

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

Editor's Note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations issued April 30, June 30, and October 16, 2009. The Governor's Office authorized the notice to proceed through the rulemaking process on August 31, 2009.

[R10-18]

PREAMBLE

- 1. Sections Affected**
R3-2-202
- Rulemaking Action**
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) and 3-1203(A)
Implementing statute: A.R.S. §§ 3-2046 and 3-2161
- 3. The effective date of the rules:**
April 3, 2010
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 15 A.A.R. 1573, September 25, 2009
Notice of Proposed Rulemaking: 15 A.A.R. 1596, October 2, 2009
Notice of Emergency Rulemaking: 15 A.A.R. 1890, November 13, 2009
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Casey Cullings
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: casey.cullings@azag.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**
This final rulemaking updates the incorporation by reference of federal regulations to the 2009 version of those regulations. New federal regulations became effective on October 1, 2007 entitled "Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle." These new regulations relate to the prevention of the transmission of bovine spongiform encephalopathy (mad cow disease) to humans through the human food supply. The effects of mad cow disease on humans include muscle spasms, lack of muscle control, memory problems and even death. The 2004 version of the federal regulations currently listed in this rule does not include the most recent changes. In addition, the United States Department of Agriculture requires states to have inspection standards at least equal to the federal standards, and this rulemaking will accomplish that.

These provisions attempt to prevent the transmission of bovine spongiform encephalopathy to the human food supply in two primary ways. One, they prevent cattle that cannot walk or rise from being slaughtered for use as human food.

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Two, they prevent specified risk materials from cattle over 30 months old, including the brain, skull, eyes, trigeminal ganglia, spinal cord, certain parts of the vertebral column, and dorsal root ganglia, and the tonsils and distal ileum from all cattle from being used in the human food supply.

The 2009 version of the federal regulations contains a few additional minor updates to the 2004 version. These include inserting a definition for a main-dish poultry product and extending existing nutrient content claim requirements to those products; adding requirements for substitute standardized meat and poultry food products named by use of an expressed nutrient content claim (e.g., "low fat" products); and eliminating certain sodium level restrictions on meat and poultry products labeled as healthy.

The final rulemaking also simplifies the rule by combining subsections (A) and (B) in order to eliminate the redundant incorporation of the same federal regulations in both subsections.

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:

Report Under 5 U.S.C. 801(a)(2)(A) on a Major Rule Issued by the Department of Agriculture, Food Safety and Inspection Service Entitled "Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter" (RIN: 0583-AC88).

The public may obtain or review this report at the Department at the address listed in item 5 above. The Department did not review and does not have any data underlying the study, any analysis of the study, or any supporting material other than an August 15, 2007 cover letter from Robert Cramer of the United States Government Accountability Office. The cover letter is available at the Department.

8. 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

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

The rulemaking will have a minimal impact on the Arizona Department of Agriculture. The Department's employees who are responsible for meat and poultry inspection are familiar with the new federal requirements, so this rulemaking will not require significant training. Additionally, the requirements adopted in these changes represent a small part of the meat inspection requirements, thus the changes do not add a significant burden to the Department's current responsibilities. The Arizona rulemaking is also anticipated to have a minimal impact on private industry. The latest federal regulations already apply to private industry; this rulemaking gives the state authority to enforce them. Without enforcement by the Department, these regulations would be enforced by federal officials. Notwithstanding, the Department acknowledges that the federal government estimated the (nationwide) economic impact of the federal rule change to be an average of \$171.2 million per year for five years and determined that the federal rule change would not have a significant impact on a substantial number of small entities.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

No comments were received.

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

The Department of Agriculture Advisory Council voted, without comment, in favor of adoption of this rulemaking on December 21, 2009 pursuant to its authority under A.R.S. § 3-104(F).

13. Any material incorporated by reference and its location in the text:

The rule incorporates 9 CFR Chapter III, revised January 1, 2009, except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 590 and 592.

14. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

Yes, effective October 21, 2009. *See* Notice of Emergency Rulemaking: 15 A.A.R. 1890, November 13, 2009.

The text of the emergency rule is the same as this final rule.

15. The full text of the rule follows:

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TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section
R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

- A.** All meat and poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2003, amended at 69 FR 250-255, January 5, 2004 revised January 1, 2009, except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 590 and 592. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions. The following parts and sections of 9 CFR are excepted from incorporation: 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, and 335. A copy of the incorporated material may be is available from the Department and may also be viewed at www.gpoaccess.gov/cfr/index.html or purchased from the U.S. Government Online Bookstore at www.bookstore.gpo.gov bookstore.gpo.gov.
- B.** All poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2003, amended at 69 FR 250-255, January 5, 2004. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions. The following sections of 9 CFR are excepted from incorporation: 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218, and 381.220 through 381.225. A copy of the incorporated material may be purchased from the U.S. Government Online Bookstore at www.bookstore.gpo.gov.