

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 the Governor's Regulatory Review Plan memoranda, issued January 22, 2009 and its continuations on April 30, June 29, and October 16, 2009. (See a copy of the memoranda in this issue on page 1902 through 1904.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 31, 2009.

[R09-105]

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:**
October 21, 2009

The Department requests an immediate effective date for this rule under A.R.S. § 41-1032(A)(1) because this rule is necessary to preserve public health. The amendments to this rule incorporate by reference the latest version of the applicable federal regulations. The 2009 version of the federal regulations contains updated provisions designed to prevent 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.
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
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6. An explanation of the rule, including the agency's reasons for initiating the rules:

This emergency rule updates the incorporation by reference of federal regulations in subsection (A) 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. 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 content restrictions on meat and poultry products labeled as healthy.

This rule also consolidates prior subsections (A) and (B) for clarity and conciseness and also updates the poultry regulations to the latest version of the federal regulations.

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:

Exempt pursuant to A.R.S. § 41-1055(D)(1).

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:

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, located in R3-2-202.

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

This emergency rule is necessary to obtain an immediate effective date for the rule. The Department requests an immediate effective date for this rule under A.R.S. § 41-1032(A)(1) because this rule is necessary to preserve public health. The amendments to this rule incorporate by reference the latest version of the applicable federal regulations. The 2009 version of the federal regulations contains updated provisions designed to prevent 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.

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

October 19, 2009

13. 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 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.
- 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.