

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

6 A.A.R. 2626, July 14, 2000

2. Sections Affected

R9-8-104
R9-8-107

Rulemaking Action

New Section
New Section

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)

Implementing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-132(A)(13), 36-136(H)(4), 36-136(H)(5), and 36-136(H)(7)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

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3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5941

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or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 West Adams, Room 102
Phoenix, Arizona 85007

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E-Mail: kphilli@hs.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed rules will repeal A.A.C. Title 9, Chapter 8, Article 1 in its entirety and replace it by incorporating by reference the United States Food and Drug Administration publication, *Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration*, as modified. In addition, the proposed rules will add new Sections to include definitions, applicability, license application procedures, time-frames as required by the Administrative Procedure Act, license format, license suspension and revocation, inspection standardization and documentation, and cease and desist and abatement.

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The *Food Code* modifications include the following:

1. Changing definitions and other Sections to comply with Arizona law and program needs,
2. Including food processing plants within the definition of food establishment and thus within the purview of the Article,
3. Adapting Sections of the *Food Code* as required to include food processing plant activities,
4. Changing the hot holding temperature for food to 130° F from 140° F,
5. Extending the grace period for purchase of new refrigeration equipment to 10 years from 5 years,
6. Banning the use of latex gloves in direct contact with food,
7. Clarifying that the “person in charge” at a food establishment is the individual responsible for its management at the time of inspection,
8. Adding a Section that requires license holders for vending machines to affix a permanent sign to each vending machine showing a unique identifier for the machine and a contact telephone number for the license holder,
9. Deleting Sections that do not comply with the Department of Health Services’ statutory authority, that are inconsistent with other rules, or that are not appropriate for rulemaking, and
10. Making adjustments necessary to eliminate references to deleted Sections.

The food industry and the government share the responsibility of ensuring that food provided to consumers is safe and does not become a vehicle in a foodborne illness outbreak. This shared responsibility extends to ensuring that consumer expectations are met, that food is unadulterated, and that food is prepared in a clean environment.

The revisions to Article 1 are necessary to provide an updated system of prevention with overlapping safeguards designed to minimize foodborne illness and to ensure employee health, management knowledge, safe food, nontoxic and cleanable equipment, and acceptable levels of sanitation on food establishment premises. The adoption of the *Food Code* will represent a change from the traditional standards-based system of risk management to a scientifically based system known as Hazard Analysis and Critical Control Point (HACCP). The traditional standards-based food system is reactive and relies on government inspection for control of food safety. The new HACCP-based system is proactive in that it requires food establishment management to be knowledgeable of food safety criteria and to demonstrate how food is safely produced, stored, served, and sold. Under the proposed rules, food will be safer, because HACCP identifies critical control points in food processes and requires controls that minimize the risk of developing harmful foodborne pathogens. All of these controls are necessary to more effectively control risk factors that contribute to foodborne illness outbreaks in Arizona.

The advantages of well-written, scientifically sound, and up-to-date food codes have long been recognized in ensuring food safety. Accordingly, the United States Food and Drug Administration continually develops model food codes designed to more effectively control risk factors that contribute to foodborne illness outbreaks. The *Food Code* represents the Food and Drug Administration’s recommendations for developing a uniform system of regulation to ensure that food at the retail level is safe and that the public is properly protected.

The Department has been working with representatives from industry, local health departments, academia, and the public since June 1998 through the Arizona Food Code Task Force to develop an updated food code. The Task Force recommended updating Article 1 by promulgating food safety rules based on the *Food Code* with a few modifications.

The modifications recommended by the Task Force included lowering the required temperature for hot holding of foods to 130° F and increasing the grace period for replacing refrigeration equipment from 5 years to 10 years. In addition, the Task Force recommended eliminating the exemption of food processing plants in the *Food Code*. The Task Force and the Department believe that the food safety requirements in the proposed rules are adequate to regulate food processors. Food processors in Arizona that ship products interstate will still be required to meet federal food processing requirements.

The Arizona Food Code Task Force and the Department believe that the proposed rules are necessary to ensure that food at the retail level is safe and that consumers are properly protected from foodborne illness.

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6. An explanation of the substantial change which resulted in this supplemental notice:

At the oral proceeding held in Phoenix on August 14, 2000, an individual with a severe latex allergy presented information regarding latex allergy and requested that the Department prohibit the use of latex gloves by food handlers. In response to this request, and because of the serious and often life-threatening nature of latex allergy, the Department has decided to prohibit the use of latex gloves in direct contact with food by modifying 2 paragraphs of the *Food Code*, FC ¶ 3-301.11(B) and FC ¶ 3-304.15(E).

Another individual at the Phoenix oral proceeding expressed concern that the definition of “person in charge” in FC ¶ 1-201.10(B)(54) was not clear. The individual was concerned that the regulatory authority might interpret “person in charge” to mean any employee rather than just a member of management. The Department has decided to modify the definition of “person in charge” to clarify that the “person in charge” is the individual who is responsible for the management of the operation at the time of inspection.

Another individual at the Phoenix oral proceeding brought to the Department’s attention 2 errors in A.A.C. R9-8-107. Specifically, the Department failed in A.A.C. R9-8-107 to delete 2 references in the *Food Code* to Sections of the *Food Code* that are being deleted by A.A.C. R9-8-107. The Department has corrected those errors by modifying FC ¶ 3-701.11(C) and FC ¶ 8-304.11(D). The same individual brought to the Department’s attention an apparent referencing error in the text of the *Food Code* itself. The *Food Code* error was a reference in FC ¶ 5-501.116(A) to a mobile food establishment Section. The Department has corrected that error by referencing different Sections in FC ¶ 5-501.116(A). Finally, the same individual brought to the Department’s attention a typographical error in A.A.C. R9-8-104. The typographical error was the omission of the title number “41” in the citation of a statute in R9-8-104(C). The Department has added the “41” to the citation.

At the oral proceeding held in Tucson on August 18, 2000, an individual complained to the Department about spoiled food being sold in vending machines within a federal prison. The individual stated that vending machines should have numbers posted on them so that consumers have some recourse when the food is spoiled. Although the Department does not have jurisdiction over vending machines located within federal prisons, the Department has decided to add a Section to the *Food Code* at FC § 6-501.116 to require the license holder for a vending machine to affix a permanent sign to the vending machine that includes a unique identifier for the machine and a contact telephone number for the license holder. This will give vending machine food consumers recourse comparable to that available in a restaurant when the quality of food served is unacceptable.

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 preliminary summary of the economic, small business, and consumer impact:

For those areas in the proposed rules that have not been changed since the original Notice of Proposed Rulemaking, the economic impact is the same as that stated in the Notice of Proposed Rulemaking. This summary includes only those areas in the proposed rules that are being changed as described in paragraph 6.

The ban on latex glove use will impact the following groups:

1. Food establishments that have been using latex gloves in direct contact with food, because they will have to select another method for avoiding direct contact with food;
2. Food establishments that, absent the ban, would have chosen to use latex gloves to avoid direct contact with ready-to-eat food once the rules went into effect, because they will have to select another method for avoiding direct contact with food;
3. Manufacturers of latex and other types of disposable gloves, because they will not sell as many latex gloves, but may sell more units of other types of gloves, in Arizona; and
4. Vendors of latex and other types of disposable gloves, because they will not sell as many latex gloves, but may sell more units of other types of gloves, in Arizona.

There are several types of non-latex gloves available to use in food handling. The prices of gloves vary depending on the material from which they are made, as shown in the following table of average retail prices compiled using data from several different vendors.

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Type of Glove	Disposable Latex General Purpose	Disposable Vinyl General Purpose	Disposable Polyethylene	Disposable Nitrile General Purpose
Quantity	1000	1000	1000	1000
Price	\$41.38	\$41.88	\$6.37	\$77.83

The vinyl gloves are slightly looser than the latex gloves in their fit, but offer comparable dexterity and sensitivity. The polyethylene gloves are much looser than latex or vinyl gloves and thus offer less dexterity and sensitivity. Polyethylene gloves are often used in service of ready-to-eat foods such as donuts and deli products. The nitrile gloves offer a fit comparable to those of latex gloves and superior tear strength, dexterity, and sensitivity.

For a food establishment that has been using latex gloves to avoid direct contact with ready-to-eat food, the ban on latex glove use in direct contact with food could result in a minimal-to-moderate economic impact. The food establishment will have to switch from latex gloves to another type of glove, another type of utensil, or a handwashing plan once the proposed rules go into effect. Assuming that a typical food establishment used 5,000 gloves each month, and that the food establishment switched to vinyl gloves from latex gloves, the food establishment would incur a minimal annual increase of \$30.00, based on the average prices in the table above. If the food establishment switched to nitrile gloves, the food establishment would incur a moderate annual increase of \$2,187.00 in glove purchase costs. On the other hand, if the food establishment switched to polyethylene gloves, the food establishment would save \$2,100.60 annually in glove purchase costs. Of course, polyethylene gloves would not suit all food establishment needs, due to their lack of elasticity and dexterity, and nitrile gloves may offer more elasticity and dexterity than a food handler really needs. A number of other possible impacts could occur if the food establishment switched to a different utensil or a handwashing plan, none of them anticipated to be any more burdensome than switching to another type of glove.

Those food establishments that would have purchased latex gloves rather than using another utensil or a handwashing plan to avoid direct contact with ready-to-eat food once the proposed rules went into effect will incur similar impacts depending on the choice made for an alternate glove, other utensil, or handwashing plan.

The ban on latex glove use in direct contact with food may have a substantial impact on latex glove manufacturers. The impact is merely speculative, however, because it is not possible to predict the number of food establishments that would have chosen latex gloves as the utensil of choice to avoid direct contact with ready-to-eat food once the rules went into effect.

It is also important to note that the new requirement to avoid direct contact with ready-to-eat food is actually creating a market for sales of gloves and other utensils that did not exist previously. Thus, glove manufacturers, which typically manufacture more than 1 type of glove, actually stand to benefit substantially from the new rules because of dramatically increased sales of non-latex gloves in Arizona.

The same is true for glove vendors, which typically sell all of the varieties discussed above. Those vendors will potentially lose sales of latex gloves, but will also gain sales of other gloves probably to the same or even to a greater extent. According to at least 1 vendor, sales of latex gloves have already dropped off, and vinyl and polyethylene glove sales have increased, as different industries such as child care and medical care have become more sensitive to the risks of using latex.

The requirement that license holders for vending machines affix permanent signs to the vending machines could result in a minimal impact for each license holder. If the license holder does not already have signs that comply with the rule, the license holder will need to create or purchase the signs to place on the vending machines and will need to place them. The economic impact will result from the creation or purchase of the signs, because the license holder can place the signs on routine trips to the vending machines and will not need to make special trips to place the signs. The Department anticipates that license holders not already in compliance will purchase or produce small adhesive decals to use as signs.

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If a license holder produces the decals, the cost would be minimal, including supplies and labor, probably costing less than \$50.00. If a license holder purchases custom-made decals, the cost would also be minimal. For example, a set of 125 consecutively numbered 2" by 3" vinyl stickers screenprinted with a company name and phone number in a single color would cost approximately \$225.00. It is estimated that there are approximately 1,148 vending machine companies in Arizona.¹

The rule only affects those vending machines that are food establishments—those that hold food other than prepackaged, non-potentially hazardous food. It is estimated that most license holders for vending machines have few vending machines that will be affected by this rule. Inquiries to 3 large vending machine companies revealed that only 2 to 4% of their machines (20 or fewer for each) would be affected. It is also estimated that almost all vending machine companies already affix permanent signs to their vending machines with company name and telephone number. Thus, most license holders will only need to add a unique identifier to each vending machine in order to come into compliance with the proposed rule.

The other changes being made in this Notice of Supplemental Rulemaking should not result in any economic impact.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Will Humble, Office Chief

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Name: Kathleen Phillips, Rules Administrator

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10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: December 18, 2000

Time: 9:00 a.m.

Location: Arizona Department of Health Services
1740 West Adams, Conference Rooms A & B
Phoenix, Arizona 85007

Nature: Oral Proceeding

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to the individuals listed in questions 4 and 9 until 5:00 p.m. on December 18, 2000.

1. This is based on Maricopa County's estimate that it currently licenses 15% of the vending machine companies in Maricopa County. Because Maricopa County now licenses 93 vending machine companies, the estimated total of vending machine companies in Maricopa County is 620. Assuming that vending machine companies are distributed throughout the state in equivalent proportions to total food establishments in the state, approximately 54% of vending machine companies are located in Maricopa County. Thus, the estimated total of vending machine companies in Arizona is approximately 1148.

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

Not applicable

12. Incorporations by reference and their location in the rules:

R9-8-107: United States Food and Drug Administration, *Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration* (1999).

13. The full text of the changes follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

ARTICLE 1. FOOD AND DRINK

R9-8-104. Time-frames

- A.** This Section applies to the Department and to county boards of health, local health departments, and municipalities to which the duty to comply with A.R.S. §§ 41-1074 through 41-1076 has been delegated by the Department.
- B.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is set forth in Table 1. The applicant, LICENSE HOLDER, or requester and the REGULATORY AUTHORITY may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- C.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is set forth in Table 1 and begins on the date that the REGULATORY AUTHORITY receives an application or request for approval.
1. The REGULATORY AUTHORITY shall mail a notice of administrative completeness or deficiencies to the applicant, LICENSE HOLDER, or requester within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application or request for approval.
 - b. If the REGULATORY AUTHORITY issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date that the REGULATORY AUTHORITY receives the missing information from the applicant, LICENSE HOLDER, or requester.
 - c. If the applicant, LICENSE HOLDER, or requester fails to submit to the REGULATORY AUTHORITY all of the information and documents listed in the notice of deficiencies within 180 days from the date that the REGULATORY AUTHORITY mailed the notice of deficiencies, the REGULATORY AUTHORITY shall consider the application or request for approval withdrawn.
 2. If the REGULATORY AUTHORITY issues a LICENSE or other approval to the applicant, LICENSE HOLDER, or requester during the administrative completeness review time-frame, the REGULATORY AUTHORITY shall not issue a separate written notice of administrative completeness.
- D.** The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1 and begins on the date of the notice of administrative completeness.
1. The REGULATORY AUTHORITY shall mail written notification of approval or denial of the application or other request for approval to the applicant, LICENSE HOLDER, or requester within the substantive review time-frame.
 2. As part of the substantive review for a FOOD ESTABLISHMENT LICENSE, the REGULATORY AUTHORITY may complete an inspection that may require more than 1 visit to the FOOD ESTABLISHMENT.
 3. During the substantive review time-frame, the REGULATORY AUTHORITY may make 1 comprehensive written request for additional information, unless the REGULATORY AUTHORITY and the applicant, LICENSE HOLDER, or requester have agreed in writing to allow the REGULATORY AUTHORITY to submit supplemental requests for information.
 - a. The comprehensive written request regarding a FOOD ESTABLISHMENT LICENSE application may include a request for submission of plans and specifications, as described in FC, § 8-201.11.
 - b. The comprehensive written request regarding a request for a VARIANCE under FC, § 8-103.10 may include a request for a HACCP PLAN, as described in FC, § 8-201.13(A), if the REGULATORY AUTHORITY determines that a HACCP PLAN is required.
 - c. If the REGULATORY AUTHORITY issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame shall be suspended from the date that the REGULATORY AUTHORITY issues the request until the date that the REGULATORY AUTHORITY receives all of the information requested.

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4. The REGULATORY AUTHORITY shall issue a license or an approval unless:
 - a. For a FOOD ESTABLISHMENT LICENSE application, the REGULATORY AUTHORITY determines that the application for a FOOD ESTABLISHMENT LICENSE or the FOOD ESTABLISHMENT does not satisfy all of the requirements of this Article;
 - b. For a request for a VARIANCE, the REGULATORY AUTHORITY determines that the request for a VARIANCE fails to demonstrate that the VARIANCE will not result in a health HAZARD or nuisance;
 - c. For a request for approval of plans and specifications, the REGULATORY AUTHORITY determines that the plans and specifications do not satisfy all of the requirements of this Article;
 - d. For a request for approval of a HACCP PLAN, the REGULATORY AUTHORITY determines that the HACCP PLAN does not satisfy all of the requirements of this Article;
 - e. For a request for approval of an inspection form, the Department determines that the inspection form does not satisfy all of the requirements of A.A.C. R9-8-108(B)-(C); or
 - f. For a request for approval of a quality assurance program, the Department determines that the quality assurance program does not satisfy all of the requirements of A.A.C. R9-8-108(E)(1).
5. If the REGULATORY AUTHORITY disapproves an application or request for approval, the REGULATORY AUTHORITY shall send to the applicant, LICENSE HOLDER, or requester a written notice of disapproval setting forth the reasons for disapproval and all other information required by A.R.S. § 41-1076.
- E.** For the purpose of computing time-frames in this Section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

Table 1. Time-frames (in days)

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Review Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>FOOD ESTABLISHMENT LICENSE</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Approval of Request for VARIANCE under FC, § 8-103.10</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Approval of Plans and Specifications under FC, § 8-201.11</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Approval of HACCP PLAN under FC, § 8-201.13</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Approval of Inspection Form</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Approval of Quality Assurance Program</u>	<u>A.R.S. § 36-136(H)(4)</u>	<u>90</u>	<u>30</u>	<u>60</u>

R9-8-107. Food Safety Requirements

- A.** A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified, which is incorporated by reference. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and the Office of the Secretary of State; is available to purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available on the Internet at <http://www.fda.gov>.
- B.** The material incorporated by reference in subsection (A) is modified as follows:
 1. Where the term “permit” appears, it is replaced with “license”;

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2. Subparagraph 1-201.10(B)(2)(a) is modified to read: “‘Food additive’ has the meaning stated in A.R.S. § 36-901(7).”;
3. Subparagraph 1-201.10(B)(2)(b) is modified to read: “‘Color additive’ has the meaning stated in A.R.S. § 36-901(2).”;
4. Subparagraph 1-201.10(B)(3) is modified to read: “‘Adulterated’ means possessing 1 or more of the conditions enumerated in A.R.S. § 36-904(A).”;
5. Subparagraph 1-201.10(B)(4) is modified to read: “‘Approved’ means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.”;
6. Subparagraph 1-201.10(B)(14) is modified by deleting “or FOOD PROCESSING PLANT”;
7. Subparagraph 1-201.10(B)(31)(c)(iii) is deleted;
8. Subparagraph 1-201.10(B)(32) is modified to read: “‘Food processing plant’ means a FOOD ESTABLISHMENT that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.”;
9. Subparagraph 1-201.10(B)(50)(a) is modified to read: “‘Packaged’ means bottled, canned, cartoned, securely bagged, or securely wrapped.”;
10. Subparagraph 1-201.10(B)(54) is modified to read: “‘Person in charge’ means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation at the time of inspection.”;
11. Subparagraph 1-201.10(B)(69) is modified to read: “‘Regulatory authority’ means the Department or a local health department or public health services district operating under a delegation of authority from the Department.”;
12. Paragraph 3-202.11(C) is modified to read: “POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under §§ 3-401.11 - 3-401.13 and received hot shall be at a temperature of 54° C (130° F) or above.”;
13. Paragraph 3-202.14(B) is deleted;
14. Paragraph 3-202.14(C) is deleted;
15. Paragraph 3-202.14(D) is deleted;
16. Paragraph 3-202.17(B) is deleted;
17. Paragraph 3-202.18(B) is deleted;
18. Paragraph 3-203.11(A) is modified to read: “Except as specified in ¶¶ (B) and (C) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;
19. Paragraph 3-203.12(B) is modified to read:

“(B) The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:

 - (1) Using an APPROVED recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and
 - (2) If SHELLSTOCK are removed from their tagged or labeled container:
 - (a) Using only 1 tagged or labeled container at a time, or
 - (b) Using more than 1 tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:
 - (i) Is submitted by the LICENSE HOLDER and APPROVED as specified under § 8-103.11,
 - (ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
 - (iii) Ensures that SHELLSTOCK from 1 tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;
20. Paragraph 3-301.11(B) is modified by replacing “SINGLE-USE gloves” with “non-latex SINGLE-USE gloves”;
21. Paragraph 3-304.12(F) is modified to read: “In a container of water if the water is maintained at a temperature of at least 54°C (130° F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).”;
22. Section 3-304.15 is modified by adding a new Paragraph (E):

“(E) Latex gloves may not be used in direct contact with FOOD.”;
23. Section 3-401.13 is modified to read: “Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 54° C (130° F).”;
24. Paragraph 3-403.11(C) is modified to read: “READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD regulatory agency that has jurisdiction over the plant, shall be heated to a temperature of at least 54° C (130° F) for hot holding.”;

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25. Subparagraph 3-501.14(A)(1) is modified to read: “Within 2 hours, from 54° C (130° F) to 21° C (70° F); and”;
26. Paragraph 3-501.16(A) is modified to read: “At 54° C (130° F) or above; or”;
27. Subparagraph 3-501.16(C)(2) is modified to read: “Within 10 years of the adoption of this Code, the EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5° C (41° F) or less.”;
28. Section 3-502.11 is modified by deleting “custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT.”;
29. Section 3-603.11 is modified by deleting “milk”;
30. Paragraph 3-701.11(C) is modified by replacing “who has been restricted or excluded as specified under § 2-201.12” with “who has any of the conditions that require reporting to the PERSON IN CHARGE under § 2-201.11 or who has been excluded by the REGULATORY AUTHORITY under the communicable disease rules at 9 A.A.C. 6”;
31. Subparagraph 4-602.11(D)(7) is modified by replacing “60° C (140° F)” with “54° C (130° F)”;
32. Section 5-101.13 is modified to read: “BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources, in accordance with 21 CFR Part 129 – Processing and Bottling of Bottled Drinking Water (1989).”;
33. Paragraph 5-501.116(A) is modified by replacing “§ 5-402.12” with “§§ 5-402.13 and 5-403.11”;
34. Section 6-501.116 is added to read:
“6-501.116 Vending Machine Signs.
The LICENSE HOLDER for a VENDING MACHINE shall affix to the VENDING MACHINE a permanent sign that includes:
1. A unique identifier for the VENDING MACHINE, and
2. A telephone number for CONSUMERS to contact the LICENSE HOLDER.”;
35. Paragraph 8-101.10(A) is modified by deleting “, as specified in § 1-102.10.”;
36. Paragraph 8-201.11(C) is modified by replacing “as specified under ¶ 8-302.14(C)” with “as described in A.A.C. R9-8-103(A)(6)-(7)”;
37. Paragraph 8-304.11(D) is modified to read: “Require FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and FOOD EMPLOYEES to report to the PERSON IN CHARGE the information required under § 2-201.11”;
38. Paragraph 8-304.11(H) is modified by replacing “5 years” with “10 years”;
39. Section 8-304.20 is modified by replacing “as specified under ¶ 8-302.14(C)” with “as described in A.A.C. R9-8-103(A)(6)-(7)”;
40. Section 8-402.11 is modified by adding the following at the end of the Section: “The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall comply with A.R.S. § 41-1009 when performing inspections.”;
41. Section 8-403.50 is modified by deleting “Except as specified in § 8-202.10,” and capitalizing “the”;
42. Section 8-404.12 is modified by adding the following at the end of the Section: “The REGULATORY AUTHORITY shall approve or deny resumption of operations within 5 days of the LICENSE HOLDER’S request to resume operations.”;
43. Section 8-405.11 is modified by adding the following at the end of the Section:
“(C) The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall not provide the LICENSE HOLDER an opportunity to correct critical Code violations or HACCP PLAN deviations after the date of inspection if the Department or the local health department or public health services district determines that the deficiencies are:
(1) Committed intentionally,
(2) Not correctable within a reasonable period of time,
(3) Evidence of a pattern of noncompliance, or
(4) A risk to any PERSON; the public health, safety, or welfare; or the environment.
(D) If the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department allows the LICENSE HOLDER an opportunity to correct violations or deviations after the date of inspection, the Department, local health department, or public health services district shall inspect the FOOD ESTABLISHMENT within 24 hours after the deadline for correction has expired. If the Department, local health department, or public health services district determines that the violations or deviations have not been corrected, the Department, local health department, or public health services district may take any enforcement action authorized by LAW based upon those violations or deviations.
(E) A decision made under subparagraph 8-405.11(C) or subparagraph 8-405.11(D) by the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department is not an appealable agency action, as defined by A.R.S. § 41-1092.”;
44. The following FC Sections are deleted:
a. Section 1-102.10,
b. Section 1-103.10,
c. Section 2-201.12.

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- d. Section 2-201.13.
- e. Section 2-201.14.
- f. Section 2-201.15.
- g. Section 3-201.13.
- h. Section 8-102.10.
- i. Section 8-202.10.
- j. Section 8-302.11.
- k. Section 8-302.12.
- l. Section 8-302.13.
- m. Section 8-302.14.
- n. Section 8-303.10.
- o. Section 8-303.20.
- p. Section 8-303.30.
- q. Section 8-402.20.
- r. Section 8-402.30.
- s. Section 8-402.40.
- t. Section 8-403.10.
- u. Section 8-501.10.
- v. Section 8-501.20.
- w. Section 8-501.30, and
- x. Section 8-501.40; and
- 45. The annexes are excluded.