit a corrective action plan.
  - I.** Repeated major violations are limited to violations occurring during the current and prior fiscal year.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R.

2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-606. Corrective Action Plans**

- A.** A signatory who commits a flagrant violation, major deviation, or minor deviation shall correct the violation and submit a corrective action plan to the Committee or its designee within five business days of receipt of the audit report noting the violation. If the Committee or its designee rejects the corrective action plan, the signatory has 24 hours to submit a revised corrective action plan.
- B.** In the case of a flagrant violation or major deviation, once the Committee or its designee accepts the signatory’s corrective action plan, an auditor shall perform an unannounced audit of the signatory within three business days.
- C.** The signatory shall comply with the corrective action plan.
- D.** Notwithstanding subsection (A), in the case of a violation that creates an immediate danger to public health, the signatory shall submit a correction action plan immediately and take necessary action to minimize the threat to public health.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).