

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R05-160]

PREAMBLE

1. Sections Affected

R9-8-102
R9-8-107

Rulemaking Action

Amend
Amend

2. The statutory 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 statute: A.R.S. § 36-136(H)(4)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 3022, July 30, 2004

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

Name: Robert Gomez, Manager
Food Safety and Environmental Services
Address: Arizona Department of Health Services
Office of Environmental Health
Bureau of Epidemiology and Disease Control
150 N. 18th Ave., Suite 430
Phoenix, AZ 85007

Telephone: (602) 364-3140

Fax: (602) 364-3146

E-mail: gomezr@azdhs.gov

Or:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
Office of Administrative Rules
1740 W. Adams St., Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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

The purpose of this rulemaking is to implement Laws 2004, Ch. 51, effective August 25, 2004, which requires the Arizona Department of Health Services (Department) to prescribe reasonably necessary measures to assure that all

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects, or disease-causing organisms. The rules for the regulation and inspection of food and drink in Arizona are in A.A.C. Title 9, Chapter 8, Article 1. The Department had exempted milk and milk products from A.A.C. Title 9, Chapter 8, Article 1. The Department is amending R9-8-102 to remove the exemption for milk and milk products from the Article. In R9-8-107, the Department has incorporated the United States Food and Drug Administration publication, *Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration* (1999) (FC), as modified. The Department is amending R9-8-107 to include the sections of the FC that apply to milk and milk products sold at the retail level.

Although the Department does not currently require the inspection of milk and milk products sold at the retail level, county health departments and the Department have been conducting food establishment inspections where milk and milk products were sold. During fiscal year 2004, county health departments and the Department conducted 71,450 annual food safety inspections at 29,403 food establishments currently licensed to operate in Arizona.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or 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:

The Department did not review or rely on any study during this rulemaking.

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:

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00.

This rulemaking affects any person selling milk or milk products at the retail level in Arizona, county health departments inspecting food establishments, and the Department.

The estimated cost to any person selling milk or milk products at the retail level in Arizona is minimal because the proposed rulemaking does not change the responsibilities of the person selling milk and milk products at the retail level in Arizona.

The county health departments are currently inspecting food establishments in Arizona and the cost to include inspections of milk and milk products during a food inspection is minimal.

The Department will incur minimal costs for making and enforcing the rules. Costs for making the rules include staff time to write, review, and direct the rules through the rulemaking process.

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: Robert Gomez, Manager
Food Safety and Environmental Services

Address: Arizona Department of Health Services
Office of Environmental Health
Bureau of Epidemiology and Disease Control
150 N. 18th Ave., Suite 430
Phoenix, AZ 85007

Telephone: (602) 364-3140

Fax: (602) 364-3146

E-mail: gomezr@azdhs.gov

Or:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
Office of Administrative Rules
1740 W. Adams St., Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

Notices of Proposed Rulemaking

10. The time, place, and nature of the proceedings for the making, 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:

The Department has scheduled the following oral proceeding:

Date: June 30, 2005
Time: 10:00 a.m.
Place: Arizona Department of Health Services
1740 W. Adams Street, Room 204
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items #4 or #9 until the close of record at 5:00 p.m., June 16, 2005. Persons with a disability may request reasonable accommodation by contacting Maria Herbert at herberm@azdhs.gov or (602) 364-0912. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

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:

The following is incorporated by reference in R9-8-107(B)(13):

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

The following is incorporated by reference in R9-8-107(B)(14):

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

The following is incorporated by reference in R9-8-107(B)(15):

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 rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. FOOD AND DRINK

Section
R9-8-102. Applicability
R9-8-107. Food Safety Requirements

ARTICLE 1. FOOD AND DRINK

R9-8-102. Applicability

This Article does not apply to the following:

1. No change
2. ~~Milk and milk products;~~
- 3-2. No change
- 4-3. No change
- 5-4. No change
- 6-5. No change
- 7-6. No change
- 8-7. No change
- 9-8. No change

R9-8-107. Food Safety Requirements

A. No change

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
 - 12. No change
 - 13. Paragraph 3-202.14(B) is deleted;
 - 14. Paragraph 3-202.14(C) is deleted;
 - 15. Paragraph 3-202.14(D) is deleted;
 - ~~16-13.~~No change
 - ~~17-14.~~No change
 - ~~18-15.~~No change
 - ~~19-16.~~No change
 - “(B) No change
 - (1) No change
 - (2) No change
 - (a) No change
 - (b) No change
 - (i) No change
 - (ii) No change
 - (iii) No change
 - 20-17.No change
 - 21-18.No change
 - 22-19.No change
 - 23-20.No change
 - 24-21.No change
 - 25-22.No change
 - 26-23.No change
 - 27-24.No change
 - 28-25.No change
 - 29-26.No change
 - 30-27.No change
 - 31-28.No change
 - 32-29.No change
 - 33-30.No change
 - 34-31.No change
 - 35-32.No change
 - 36-33.No change
 - 37-34.No change
 - 38-35.No change
 - 39-36.No change
 - 40-37.No change
 - 41-38.No change
 - 42-39.No change
 - 43-40.No change
 - 44-41.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

- g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
- 45-42. No change