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 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 160.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 28, 2012.

[R13-03]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**
R3-2-202 Amend

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. §§ 3-107(A)(1) and 3-1203(B)

Implementing statute: A.R.S. §§ 3-2046, 3-2088 and 3-2161

3. The effective date of the rule:

January 9, 2013

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):

The Department has two reasons for selecting an immediate effective date. First, the rulemaking helps to protect and preserve public health by requiring nutritional labeling of certain meat and poultry products. Second, the rulemaking is necessary to maintain Arizona's "at least equal to" status required by federal law. As an emergency rulemaking, this rulemaking becomes effective on filing with the Secretary of State and remains in effect for 180 days. A.R.S. § 41-1026(D).

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 rulemaking notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:

Notice of Rulemaking Docket Opening: 18 A.A.R. 3263, December 14, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 3250, December 14, 2012

Notice of Supplemental Proposed Rulemaking: 19 A.A.R. 46, January 11, 2013

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

Name: Rick Mann

Address: 1688 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-6398

E-mail: rmann@azda.gov

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 primary purpose of this rulemaking is to update the incorporated federal regulations in order to maintain at least equal to state status.

The applicable federal regulations in 9 CFR Chapter III have undergone ten rulemakings since January 1, 2009. First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. *See* 74 FR 11463-66 (March 18, 2009). Second, voluntary rules pertaining to inflating carcasses were amended. *See* 75 FR 69575-77 (November 15, 2010). Third, a voluntary nutritional labeling program for major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products has become mandatory. *See* 75 FR 82148-67 (December 29, 2010). Fourth, a voluntary program has been added that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. *See* 76 FR 24714-59 (May 2, 2011). Fifth, the time it takes an inspector to don and doff work clothes now counts toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. *See* 76 FR 33974-80 (June 10, 2011). Sixth, the definitions for certain classes of poultry are set to change on January 1, 2014 to more accurately and clearly describe the characteristics of poultry in the market today. *See* 76 FR 68058-64 (November 3, 2011). Seventh, inspected facilities must now (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. *See* 77 FR 26929-37 (May 8, 2012). Eighth, section 392 has been added, which relates to petitions for federal rulemaking. This new federal section does not need to be part of this state rule, so the Department is adding this new federal section to the list of excluded sections in the rule. *See* 74 FR 16104-08 (April 9, 2009). The remaining two rulemakings made technical changes to the rules without changing the intended meaning. *See* 76 FR 81360 (December 28, 2011) and 76 FR 82077-79 (December 30, 2011).

This rulemaking also clarifies the scope of the rule. The rule pertains to the requirements of 9 CFR Chapter III. Currently, only meat and poultry inspection and slaughtering procedures are specifically mentioned. However, 9 CFR Chapter III actually covers inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation. The Department has interpreted the current general references to inspection and slaughtering as covering all of 9 CFR Chapter III, but this rulemaking will make the rule more specific for added clarity and to match the authority granted under A.R.S. §§ 3-2046, 3-2088(B) and 3-2161.

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 rule 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:

As more fully described in item #6, the rulemaking makes seven substantive changes. None of these changes are expected to require any new full-time Department employees. Also, the Department is not able to offer any less intrusive alternatives and still be "at least equal to" federal law.

First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. The federal government estimated that in 2007 about 1,300 out of 33.7 million cattle nationwide became non-ambulatory disabled cattle after the antemortem slaughter inspection. The federal regulation being adopted by Arizona is designed to bring the nationwide figure of 1,300 down to 0. The purpose of this federal regulation is animal welfare. The federal government estimates that this change will cost the entire beef industry $930,000 to $1,370,000 annually, with $883,000 to $1,342,600 of that being born by smaller businesses. The federal government also estimates that the annual value of the beef industry is $8.4 billion. The federal government expects that the beef industry will eventually pass this cost on to consumers. S*ee* 74 FR 11463-66 (March 18, 2009).

Second, the rulemaking adopts federal amendments to voluntary rules pertaining to inflating carcasses. Because air inflation is voluntary, the federal government believes the federal rule will not have an economic impact. *See* 75 FR 69575-77 (November 15, 2010).

Third, the rulemaking adopts new federal requirements for nutritional labeling of major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products. The federal government tried a voluntary labeling program, but the federal government felt participation levels were too low. The federal government wants consumers to have precise information about fat content per serving so that consumers can make educated

choices about consuming covered meat and poultry products. The federal requirements have several exemptions, including for small businesses with respect to labeling ground or chopped products. The federal government estimates the cost of labeling for major cuts to be $0.0002 per pound and for ground and chopped products to be $0.006 per pound or less. The federal government also estimates that the cost for retail stores that use point-of-purchase signs instead of product labels will be about $1,537 annually (per store). *See* 75 FR 82148-67 (December 29, 2010).

Fourth, the rulemaking adopts a new federal voluntary program that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. Presently, no meat or poultry inspected at a state-inspected facility may be sold in interstate commerce. The federal government estimates that state agencies will need about 40 hours to complete the steps necessary to join the program and another 24 hours per establishment that wants to participate. The federal government also estimates that about 25% of the establishments that wish to participate will need to spend about 16 hours in updating recordkeeping procedures. Since this program is voluntary, businesses don't have to incur any new costs. *See* 76 FR 24714-59 (May 2, 2011).

Fifth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to don and doff work clothes as time counting toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. The state overtime fee is $19.40 per hour or $4.85 per 15 minutes. Over 260 work days per year, there would be an overtime charge of $1,261 per inspector at state inspected facilities. In comparison, federal inspected facilities would pay $4,462 per inspector per year in overtime. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of $0.0001 per pound. Facilities have the option of operating 15 minutes less each day to avoid overtime charges, but the revenue generated during those extra 15 minutes exceeds the cost of the overtime. The federal regulation is intended to meet the requirements of federal labor law. *See* 76 FR 33974-80 (June 10, 2011).

Sixth, the rulemaking adopts federal amendments effective beginning January 1, 2014 that redefine certain classes of poultry to comport with current market conditions and for increased clarity, consistency and uniformity. The federal government believes these changes may have some economic benefit for the industry, but will not have a significant effect on poultry prices. The new definitions lower the age limit for five classes of poultry, which benefits suppliers who will be able to sell birds at younger ages. In addition, some chickens that are "broilers" now will become "roasters," which means they might be sold at a higher per-pound price. The classification changes will result in the need to change labels, but industry will probably be able to make those changes at the same time it is changing the labels to comply with other federal regulations. The federal government believes the changes will not have much effect on consumer demand. According to the federal government, because these changes "will not have a significant effect on the demand side and [are] not imposing additional cost to the suppliers, there will not be significant change in prices." *See* 76 FR 68058-64 (November 3, 2011).

Seventh, the rulemaking adopts new federal regulations that require inspected facilities to (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. The requirements to allow review and copying of records and to notify USDA-FSIS of adulterated or misbranded product will have a negligible economic impact. The requirements to create recall procedures and document reassessments of HACCP plans are estimated to cost the 6,300 federally-inspected establishments nationwide a total of between $4.7 and $5.7 million the first year and approximately $687,000 annually over years two through ten. Of the 6,300 nationwide facilities, there are 2,856 very small facilities (under 10 employees or less than $2.5 million in sales) and 3,044 small facilities (10-499 employees). *See* 77 FR 26929-37 (May 8, 2012).

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:

Pursuant to A.R.S. § 3-104(F), the Department will discuss this rulemaking with the ADA Advisory Council prior to adopting the rule.

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:

9 CFR Chapter III is applicable to this rule. This rule is not more stringent than federal law.

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:

Most of 9 CFR Chapter III, including 76 FR 68058-64 (November 3, 2011) and 77 FR 26929-37 (May 8, 2012), is incorporated by reference in R3-2-202.

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

There are three reasons that justify the rulemaking as an emergency rule. First, the rulemaking helps to protect and preserve public health by requiring nutritional labeling of certain meat and poultry products. Second, the rulemaking is necessary to maintain Arizona's "at least equal to" status required by federal law. Third, if Arizona fails to maintain "at least equal to" status, it may cause serious prejudice to state-inspected establishments providing services under the rule and to their customers. The state-inspected establishments may require updating, remodeling, or enlarging of their facilities to continue operating under federal inspection. In addition, if some of these state-inspected facilities were to choose not to make the upgrades and closed instead, their customers might not be able to receive the same custom services from another facility because only limited custom work is performed at federally inspected facilities. This potential inability to use a local establishment to provide the custom services could end the customer's business or force the customer to travel out-of-state for assistance.

13. The date the Attorney General approved the rule:

January 8, 2013

14. The full text of the rule follows:

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 and Processing Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

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

All meat and poultry ~~inspection and slaughtering procedures~~ inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, ~~2009,~~ 2012 as amended by 76 FR 68058-64 (November 3, 2011) and 77 FR 26929-37 (May 8, 2012), 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, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material 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 bookstore.gpo.gov.~~ online at www.gpo.gov/fdsys.