

## 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

[R07-125]

#### PREAMBLE

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| <b><u>1. Sections Affected</u></b><br>R3-2-905 | <b><u>Rulemaking Action</u></b><br>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. § 3-710(F)  
Implementing statute: A.R.S. § 3-716
- 3. The effective date of the rules:**  
April 9, 2007
- The original emergency rulemaking is valid through April 8, 2007. A notice of proposed rulemaking was filed with the Secretary of State pursuant to A.R.S. § 41-1022 on December 22, 2006. The rulemaking record is now closed and a rule package will be submitted to the Governor's Regulatory Review Council pursuant to A.R.S. § 41-1024(B) for approval. It is anticipated that the Council's schedule will not allow it to approve the rule package prior to the expiration of the current emergency rule. In addition, the Council-approved final rule would not become effective until 60 days after filing with the Secretary of State. As a result, there will be a gap between the expiration of the original emergency rule and the effective date of the final rule. Accordingly, this emergency rule renewal is necessary to fill that gap.
- This emergency rulemaking renewal is necessary as an emergency measure to avoid an imminent budget reduction and protect the public health, safety and welfare. Although pay increases granted by the legislature in 2006 were certainly welcomed by employees, they had a substantial negative impact with respect to the egg fund balance, putting it in a rapid state of decline. The current emergency rule has allowed the egg fund (an appropriated non-general fund source) to barely cover payroll. Without the renewal of the emergency rule, the egg fund will be exhausted prior to approval of the final rule. If the budget is depleted, the Department will be forced to reduce the number of inspectors, which will result in fewer inspections. Without the ability to monitor the quality of eggs that reach consumers, the public health, safety and welfare will be placed in jeopardy.
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**  
Yes
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Dart Easterday  |
| Address:   | Arizona Department of Agriculture<br>1688 W. Adams St.<br>Phoenix, AZ 85007 |
| Telephone: | (602) 542-0869  |
| Fax:       | (602) 542-4194  |

E-mail: deasterday@azda.gov

**6. An explanation of the rule, including the agency's reasons for initiating the rules:**

The emergency rule renewal would maintain the inspection fee rate for shell eggs and egg products at 3.0 mills, which rate was 2.3 mills prior to the initial emergency rule becoming effective. A mill is 1/10th of a cent. This emergency rulemaking renewal is necessary to avoid an imminent budget reduction and protect the public health, safety and welfare. Although pay increases granted by the legislature in 2006 were certainly welcomed by employees, they had a substantial negative impact with respect to the egg fund balance, putting it in a rapid state of decline. The current emergency rule has allowed the egg fund (an appropriated non-general fund source) to barely cover payroll. Without the renewal of the emergency rule, the egg fund will be exhausted prior to approval of the final rule. If the budget is depleted, the Department will be forced to reduce the number of inspectors, which will result in fewer inspections. Without the ability to monitor the quality of eggs that reach consumers, the public health, safety and welfare will be placed in jeopardy.

It should also be pointed out that the emergency rule and the final rule would raise the mill fee to the same rate assessed to egg dealers in 1989, when the mill fee was voluntarily reduced to 2.33 mills due to a fund balance beyond what was required to operate the egg inspection program.

**7. 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

**8. The summary of the economic, small business, and consumer impact:**

This rulemaking will provide the Arizona Department of Agriculture with additional revenue from an increase in the egg inspection fee rate. This rate increase will offset a complete depletion of the funds used to conduct the inspections in the short term until the regular rulemaking process can be completed and thereby allow the Department to retain its inspectors. Other than the Department, no political subdivision is affected by this rulemaking. An Arizona egg dealer, producer-dealer, manufacturer, producer, or retailer will be subject to the increased fee. The increased fee will be the same rate assessed to egg dealers in 1989, before the mill fee was voluntarily reduced due to a fund balance beyond what was required to operate the egg inspection program. Consumers of eggs and egg products will benefit from the Department's ability to monitor the quality of eggs at the levels currently in place.

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

None

**10. Incorporations by reference and their location in the rules:**

None

**11. An explanation of the situation justifying the rule's making as an emergency rule:**

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This emergency rulemaking renewal is necessary as an emergency measure to avoid an imminent budget reduction and protect the public health, safety and welfare. Although pay increases granted by the legislature in 2006 were certainly welcomed by employees, they had a substantial negative impact with respect to the egg fund balance, putting it in a rapid state of decline. The current emergency rule has allowed the egg fund (an appropriated non-general fund source) to barely cover payroll. Without the renewal of the emergency rule, the egg fund will be exhausted prior to approval of the final rule. If the budget is depleted, the Department will be forced to reduce the number of inspectors, which will result in fewer inspections. Without the ability to monitor the quality of eggs that reach consumers, the public health, safety and welfare will be placed in jeopardy.

The agency has ample authority in terms of appropriation and allocation of funds to spend the increase in funds received as a result of this rule's fee rate increase.

**12. The date of the Attorney General's approval of the emergency rule:**

April 5, 2007

**13. The full text of the rule follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE  
ANIMAL SERVICES DIVISION**

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

Section

R3-2-905. Inspection Fee Rate

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

**R3-2-905. Inspection Fee Rate**

- A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of ~~2.3 mills (.00233)~~ 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of ~~2.3 mills (.00233)~~ 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).