

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

- 1. Sections Affected**

| | |
|-----------|---------------------------------|
| Article 1 | <u>Rulemaking Action</u> |
| R4-19-101 | Amend |
| R4-19-102 | Amend |
| Table 1 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-1606(A)(1)
Implementing statute: A.R.S. § 41-1073
- 3. The effective date of the rules:**

April 4, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 2011, June 18, 1999
Notice of Rulemaking Docket Opening: 6 A.A.R. 1803, May 19, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 1874, May 26, 2000
- 5. Name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

| | |
|------------|---|
| Name: | Pamela Randolph Nurse Practice Consultant |
| Address: | Arizona State Board of Nursing 1651 East Morten, Suite 150 Phoenix, Arizona 85020 |
| Telephone: | (602) 331-8111, Ext. 139 |
| Fax: | (602) 906-9365 |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

In this rulemaking, the Board amends its definitions, as recommended in its last 5 year rule review, and adds definitions that are applicable to certified nursing assistants, who are now regulated by Article 8. Additionally, the Board amended its definition of "collaborate" to be consistent with the 1999 amendments to Article 5 regarding advanced nursing practice and added definitions applicable to R4-19-513 regarding prescribing authority of certified registered nurse anesthetists. The Board also amends R4-19-102, its time-frame rule. This change is needed because the implementation of fingerprinting in January of 1999 increased the number of applicant investigations to approximately 900 annually and resulted in a significant number of complex investigations.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable

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8. 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

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

The amendments to the definitions in R4-19-101 are not expected to have any direct economic impact on the Board, the regulated community, or the public. The proposed amendment to the definition of “collaborate” may have an indirect economic impact on nurse practitioners. However, the consensus at the public hearing was that the proposed definition with one minor change will assist nurse practitioners in obtaining third-party reimbursement for their services.

The amendments to R4-19-102 regarding time-frames are not expected to have a substantial economic impact on the regulated community or the public. The amendments regarding extension of the time to respond to a deficiency notice are expected to have a positive economic impact on applicants who have difficulty meeting the requirements for licensure within 180 days, the current time-frame to respond to a deficiency notice. In particular, applicants who are required to pass an examination may have difficulty doing so within 180 days. Currently, the application of an applicant who is unable to obtain a passing score within 180 days is withdrawn, and a new application and new application fees must be submitted to continue to pursue licensure or certification in Arizona. Additionally, the amendments regarding extension of the time to respond to a deficiency notice are expected to have a positive economic impact on the Board because the licensing technicians will be able to continue processing the existing application, rather than withdrawing it and processing a second application, a more time-consuming process. The Board also anticipates that some of the amendments to the language in R4-19-102 regarding failure to respond to comprehensive requests will allow more applications, which would otherwise be denied because of unprofessional conduct, to be withdrawn thereby conserving investigative and secretarial resources. The Board anticipates that the addition of categories allowing increased times for substantive review of those applications that need investigation will have no impact on 95% of applications. This amendment will impact those applicants that need investigating by delaying the decision until a thorough investigation can be conducted and the results presented to the Board. The negative effect of the delay will be outweighed by the increased opportunity to gather information that will afford the applicant due process and protect the public.

10. A description of the changes between proposed rules, including supplemental notices, and final rules (if applicable):

R4-19-101(5) Definition of collaborate, add “on an as-needed basis” after “physicians.” Delete the comma after “direct” and add “or.” The proposed rules that extended the time-frames for administrative review and all the proposed extensions of time-frames for programs have been withdrawn. The definition of preceptorship has been expanded to reflect its use in R4-19-502 (A) 3 and anticipated use as the Board revises Article 2. The time-frame for substantive review was divided into two sections for licensure and certification applicants based on whether an investigation was required to ensure public protection. This was at the suggestion of GRRC staff. Various technical and grammatical changes were made at the suggestion of the GRRC staff.

11. A summary of the principal comments and the agency response to them:

The Board received oral and written comments from 23 individuals. The comments addressed two definitions in the proposed rulemaking: the definition of “collaborate” and the definition of “physician”. The majority of the written comments opposed the proposed amended definition of “collaborate” in the Notice of Proposed Rulemaking. However, two individuals submitting written comments retracted their opposition to the second sentence of the definition: “It does not require direct, on-site supervision of the activities of a registered nurse practitioner by the collaborating physician.”

Six individuals testified at the public hearing held on June 30, 2000. Three of these individuals also submitted written comments. The consensus of the individuals who made oral comments at the hearing (3 of whom made written comments opposing the proposed amendment to the definition of collaborate) was in support of the proposed definition of collaborate if the Board added “on an as-needed basis” to the end of the first sentence. Additionally, Dr. Ram R. Krishna, on behalf of the Board of Medical Examiners, submitted a comment opposing the deletion of the words “who have an active, unrestricted license” in the proposed amendment to the definition of collaborate. After consideration of the oral and written comments to the proposed amendment of the definition, the Board voted to amend the proposed definition by adding the words “on an as-needed basis” to the end of the first sentence of the amended definition, to continue to delete the words “who have an active, unrestricted license,” and to leave the second sentence of the amended definition without additional changes.

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Of the 23 individuals who made oral or written comments to this proposed rulemaking, one comment opposed the existing definition of physician and three comments supported the existing definition. The existing definition of physician includes health care providers licensed under Title 32 of the Arizona Revised Statutes, as well as comparably licensed providers in other states. Dr. Ram R. Krishna, on behalf of the Board of Medical Examiners, expressed the opinion that nurse practitioners should not collaborate with physicians who are not licensed in Arizona. One individual who submitted a written comment regarding this issue expressed an opinion that nurse practitioners who are licensed in Arizona, but work in federal facilities, often must collaborate with physicians who are not required to hold an Arizona license and imposing this requirement would create a conflict between federal and state licensing requirements. Two commenters expressed a concern that their practice requires consultation with physicians licensed outside of Arizona because of the unique expertise of the out-of-state physicians and the lack of health care resources for certain specialty areas of practice within Arizona. After consideration of the oral and written comments, the Board voted to leave the existing language that includes physicians licensed in other states and avoid any conflict between federal and state licensing requirements.

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

Not applicable

13. Incorporation by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

Section

R4-19-101. Definitions

R4-19-102. Time-frames for Licensure, ~~Certifications~~ Certification, and or Approvals Approval

Table 1 Time-frames

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

R4-19-101. Definitions

In addition to the definitions in A.R.S. § 32-1601, in this Chapter: ~~unless the context otherwise requires:~~

“Abuse” means a misuse of power or betrayal of trust, respect, or intimacy by a nurse or nursing assistant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

1. ~~“Active practice” means a minimum of 1,000 hours per year of work in a clinical area with direct patient contact, excluding the hours of clinical experience received during a nurse practitioner program; or, for registered nurse practitioner faculty, 400 hours per year of work in a clinical area with direct patient contact.~~

“Administer” means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

2. ~~“Administrator” means the a nurse educator with the administrative responsibility and authority for the direction of a nursing program.~~
3. ~~“Approved national nursing accrediting agency” means the National League of Nursing or the National Association for Practical Nurse Education and Service~~ an organization recognized by the Department of Education as an accrediting agency for a nursing program.

4. ~~“Certificate or Diploma diploma in Practical Nursing practical nursing” means the document awarded to a graduate of an educational program in practical nursing.~~

“Clinical nurse specialist” means a nurse who, through study and supervised practice at the graduate level, is expert in a selected clinical area of nursing.

5. ~~“Collaborate” means to establish a relationship for consultation or referral with 1 or more licensed physicians on an as-needed basis who have an active, unrestricted license. Direct or onsite supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.~~

6. ~~“Contact hour” means an equivalent of 50 minutes of participation in a regular or continuing education activities activity relating to nursing practice.~~

7. ~~“Continuing education activities activity” means college courses, institutes, seminars, lectures, conferences, workshops, and various forms of mediated instruction or programmed learning courses~~ a course of study related to nursing practice that is awarded credit hours or units in nursing or medicine by an accredited organization.

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- “CNA” means a certified nursing assistant.
- “CRNA” means a certified registered nurse anesthetist who provides anesthesia services under A.R.S. § 32-1661.
8. “DEA” means the federal Drug Enforcement Administration.
“Dispense” means to issue 1 or more doses of medication in a suitable container for subsequent use by a patient.
9. “Endorsement” means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States or foreign country or an Arizona nursing assistant certificate to an applicant who is already listed on a nurse aide register in another state or territory of the United States.
10. “Full approval” means the status granted in writing by the Board when a nursing program, upon graduation of its 1st class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by set forth in the law A.R.S. § 32-1601 et seq. and these rules.
11. “Good standing” means the license of a nurse, either practical or professional, or the certificate of a nursing assistant, is current and valid, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement, and no disciplinary action, consent order, or settlement agreement is pending against the nurse.
12. “Initial approval” means the permission, granted in writing by the Board, to an educational institution to establish a nursing or nursing assistant training program, following a determination by after the Board determines that the program proposal meets the standards set forth in provided by the law and these rules.
“Licensed practical nurse” means a practical nurse licensed under this Chapter.
13. “Mediated instruction” means teaching transmitted through intermediate mechanisms such as audiotape, videotape, and telephonic transmission.
“NATCEP” means Nurse Aide Training and Competency Evaluation Program.
14. “NCLEX” means the National Council Licensure Examination.
“Nurse” means a licensed practical or professional nurse.
“Nursing practice” means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined health goals, and evaluating responses to care and treatment.
15. “Nursing process” means the applying problem-solving techniques that require technical and scientific knowledge, and good judgment, and decision-making skills in order to assess, plan, implement, and evaluate a plan of care.
16. “Nursing program” means a formal course of instruction designed to prepare graduates for licensure as professional or practical nurses.
“Nursing-related activities or duties” means client care tasks for which education is provided by a basic NATCEP.
17. “Parent institution” means the educational institution in which a nursing program or nursing assistant training program is conducted.
18. “Pharmacology” means the science that deals with the study of drugs in all their aspects.
19. “Physician” means a person licensed under pursuant to A.R.S., Title 32, Chapters Articles 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.
20. “Prepackaged labeled drug” means a prescription drug prewrapped in a unit-of-use container by a pharmacist or manufacturer in a quantity ordinarily prescribed by a registered nurse practitioner and properly labeled for storage and subsequent dispensing by the registered nurse practitioner.
“Prescribe” means to order a medication, medical device, or appliance for use by a patient.
“P & D” means prescribing and dispensing.
“Preceptorship” means a clinical learning experience by which a learner enrolled in a NATCEP, nursing program, or nurse practitioner course of study provides nursing or nurse assistant services while assigned to a health care worker who holds a license or certificate equivalent to or higher than the level of the learner’s program.
21. “PRN” means to give as needed.
22. “Reentry Update Program Refresher Pprogram” means a formal course of instruction designed to provide a review and update of nursing theory and practice to a professional or practical nurse preparing to re-enter nursing practice.
23. “Regionally accredited” means an educational institution is accredited by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges.
“Register” means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:
 - a. Identifying demographic information;
 - b. Date placed on the register;
 - c. Date of initial and most recent certification, if applicable; and
 - d. Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.“RNP” means a registered nurse practitioner.

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- 24. "SBTPE" means the State Board Test Pool Examination.
- 25. "Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards set forth listed in R4-19-201 through R4-19-206.
- 26. ~~"School of practical nursing" means a nursing program that is preparing its graduates for practical nursing.~~
- 27. ~~"School of professional nursing" means a nursing program that is preparing its graduates for professional nursing.~~
"School nurse" means a professional nurse who is certified under R4-19-308.
- 28. ~~"Supervision" means the direction, and periodic consultation, and assessment evaluation provided by a professional nurse to a person an individual to whom a nursing task or patient care activity regarding patient care is delegated after the professional nurse assesses the patient.~~
- 29. ~~"Unit-of-use packaging" means an individual dosage container in which a prescription drug is prepackaged by a pharmacist, licensed manufacturer, or repackager of medications.~~

R4-19-102. Time-frames for Licensure, ~~Certifications~~ Certification, and ~~or Approvals~~ Approval

A. In this Section:

- 1. "Applicant" means a person or entity seeking licensure, certification, approval to prescribe and dispense drugs, or approval of a nursing assistant program, ~~or a nursing program, a refresher program, or a nurse practitioner course of study.~~
- 2. "Application Packet" means a Board-approved application form and the documentation necessary to establish an applicant's qualifications for licensure, certification, or approval.

B. In computing the time-frames ~~set forth~~ in this Section, the day of the act or event from which the designated period ~~of time~~ begins to run ~~shall is not be~~ included. The last day of the period ~~shall be is~~ included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day ~~which that~~ is not a Saturday, Sunday, or official state holiday.

C. For each type of licensure, certification, or approval ~~granted issued~~ by the Board, the overall-time-frame described in A.R.S. § 41-1072(2) is ~~set forth listed~~ in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frames ~~set forth~~ in Table 1. The overall time-frame and the substantive review time-frame described in A.R.S. § 41-1072(3) may not be extended by more than 25% of the overall time-frame.

D. For each type of licensure, certification, or approval ~~granted issued~~ by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is ~~set forth listed~~ in Table 1 and begins to run when the Board receives an application packet.

- 1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the postmark date of the deficiency notice.
 - a. The deficiency notice shall list each deficiency.
 - b. The applicant shall submit to the Board the information or the documentation listed in the deficiency notice within the time period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information or documentation.
 - c. If the applicant fails to provide the information or the documentation listed in the deficiency notice within the time period specified in Table 1, the Board shall ~~deem~~ consider the application packet withdrawn and shall send the applicant a notice of withdrawal. ~~The Board shall send the applicant a notice of withdrawal and return the application packet to the applicant.~~
- 2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- 3. ~~The Board considers an application packet complete if~~ If the Board it grants issues a license, certificate, or approval during the administrative completeness time-frame, ~~The the Board shall not issue send~~ a separate written notice of administrative completeness.

E. For each type of licensure, certification, or approval ~~granted issued~~ by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is ~~set forth listed~~ in Table 1 and begins to run on the postmark date of the notice of administrative completeness.

- 1. During the substantive review time-frame, an applicant may withdraw an application packet ~~unless the Board has evidence of unprofessional conduct by the applicant as defined in A.R.S. § 32-1601 that has not been reported in any national disciplinary data bank.~~
- 2. The Board may investigate an applicant who discloses prior unprofessional conduct defined in A.R.S. § 32-1601 and may require the applicant to provide additional information or documentation as prescribed in subsection (E)(3) if the Board believes that the conduct is or might be harmful or dangerous to the health of a patient or the public.

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3. During the substantive review time-frame, the Board may make 1 comprehensive written request for additional information or documentation. The applicant shall submit the additional information or documentation within the time period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
4. ~~The Board shall issue by mail a written order of denial of licensure, certification, or approval to an applicant if it determines that the applicant has engaged in unprofessional conduct as defined in A.R.S. § 32-1601 and licensure, certification, or approval is not in the best interest of the public.~~
5. ~~The written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 10 days of the postmark date of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6 Articles 6 and 10 and 4 A.A.C. 19, Article 6.~~
6. ~~If the applicant fails to provide the information or documentation identified in the comprehensive written request within the time specified in Table 1, the Board shall consider the application withdrawn ~~unless~~ and shall send a notice of withdrawal to the applicant.
 - a. ~~The applicant mails a written request for denial to the Board within 10 days of the postmark date of the notice of withdrawal, or~~
 - b. ~~Based on the information the applicant has submitted, the Board determines that the applicant has committed an act of unprofessional conduct, as defined in A.R.S. § 32-1601, and determines that a formal denial is necessary. If the Board considers the application withdrawn, the Board shall send a notice of withdrawal to the applicant and return the application packet.~~~~
7. ~~The Board shall grant licensure, conditional licensure, certification, or approval to an qualified applicant:~~
 - a. ~~Who meets the substantive criteria for licensure, certification, or approval required by ~~statute or rule~~ the Board; and~~
 - b. ~~Whose licensure, certification, or approval is in the best interest of the public.~~
6. ~~The Board shall deny licensure, certification, or approval to an applicant:~~
 - a. ~~Who fails to meet the substantive criteria for licensure, certification or approval required by the Board; or~~
 - b. ~~Who has engaged in unprofessional conduct as defined in A.R.S. § 32-1601; and~~
 - c. ~~Whose licensure, certification, or approval is not in the best interest of the public.~~
7. ~~The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. § 41-1092 et seq., and 4 A.A.C. 19, Article 6.~~

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Table 1. Time-frames

Time-frames (in days)

| Type of License, Certificate, or Program Approval | Applicable Section | Overall Time-frame Without Investigation | Overall Time-frame With Investigation | Administrative Completeness Time-frame | Time To Respond to Deficiency Notice | Substantive Review Time-frame Without Investigation | Substantive Review Time-frame With Investigation | Time to Respond to Comprehensive Written Request |
|--|--|--|---------------------------------------|--|--------------------------------------|---|--|--|
| Initial Approval of Nursing Programs | R4-19-207 | 150 | Not applicable | 60 | 180 | 90 | Not applicable | 120 |
| Full Approval of Nursing Programs | R4-19-208 | 150 | Not applicable | 60 | 180 | 90 | Not applicable | 120 |
| Approval of Reentry Update Refresher Programs | R4-19-214 | 150 | Not applicable | 60 | 180 | 90 | Not applicable | 120 |
| Licensure by Exam | R4-19-301 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Licensure by Endorsement | R4-19-302 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Temporary License | R4-19-303 | 60 | <u>90</u> | 30 | 60 | 30 | <u>60</u> | 90 |
| Biennial License Renewal | R4-19-304 | 120 | <u>270</u> | 30 | 180 <u>270</u> | 90 | <u>240</u> | 120 <u>150</u> |
| School Nurse Certification | R4-19-308 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Reinstatement of License | R4-19-404 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Nurse Practitioner Program Approval | R4-19-503 | 150 | Not applicable | 60 | 180 <u>270</u> | 90 | Not applicable | 120 |
| Nurse Practitioner Certification | R4-19-504 | 150 | <u>270</u> | 30 | 180 | 120 | <u>240</u> | 120 <u>150</u> |
| Prescribing and Dispensing Approval | R4-19-507 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Clinical Nurse Specialist Certification | R4-19-511 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Prescribing Authority of a Certified Registered Nurse Anesthetist | <u>R4-19-513</u> | 150 | <u>270</u> | 30 | <u>270</u> | 120 | <u>240</u> | 150 |
| Approval of Certified Nursing Assistant Training Programs | R4-19-804 <u>R4-19-803</u> | 120 | Not applicable | 30 | 180 | 90 | Not applicable | 120 |
| Renewal of Approval of Certified Nursing Assistant Training Programs | R4-19-805 <u>R4-19-804</u> | 120 | Not applicable | 30 | 180 | 90 | Not applicable | 120 |
| Nursing Assistant Certification by Examination | R4-19-807 <u>R4-19-806</u> | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Nursing Assistant Certification by Endorsement | R4-19-808 <u>R4-19-807</u> | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |
| Temporary Certificate | <u>R4-19-808</u> | <u>60</u> | Not applicable | <u>30</u> | <u>60</u> | <u>30</u> | Not applicable | <u>60</u> |
| Annual Recertification Nursing Assistant Renewal | R4-19-809 | 120 | <u>270</u> | 30 | 180 <u>270</u> | 90 | <u>240</u> | 120 <u>150</u> |
| Reinstatement or Issuance of a Certified Nursing Assistant Certificate | R4-19-815 | 150 | <u>270</u> | 30 | 180 <u>270</u> | 120 | <u>240</u> | 120 <u>150</u> |

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TITLE 9. HEALTH SERVICES

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

PREAMBLE

| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-8-101 | New Section |
| R9-8-102 | New Section |
| R9-8-103 | New Section |
| R9-8-104 | New Section |
| Table 1 | New Table |
| R9-8-105 | New Section |
| R9-8-106 | New Section |
| R9-8-107 | New Section |
| R9-8-108 | New Section |
| R9-8-109 | New Section |
| R9-8-111 | Repeal |
| R9-8-112 | Repeal |
| R9-8-113 | Repeal |
| R9-8-114 | Repeal |
| R9-8-115 | Repeal |
| R9-8-116 | Repeal |
| R9-8-117 | Repeal |
| R9-8-118 | Repeal |
| R9-8-119 | Repeal |
| R9-8-121 | Repeal |
| R9-8-122 | Repeal |
| R9-8-123 | Repeal |
| R9-8-124 | Repeal |
| R9-8-125 | Repeal |
| R9-8-126 | Repeal |
| R9-8-127 | Repeal |
| R9-8-131 | Repeal |
| R9-8-132 | Repeal |
| R9-8-133 | Repeal |
| R9-8-134 | Repeal |
| R9-8-135 | Repeal |
| R9-8-136 | Repeal |
| R9-8-137 | Repeal |
| R9-8-138 | Repeal |
| R9-8-139 | Repeal |
| R9-8-140 | Repeal |
| R9-8-151 | Repeal |
| R9-8-156 | Repeal |
| R9-8-160 | Repeal |
| R9-8-161 | Repeal |
| R9-8-162 | Repeal |
| R9-8-163 | Repeal |
| R9-8-164 | Repeal |
| R9-8-165 | Repeal |
| R9-8-171 | Repeal |
| R9-8-172 | Repeal |
| R9-8-173 | Repeal |
| R9-8-174 | Repeal |
| R9-8-175 | Repeal |
| R9-8-176 | Repeal |
| R9-8-177 | Repeal |
| R9-8-178 | Repeal |
| R9-8-181 | Repeal |
| R9-8-182 | Repeal |

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| R9-8-183 | Repeal |
| R9-8-184 | Repeal |
| R9-8-185 | Repeal |
| R9-8-186 | Repeal |
| R9-8-187 | Repeal |
| R9-8-188 | Repeal |
| R9-8-189 | Repeal |

2. 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)

3. The effective date of the rules:

The rules will become effective on October 3, 2001

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 3276, September 24, 1999

Notice of Rulemaking Docket Opening: 5 A.A.R. 4579, December 10, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 2626, July 14, 2000

Notice of Supplemental Proposed Rulemaking: 6 A.A.R. 4255, November 13, 2000

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 rule:

The rules repeal 9 A.A.C. 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 rules 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.

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;

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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’ (ADHS’s) 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* represents a change from the traditional standards-based system to a scientifically based risk management 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 new 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 control more effectively 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 control more effectively 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.

ADHS 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 ADHS believe that the food safety requirements in the new 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.

ADHS added the ban on the use of latex gloves in direct contact with food as a result of public comment received from an individual with a severe latex allergy during the initial public comment period for the new rules. Banning the use of latex gloves in direct contact with food will prevent the adulteration of food that occurs because latex gloves leave a residue on food. The ban is also consistent with the National Institute for Occupational Safety and Health’s recommendation that workers be provided with non-latex gloves to use when there is little potential for contact with infectious materials, such as in the food industry.¹ In addition to protecting consumers from food adulterated with latex residue, banning the use of latex gloves in direct contact with food will protect food establishment workers from latex exposure in the workplace, which has been proven to cause latex sensitization and allergy for susceptible individuals. Banning the use of latex gloves by food establishment workers is also consistent with the recommendations of the Occupational Safety and Health Administration.²

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

1. National Institute for Occupational Safety and Health, United States Department of Health and Human Services, DHHS (NIOSH) Pub. No. 97-135, NIOSH Alert: Preventing Allergic Reactions to Natural Rubber Latex in the Workplace (2nd prtg. August 1997).
2. Occupational Safety and Health Administration, United States Department of Labor, Technical Information Bulletin: Potential for Allergy to Natural Rubber Latex Gloves and other Natural Rubber Products (April 12, 1999).

8. 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

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

The new rules will significantly change food management practices by adopting a science-based evaluation system known as Hazard Analysis and Critical Control Point (HACCP) to replace the current traditional standards-based system. 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 new 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. The reduction of these risks has immediate and long-term economic benefits because of reduced medical costs, reduced lost work time, and reduced liability for food establishments. Although there is little satisfactory information relating introduction of a HACCP-based food code to reduction of illnesses, national studies of federally regulated food processing plants have demonstrated that the economic benefits of such a food code exceed the economic costs of implementing it.

The new rules will create much more flexibility in food establishment operations by concentrating on critical control points within food preparation, storage, and service and allowing variances from provisions of the rules where food safety will not be compromised. The rules also allow the regulatory authority to adjust frequency of inspection in response to the risks attributed to individual food establishments. This enables the regulatory authority to use its resources more effectively by concentrating on more frequent inspections of food establishments that have been identified as presenting higher risks to consumer safety.

The most substantial economic impact of the new rules to food establishments will result from the need to train managers in the new system and from the implementation of HACCP criteria in food processes. Food establishment managers will have the responsibility of becoming familiar with the new rules and of bringing their food establishments into compliance with them. Compliance will require that the criteria prescribed in the new rules be incorporated into the operations of food establishments. These requirements will have a substantial economic impact on food establishments during the implementation period. In the long run, however, good management training and the integration of HACCP principles should enable food establishments to operate using safer and more efficient food processes.

The reduction of cold holding temperatures from 45° F to 41° F will have an economic impact on the food industry, but the extent of the impact has been reduced by the extension of the compliance period for most equipment to 10 years and the availability of time alone or time combined with temperature as a safety control in food holding. The reduction of hot holding temperatures from 140° F to 130° F will provide economic benefits by reducing energy costs and reducing food waste due to overcooking during hot holding.

The new rules recognize time as a critical control in maintaining food free of harmful pathogens that cause foodborne illness. The development of processes for preparing, serving, and storing food using both temperature and time to preserve food safety is at the heart of compliance with the new rules. These processes, which include temperature monitoring, labeling prepared food with time and date for disposal, and time monitoring will impose moderate short-run economic costs. As the processes are developed and refined, however, they will have only minimal long-term economic costs. The availability of using time alone to preserve food safety should produce economic benefits by allowing food establishments more flexibility in food preparation and in marketing products to consumers.

The new rules governing personal hygiene and protection from cross-contamination will add little cost to the operation of food establishments while providing them with more flexibility. These provisions have at most a minimal economic impact.

Other new rules are oriented to consumer protection—rules on the display of food and warnings to consumers, especially highly susceptible populations, about potentially hazardous foods and rules that allow for safer floor coverings in specific areas of a food establishment. The impact of these provisions is small, and their economic impact will be minimal. However, the benefits to consumers in highly susceptible populations are significant, because foodborne illnesses in these populations are generally more expensive to treat and result in more time lost from work.

The new rules for compliance and enforcement provide the regulatory authority much more flexibility in administering its inspection program. Risk criteria can be used to increase or decrease the interval between inspections of a food establishment, normally 6 months, while variances can be granted based on a review of food establishment practices or a HACCP plan. This additional flexibility for the regulatory authority comes at the expense of additional documentation requirements. This additional documentation will require more comprehensive inspections, especially when dealing with variances, and an increase in the amount of time health inspectors will need to discuss criteria related to food processes with the management of each food establishment. New HACCP criteria will require modifications in inspection and reporting forms used by the regulatory authority. However, ADHS has created optional model forms and will allow counties to maintain HACCP-based inspection and reporting systems in place as long as they are reviewed by ADHS and meet the criteria of the new rules. In addition, the new rules place more stringent time limits on the regulatory authority to follow up on corrections of violations revealed during food establishment inspections. The regulatory authority will need to retrain its sanitarians and health inspectors in the new rules and to establish criteria and inspection practices. This may impose substantial economic costs on the regulatory authority.

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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.

| 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 that 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 new rules go into effect. Assuming that a typical food establishment uses 5000 gloves each month, and that the food establishment switches to vinyl gloves from latex gloves, the food establishment will incur a minimal annual increase of \$30.00, based on the average prices in the table above. If the food establishment switches to nitrile gloves, the food establishment will incur a moderate annual increase of \$2,187.00 in glove purchase costs. On the other hand, if the food establishment switches to polyethylene gloves, the food establishment will save \$2,100.60 annually in glove purchase costs. Of course, polyethylene gloves do 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 may occur if the food establishment switches 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 new 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. ADHS anticipates that license holders not already in compliance will purchase or produce small adhesive decals to use as signs. If a license holder produces the decals, the cost will be minimal, including supplies and labor, probably costing less than \$50.00. If a license holder purchases custom-made decals, the cost will 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 1148 vending machine companies in Arizona.³

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 2-4% 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 new rule.

Summary of Small Business Impacts

About 96% of the food establishments in Arizona, including individual grocery, convenience, and fast food stores that are part of large chains, employ fewer than 100 persons. When chain stores are eliminated, the percentage is significantly reduced. Individual establishments that are part of large chains but that employ fewer than 100 people have been included in the small business category. Those individual establishments that are owned by large corporations are not small businesses as defined by A.R.S. § 41-1001, however, because they are not independently owned and operated and, with their affiliates, have more than 100 employees and gross annual receipts much greater than \$4 million. Those individual establishments that are owned by individual franchisees or other individuals are generally small businesses. It is not possible to determine the actual number of small businesses because no entity within Arizona tracks the number of small businesses within the state.

Many of the large chains have already begun to incorporate the *Food Code* and HACCP principles into their operations. For example, chain grocery stores in Maricopa County are sending as many as 8 managers from each store for certification training and testing. Also, a large convenience store chain is in the process of training at least 1 certified food manager per store in Arizona. Even at the individual store level, food establishments that are affiliated with large chains enjoy economies of scale in purchasing, financing, and training. As a result, these small businesses will not be as heavily impacted by the changes in the new rules. Small business food establishments that are not owned by a franchise of a large corporation do not enjoy these same benefits.

Because independent, owner-operated food establishments do not experience the same economies of scale as their large competitors, they may be affected to a greater degree by the adoption of the new rules. National studies have suggested that small businesses will receive relatively fewer benefits from the *Food Code* per unit of cost. One reason for this is that the improved health benefits that will result from the adoption of the *Food Code* are societal and not necessarily associated with a given establishment (although a reduction in the risks of a foodborne illness outbreak occurring at a facility is an economic benefit to the facility). Where chain food establishments should see reductions in the cost of conforming to the new rules from the realization of efficiencies of production, smaller independent food establishments may not realize the long-run cost reductions to the same degree.

Even though small businesses may be impacted relatively more by the adoption of the new rules, they will realize many of the efficiencies that will be brought about through planning and the cooperation of health department inspectors well versed in the new rules and HACCP principles. Some small business owners have already reported working successfully with Maricopa County Health Department inspectors to develop processes based on HACCP principles.⁴

The conversion to cold holding at 41°F may especially impact small businesses that are not affiliated with large chains because many of these owner-operated food establishments have traditionally purchased used refrigeration equipment when starting up business. Although the new rules allow 10 years for the replacement of substandard refrigeration equipment, food establishments that are new or that undergo a change in ownership must immediately become compliant. This may preclude the start up of some new food establishments and the sale of others.

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3. 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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The new criteria dealing with reinspection of food code violations by the regulatory authority should assist small businesses. The more stringent time limits for these reinspections after deficiencies have been corrected will enable small business owners to correct problems and return to normal operations in a more timely manner.

In spite of the recognition that independent small business food establishments may be more heavily burdened by the new rules than will be larger food establishments or small business food establishments affiliated with large chains, there is no viable means to reduce the effect of the new rules on small business. The new rules will establish the safety standards for food prepared, served, and sold within the state. They are based on current scientific knowledge and are designed to reduce the risks of foodborne illness outbreaks by controlling the critical points within food processes. In order to be effective, those standards must be applied uniformly throughout the state, regardless of the size of the food establishment being regulated.

ADHS, the Governor's Regulatory Review Council, and the Office of the Secretary of State will bear the costs of the rulemaking, which are estimated to be moderate for ADHS and minimal-to-moderate for the Governor's Regulatory Review Council and the Office of the Secretary of State.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Notice of Proposed Rulemaking was published on July 14, 2000. ADHS held oral proceedings on August 14, August 15, and August 18, 2000. ADHS received a number of comments, including a request for a ban on the use of latex gloves, a request that vending machines be required to have numbers posted on them so that consumers have some recourse when the food within a vending machine is spoiled, a request for clarification of the term "person in charge," and several comments regarding cross-referencing and typographical errors in the proposed rules. ADHS made changes to address these comments and published a Notice of Supplemental Proposed Rulemaking on November 13, 2000.

ADHS held an oral proceeding on December 18, 2000, and received 1 oral comment in support of the ban on latex gloves. In addition, ADHS received several written comments and oral comments during the public comment period. After reviewing these comments and conducting an internal review of the proposed rules, ADHS made the following changes:

In response to a request from all 15 county health departments for a 6-month delay of the effective date for the new rules, ADHS designated an effective date of October 3, 2001.

Throughout the rules, where "FC" is used to cite to the *Food Code*, ADHS has deleted the comma after "FC".

In R9-8-101(2), ADHS changed "2 officers" to "officer" and "2 members" to "member".

In R9-8-102(1), ADHS added the word "meat" to be consistent with the language of A.R.S. § 36-136(H)(4).

In R9-8-102(2), ADHS deleted the language following "milk products".

In R9-8-102(8), ADHS removed the comma after "9 A.A.C. 20".

In R9-8-104(A), ADHS changed "county boards of health, local health departments, and municipalities" to "a local health department or public health services district" to be consistent with the language of A.R.S. § 36-136(D) and the remainder of the new rules.

In R9-8-106(B), ADHS separated subsection (B)(1) into subsections (B)(1) and (2) and renumbered subsection (B)(2) to (B)(3) to make the rule more clear, concise, and understandable.

In R9-8-107(B)(19), ADHS changed "recordkeeping" to "record keeping" to be consistent with the language of the *Food Code*.

In R9-8-107(B)(21), ADHS inserted a space in "54° C".

In R9-8-107(B)(32), ADHS changed "21 CFR Part 129 - Processing and Bottling of Bottled Drinking Water (1989)" to "LAW".

In R9-8-107(B)(33), ADHS changed "§ 5-402.12" to "§ 5-402.14" to correct a typographical error.

In R9-8-107(B)(43), ADHS changed the commas in the displayed list to semicolons.

In R9-8-108(D), ADHS added "If a REGULATORY AUTHORITY desires to create its own inspection form,"; changed "A" to "the"; and changed "an" to "its".

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4. Food establishments in Maricopa County are already required to have at least 1 certified food manager on staff as of January 1, 2000. Maricopa County amended its health code in 1999 to require its food establishments to employ a certified food manager. Although the new rules do not require certification, the training attended or the study completed to attain certification should provide food managers with the knowledge necessary to succeed in inspections accomplished under these rules. Maricopa County food establishments will thus not be as heavily impacted by these new rules. Nor will the Maricopa County Health Department be as heavily impacted as may the health departments of those counties that have not yet adopted HACCP principles.

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In R9-8-108(E)(1)(b), ADHS changed “individual inspectors” to “each inspector”.

In R9-8-108(E)(1)(c), ADHS changed “with incongruous reports” to “for which inspection reports are incongruous” and changed “any problems in the inspector’s application of the rules” to “a misapplication of the rules by the inspector”.

In R9-8-108(E)(1)(d), ADHS added “by a quality assurance inspector” and changed “a problem in applying the rules” to “misapplied the rules”.

In R9-8-108(E)(1)(d)(i), ADHS changed “problems in the inspector’s application of the rules” to “misapplication of the rules by the inspector”.

In R9-8-108(E)(1)(e), ADHS changed “problems in an inspector’s application of the rules” to “misapplication of the rules by the inspector”.

In R9-8-109(B)(2), ADHS changed “LICENSE HOLDER” to “LICENSE HOLDER’s”.

ADHS also made numerous stylistic and grammatical changes recommended by Governor’s Regulatory Review Council staff to make the rules more clear, concise, and understandable.

11. A summary of the principal comments and the agency response to them:

A. First Comment Period

| Public Comment | ADHS Response |
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| Three related commenters urged ADHS to ban latex glove use for food handlers because the handling of food with latex gloves can cause severe, life-threatening allergic reactions for latex-allergic individuals who consume the food. One of the commenters is a registered nurse with latex allergy who was forced by her allergy to stop working in a hospital setting. | ADHS is banning the use of latex gloves by food handlers handling ready-to-eat food by adding “non-latex” before “SINGLE-USE gloves” in F.C. ¶ 3-301.11(B). ADHS is also banning the use of latex gloves by food handlers handling other food by adding a new F.C. ¶ 3-304.15(E) to read: “(E) Latex gloves may not be used in direct contact with FOOD.” |
| A representative of a fast-food restaurant chain expressed support for the new rules and for the ban on latex glove use. | ADHS appreciates the support. |
| A representative of the Arizona Restaurant Association who also owns 40 fast-food restaurants in Arizona expressed support for the new rules and for a ban on latex glove use. | ADHS appreciates the support. |
| The definition of “person-in-charge” should be clarified to state that there is 1 person-in-charge for a food establishment at a time, so that inspectors do not expect just any employee to make the demonstration of knowledge under F.C. § 2-102.11. | ADHS is modifying F.C. ¶ 1-201.10(B)(54) to read: “(54) ‘ 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.” |
| A registered sanitarian employed by a county health department expressed support for the new rules and for a ban on latex gloves. | ADHS appreciates the support. |
| Food processors should be required to include a sell-by date on the label that they place on potentially hazardous food that they package, which could be accomplished by adding a new F.C. ¶ 3-602.11(B)(6) to read: “(6) The sell-by date as determined in 3-501.18(A).” | ADHS is not making any changes in response to this comment. Addition of the suggested text would require all food establishments to include a sell-by date on all food that they package, whether potentially hazardous or not. This would clearly exceed the area of concern, which is sale of potentially hazardous food that is no longer safe for consumption. |

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| <p>Change the exclusionary language in the definition of “food establishment” at F.C. ¶1-201.10(B)(31)(c)(i) from “An establishment that offers only prePACKAGED FOODS that are not POTENTIALLY HAZARDOUS” to “An establishment that offers only prePACKAGED FOODS made by a Food Processor, FOOD PROCESSING PLANT, or Food Manufacturer”. The commenter’s rationale was that this would allow counties to continue to issue licenses to mobile food establishments that safely sell hot, cold, and frozen potentially hazardous foods. The commenter expressed a desire to have a separate set of standards for mobile food establishments.</p> | <p>ADHS is not making any changes in response to this comment. The suggested change in language, rather than allowing the counties to continue to license mobile food establishments that sell only prepackaged potentially hazardous foods, would exclude establishments that sell only prepackaged potentially hazardous foods from the definition of “food establishment” and thus from the rules. The <i>Food Code</i> appropriately excludes establishments that offer only non-potentially hazardous prepackaged foods, because they do not create a risk for foodborne illness.</p> <p>ADHS also believes that the <i>Food Code</i> gives ample consideration to the differences between mobile food establishments and stationary food establishments.</p> |
| <p>F.C. ¶ 3-701.11(C) includes a reference to F.C. § 2-201.12, which is deleted by R9-8-107.</p> | <p>ADHS is modifying F.C. ¶ 3-701.11(C) 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”.</p> |
| <p>F.C. ¶ 4-703.11(C)(4) should refer to F.C. ¶ 1-201.10(B)(72).</p> | <p>ADHS is not making any changes in response to this comment, because F.C. ¶ 4-703.11(C)(4) does refer to F.C. ¶ 1-201.10(B)(72).</p> |
| <p>F.C. ¶ 5-501.116(A) should not refer to a mobile food establishment section.</p> | <p>ADHS is modifying F.C. ¶ 5-501.116(A) by replacing “§ 5-402.14” with “§§ 5-402.13 and 5-403.11”.</p> |
| <p>F.C. ¶ 8-304.11(D) includes a reference to F.C. § 2-201.15, which is deleted by R9-8-107.</p> | <p>ADHS is modifying F.C. ¶ 8-304.11(D) 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”.</p> |
| <p>In R9-8-104(C), the number “41” was omitted from the A.R.S. citation.</p> | <p>ADHS is adding the number “41” to the A.R.S. citation in R9-8-104(C).</p> |
| <p>Food establishments should be allowed to do self inspections.</p> | <p>ADHS is not making any changes in response to this comment. Food establishments are free to perform self inspections as a management tool, but the regulatory authority will not recognize those self inspections as inspections by the regulatory authority. To do so could compromise the effectiveness of inspections and undermine efforts to standardize application of the rules to different food establishments.</p> |
| <p>A representative of a county environmental services department expressed support for the new rules.</p> | <p>ADHS appreciates the support.</p> |
| <p>A representative of a grocery store chain expressed support for the new rules and for a ban on the use of latex gloves.</p> | <p>ADHS appreciates the support.</p> |
| <p>Several commenters expressed a need for a training phase to occur after the new rules become effective, perhaps by allowing food establishments to take several months to get into compliance after the rules become effective, but hesitated to support a delayed effective date.</p> | <p>ADHS does not believe that it would be appropriate for the county health departments to inspect using the old standards after the new rules become effective. However, in response to this comment, a comment in the 2nd public comment period, and a later request from all 15 county health departments for a 6-month delay in the effective date of the rules, ADHS is designating an effective date of October 3, 2001.</p> |

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| <p>A commenter expressed concern about the deletion of F.C. §§ 2-201.12 to 2-201.15, because it eliminates the requirement that the person in charge report to the regulatory authority when an employee has a communicable disease. The commenter recommended that ADHS include language in the rules to require the person in charge to notify the regulatory authority of an employee's communicable disease, because the report from the diagnosing health care provider or the clinical laboratory may not come to the regulatory authority until after an outbreak has begun.</p> | <p>ADHS is not making any changes in response to this comment. R9-6-202 requires a physician, the administrator of a health care facility, or an authorized representative to report by telephone or equally expeditious means any of a list of foodborne illnesses to the local health agency within 24 hours of diagnosis in a food handler. Other rules in 9 A.A.C. 6 require the local health agency to exclude cases with specific foodborne illnesses (and sometimes contacts of cases) from food handling for the specific periods stated in the rules, which differ from those in the <i>Food Code</i>. Although ADHS believes that the current communicable disease rules are adequate to control foodborne illness, it is in the process of drafting revised rules for 9 A.A.C. 6 as the result of a 5-year-review report. ADHS is considering whether a reporting requirement for persons in charge should be added to 9 A.A.C. 6.</p> |
| <p>A representative of a county environmental health unit expressed support for the new rules.</p> | <p>ADHS appreciates the support.</p> |
| <p>A commenter expressed concern about the lack of hair restraint use by food handlers in fast food restaurants.</p> | <p>ADHS is not making any changes in response to this comment. F.C. § 2-402.11 requires food employees to wear hair restraints that are designed and worn to keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. There is an exception for food employees who present a minimal risk for contamination due to the nature of their duties.</p> |
| <p>A commenter expressed concern about the lack of glove use by food handlers in fast food restaurants.</p> | <p>ADHS is not making any changes in response to this comment. F.C. ¶ 3-301.11(B) states that except when washing fruits and vegetables as specified under F.C. § 3-302.15 or when otherwise approved, food employees may not contact exposed ready-to-eat food with their bare hands and shall use suitable utensils.</p> |
| <p>A commenter expressed concern about the general bad hand sanitation practices of food handlers (for example, wiping sweat off the brow with the hand and then touching food without washing the hand), which the commenter believes should be addressed in the new rules.</p> | <p>ADHS is not making any changes in response to this comment. F.C. § 2-301.14 requires food employees to clean their hands as specified under § 2-301.12 immediately before engaging in food preparation and in other specific circumstances, such as after touching bare human body parts other than clean hands and clean exposed portions of the arms.</p> |

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| <p>A commenter expressed concern that the rules use “shall” rather than “must”, because <i>Webster’s Dictionary</i> states that “shall” is not a command and should not be used in law, while “must” denotes a compulsion or obligation.</p> | <p>ADHS is not making any changes in response to this comment. The <i>Arizona Rulemaking Manual</i>, published by the Office of the Secretary of State, requires the use of “shall” in rulemaking to indicate a mandatory duty, direction, or command and prohibits the use of “must” in rulemaking.</p> |
| <p>F.C. § 2-102.11 should be modified to require certification as a food protection manager through passing a test that is part of an accredited course as the only means of demonstrating knowledge, because allowing demonstration of knowledge through answering food safety questions posed by inspectors is too subjective. Unless the questions are agreed upon in advance and are consistent, the provision for demonstration of knowledge through answering questions is too open for interpretation and could be subject to abuse.</p> | <p>ADHS is not making any changes in response to this comment. ADHS believes that the demonstration of knowledge provisions in F.C. § 2-102.11 can be implemented properly. Having various options available to demonstrate knowledge is an important option for many food establishments in minimizing the economic impact of these new rules on small businesses.</p> |
| <p>A commenter expressed concern about a “ban” on latex gloves, because not everybody is allergic to them, and some people have used them quite well.</p> | <p>ADHS is not making any changes in response to this comment. ADHS believes that, although only a small percentage of the population suffers from latex allergy, the nature of the allergy can be so severe and life-threatening that a prohibition on handling food with latex gloves is appropriate. In addition, prohibiting the use of latex gloves for food handling should help to prevent sensitization of food handlers and those who work near them, because research has demonstrated that prolonged exposure to latex can lead to sensitization and allergy in individuals who did not previously react to latex.</p> |
| <p>Kitchens in prisons are dirty and infested with mice and roaches, and the prisons are serving food that is marked as unfit for human consumption.</p> | <p>ADHS is not making any changes in response to this comment. The new rules, like the old rules, prohibit food establishments from having unsanitary conditions and from serving food that is not from an approved source. For state prisons, this is an issue of ineffective enforcement of the rules rather than an issue of insufficient rules. ADHS does not have jurisdiction to regulate federal prison kitchens, which are regulated by the Bureau of Prisons.</p> |
| <p>Vending machines in the federal prisons are filled with spoiled and moldy food. They are not being inspected, and there is no one for visitors to complain to. All vending machines should have numbers posted on them or comment boxes nearby to provide feedback to the local authorities about the food in them.</p> | <p>ADHS does not have jurisdiction to inspect vending machines located within federal prisons. However, ADHS is modifying the <i>Food Code</i> by adding the following: “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.”</p> |
| <p>Kitchens in federal prisons are infested with mice and roaches. There should be local oversight and regulation of federal prison food service.</p> | <p>ADHS is not making any changes in response to this comment. ADHS does not have jurisdiction to regulate federal prison kitchens, which are regulated by the Bureau of Prisons.</p> |

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B. Second Comment Period

| Public Comment | ADHS Response |
|--|---|
| The registered nurse with latex allergy who originally brought latex allergy to ADHS's attention provided ADHS with additional information about latex allergy and expressed support for banning the use of latex gloves by food handlers. | ADHS appreciates the support. |
| A representative of a county health department informed ADHS that the counties need some time to get ready before the approved rules go into effect. | In response to this comment and a later request from all 15 county health departments for a 6-month delay in the effective date of the rules, ADHS is designating an effective date of October 3, 2001. |
| A representative of a county health department requested clarification of the vending machine provision because the county does not currently permit each individual vending machine. The representative of the county health department believed that the provision applied to all vending machines, not just to those that contain potentially hazardous food. | ADHS explained that the vending machine provision applies only to those vending machines that are food establishments—those that contain potentially hazardous food. The vending machines to which the provision applies are a very small percentage of the machines within the state. The vast majority of vending machines do not contain potentially hazardous food. |
| A registered nurse disabled because of latex allergy requested that ADHS consider banning the use of latex gloves for any purpose in a food establishment, not just in direct contact with food. She stated that when powdered gloves are used, the powder, which is allergenic, can be inhaled even hours later. She also provided ADHS with information about latex allergy. | ADHS is not making any changes in response to this comment. ADHS was unable to find documentation of allergic reactions in consumers as a result of non-food handler's using latex gloves in a food establishment and is concerned about the economic impact of banning the use of latex gloves for functions such as cleaning. |
| A commenter wrote to inform ADHS that the Occupational Safety and Health Administration has begun citing and fining employers who provide employees latex gloves to perform non-patient care tasks such as kitchen duties and housekeeping. | ADHS is not making any changes in response to this comment. |
| A medical technologist now disabled by latex allergy wrote to inform ADHS that, as a frequent visitor to Arizona, she has been frustrated because most food establishments where she has attempted to eat in Arizona use latex gloves. The commenter urged ADHS to ban the use of latex gloves in all food preparation. | ADHS is banning the use of latex gloves in direct contact with food. |
| A commenter wrote to request that Arizona be proactive with banning gloves from food preparation. | ADHS is banning the use of latex gloves in direct contact with food. |
| The mother of a latex-allergic child wrote in support of the ban on the use of latex gloves in food preparation and noted that a public school in Flagstaff banned the use of latex gloves in its cafeteria 3 years ago in response to her son's latex allergy. | ADHS appreciates the support. |
| A registered nurse disabled by latex allergy wrote to educate ADHS about the dangers of latex and to thank ADHS for its support. | ADHS appreciates the support. |
| A commenter wrote to express concern about the growing epidemic of dangers associated with the use of latex gloves in public places such as hospitals and restaurants. | ADHS is banning the use of latex gloves in direct contact with food. |

C. Post-Comment Period

| Public Comment | ADHS Response |
|---|---|
| ADHS received a request from all 15 county health departments for a 6-month delay in the effective date of the rules. | ADHS is designating an effective date of October 3, 2001. |

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

Not applicable

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13. 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).

14. Was this rule previously adopted as an emergency rule?

No

15. 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

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|------------------|---|
| <u>R9-8-101.</u> | <u>Definitions</u> |
| <u>R9-8-102.</u> | <u>Applicability</u> |
| <u>R9-8-103.</u> | <u>Food Establishment License Application</u> |
| <u>R9-8-104.</u> | <u>Time-frames</u> |
| <u>Table 1.</u> | <u>Time-frames (in days)</u> |
| <u>R9-8-105.</u> | <u>Issuance of License</u> |
| <u>R9-8-106.</u> | <u>License Suspension or Revocation</u> |
| <u>R9-8-107.</u> | <u>Food Safety Requirements</u> |
| <u>R9-8-108.</u> | <u>Inspection Standardization and Documentation</u> |
| <u>R9-8-109.</u> | <u>Cease and Desist and Abatement</u> |
| <u>R9-8-111.</u> | <u>Scope and legal authority</u> <u>Repealed</u> |
| <u>R9-8-112.</u> | <u>Definitions</u> <u>Repealed</u> |
| <u>R9-8-113.</u> | <u>Prohibition</u> <u>Repealed</u> |
| <u>R9-8-114.</u> | <u>Minimum standards</u> <u>Repealed</u> |
| <u>R9-8-115.</u> | <u>Right of entry</u> <u>Repealed</u> |
| <u>R9-8-116.</u> | <u>Examination and condemnation</u> <u>Repealed</u> |
| <u>R9-8-117.</u> | <u>Refuse</u> <u>Repealed</u> |
| <u>R9-8-118.</u> | <u>Plans</u> <u>Repealed</u> |
| <u>R9-8-119.</u> | <u>Permits</u> <u>Repealed</u> |
| <u>R9-8-121.</u> | <u>Non-specific places or operations; scope</u> <u>Repealed</u> |
| <u>R9-8-122.</u> | <u>Non-specific places or operations; general</u> <u>Repealed</u> |
| <u>R9-8-123.</u> | <u>Non-specific places or operations; physical plant</u> <u>Repealed</u> |
| <u>R9-8-124.</u> | <u>Non-specific places or operations; water supply</u> <u>Repealed</u> |
| <u>R9-8-125.</u> | <u>Non-specific places or operations; toilets and lavatories</u> <u>Repealed</u> |
| <u>R9-8-126.</u> | <u>Non-specific places or operations; utensils and equipment</u> <u>Repealed</u> |
| <u>R9-8-127.</u> | <u>Non-specific places or operations; wholesomeness and storage of food and drink</u> <u>Repealed</u> |
| <u>R9-8-131.</u> | <u>Food service establishments</u> <u>Repealed</u> |
| <u>R9-8-132.</u> | <u>Food care</u> <u>Repealed</u> |
| <u>R9-8-133.</u> | <u>Personnel</u> <u>Repealed</u> |
| <u>R9-8-134.</u> | <u>Equipment and utensils</u> <u>Repealed</u> |
| <u>R9-8-135.</u> | <u>Cleaning, sanitization and storage of equipment and utensils</u> <u>Repealed</u> |
| <u>R9-8-136.</u> | <u>Sanitary facilities and controls</u> <u>Repealed</u> |
| <u>R9-8-137.</u> | <u>Construction and maintenance of physical facilities</u> <u>Repealed</u> |
| <u>R9-8-138.</u> | <u>Mobile food units or pushcarts</u> <u>Repealed</u> |
| <u>R9-8-139.</u> | <u>Temporary food service</u> <u>Repealed</u> |
| <u>R9-8-140.</u> | <u>Compliance procedures</u> <u>Repealed</u> |
| <u>R9-8-151.</u> | <u>Shellfish</u> <u>Repealed</u> |
| <u>R9-8-156.</u> | <u>Vending machines; sanitation ordinance and code</u> <u>Repealed</u> |
| <u>R9-8-160.</u> | <u>Definition</u> <u>Repealed</u> |
| <u>R9-8-161.</u> | <u>Ice manufacturing plant; sanitation</u> <u>Repealed</u> |
| <u>R9-8-162.</u> | <u>Ice manufacturing plant; toilet and lavatory</u> <u>Repealed</u> |
| <u>R9-8-163.</u> | <u>Ice manufacturing plant; water supply</u> <u>Repealed</u> |
| <u>R9-8-164.</u> | <u>Ice manufacturing plant; miscellaneous</u> <u>Repealed</u> |
| <u>R9-8-165.</u> | <u>Ice making and dispensing equipment</u> <u>Repealed</u> |
| <u>R9-8-171.</u> | <u>Bakeries; definitions</u> <u>Repealed</u> |

- R9-8-172. ~~Bakeries; general~~ Repealed
- R9-8-173. ~~Bakeries; physical plant~~ Repealed
- R9-8-174. ~~Bakeries; toilet and lavatory~~ Repealed
- R9-8-175. ~~Bakeries; water supply~~ Repealed
- R9-8-176. ~~Bakeries; utensils and equipment~~ Repealed
- R9-8-177. ~~Bakeries; refrigeration~~ Repealed
- R9-8-178. ~~Bakeries; storage; display; transportation~~ Repealed
- R9-8-181. ~~Definitions~~ Repealed
- R9-8-182. ~~General~~ Repealed
- R9-8-183. ~~Physical plant~~ Repealed
- R9-8-184. ~~Toilet and lavatory~~ Repealed
- R9-8-185. ~~Water supply~~ Repealed
- R9-8-186. ~~Utensils and equipment~~ Repealed
- R9-8-187. ~~Refrigeration; packaging; transportation~~ Repealed
- R9-8-188. ~~Processed meat and meat food product requirements for retail meat establishments~~ Repealed
- R9-8-189. ~~Inspections~~ Repealed

ARTICLE 1. FOOD AND DRINK

R9-8-101. Definitions

In addition to the terms defined in the material incorporated by reference in R9-8-107, which are designated by all capital letters, the following definitions apply in this Article, unless otherwise specified:

1. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
2. “Applicant” means the following PERSON requesting a LICENSE:
 - a. If an individual, the individual who owns the FOOD ESTABLISHMENT;
 - b. If a corporation, any officer of the corporation;
 - c. If a limited liability company, the designated manager or, if no manager is designated, any member of the limited liability company;
 - d. If a partnership, any 2 of the partners;
 - e. If a joint venture, any 2 individuals who signed the joint venture agreement;
 - f. If a trust, the trustee of the trust;
 - g. If a religious or nonprofit organization, the individual in the senior leadership position within the organization.
 - h. If a school district, the superintendent of the district;
 - i. If an agency, the individual in the senior leadership position within the agency; or
 - j. If a county, municipality, or other political subdivision of the state, the individual in the senior leadership position within the county, municipality, or political subdivision.
3. “Department” means the Arizona Department of Health Services.
4. “FC” means 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 and incorporated by reference in R9-8-107.
5. “Incongruous” means inconsistent with the inspection reports of other inspectors or the REGULATORY AUTHORITY as a whole because significantly more or fewer violations of individual CRITICAL ITEMS are documented.
6. “Prepare” means to process commercially for human consumption by manufacturing, packaging, labeling, cooking, or assembling.
7. “Public health control” means a method to prevent transmission of foodborne illness to the CONSUMER.
8. “Remodel” means to change the PHYSICAL FACILITIES or PLUMBING FIXTURES in a FOOD ESTABLISHMENT’S FOOD preparation, storage, or cleaning areas through construction, replacement, or relocation, but does not include the replacement of old EQUIPMENT with new EQUIPMENT of the same type.
9. “Requester” means a PERSON who requests an approval from the REGULATORY AUTHORITY, but who is not an applicant or a LICENSE HOLDER.

R9-8-102. Applicability

This Article does not apply to the following:

1. Beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Milk and milk products;
3. Group homes, as defined in A.R.S. Title 36, Chapter 5.1, Article 1;
4. Child care group homes, as defined in A.R.S. Title 36, Chapter 7.1, Article 4;
5. Residential group care facilities, as defined in 6 A.A.C. 5, Article 74, that have 20 or fewer clients;
6. Assisted living homes, as defined in 9 A.A.C. 10, Article 7;
7. Adult day health care services, as defined in 9 A.A.C. 10, Article 7, that have 15 or fewer clients; and

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8. Behavioral health service agencies, licensed under 9 A.A.C. 20, that provide residential or partial care services for 10 or fewer clients.

R9-8-103. Food Establishment License Application

- A.** To obtain a FOOD ESTABLISHMENT LICENSE, an applicant shall complete and submit to the REGULATORY AUTHORITY a FOOD ESTABLISHMENT LICENSE application form supplied by the REGULATORY AUTHORITY that indicates all of the following:
 1. The full name, telephone number, and mailing address of the applicant;
 2. The name, telephone number, and street address of the FOOD ESTABLISHMENT;
 3. Whether the FOOD ESTABLISHMENT is mobile or stationary;
 4. Whether the FOOD ESTABLISHMENT is temporary or permanent;
 5. Whether the FOOD ESTABLISHMENT facility is one of the following:
 - a. A new construction that is not yet completed;
 - b. An existing structure that is being converted for use as a FOOD ESTABLISHMENT, or
 - c. An existing FOOD ESTABLISHMENT facility that is being remodeled;
 6. Whether the FOOD ESTABLISHMENT prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD;
 7. Whether the FOOD ESTABLISHMENT does any of the following:
 - a. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD only to order upon CONSUMER request;
 - b. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD in advance, in quantities based on projected CONSUMER demand;
 - c. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD using time alone, rather than time and temperature, as the public health control as described in FC § 3-501.19;
 - d. Prepares POTENTIALLY HAZARDOUS FOOD in advance using a multiple stage FOOD preparation method that may include the following:
 - i. Combining POTENTIALLY HAZARDOUS FOOD ingredients,
 - ii. Cooking,
 - iii. Cooling,
 - iv. Reheating,
 - v. Hot or cold holding,
 - vi. Freezing, or
 - vii. Thawing;
 - e. Prepares FOOD as specified under subsection (A)(7)(d) for delivery to and consumption at a location off of the PREMISES where prepared;
 - f. Prepares FOOD as specified under subsection (A)(7)(d) for service to a HIGHLY SUSCEPTIBLE POPULATION; or
 - g. Does not prepare FOOD, but offers for sale only pre-PACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD; and
 8. The applicant's signature and the date signed.
- B.** An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit a completed LICENSE application for each location.

R9-8-104. Time-frames

- A.** This Section applies to the Department and to a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 7.1 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 provided 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 provided 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.

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- 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 provided in Table 1 and begins as of the date on 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 are suspended from the date that the REGULATORY AUTHORITY issues the request until the date that the REGULATORY AUTHORITY receives all of the information requested.
 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 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 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 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 approval of an inspection form, the Department determines that the inspection form does not satisfy all of the requirements of R9-8-108(B)-(C); or
 - f. For approval of a quality assurance program, the Department determines that the quality assurance program does not satisfy all of the requirements of R9-8-108(E)(1).
 5. If the REGULATORY AUTHORITY denies an application or request for approval, the REGULATORY AUTHORITY shall send to the applicant, LICENSE HOLDER, or requester a written notice of denial setting forth the reasons for the denial 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 is not included. Intermediate Saturdays, Sundays, and legal holidays are included in the computation. The last day of the period so computed is 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.

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Table 1. Time-frames (in days)

| Type of Approval | Statutory Authority | Overall Time-frame | Administrative Completeness Review Time-frame | Substantive Review Time-frame |
|---|------------------------------|--------------------|---|-------------------------------|
| <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 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> |

R9-8-105. Issuance of License

A FOOD ESTABLISHMENT LICENSE issued by the REGULATORY AUTHORITY shall bear the following information:

1. The name of the FOOD ESTABLISHMENT.
2. The street address of the FOOD ESTABLISHMENT.
3. The full name of the LICENSE HOLDER.
4. The mailing address of the LICENSE HOLDER, and
5. A unique identification number assigned by the REGULATORY AUTHORITY.

R9-8-106. License Suspension or Revocation

A. The REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT LICENSE if the LICENSE HOLDER:

1. Violates this Article or A.R.S. § 36-601, or
2. Provides false information on a LICENSE application.

B. A LICENSE revocation or suspension hearing shall be conducted as follows:

1. If the REGULATORY AUTHORITY is the Department, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings;
2. If the REGULATORY AUTHORITY is a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings; and
3. For all other REGULATORY AUTHORITIES, a LICENSE revocation or suspension hearing shall be conducted in accordance with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).

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 for 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”;
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).”;

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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 record keeping 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.”;
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”;

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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 LAW.”;
33. Paragraph 5-501.116(A) is modified by replacing “§ 5-402.14” 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 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 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 after receipt 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,
 - d. Section 2-201.13,

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- 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.

R9-8-108. Inspection Standardization and Documentation

- A.** At each inspection, the REGULATORY AUTHORITY shall, at a minimum, inspect for compliance with each of the applicable CRITICAL ITEMS in the following categories:
- 1. Temperature control of POTENTIALLY HAZARDOUS FOODS, as required by FC §§ 3-401.11, 3-401.12, 3-403.11, 3-501.14, and 3-501.16;
 - 2. EMPLOYEE health and hygienic practices, as required by FC §§ 2-201.11, 2-301.11, 2-301.12, 2-301.14, 2-401.11, 2-401.12, 2-403.11, 3-301.11, 3-301.12, and 5-203.11;
 - 3. Time as a public health control, as required by FC § 3-501.19;
 - 4. FOOD condition and source, as required by FC §§ 3-101.11, 3-201.11, 3-201.12, 3-201.14, 3-201.15, 3-201.16, 3-201.17, 3-202.11, 3-202.13, 3-202.14, 3-202.15, 3-202.16, 3-202.18, 3-203.12, 5-101.11, and 5-101.13;
 - 5. CONSUMER advisories, as required by FC § 3-603.11;
 - 6. Contamination prevention, as required by FC §§ 3-302.11, 3-302.13, 3-302.14, 3-304.11, 3-306.13, 3-306.14, 4-601.11, 4-602.11, 4-702.11, 4-703.11, 5-101.12, 5-201.11, and 5-202.11;
 - 7. Date marking and disposal of READY-TO-EAT FOODS, as required by FC §§ 3-501.17 and 3-501.18;
 - 8. Responsibility and knowledge of the PERSON IN CHARGE, as required by FC §§ 2-101.11 and 2-102.11; and
 - 9. Compliance with a HACCP PLAN or VARIANCE, as required by FC § 8-103.12;
- B.** The REGULATORY AUTHORITY shall document its inspection results on an inspection report form provided or approved by the Department. The inspection report form shall include the following:
- 1. The name and address of the FOOD ESTABLISHMENT inspected;
 - 2. The LICENSE number of the FOOD ESTABLISHMENT inspected;
 - 3. The date of inspection;
 - 4. The type of inspection;
 - 5. A rating for each of the observed CRITICAL ITEMS listed in subsection (A), using a rating scheme that indicates whether the CRITICAL ITEM is met;
 - 6. Space for comments, including observed violations of non-CRITICAL ITEMS;
 - 7. Signature and date lines for the PERSON IN CHARGE of the FOOD ESTABLISHMENT; and
 - 8. Signature and date lines for the inspector conducting the inspection.
- C.** The REGULATORY AUTHORITY shall also document on the inspection form the applicable CRITICAL ITEMS listed in subsection (A) that were not observed during the inspection, unless the REGULATORY AUTHORITY has a quality assurance program that has been approved by the Department under subsection (E).
- D.** If a REGULATORY AUTHORITY desires to create its own inspection form, the REGULATORY AUTHORITY may request approval of its inspection form by submitting a written request to the Department along with a copy of the inspection form for which approval is sought. The Department shall approve an inspection form if it determines that the inspection form satisfies all of the requirements of subsections (B) and (C).
- E.** A REGULATORY AUTHORITY may request approval of a quality assurance program by submitting a written request to the Department along with a description of the quality assurance program for which approval is sought.
- 1. The quality assurance program shall include the following:

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- a. A system for monitoring the inspection reports completed by each inspector every 6 months and comparing them to the reports of other inspectors and the REGULATORY AUTHORITY as a whole with respect to the number and types of violations documented during the same period;
 - b. Identification of each inspector whose inspection reports are incongruous;
 - c. Reinspection of a representative sample of an inspector's FOOD ESTABLISHMENTS for which inspection reports are incongruous by a quality assurance inspector within 30 days of identification of an inspector under subsection (E)(1)(b) to determine whether the incongruous reports indicate a misapplication of the rules by the inspector;
 - d. Follow-up with each inspector determined by a quality assurance inspector to have misapplied the rules:
 - i. If the inspector has not previously required follow-up, additional training by a quality assurance inspector regarding any misapplication of the rules by the inspector;
 - ii. If the inspector has previously received additional training under subsection (E)(1)(d)(i), formal counseling by the inspector's direct supervisor and a quality assurance inspector; or
 - iii. If the inspector has previously been formally counseled under subsection (E)(1)(d)(ii), disciplinary action; and
 - e. Consideration by the REGULATORY AUTHORITY of any misapplication of the rules by the inspector when completing the inspector's performance evaluations.
2. The Department shall approve a quality assurance program if it determines that the quality assurance program satisfies all of the requirements of subsection (E)(1).

R9-8-109. Cease and Desist and Abatement

- A.** Engaging in any practice in violation of this Article is a public nuisance.
- B.** If the REGULATORY AUTHORITY has reasonable cause to believe that any FOOD ESTABLISHMENT is creating or maintaining a nuisance, the REGULATORY AUTHORITY shall order the LICENSE HOLDER for the FOOD ESTABLISHMENT to cease and desist the activity and to abate the nuisance as follows:
1. The REGULATORY AUTHORITY shall serve upon the LICENSE HOLDER for the FOOD ESTABLISHMENT a written cease and desist and abatement order requiring the LICENSE HOLDER to cease and desist the activity and to remove the nuisance at the LICENSE HOLDER's expense within 24 hours after service of the order. The order shall contain the following:
 - a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
 - b. A description of the LICENSE HOLDER's right to request a hearing, and
 - c. A description of the LICENSE HOLDER's right to request an informal settlement conference.
 2. The REGULATORY AUTHORITY shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the LICENSE HOLDER's or other party's last address of record with the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the LICENSE HOLDER or other party.
 3. The LICENSE HOLDER or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the REGULATORY AUTHORITY within 30 days after service of the order. The LICENSE HOLDER or other party appealing the order shall serve the notice of appeal upon the REGULATORY AUTHORITY by personal delivery or certified mail, return receipt requested, to the office of the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the REGULATORY AUTHORITY.
 4. If a notice of appeal is timely filed, the REGULATORY AUTHORITY shall do 1 of the following:
 - a. If the REGULATORY AUTHORITY is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
 - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
 5. If no written notice of appeal is timely filed, the order shall become final without further proceedings.
- C.** The REGULATORY AUTHORITY shall inspect the FOOD ESTABLISHMENT 24 hours after service of the order to determine whether the LICENSE HOLDER has complied with the order. If the REGULATORY AUTHORITY determines upon inspection that the LICENSE HOLDER has not ceased the activity and abated the nuisance, the REGULATORY AUTHORITY shall cause the nuisance to be removed, regardless of whether the LICENSE HOLDER is appealing the order.
- D.** If the LICENSE HOLDER fails or refuses to comply with the order after a hearing has upheld the order or after the time to appeal the order has expired, the REGULATORY AUTHORITY may file an action against the LICENSE HOLDER in the superior court of the county in which the violation occurred, requesting that a permanent injunction be issued to restrain the LICENSE HOLDER from engaging in further violations as described in the order.

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R9-8-111. ~~Scope and legal authority~~ Repealed

- ~~A. All food establishments shall comply with the provisions of this Article which are applicable to that particular type of establishment or to the foods provided by the establishment.~~
~~B. The regulations in this Article are adopted pursuant to the authority granted by A.R.S. §§ 36-132, 36-136, and 36-911.~~

R9-8-112. ~~Definitions~~ Repealed

In these regulations, unless the context otherwise requires:

- ~~1. "Adulteration". A food is adulterated if one or more of the conditions specified in A.R.S. § 36-904 exists.~~
- ~~2. "Approved" means acceptable to the Department.~~
- ~~3. "Commissary" means a catering establishment, restaurant, or any other place in which food, food containers, or food supplies are kept, handled, prepared, packaged, or stored.~~
- ~~4. "Corrosion-resistant materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions of use environment.~~
- ~~5. "Department" means the Arizona Department of Health Services or a local, county, or city health department designated by the Director.~~
- ~~6. "Easily cleanable" means readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.~~
- ~~7. "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food establishment.~~
- ~~8. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food establishment.~~
- ~~9. "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.~~
- ~~10. "Food contact surface" means any surface of equipment or utensils with which food normally comes in contact and any surface from which food may drain, drip, or splash back onto surfaces normally in contact with food.~~
- ~~11. "Food establishment" means any place where food or beverage or any of the constituents thereof is produced, stored, manufactured, prepared, handled, sold or offered for sale or given away, including a food processing establishment and a food service establishment.~~
- ~~12. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.~~
- ~~13. "Food service establishment" means any place where food is prepared and intended for individual portion service and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.~~
- ~~14. "Health officer" means the Director of the Department, a city health officer, a local health officer, or a county health officer.~~
- ~~15. "Hermetically sealed container" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.~~
- ~~16. "Insanitary" means an unclean or unhealthful condition where food in the process of production, preparation, manufacture, packing, storing, sale, distribution or transportation is not protected from insects, flies, rodents, dust, dirt, or any other injurious contamination; or where refuse, dirt or waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, distributing, or transportation of food is not removed daily; or where all machinery, equipment and utensils are not maintained in a clean condition; or where the clothing of employees is unclean; or where there exists any other circumstance determined by the Department to constitute a health hazard.~~
- ~~17. "Kitchenware" means all multi-use utensils other than tableware.~~
- ~~18. "Mislabeling or misbranding". A food is mislabeled or misbranded if one or more of the conditions specified in A.R.S. § 36-906 exists or if it does not conform to the labeling requirements of the Federal Act as defined in A.R.S. § 36-901.~~
- ~~19. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.~~
- ~~20. "Packaged" means bottled, canned, cartoned, or securely wrapped.~~
- ~~21. "Person" means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual or other legal entity.~~

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22. ~~“Person in charge” means the individual present in a food service establishment who is the supervisor of the food service establishment at the time of inspection, or his designee. If no individual is the apparent supervisor, then any employee present is the person in charge.~~
23. ~~“Potentially hazardous food” means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.~~
24. ~~“Pushcart” means a non-self-propelled vehicle limited to serving non-potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and serving of frankfurters.~~
25. ~~“Reconstituted” means dehydrated food products recombined with water or other liquids.~~
26. ~~“Regulatory authority” means a local, county, or city health department with jurisdiction over a food service establishment; however nothing herein shall be deemed to limit
 - a. the authority of the Director of the Arizona Department of Health Services to administer and enforce these regulations or assume any powers therein; or
 - b. the authority of a local, county, or city health department to issue permits pursuant to local health regulations.~~
27. ~~“Safe materials” means articles manufactured from or composed of materials that may not reasonably be expected to adversely affect, directly or indirectly, the characteristics of any food. If materials used are food additives or color additives as defined in Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act, they are “safe” only if they are used in conformity with regulations established pursuant to Section 409 or Section 706 of the Act. Other materials are “safe” only if, as used, they are not food additives or color additives as defined in Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act and are used in conformity with all applicable regulations of the Food and Drug Administration.~~
28. ~~“Sanitization” means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.~~
29. ~~“Sealed” means free of cracks or other openings that permit the entry or passage of moisture.~~
30. ~~“Single-service articles” means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one-person use and then discarded.~~
31. ~~“Tableware” means multi-use eating and drinking utensils.~~
32. ~~“Temporary food service establishment” means a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.~~
33. ~~“Uniform Mechanical Code” means the Uniform Mechanical Code published by the International Association of Plumbing and Mechanical Officials.~~
34. ~~“Uniform Plumbing Code” means the Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials.~~
35. ~~“Utensil” means any implement used in the storage, preparation, transportation, or service of food.~~
36. ~~“Wholesome” means clean, free from spoilage, and in such condition as to be safe for human consumption.~~

R9-8-113. Prohibition Repealed

~~The floors, walls, ceilings, receptacles, implements, machinery, and equipment of every food establishment, and all vehicles used in the transportation of food shall not be kept or permitted to remain in an unclean, unhealthful, or insanitary condition.~~

R9-8-114. Minimum standards Repealed

~~When minimum standards of design and construction for a particular type of equipment have been formulated and published by the Department or the National Sanitation Foundation, only that equipment which is designed and constructed in accordance with the applicable standard may be installed as new or replacement equipment.~~

R9-8-115. Right of entry Repealed

~~No person shall refuse to admit the Health Officer, at any reasonable time, upon his request to any part of the establishment for the purpose of inspection and shall permit the copying of any or all records of foods purchased or disposed of.~~

R9-8-116. Examination and condemnation Repealed

~~Samples of food or drink may be taken and examined by the Health Officer as often as he deems necessary for the detection of unwholesomeness or adulteration. The Health Officer shall, at his discretion, condemn and forbid the sale, or cause to be removed or destroyed, food or drink which he deems unwholesome or adulterated.~~

R9-8-117. Refuse Repealed

~~All refuse shall be stored and disposed of in accordance with Article 4 of this Chapter of these regulations.~~

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R9-8-118. Plans Repealed

~~Plans for the construction, alteration, or remodeling of any food establishment shall be reviewed by the Health Officer for compliance with these regulations. No construction, alteration, or remodeling shall be undertaken until such plans have been approved.~~

R9-8-119. Permits Repealed

- ~~A. No person shall operate a food establishment without first procuring a permit to do so from the Health Officer. The permit shall be posted in a conspicuous place on the premises of the food establishment.~~
- ~~B. The permit shall be issued in the name of the owner, manager, or operator for a specific location and shall be nontransferable.~~
- ~~C. A permit issued by the Health Officer is good until suspended or revoked, which action may be taken if the establishment is found to be operating contrary to these regulations.~~
- ~~D. The operation of such an establishment without a permit, or the continued operation after a permit has been suspended or revoked, shall constitute a violation of this regulation.~~
- ~~E. Application for a permit shall be on a form prescribed by the Health Officer and shall contain the name and address of the applicant and whatever other information the Health Officer shall require to ascertain whether the applicant has the facilities and capabilities to operate in such a manner as to conform to this regulation.~~
- ~~F. Prior to the issuance of any permit, an inspection of the premises and equipment shall be made by the Health Officer and no permit shall be issued unless the premises and equipment conform to the requirements of these regulations. Inspection shall be made as frequently as necessary for compliance with these regulations but in no instance at intervals of longer than six months.~~

R9-8-121. Non-specific places or operations; scope Repealed

~~R9-8-122 through R9-8-127 are applicable to any business, place or operation in which food is processed, prepared, stored, handled, transported, sold or given away and for which specific regulations have not been adopted elsewhere in this Article.~~

R9-8-122. Non-specific places or operations; general Repealed

- ~~A. Approved and effective methods of insect and vermin control shall be used at all times.~~
- ~~B. All persons engaged in these occupations shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Persons, while engaged in preparing or handling food, shall not use tobacco in any form. Hairnets are required for female personnel; caps shall be worn by males where required.~~
- ~~C. The premises of all food establishments shall be kept clean and free of litter or rubbish. None of the operations connected with a food handling establishment shall be conducted in any room used for domestic purposes. Adequate lockers and dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats and aprons shall be kept in covered containers provided for this purpose.~~

R9-8-123. Non-specific places or operations; physical plant Repealed

- ~~A. The building shall be of sound, tight construction and dust proof.~~
- ~~B. The floors shall be constructed of impervious material where they are subject to flooding, spillage, or other conditions of hard use. All floors shall be easily cleanable, smooth, and, where necessary, graded to drain. They shall be kept clean and in good repair. The juncture of floors and walls shall be coved for easier cleaning.~~
- ~~C. Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food is stored or prepared shall be finished in a light color. The walls and ceilings of all rooms in which food is prepared or utensils washed shall have a smooth, washable surface.~~
- ~~D. All openings into the outer air shall be effectively screened and doors shall be self-closing, unless other approved means are provided to control insects and vermin.~~
- ~~E. All rooms in which food is stored, prepared, or in which equipment is washed shall be kept well lighted. Inspection points shall be lighted to the degree necessary to meet product inspectional requirements.~~
- ~~F. All rooms in which food is stored, prepared, or served, or in which utensils are washed, shall be properly ventilated at all times.~~

R9-8-124. Non-specific places or operations; water supply Repealed

- ~~A. All water shall be obtained from a safe, sanitary supply, and from an approved source. Hot and cold running water shall be provided in all rooms in which products are processed or prepared or utensils are washed.~~
- ~~B. Any connection or condition, including overhead leakage, that may permit an interchange of water between a public water supply and a private, industrial, or other source of water supply is prohibited unless both supplies and the method of cross-connection or condition have been approved in writing by the Department.~~

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- ~~C.~~ No plumbing fixture or other device which provides, or may provide, a connection between a drinking water supply and a drainage, soil, waste, or other sewer pipe so as to make possible the backflow of sewage or waste water into the water supply system shall be installed or permitted to remain installed. Water which has been used for cooling or for any other purpose shall not be returned to the system unless the entire installation and operation thereof has been approved in writing by the Department. All plumbing shall be installed in accordance with any local ordinance or code and with the standards adopted by reference in R9-1-412(D).

R9-8-125. ~~Non-specific places or operations; toilets and lavatories~~ Repealed

- ~~A.~~ Adequate and convenient toilet facilities shall be provided for employees. They shall conform to the requirements of the Department. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept clean, in good repair, well lighted, and ventilated to the outside air. Hand-washing signs shall be posted in each toilet room used by employees.
- ~~B.~~ Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved individual sanitary towels. Lavatories, in addition to those provided in toilet rooms, shall be provided and shall be easily accessible to all employees. Mixing faucets are required in new construction or when the existing plant is remodeled. No employee shall resume work after using the toilet room without washing his hands. Lavatories and wash rooms shall be kept clean and sanitary.

R9-8-126. ~~Non-specific places or operations; utensils and equipment~~ Repealed

- ~~A.~~ All piping, vats, utensils, and all counters, shelves, refrigerating equipment, sinks, and any other equipment or utensils, used in connection with the operation of any business covered by this regulation, shall be so constructed as to be easily cleaned and shall be kept in good repair. Only approved piping shall be used. Enamelware and graniteware are prohibited. Utensils or equipment which are cadmium lead or other toxic material is a part of the metal are prohibited. The equipment shall be so located and installed as to facilitate the cleaning of both the equipment and the area in which it is installed.
- ~~B.~~ All equipment, including but not limited to, windows, counters, shelves, vats, tables, refrigerators, and sinks shall be kept clean and free from dust, dirt, insects, and all contaminating material. All multi-use equipment and utensils used in the preparation or processing of food or food products shall be thoroughly cleaned immediately following the day's operation and shall be subjected to an approved bactericidal treatment immediately prior to reuse. An approved bactericidal treatment shall consist of one of the following methods:
1. Steam—large equipment and pipe lines may be sanitized by being sprayed with live, dry (15 No. relative pressure with pipe vented until live steam reaches end) steam or may be circulated through a pipe.
 2. Utensils or the product zone of equipment or pipe system may be sanitized by means of being dipped into, swabbed, sprayed, or recirculated by a chlorine solution. Minimum strength of chlorine solution shall be 100 ppm free chlorine.
 3. Such other methods or chemicals, as approved by the Health Officer in writing, may be used.
- ~~C.~~ After cleaning, utensils and equipment shall be properly stored in a clean dry place, protected from insects and vermin, dust, and other types of contamination. Containers and packaging materials shall be purchased in clean containers, stored in a clean, dry area, and in such a manner as to preclude contamination.

R9-8-127. ~~Non-specific places or operations; wholesomeness and storage of food and drink~~ Repealed

- ~~A.~~ All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. Perishable food or products shall be refrigerated so that the food temperature does not exceed 45° F. at any time except during actual processing. Subsequent to processing, the food shall be returned to refrigeration in the minimum amount of time consistent with the preservation of the quality of the food and good processing techniques. Ice shall be from approved sources, stored, and handled in a sanitary manner.
- ~~B.~~ All food and drink shall be stored, displayed, and served so as to be protected from dust, insects, vermin, depredation and pollution by rodents, handling, droplet infection, overhead leakage, and other contamination. No live animals or birds shall be kept or allowed in any room in which food or drink is prepared, stored, or served.

R9-8-131. ~~Food service establishments~~ Repealed

The provisions of R9-8-131 through R9-8-140 apply only to food service establishments, including mobile food service and temporary food service establishments. Said provisions are derived from the Food Service Sanitation Manual (1976) of the United States Department of Health, Education, and Welfare (DHEW Publication No. (FDA) 78-2081) and shall to the extent practicable be construed consistently with the provisions and comments set forth in the Manual.

R9-8-132. ~~Food care~~ Repealed

- ~~A.~~ Food supplies
1. General
 - a. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.
 2. Special requirements

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- a. Fresh and shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker packer, or repacker, and the interstate certification number issued according to the U.S. Public Health Service Certification Program. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quality of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency.
- b. Only clean, whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

B. Food protection

1. General

- a. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 45° F. or below or 140° F. or above at all times, except as otherwise provided in this Article.

2. Emergency occurrences

- a. In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the regulatory authority. Upon receiving notice of this occurrence, the regulatory authority shall take whatever action that it deems necessary to protect the public health.

C. Food storage

1. General

- a. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
- b. Containers of food shall be stored a minimum of 6 inches above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area, except that:
 - i. Metal pressurized beverage containers and eased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture; and
 - ii. Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.
- c. Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.
- d. Food not subject to further washing or cooking before serving shall be stored in a way that protects it from cross-contamination from food requiring washing or cooking.
- e. Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.
- f. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, or flour not stored in the product container or package in which it was obtained shall be in a container identifying the food by common name.

2. Refrigerated storage

- a. Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically sealed indicating thermometer, accurate to $\pm 3^{\circ}$ F., located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}$ F., may be used in lieu of indicating thermometers.
- b. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45° F. or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed 4 hours. Potentially hazardous food to be transported shall be prechilled and held at a temperature of 45° F. or below unless maintained in accordance with R9-8-132(C)(3).
- e. Frozen food shall be kept frozen and should be stored at a temperature of 0° F. or below.

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- d. ~~Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.~~

3. Hot storage

- a. ~~Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically sealed indicating thermometer, accurate to $\pm 3^{\circ}$ F., located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}$ F., may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.~~
- b. ~~The internal temperature of potentially hazardous foods requiring hot storage shall be 140° F. or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140° F. or above unless maintained in accordance with R9-8-132(C)(2)(b).~~

D. Food preparation

1. General

- a. ~~Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.~~

2. Raw fruits and raw vegetables

- a. ~~Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.~~

3. Cooking potentially hazardous foods

- a. ~~Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F., except that:~~
 - i. ~~Poultry, poultry stuffing, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F. with no interruption of the cooking process.~~
 - ii. ~~Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F.~~
 - iii. ~~Rare roast beef shall be cooked to an internal temperature of at least 130° F., and rare beef steak shall be cooked to a temperature of 130° F. unless otherwise ordered by the immediate consumer.~~

4. Liquid, frozen, dry eggs and egg products

- a. ~~Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.~~

5. Reheating

- a. ~~Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165° F. or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.~~

6. Nondairy products

- a. ~~Nondairy creaming, whitening, or whipped agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one gallon capacity and cooled to 45° F. or below within 4 hours after preparation.~~

7. Product thermometers

- a. ~~Metal stem type numerically sealed indicating thermometers, accurate to $\pm 2^{\circ}$ F., shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperature of all potentially hazardous foods.~~

8. Thawing potentially hazardous foods

- a. ~~Potentially hazardous foods shall be thawed:~~
 - i. ~~In refrigerated units at a temperature not to exceed 45° F., or~~
 - ii. ~~Under potable running water of a temperature of 70° F. or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or~~
 - iii. ~~In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as a part of continuous cooking process or when the entire uninterrupted cooking process takes place in the microwave oven; or~~
 - iv. ~~As part of the conventional cooking process.~~

E. Food display and service

1. Potentially hazardous food

- a. ~~Potentially hazardous foods shall be kept at an internal temperature of 45° F. or below or at an internal temperature of 140° F. or above during display and service, except that rare roast beef shall be held for service at a temperature of at least 130° F.~~

2. Milk and cream dispensing

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- a. Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding 1 pint in capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where a bulk dispenser for milk and milk products is not available and portions of less than 1/2 pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than 1/2 gallon capacity.
- b. Cream or half and half shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service.
- 3. Nondairy product dispensing
 - a. Nondairy creaming or whitening agents shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.
- 4. Condiment dispensing
 - a. Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with R9-8-132(E)(8).
 - b. Condiments provided for table or counter service shall be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.
- 5. Ice dispensing
 - a. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice dispensing utensils or through automatic self-service, ice dispensing equipment. Ice dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.
- 6. Dispensing utensils
 - a. To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:
 - i. Stored in the food with the dispensing utensil handle extended out of the food; or
 - ii. Stored clean and dry; or
 - iii. Stored in running water; or
 - iv. Dispensing utensils and malt collars used in preparing frozen desserts may be stored either in a running water dipper well or clean and dry.
- 7. Re-service
 - a. Once served to a consumer, portions of leftover food shall not be served again except that packaged food, other than potentially hazardous food, that is still packaged and is still in sound condition, may be re-served.
- 8. Display equipment
 - a. Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.
- 9. Re-use of tableware
 - a. Re-use of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.
- F. Food transportation**
 - 1. General
 - a. During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be over-wrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, the requirements of this Article relating to food protection and food storage shall be followed.

R9-8-133. Personnel Repealed

A. Employee health

1. General

- a. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

B. Personal cleanliness

1. General

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- a. ~~Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.~~

C. Clothing

1. General

- a. ~~The outer clothing of all employees shall be clean.~~
- b. ~~Employees shall use hair restraints which prevent any possibility of hair entering into food or contaminating food-contact surfaces.~~

D. Employee practices

1. General

- a. ~~Employees shall consume food only in designated dining areas. An area shall not be designated as an employee dining area if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.~~
- b. ~~Employees shall not use tobacco in any form while engaged in food preparation or service nor while in areas used for equipment or utensil washing or for food preparation. Employees shall use tobacco only in designated areas. An area shall not be designated as an employee tobacco use area if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.~~
- e. ~~Employees shall handle soiled tableware in a way that minimizes contamination of their hands.~~
- d. ~~Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.~~

R9-8-134. Equipment and utensils Repealed

A. Materials

1. General

- a. ~~Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and non-absorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste nor contribute to the contamination of food.~~

2. Solder

- a. ~~If solder is used, it shall be composed of safe materials and be corrosion resistant.~~

3. Wood

- a. ~~Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in R9-8-134(A)(1) may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chop sticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances is prohibited.~~

4. Plastics

- a. ~~Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in R9-8-134(A)(1) are permitted for repeated use.~~

5. Mollusk and crustacea shells

- a. ~~Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.~~

6. Single-service

- a. ~~Re-use of single-service articles is prohibited.~~

B. Design and fabrication

1. General

- a. ~~All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.~~
 - i. ~~Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, griddle tops, and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems, such threads shall be minimized.~~
 - ii. ~~Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.~~

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- iii. ~~Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice; provided that such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or draining tubes from dispensing units shall not pass through the ice machine or the ice storage bin.~~
- iv. ~~Sinks and drain boards shall be self-draining.~~
- 2. ~~Accessibility~~
 - a. ~~Unless designed for in-place cleaning, food contact surfaces shall be accessible for cleaning and inspection:~~
 - i. ~~Without being disassembled; or~~
 - ii. ~~By disassembling without the use of tools; or~~
 - iii. ~~By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.~~
- 3. ~~In-place cleaning~~
 - a. ~~Equipment intended for in-place cleaning shall be so designed and fabricated that:~~
 - i. ~~Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and~~
 - ii. ~~Cleaning and sanitizing solutions will contact all interior food contact surfaces; and~~
 - iii. ~~The system is self-draining or capable of being completely evacuated.~~
- 4. ~~Pressure spray cleaning~~
 - a. ~~Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.~~
- 5. ~~Thermometers~~
 - a. ~~Indicating thermometers required for immersion into food or cooking media shall be of metal stem type construction, numerically sealed, and accurate to $\pm 2^{\circ}$ F.~~
- 6. ~~Non-food contact surfaces~~
 - a. ~~Surfaces of equipment not intended for contact with food but which are exposed to splash or food debris or which otherwise require frequent cleaning shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.~~
- 7. ~~Ventilation hoods~~
 - a. ~~Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings and from dripping into food or onto food contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place.~~
- 8. ~~Existing equipment~~
 - a. ~~Equipment that was installed in a food service establishment prior to the effective date of this Section, and that does not fully meet all of the design and fabrication requirements of this Section, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of this Section shall meet the requirements of this Article.~~
- C. ~~Equipment installation and location~~
 - 1. ~~General~~
 - a. ~~Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.~~
 - 2. ~~Table mounted equipment~~
 - a. ~~Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a 4-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.~~
 - b. ~~Equipment is portable within the meaning of R9-8-134(C)(2)(a) if:~~
 - i. ~~It is small and light enough to be moved easily by one person; and~~
 - ii. ~~It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.~~
 - 3. ~~Floor-mounted equipment~~
 - a. ~~Floor-mounted equipment, unless readily movable shall be:~~
 - i. ~~Sealed to the floor; or~~
 - ii. ~~Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or~~
 - iii. ~~Elevated on legs to provide at least a 6-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a 4-inch clearance between the floor and equipment if no part of the floor under the mixer is more than 6 inches from cleaning access.~~

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- b. ~~Equipment is easily movable if:
 - i. ~~It is mounted on wheels or casters; and~~
 - ii. ~~It has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.~~~~
 - e. ~~Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch; or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls or ceilings.~~
4. ~~Aisles and working spaces~~
- a. ~~Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.~~

R9-8-135. ~~Cleaning, sanitization and storage of equipment and utensils~~ Repealed

A. ~~Equipment and utensil cleaning and sanitization~~

- 1. ~~Cleaning frequency~~
 - a. ~~Tableware shall be washed, rinsed, and sanitized after each use.~~
 - b. ~~To prevent cross-contamination, kitchenware and food contact surfaces of equipment shall be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.~~
 - e. ~~Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food contact surfaces of equipment shall be washed, rinsed, and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.~~
 - d. ~~The food contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day; except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food contact surfaces of all cooking equipment shall be free of encrusted grease deposits and other accumulated soil.~~
 - e. ~~Non-food contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles and other debris.~~
- 2. ~~Wiping cloths~~
 - a. ~~Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose.~~
 - b. ~~Moist clothes or sponges used for wiping food spills on kitchenware and food contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in R9-8-135(A)(3) and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.~~
 - e. ~~Moist clothes or sponges used for cleaning non-food contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed as specified in R9-8-135(A)(2)(b) and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.~~
- 3. ~~Manual cleaning and sanitization~~
 - a. ~~For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.~~
 - b. ~~Drain boards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.~~
 - e. ~~Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.~~
 - d. ~~Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:
 - i. ~~Sinks shall be cleaned prior to use.~~
 - ii. ~~Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.~~
 - iii. ~~Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.~~
 - iv. ~~Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in R9-8-135(A)(3)(e)(i) through (iv).~~~~

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- e. ~~The food-contact surfaces of all equipment and utensils shall be sanitized by:~~
 - i. ~~Immersion for at least one-half (1/2) minute in clean, hot water at a temperature of at least 170° F.; or~~
 - ii. ~~Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75° F.; or~~
 - iii. ~~Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75° F.; or~~
 - iv. ~~Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 Code of Federal Regulations 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75° F. for one minute; or~~
 - v. ~~Treatment with steam free from materials or additives other than those specified in 21 Code of Federal Regulations 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or~~
 - vi. ~~Rinsing, spraying, or swabbing with a chemical solution of at least twice the strength required for that particular sanitizing solution under R9-8-135(A)(3)(e)(iv) in the case of equipment too large to sanitize by immersion.~~
 - f. ~~When hot water is used for sanitizing, the following facilities shall be provided and used:~~
 - i. ~~An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170° F.; and~~
 - ii. ~~A numerically sealed indicating thermometer, accurate to $\pm 3^\circ$ F., convenient to the sink for frequent checks of water temperature; and~~
 - iii. ~~Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.~~
 - g. ~~When chemicals are used for sanitization, they shall not have concentration higher than the maximum permitted under 21 Code of Federal Regulations 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.~~
4. ~~Mechanical cleaning and sanitizing~~
- a. ~~Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.~~
 - b. ~~The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 no more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4-inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.~~
 - e. ~~Machine or water line mounted numerically sealed indicating thermometers, accurate to $\pm 3^\circ$ F., shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.~~
 - d. ~~Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machine.~~
 - e. ~~Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dish tables for the storage of clean utensils following sanitization.~~
 - f. ~~Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.~~

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- g. ~~Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used: Provided, that,~~
 - i. ~~The temperature of the wash water shall not be less than 120° F.~~
 - ii. ~~The wash water shall be kept clean.~~
 - iii. ~~Chemicals added for sanitization purposes shall be automatically dispensed.~~
 - iv. ~~Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturers' specifications for time and concentration.~~
 - v. ~~The chemical sanitizing rinse water temperature shall be not less than 75° F. nor less than the temperature specified by the machine's manufacturer.~~
 - vi. ~~Chemical sanitizers used shall meet the requirements of 21 Code of Federal Regulations 178.1010.~~
 - vii. ~~A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.~~
- h. ~~Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the temperature stated in R9-8-135(A)(4)(h)(i) through (v):~~
 - i. ~~Single-tank, stationary-rack, dual-temperature machine:~~

| | |
|-------------------------|---------|
| Wash temperature | 150° F. |
| Final rinse temperature | 180° F. |
 - ii. ~~Single-tank, stationary-rack, single temperature machine:~~

| | |
|-------------------------|---------|
| Wash temperature | 165° F. |
| Final rinse temperature | 165° F. |
 - iii. ~~Single-tank, conveyor machine:~~

| | |
|-------------------------|---------|
| Wash temperature | 160° F. |
| Final rinse temperature | 180° F. |
 - iv. ~~Multi-tank, conveyor machine:~~

| | |
|--------------------------|---------|
| Wash temperature | 150° F. |
| Pumped-rinse temperature | 160° F. |
| Final rinse temperature | 180° F. |
 - v. ~~Single-tank, pot, pan and utensil washer (either stationary or moving rack):~~

| | |
|-------------------------|---------|
| Wash temperature | 140° F. |
| Final rinse temperature | 180° F. |
- i. ~~All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.~~

5. ~~Drying~~

- a. ~~After sanitization, all equipment and utensils shall be air dried.~~

B. ~~Equipment and utensil storage~~

1. ~~Handling~~

- a. ~~Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.~~

2. ~~Storage~~

- a. ~~Cleaned and sanitized utensils and equipment shall be stored at least 6 inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.~~
- b. ~~Utensils shall be air dried before being stored or shall be stored in a self-draining position.~~
- e. ~~Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, wherever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations shall protect these articles from contamination and present the handle of the utensil to the consumer.~~

3. ~~Single-service articles~~

- a. ~~Single-service articles shall be stored at least 6 inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.~~
- b. ~~Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.~~

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- e. ~~Single-service knives, forks and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.~~
- 4. ~~Prohibited storage area~~
 - a. ~~The storage of food equipment, utensils, or single-service articles in toilet rooms or vestibules is prohibited.~~

R9-8-136. Sanitary facilities and controls Repealed

~~A. Water supply~~

- 1. ~~General. Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated pursuant to A.A.C. Title 18, Chapter 4, Article 2.~~
- 2. ~~Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed and operated in a manner approved by the Department Environmental Quality under A.A.C., Title 18, Chapter 4, Article 2.~~
- 3. ~~Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with A.A.C. Title 9, Chapter 8, Article 2, and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.~~
- 4. ~~Water under pressure at the required temperature shall be provided to all fixtures and equipment that use water.~~
- 5. ~~Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 Code of Federal Regulations 173.310.~~

~~B. Sewage. All sewage, including liquid waste, shall be disposed of by a public sewerage or by a sewage disposal system constructed and operated according to A.A.C. Title 18, Chapter 9, Article 8. Non-water-carried sewage disposal facilities are prohibited, except as permitted by R9-8-139(A)(1) through R9-8-139(A)(8) of this Article (pertaining to temporary food service establishments) or as permitted by the regulatory authority in remote areas or because of special situations.~~

~~C. Plumbing.~~

- 1. ~~Plumbing shall be sized, installed, and maintained in accordance with the Uniform Plumbing Code. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.~~
- 2. ~~A nonpotable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed in accordance with the Uniform Plumbing Code and the nonpotable water does not contact, directly or indirectly, food or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.~~
- 3. ~~The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed.~~
- 4. ~~If used, grease traps shall be located to be easily accessible for cleaning.~~
- 5. ~~If used, garbage grinders shall be installed and maintained in accordance with the Uniform Plumbing Code.~~
- 6. ~~Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drain originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within 5 feet of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted under the Uniform Plumbing Code.~~

~~D. Toilet facilities~~

- 1. ~~Toilet facilities shall be installed in the number and manner required by the Uniform Plumbing Code and shall be conveniently located and shall be accessible to employees at all times.~~
- 2. ~~Toilets and urinals shall be designed to be easily cleanable.~~
- 3. ~~Toilet rooms shall be completely enclosed and shall have tight fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance except as approved by the Department.~~
- 4. ~~Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.~~

~~E. Lavatory facilities~~

- 1. ~~Lavatory installation~~
 - a. ~~Lavatories shall be installed in the number and manner required by the Uniform Plumbing Code and shall be located to permit convenient use by all employees in food preparation areas and utensil washing areas.~~
 - b. ~~Lavatories shall be accessible to employees at all times.~~
 - c. ~~Lavatories shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.~~
- 2. ~~Equipment and supplies.~~

- a. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 16 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.
- b. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.
- e. Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.

F. Garbage and refuse

1. Containers

- a. Garbage and refuse shall be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.
- b. Containers used in food preparation and utensil-washing areas shall be kept covered after they are filled.
- e. Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.
- d. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
- e. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

2. Storage

- a. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.
- b. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof and shall be large enough to store the garbage and refuse containers that accumulate.
- e. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

3. Disposal

- a. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
- b. Where garbage or refuse is burned on the premises it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with plans and specifications approved by the Department. Areas around incineration facilities shall be clean and orderly.

G. Insect and rodent control

- 1. Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises, shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.
- 2. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

R9-8-137. Construction and maintenance of physical facilities Repealed

A. Floors

1. Floor construction

- a. Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as sealed concrete, terrazzo, ceramic tiles, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this Section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

2. Floor carpeting

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- ~~a. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment washing and utensil washing areas where it would be exposed to large amounts of grease and water, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.~~
- ~~3. Prohibited floor covering~~
 - ~~a. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.~~
- ~~4. Floor drains~~
 - ~~a. Properly installed, trapped floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and shall be graded to drain.~~
- ~~5. Mats and duckboards~~
 - ~~a. Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.~~
- ~~6. Floor junctures~~
 - ~~a. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar floor materials, and where water flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other areas, the juncture between walls and floors shall not present an open seam of more than 1/32 inch.~~
- ~~7. Utility line installation~~
 - ~~a. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.~~
- B. Walls and ceilings**
 - 1. Maintenance**
 - ~~a. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.~~
 - 2. Construction**
 - ~~a. The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, toilet rooms and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.~~
 - 3. Exposed construction**
 - ~~a. Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.~~
 - 4. Utility line installation**
 - ~~a. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules.~~
 - 5. Attachments**
 - ~~a. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.~~
 - 6. Covering material installation**
 - ~~a. Wall and ceiling covering materials shall be attached and sealed so as to be easily cleanable.~~
- C. Cleaning physical facilities**
 - 1. General**
 - ~~a. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.~~
 - 2. Utility facility**
 - ~~a. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil washing or equipment washing, or food preparation sinks for this purpose is prohibited.~~

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D. Lighting

1. General

- a. Permanently fixed artificial light sources shall be installed to provide at least 20 foot-candles of light on all food preparation surfaces and at equipment or utensil-washing work levels.
- b. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor:
 - i. At least 20 foot-candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and
 - ii. At least 10 foot-candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas.This shall also include dining areas during cleaning operations.

2. Protective shielding

- a. Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities, and facilities where utensils and equipment are cleaned and stored.
- b. Infrared or other heat lamps will be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

E. Ventilation

1. General

- a. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated in accordance with the Uniform Mechanical Code and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

2. Special ventilation

- a. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
- b. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

F. Dressing rooms and locker areas

1. Dressing rooms and areas

- a. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

2. Locker areas

- a. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms or in food storage rooms or areas containing only completely packaged food or packaged single service articles.

G. Poisonous or toxic materials

1. Materials permitted

- a. There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.

2. Labeling of materials

- a. Containers of poisonous or toxic materials shall be prominently and distinctly labeled and kept in their original containers with their original labels attached for easy identification of contents.

3. Storage of materials

- a. Poisonous or toxic materials consist of the following categories:
 - i. Insecticides and rodenticides
 - ii. Detergents, sanitizers, and related cleaning or drying agents
 - iii. Caustics, acids, polishes, and other chemicals.
- b. Each of the three categories set forth in R9-8-137(G)(3)(a) shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically located separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.

4. Use of materials

- a. Bactericides, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
- b. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

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- 5. Personal medications
 - a. Personal medications shall not be stored in food storage, preparation or service areas.
- 6. First-aid supplies
 - a. First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

H. Premises

- 1. General
 - a. Food service establishments and all parts of property used in connection with their operations shall be kept free of litter.
 - b. The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.
 - c. Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.
 - d. Persons whose presence is unnecessary for proper operation of food preparation and utensil-washing areas shall not be permitted in those areas.
- 2. Living areas
 - a. No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
- 3. Laundry facilities
 - a. Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.
 - b. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.
- 4. Linens and clothes storage
 - a. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
 - b. Soiled clothes and linens shall be stored in non-absorbent containers or washable laundry bags until removed for laundering.
- 5. Cleaning equipment storage
 - a. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner for the cleaning of that storage location.
- 6. Animals
 - a. Live animals, including birds, and turtles, shall be excluded from within the food service operational premises and from adjacent areas under the control of the permit holder. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind persons, shall be permitted in dining areas.

R9-8-138. Mobile food units or pushcarts Repealed

A. Mobile food service

- 1. General
 - a. Mobile food units or pushcarts shall comply with the requirements of this Article applicable to food service establishments, except as otherwise provided in this Section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this Article relating to physical facilities, except those requirements of R9-8-138(A)(4), (A)(5), (B)(1), (C)(1), and (C)(2).
- 2. Restricted operation
 - a. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this Article, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with the requirements of this Article pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.
- 3. Single-service articles
 - a. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

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4. ~~Water system~~
 - a. ~~A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this Article. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this Article.~~
5. ~~Waste retention~~
 - a. ~~If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.~~

B. Commissary

1. ~~Base of operations~~
 - a. ~~Mobile food units or pushearts shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.~~
 - b. ~~The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushearts shall be constructed and operated in compliance with the requirements of this Article.~~

C. Servicing area and operation

1. ~~Servicing area~~
 - a. ~~A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pusheart or where mobile food units do not contain waste retention tanks.~~
 - b. ~~The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.~~
 - e. ~~The construction of the walls and ceilings of the servicing area is exempted from the provisions of R9-8-137(B)(1) through R9-8-137(B)(6).~~
2. ~~Servicing operations~~
 - a. ~~Potable water servicing equipment shall be installed according to A.C.R.R., Title 9, Chapter 8, Article 2 and shall be stored and handled in a way that protects the water and equipment from contamination.~~
 - b. ~~The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with R9-8-136(B)(1).~~

R9-8-139. Temporary food service Repealed

A. Temporary food service establishments

1. ~~General~~
 - a. ~~A temporary food service establishment shall comply with all requirements in this Article applicable to food service establishments, except as otherwise provided in this Section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this Section.~~
2. ~~Restricted operations~~
 - a. ~~The provisions of R9-8-139(A)(2)(b) are applicable whenever a temporary food service establishment is permitted, under the provisions of R9-8-139(A)(1), to operate without complying with all the requirements of this Article applicable to food service establishments.~~
 - b. ~~Only those potentially hazardous foods requiring limited preparations, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this Article, is obtained in individual servings, is stored at a temperature of 45° F. or below or at a temperature of 140° F. or above in facilities meeting the requirements of this Article, and is served directly in the unopened container in which it was packaged.~~

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3. ~~Ice~~
 - a. ~~Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this Article. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.~~
4. ~~Equipment~~
 - a. ~~Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.~~
 - b. ~~Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.~~
5. ~~Single-service articles~~
 - a. ~~All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.~~
6. ~~Water~~
 - a. ~~Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.~~
7. ~~Wet storage~~
 - a. ~~Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.~~
8. ~~Waste~~
 - a. ~~All sewage, including liquid waste, shall be disposed of according to A.C.R.R., Title 9, Chapter 8, Article 3.~~
9. ~~Handwashing~~
 - a. ~~A convenient handwashing facility shall be available for employee handwashing. This facility shall consist of, at least, warm running water, soap, and individual paper towels.~~
10. ~~Floors~~
 - a. ~~Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings, or other suitable materials effectively treated to control dust.~~
11. ~~Walls and ceilings of food preparation areas~~
 - a. ~~Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be self-closing. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch.~~
 - b. ~~Counter-service openings shall not be larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.~~

R9-8-140. Compliance procedures Repealed

~~A.~~ Permits, licenses, or certificates

1. ~~General~~
 - a. ~~No person shall operate a food service establishment who does not have a valid permit, license, or certificate issued to him by the regulatory authority. Only a person who complies with the requirements of this Article shall be entitled to receive or retain such a permit, license, or certificate. Permits, licenses, or certificates are not transferable. A valid permit, license, or certificate shall be posted in every food service establishment.~~
2. ~~Issuance of permit, license, or certificate~~
 - a. ~~Any person desiring to operate a food service establishment shall make written application for a permit, license, or certificate on forms provided by the regulatory authority. Such application shall include the name and address of each applicant, the location and type of the proposed food service establishment, and the signature of each applicant.~~
 - b. ~~Prior to approval of an application for a permit, license, or certificate, the regulatory authority shall inspect the proposed food service establishment to determine compliance with the requirements of this Article.~~
 - c. ~~The regulatory authority shall issue a permit, license, or certificate to the applicant if its inspection reveals that the proposed food service establishment complies with the requirements of this Article.~~
 - d. ~~When an application for a permit, license, or certificate is denied by the regulatory authority, the applicant shall be entitled to a hearing before the regulatory authority in accordance with A.R.S. § 41-1013.~~
3. ~~Suspension of permit, license, or certificate~~

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- a. ~~If the regulatory authority finds that conditions in a food service establishment present such a severe and imminent health hazard as to require emergency action and incorporates a finding to that effect in its order, summary suspension of the establishment's permit, license or certificate may be ordered pending proceedings for revocation or other action. Upon suspension pursuant to this subsection, the holder of the permit, license, or certificate may immediately move to vacate the suspension order and the regulatory authority shall hear such motion within five (5) days. In no event may a summary suspension remain in effect for more than twenty-five (25) days.~~
- 4. ~~Revocation of permit, license, or certificate~~
 - a. ~~The regulatory authority may, after providing opportunity for hearing, revoke a permit, license, or certificate for serious or repeated violations of any of the requirements of this Article or for interference with the regulatory authority in the performance of duty.~~
 - b. ~~Prior to revocation, the regulatory authority shall notify, in writing, the holder of the permit, license, or certificate, or the person in charge of the specific reason(s) for which the permit, license, or certificate is to be revoked and that the permit, license, or certificate shall be revoked at the end of the twenty (20) days following service of such notice unless a written request for hearing is filed with the regulatory authority by the holder of the permit, license, or certificate within such twenty (20) day period. If no request for hearing is filed within the twenty (20) day period, the revocation of the permit, license, or certificate becomes final. If a request for a hearing is timely filed, the hearing shall be held within twenty (20) days of receipt of the request.~~
- 5. ~~Service of notices~~
 - a. ~~A notice provided for in these regulations is properly served when it is delivered to the holder of the permit, license, or certificate, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit, license, or certificate. A copy of the notice shall be filed in the records of the regulatory authority. The notice shall comply with the provisions of A.R.S. § 41-1009(B).~~
- 6. ~~Hearings~~
 - a. ~~Hearings held pursuant to the provisions of this Article shall be conducted in accordance with the requirements of A.R.S. §§ 41-1009 through 41-1013.~~
- 7. ~~Application after revocation~~
 - a. ~~Whenever a revocation of a permit, license, or certificate has become final, the holder of the revoked permit, license, or certificate may make written application for a new permit, license, or certificate.~~
- B. Inspections**
 - 1. ~~Inspection frequency~~
 - a. ~~An inspection of a food service establishment shall be performed at least once every 6 months. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of the provisions of this Article.~~
 - 2. ~~Access~~
 - a. ~~Representatives of the regulatory authority, after proper identification, shall be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this Article. The representatives shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used.~~
 - 3. ~~Report of inspections~~
 - a. ~~Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on Form FD 2420 of the Federal Food and Drug Administration. The inspection report form shall summarize the requirements of this Article and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by Section number, the Section violated and shall state the correction to be made. The rating score of the establishment shall be one total of the weighted point values for all violations, subtracted from 100. A copy of the completed inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it pursuant to A.R.S. Title 39. The Director may require that completed inspection reports, or summaries thereof, be submitted to the Department on a periodic basis.~~
 - 4. ~~Correction of violations~~
 - a. ~~The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:~~
 - i. ~~If an imminent health hazard exists, such as complete lack of refrigeration or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.~~

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- ii. ~~All violations of 4- or 5-point weighted items shall be corrected as soon as possible, but in any event, within 10 days following inspection. Within 15 days after the inspection, the holder of the permit, license, or certificate shall submit a written report to the regulatory authority stating that the 4- or 5-point weighted violations may have been corrected. A follow-up inspection shall be conducted to confirm correction.~~
- iii. ~~All 1- or 2-point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.~~
- iv. ~~When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.~~
- v. ~~In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the regulatory authority.~~
- b. ~~The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the regulatory authority within twenty (20) days following the date of inspection. If a request for hearing is received, a hearing shall be held within twenty (20) days of receipt of the request, except that where the inspection report requires cessation of operations, the hearing shall be held within five (5) days of receipt of the request.~~
- c. ~~Whenever a food service establishment is required under the provisions of R9-8-140(B)(4) to cease operations, it shall not resume operations until the regulatory authority determines on reinspection that conditions responsible for the order to cease operations no longer exist. Such reinspection shall be conducted within three (3) days, exclusive of weekends and holidays, of receipt of written notice from the holder of the permit, license, or certificate that the conditions responsible for the cessation order have been corrected.~~

C. Examination and condemnation of food

1. General

- a. ~~Food may be examined or sampled by the regulatory authority as often as necessary for enforcement of this Article. The regulatory authority may seize, condemn, or destroy any food which is in violation of this Article or is adulterated or misbranded as defined under A.R.S. § 36-904 to 36-907. For any seizure, condemnation, or destruction of food pursuant to this Section, the regulatory authority shall follow the same procedures that the Director must follow under A.R.S. § 36-910.~~

D. Review of plans

1. Submission of plans

- a. ~~Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this Article. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority.~~

2. Pre-operational inspection

- a. ~~Whenever plans and specifications are required by R9-8-140(D)(1) to be submitted to the regulatory authority, the regulatory authority shall inspect the food service establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this Article.~~

E. Procedure when infection is suspected

1. General

- a. ~~When the regulatory authority has a reasonable cause to suspect possible disease transmission by an employee of a food service establishment, it may secure a morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:~~
 - i. ~~The immediate exclusion of the employee from employment in food service establishments;~~
 - ii. ~~The immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;~~
 - iii. ~~Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;~~
 - iv. ~~Adequate medical and laboratory examination of the employee and of other employees and of his and their body discharges.~~

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- b. When the holder of a permit is ordered to take any of the measures specified in R9-8-140(E)(1)(a), he shall be entitled to a hearing before the regulatory authority in the same manner as provided in R9-8-140(B)(4)(b) for hearings on inspection report findings. Where the order requires closure of the food service establishment, reopening shall be governed by the same procedures as specified in R9-8-140(B)(4)(c).

R9-8-151. Shellfish Repealed

- ~~A. Shellfish is defined for purposes of this regulation as meaning fresh or frozen oysters, clams, mussels, either shucked or in the shell.~~
- ~~B. No oysters, clams, or mussels shall be stored, handled, held for sale, or sold unless they have been grown, harvested, and processed in accordance with requirements of the U.S. Public Health Service Shellfish Certification Program; and unless the shipment shall have been accompanied by tag, label, or other mark showing that the shipper has been duly certified by the state, province, or country of origin, and the name and certificate number of the shipper included on the current U.S. Public Health Service list of certified shellfish shippers.~~
- ~~C. Shucked shellfish shall be packed without exposing them to contamination. Shucked shellfish shall be packed and shipped in clean, single-service containers made of impervious materials. Each individual package of fresh or frozen shellfish shall have permanently recorded on the package or label, so as to be easily visible, the packer's, re-packer's, or distributor's name and address, and the packer's or re-packer's certificate number preceded by the abbreviated name of the state. Containers holding one gallon or more shall have the identification on the container wall, unless the cover becomes an integral part of the container during the sealing process. Packages of frozen shellfish shall show the date or code of packing.~~
- ~~D. Shell stock shall be identified by a tag or label fastened to each shipping container and bearing the number of the shipper, his name and address, the kind and quantity of the shell stock in the container. The certification number shall remain with the stock until final disposition.~~
- ~~E. Oysters, clams, and mussels shall at all times be refrigerated at a temperature of not more than 45° F. Frozen oysters, clams, and mussels shall be held at 0° F. or lower while in the frozen condition, and may be thawed only in a refrigerator.~~

R9-8-156. Vending machines; sanitation ordinance and code Repealed

The sale or offering of food and beverages through a vending machine shall be in compliance with the requirements adopted by reference in R9-1-415(A).

R9-8-160. Definition Repealed

"Food" is defined in R9-8-131(C), text of F.S.S.O. (1962 Edition) Section (A)(8), to mean "any raw, cooked or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption." Manufactured ice is a food within that definition and for the purposes of this Article.

R9-8-161. Ice manufacturing plant; sanitation Repealed

- ~~A. The premises and equipment where ice is produced, manufactured, stored, handled, or dispensed shall be kept in good repair, clean and sanitary.~~
- ~~B. All ice shall be produced from a safe, sanitary water supply and from an approved source.~~
- ~~C. All areas where ice is produced, handled, or stored shall be well lighted.~~
- ~~D. Clean shoes, boots, overshoes, or shoe covers shall be worn by all persons on the freezing platform or in the storage area.~~
- ~~E. That part of core suction or filling equipment that penetrates the ice block shall be properly protected when not in use. Where a collar is used, it shall be large enough and so positioned as to prevent the tip of the suction or filling tube from touching the deck when it is laid down.~~
- ~~F. Ice which has been contaminated in any manner shall not be sold, offered for sale, or given away for human consumption.~~
- ~~G. Ice used for human consumption shall not be cracked, chipped, crushed, packaged, or pulverized on the trucks, loading platforms, or on the ground. This operation shall be done in an enclosed, protected area.~~
- ~~H. All cubed or crushed ice for human consumption shall be protected from contamination at all times and shall be transported and delivered in clean, closed, single-service bags, cartons, or containers.~~
- ~~I. Single-service bags shall be purchased only in sanitary containers, shall be stored therein, in a clean dry place until used, and shall be handled in a sanitary manner.~~

R9-8-162. Ice manufacturing plant; toilet and lavatory Repealed

- ~~A. Every ice manufacturing plant shall be provided with adequate and conveniently located toilet facilities for its employees, conforming to the requirements of the Department. The doors of all toilet rooms shall be self-closing and shall not open into any ice-making area. Toilet rooms shall be kept in a clean condition, in good repair, well lighted, and ventilated to the outside air. Hand-washing signs shall be posted in each toilet room used by employees.~~
- ~~B. Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap and approved individual sanitary towels. The use of a common towel is prohibited. Lavatories in addition to those provided in toilet rooms shall be provided and shall be easily accessible to all employees. A mixing type faucet is required in new construction or when an existing plant is remodeled. No employee shall resume work after using the toilet room without first washing his hands.~~

R9-8-163. ~~Ice manufacturing plant; water supply~~ Repealed

- A:** Any connection or condition, including overhead leakage, that may permit an interchange of water between a public water supply and a private, industrial, or other source of water supply is prohibited unless both supplies and the method of cross-connection or condition have been approved in writing by the Department.
- B:** No plumbing fixture or other device which provides, or may provide, a connection between a drinking water supply and a drainage, soil, waste, or other sewer pipe so as to make possible the backflow of sewage or waste water into the water supply system shall be installed or permitted to remain installed. Water which has been used for cooling, or for any other purpose, shall not be returned to the system unless the entire installation and operation thereof has been approved in writing by the Department. All plumbing shall be installed in accordance with any local ordinance or code. Where a local ordinance or code does not exist, plumbing shall be installed in accordance with the standards adopted by reference in R9-1-412(D).

R9-8-164. ~~Ice manufacturing plant; miscellaneous~~ Repealed

- A:** Ice for human consumption shall be transported only in clean, enclosed vehicles.
- B:** All persons engaged in these occupations shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Persons while engaged in preparing or handling food shall not use tobacco in any form. Hairnets are required for female personnel; caps shall be worn by males where required.
- C:** The premises of all food establishments shall be kept clean and free of litter or rubbish. None of the operations connected with a food handling establishment shall be conducted in any room used for domestic purposes. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in covered containers reserved for this purpose.

R9-8-165. ~~Ice making and dispensing equipment~~ Repealed

- A:** Ice making machines and associated equipment shall be located so that the ice will not be exposed to any source of contamination while being produced, handled, packaged or stored.
- B:** Beginning January 1, 1981, ice that is available for self-service by the public shall be dispensed in single service packages or through a device which will not permit exposure or access to ice held in storage. However any new or replacement self-service ice making or dispensing equipment acquired for use after January 17, 1977, shall conform to these requirements.
- C:** Ice making, handling and storage equipment shall be kept clean.
- D:** All persons engaged in the handling or packaging of ice shall wear clean clothing and wash their hands immediately prior to such packaging.

R9-8-171. ~~Bakeries; definitions~~ Repealed

- A:** A "bakery" means any place in which is carried on the process of mixing, compounding, cooking, baking, or manufacturing for sale, any bakery products.
- B:** "Bakery products" means any bread, biscuits, pretzels, crackers, buns, rolls, macaroni, or any similar pastes, pastries, cakes, doughnuts, pies, or other food products of which flour or meal is a principal ingredient, but does not include packaged mixes. Bakery products shall also include the materials from which the above are manufactured.

R9-8-172. ~~Bakeries; general~~ Repealed

- A:** All bakery products shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption.
- B:** Approved and effective methods of insect and vermin control shall be used at all times.
- C:** All persons engaged in these occupations shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Persons, while engaged in preparing or handling food, shall not use tobacco in any form. Hairnets are required for female personnel; caps shall be worn by males where required.
- D:** The premises of all establishments shall be kept clean and free of refuse. None of the operations connected with a food handling establishment shall be conducted in any room used for domestic purposes. Adequate locker or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers for this purpose.

R9-8-173. ~~Bakeries; physical plant~~ Repealed

- A:** The floors of all rooms in which bakery products are stored, prepared, or sold, or in which utensils are washed, shall be of easily cleanable construction, shall be smooth, free from cracks and shall be kept clean and in good repair and, where necessary, graded to drain.
- B:** Walls and ceilings of rooms in which bakery products are stored or prepared shall be finished in a light color. The walls of all rooms in which bakery products are prepared, stored, or sold, or utensils washed, shall have a smooth washable surface. Walls and ceilings shall be kept clean and in good repair.
- C:** All openings into the outer air shall be effectively screened and doors shall be self-closing, unless other approved means are provided to control insects and vermin.
- D:** All rooms in which bakery products are stored, prepared, or sold, or in which utensils are washed, shall be well lighted and ventilated.

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R9-8-174. Bakeries; toilet and lavatory Repealed

- A.** Every bakery shall be provided with adequate and conveniently located toilet facilities for its employees. The doors shall be self-closing. Toilet rooms shall be kept clean, in good repair, well lighted, and shall be ventilated to the outside air. Hand-washing signs shall be posted in each toilet room used by employees.
- B.** Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved individual sanitary towels. The common towel is prohibited. Lavatories, in addition to those provided in toilet rooms, shall be provided and shall be easily accessible to all employees. Mixing faucets are required in new construction or when existing plant is remodeled. No employee shall resume work after using the toilet room without first washing his hands.

R9-8-175. Bakeries; water supply Repealed

- A.** All water shall be obtained from a safe, sanitary supply and from an approved source. Hot and cold running water shall be provided in all rooms in which products are processed, prepared, or utensils are washed.
- B.** Any connection or condition, including overhead leakage, that may permit an interchange of water between a public water supply and a private, industrial, or other source of water supply is prohibited unless both supplies and the method of cross-connection or condition have been approved in writing by the Department.
- C.** No plumbing fixture or other device which provides, or may provide, a connection between a drinking water supply and a drainage, soil, waste, or other sewer pipe so as to make possible the backflow of sewage or waste water into the water supply system shall be installed or permitted to remain installed. Water which has been used for cooling, or for any other purpose, shall not be returned to the system unless the entire installation, and operation thereof, has been approved in writing by the Department. All plumbing shall be installed in accordance with any local ordinance or code. Where a local ordinance does not exist plumbing shall be installed in accordance with the standards adopted by reference in R9-1-412(D).

R9-8-176. Bakeries; utensils and equipment Repealed

- A.** Utensils, show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, troughs, cutters, mixers, and other equipment and utensils used in connection with the operation of a bakery shall be so constructed as to be easily cleaned and shall be kept in good repair. They shall be of non-toxic and corrosion-resistant material. Corners and jointings shall be smooth. New equipment shall comply with the minimum requirements of the standards adopted by reference in R9-1-415(B).
- B.** All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods, and sinks shall be kept clean and free from dirt, dust, insects, and vermin and other contaminating material. All cloths used by employees shall be clean. All multi-use utensils used in the preparation of bakery products shall be thoroughly cleaned and effectively subjected to an approved bactericidal process immediately following the day's operation.
- C.** After washing and bactericidal treatment, utensils shall be stored in a clean dry place, protected from insects and vermin, dust, and other contamination, and shall be handled in such a manner as to prevent contamination.

R9-8-177. Bakeries; refrigeration Repealed

All readily perishable bakery products, such as custard or cream filled pastries or pies, commonly known as cream pies, regardless of the type of filler or meringue, shall be cooled to 45° F. within one (1) hour and shall be kept at or below that temperature until final use. Perishable ingredients shall be refrigerated (45° F. or less) at all times.

R9-8-178. Bakeries; storage; display; transportation Repealed

- A.** All bakery products shall be so stored and displayed as to be protected from dust, insects, vermin, depredation and pollution by rodents, unnecessary handling, droplet infection, overhead leakage and other contamination. No animals or birds shall be kept or allowed in any room in which bakery products are prepared, stored, or sold, except that guide dogs, when accompanied by a blind person, may be allowed in sales or serving areas.
- B.** No product shall be transported or delivered unless it is wrapped or packaged to prevent airborne or manual contamination. Packaging shall be done at the place of manufacture. The only exception may be where bakery products are transported from the place of manufacture to a retail branch store where the unwrapped products shall be displayed only in enclosed display cases. The unwrapped products may be packed for transportation in dustproof bulk containers, and such containers shall be of easily cleanable construction, and shall be kept clean at all times. The unwrapped contents thereof shall not be handled by drivers or any other outside personnel.

R9-8-181. Definitions Repealed

- A.** "Department" means the Arizona Department of Health Services.
- B.** "Employee" means the permit holder, individuals having supervisory or management control or any other person working in a retail meat establishment.
- C.** "Equipment" means cases, counters, tables, meat blocks, knife cleats, trays, meat hooks, crossarms, refrigerators, saws, grinders, tenderizers, cleavers, and all other utensils and items used in the processing of meat.
- D.** "Meat" means the flesh of any animal, bird, fish or other sea food.
- E.** "Meat establishment" means a retail meat market, store or shop in which meat or meat products are processed, prepared, stored, or offered for sale.

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~~F. "Utensil" means any implement used in the processing of meat.~~

R9-8-182. General Repealed

- ~~A. All meat and meat products shall be free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms and shall be considered a food as defined in R9-8-112(E).~~
- ~~B. Approved and effective methods of insect and vermin control shall be used at all times. Adequate rodent proofing shall be provided in buildings.~~
- ~~C. Meat and meat products delivered to the meat establishment in a manner which violates the rules and regulations of the Arizona Livestock Sanitary Board shall be refused by the meat establishment. Such products, if received, are subject to condemnation as provided in R9-8-116.~~
- ~~D. All persons working in a meat establishment shall wear clean outer garments, shall keep their hands clean and their hair restrained at all times while engaged in handling of meat or meat products, utensils or equipment. While so engaged, such persons shall not use tobacco in any form.~~
- ~~E. Live animals or birds shall not be permitted on the premises of any meat establishment except that guide dogs, when accompanied by a blind person or police guard dog when accompanied by a police officer on duty, may be allowed in the sales area.~~
- ~~F. Handling of unpackaged meat and meat products in meat establishments, storing, processing, or selling meat and meat products by persons other than employees is prohibited.~~
- ~~G. No unauthorized personnel shall be allowed in areas where meat is cut, packaged, or otherwise processed.~~
- ~~H. Employees with infectious diseases, infected injuries or other conditions that could contribute significantly to contamination of meat and meat products shall be excluded from handling meat, meat products and utensils.~~
- ~~I. All meat and meat products shall be from a source approved by the Arizona Livestock Sanitary Board where it has jurisdiction. The Department reserves the right to disapprove meat or meat products from uninspected sources.~~
- ~~J. Meat and meat products shall not be labeled or represented in a manner which is in conflict with Livestock Sanitary Board requirements or which would misrepresent the item to the consumer.~~

R9-8-183. Physical plant Repealed

- ~~A. The floors of all meat establishments shall be constructed of impervious material where they are cleaned by flooding or are subject to spillage or other conditions of hard use. All floors shall be easily cleanable, smooth, and where necessary, graded to drain. Floor wall juncture shall be eoved for easier cleaning.~~
- ~~B. Walls and ceilings of all rooms of a meat establishment shall be finished in a light color, and shall be smooth and washable. They shall be kept clean and in good repair.~~
- ~~C. The premises of all meat establishments shall be kept clean and free of refuse. No operations connected with a meat establishment shall be conducted in any room used for domestic purposes. Soiled linens, coats, and aprons shall be kept in containers reserved for this purpose. An adequate area for employees' clothing shall be provided.~~
- ~~D. The use of sawdust or other similar materials on the floor of meat cutting rooms or meat storage areas may be permitted where in the opinion of the Department it does not constitute or create a health hazard. Sawdust or similar materials shall be clean and free of extraneous or deleterious substances and shall be removed and discarded at the end of each day's business.~~
- ~~E. All openings into the outer air shall be effectively screened. Doors shall be self-closing unless other effective methods are provided to control insects and vermin.~~
- ~~F. All rooms of a meat establishment shall be well lighted and well ventilated, except that walk-in refrigerators or storage boxes may not need ventilation where recirculation of air is provided.~~

R9-8-184. Toilet and lavatory Repealed

- ~~A. Adequate and convenient toilet facilities shall be provided for employees, and shall conform to the requirements of the Department. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept clean, in good repair, well lighted, and ventilated to the outside air. Handwashing signs shall be posted in each toilet room used by employees.~~
- ~~B. Adequate and convenient handwashing facilities shall be provided, including hot and cold running water, soap, and individual sanitary towels. Lavatories, in addition to those provided in toilet rooms, shall be provided in all processing rooms and shall be easily accessible to all employees. Mixing faucets are required in new constructions or when the existing plant is remodeled. No employee shall resume work after using the toilet or performing a task which might contaminate his hands without first thoroughly washing his hands. Lavatories and wash rooms shall be kept clean and sanitary.~~

R9-8-185. Water supply Repealed

- ~~A. All water shall be obtained from a public or semi-public water system approved by the Department under Arizona Compilation of Rules and Regulations Title 9, Chapter 8, Article 2. Hot and cold running water shall be easily accessible to all rooms in which products are processed, prepared, or in which utensils are washed.~~
- ~~B. Any connection or condition, including overhead leakage, that may permit an interchange of water between a public or semi-public water supply and a private, industrial, or other source of water supply, is prohibited.~~

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- ~~C.~~ No plumbing fixture or other device which provides, or may provide, a connection between a public or semi-public water supply and a drainage, soil, waste, or other sewer pipe so as to make possible the backflow or back-siphonage of sewage or waste water into the water supply system shall be installed or permitted to be installed. Water which has been used for cooling, or for any other purpose, shall not be returned to the system unless the entire installation and operation thereof has been approved in writing by the Department. All plumbing shall be installed in accordance with the applicable local ordinance or code. Where a local ordinance does not exist, plumbing shall be installed in accordance with the requirements adopted by reference in R9-1-412(D).

R9-8-186. Utensils and equipment Repealed

- ~~A.~~ All equipment shall be so constructed as to be easily cleaned, and shall be kept in good repair and shall be nontoxic and of corrosion resistant material. Utensils containing or plated with cadmium are prohibited.
- ~~B.~~ All equipment and utensils shall be kept clean and free from dust, dirt, insects, vermin, and other contaminating material. After each use equipment and utensils shall first be rinsed with hot water to remove the gross food particles. They shall be washed thoroughly with a suitable detergent, rinsed with clean water, and then sanitized in conformance with these regulations. When a chemical sanitizer is used, it shall consist of a solution of a chlorine compound providing, in use solution, at least 100 parts per million of free chlorine. Other methods of sanitizing may be used when approved by the Department.
- ~~C.~~ Equipment must be thoroughly cleaned and sanitized after cutting poultry prior to processing any other products.
- ~~D.~~ Grinders must be thoroughly cleaned and sanitized after cutting pork prior to processing any other products.
- ~~E.~~ Grinding heads shall be washed and sanitized at least once a day. Grinding heads which are easily removable shall be washed and sanitized once a day when in use, and shall be stored at 45° F. or less when not in use.
- ~~F.~~ A sink having at least two compartments connected with hot and cold water under pressure shall be provided for the washing and bactericidal treatment of equipment and utensils used in meat establishments. Meat establishments constructed or remodeled after the effective date of these regulations must have a sink for these purposes with at least three compartments. The size of each compartment shall be determined by the largest piece of equipment that needs to be washed. The sink drains are to be connected to a sewage disposal system approved by the Department under Arizona Compilation of Rules and Regulations Title 9, Chapter 8, Article 3.

R9-8-187. Refrigeration, packaging, transportation Repealed

- ~~A.~~ The temperature of meat, meat products, and other products requiring refrigeration shall not exceed 45° F. at any time. Frozen products shall be maintained at a temperature of not more than 0° F.
- ~~B.~~ All refrigerators, walk-in boxes, showcases, freezers and vehicles must be equipped with properly located, easily readable thermometers which are accurate within $\pm 2^{\circ}$ F.
- ~~C.~~ Meat and meat products shall be packaged before delivery in containers or wrappings which assure the product will be protected from contamination.
- ~~D.~~ All trucks used for the delivery of meat or meat products to a retail meat establishment shall be completely enclosed and shall be refrigerated so that the temperature of the products being transported shall not rise above 45° F. at any time. In an emergency, meat or meat products may temporarily be delivered in an unrefrigerated truck provided delivery can be made in an hour or less, but in no case will delivery be made in an unrefrigerated truck when a refrigerated truck can be obtained. All meat and meat products shall be transported in such trucks and in such a manner as not to expose the meat or meat products to dust, dirt, filth, or other deleterious substance. No meat or meat products shall be laid directly on the floor of any truck.

R9-8-188. Processed meat and meat food product requirements for retail meat establishments Repealed

- ~~A.~~ Miscellaneous raw beef products
- ~~1.~~ Chopped beef, ground beef. "Chopped beef" or "ground beef" shall consist of chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, shall not contain more than 30 percent fat, and shall not contain added water, binders, or extenders. When beef cheek meat (trimmed beef cheeks) is used in the preparation of chopped or ground beef, the amount of such cheek meat shall be limited to 25 percent, and if in excess of natural proportions, its presence shall be declared on the label in the ingredient statement, and contiguous to the name of the product.
 - ~~2.~~ Hamburger. "Hamburger" shall consist of chopped fresh and/or frozen beef with or without the addition of beef fat as such and/or seasoning, shall not contain more than 30 percent fat, and shall not contain added water, binders, or extenders. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of hamburger only in accordance with the conditions prescribed in paragraph (1) of this subsection.
 - ~~3.~~ Beef patties. "Beef patties" shall consist of chopped fresh and/or frozen beef with or without the addition of beef fat as such and/or seasonings. Binders or extenders and/or partially defatted beef fatty tissue may be used without added water or with added water only in amounts such that the product's characteristics are essentially that of a meat patty. These products must have an ingredient statement with all products used in order of predominance as in subsection (F).

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4. Fabricated steak. Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products, such as those labeled "Beef Steak, Chopped, Shaped, Frozen", "Minute Steak, Formed, Wafer Sliced, Frozen", "Veal Steaks, Beef added, Chopped-Molded-Cubed-Frozen, Hydrolyzed Plant Protein, and Flavoring" shall be prepared by comminuting and forming the product from fresh and/or frozen meat, with or without added fat, of the species indicated on the label. Such products shall not contain more than 30 percent fat and shall not contain added water, binders or extenders. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of fabricated beef steaks only in accordance with the conditions prescribed in paragraph (1) of this subsection.

- B.** Fresh pork sausage. "Fresh pork sausage" is sausage prepared with fresh pork or frozen pork, or both, not including pork by-products, and may be seasoned with condimental substances. It shall not be made with any lot of product which, in the aggregate, contains more than 50 percent trimmable fat, that is fat which can be removed by thorough, practicable trimming and sorting. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used.
- C.** Chorizo. Pork must be treated to destroy trichinae or use certified pork. If total added moisture is more than 3 percent the product must be labeled "Imitation".
- D.** Fresh beef sausage. "Fresh beef sausage" is sausage prepared with fresh beef or frozen beef, or both, not including beef by-products, and may be seasoned with condimental substances. The finished products shall not contain more than 30 percent fat. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used.
- E.** Breakfast sausage. "Breakfast sausage" is sausage prepared with fresh and/or frozen meat, or meat and meat by-products and may be seasoned with condimental substances. It shall not be made with any lot of products which, in the aggregate, contains more than 50 percent fat which can be removed by thorough practicable trimming and sorting. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used. Extenders or binders are limited to 3 1/2 percent of the finished sausage.
- F.** Pork products. All products with pork as an ingredient, except those customarily well cooked in the home, must be treated for the control of trichinae. These products include all cooked and smoked sausage and pork products that may appear to be cooked. The treatment consists of heating to a minimum internal temperature of 137° F., or freezing as set forth in the following chart.

| Temperatures °F. | Packages or pieces not over 6" in thickness Group 1 (days) | Not over 27" in thickness Group 2 (days) |
|---------------------|---|--|
| 5 | 20 | 30 |
| -10 | 10 | 20 |
| -20 | 6 | 12 |

- G.** Cooked sausage. Frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, knockwurst and similar products.
 - 1. Frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, knockwurst and similar cooked sausages are comminuted, semi-solid sausages prepared from one or more kinds of raw skeletal muscle meat or raw skeletal muscle and raw or cooked poultry meat, and seasoned and cured, using one or more curing agents. They may or may not be smoked. The finished products shall not contain more than 30 percent fat. Water or ice, or both, may be used to facilitate chopping or mixing, or to dissolve the curing ingredients, but the sausage shall not contain more than 10 percent of added water. These sausage products may contain uncooked, cured pork from primal parts which do not contain any phosphates. Such products may contain raw or cooked poultry meat not in excess of 15 percent of the total ingredients, excluding water, in the sausage. Such poultry meat ingredients shall be designated in the ingredient statement on the label of such sausage.

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2. Frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, knoekwurst and similar cooked sausages that are labeled with the phrase "with by-products" or "with variety meats" in the product name are comminuted, semi-solid sausages consisting of not less than 15 percent of one or more kinds of raw skeletal muscle meat with raw meat by-products, or not less than 15 percent of one or more kinds of raw skeletal muscle meat with raw meat by-products and raw or cooked poultry products; and seasoned and cured. They may or may not be smoked. Partially defatted pork fatty tissue or partially defatted beef fatty tissue, or a combination of both, may be used in an amount not exceeding 15 percent of the meat and meat by-products or meat, meat by-products, and poultry products ingredients. The finished products shall not contain more than 30 percent fat. Water or ice, or both, may be used to facilitate chopping or mixing or to dissolve the curing and seasoning ingredients, but the sausage shall contain no more than 10 percent of added water. These sausage products may contain uncooked, cured pork which does not contain any phosphates or contain only approved phosphates. These sausage products may contain poultry products, individually or in combination, not in excess of 15 percent of the total ingredients, excluding water, in the sausage. Such poultry products shall not contain kidneys or sex glands. The amount of poultry skin present in the sausage must not exceed the natural proportion of skin present on the whole carcass of the kind of poultry used in the sausage. The poultry products used in the sausage shall be designated in the ingredient statement on the label of such sausage. Meat by-products used in the sausage shall be designated individually in the ingredient statement on the label for such sausage.
 3. A cooked sausage as defined in paragraph (1) of this subsection shall be labeled by its generic name, e.g., frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, or knoekwurst. Sausage products within paragraph (1) that are prepared with meat from a single species of cattle, sheep, swine, or goats shall be labeled with the term designated the particular species in conjunction with the generic name, e.g., "Beef frankfurter".
 4. A cooked sausage as defined in paragraph (2) of this subsection shall be labeled by its generic name, e.g., frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, or knoekwurst, in conjunction with the phrase "with by-products" or "with variety meats" with such supplemental phrase shown in a prominent manner directly contiguous to the generic name and in the same color on an identical background.
 5. With appropriate labeling such as "Frankfurter, Calcium Reduced Dried Skim Milk Added", one or more of the following binders may be used in cooked sausage otherwise complying with paragraphs (1) and (2) of this subsection: Dried milk, calcium reduced dried skim milk, nonfat dry milk, cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate and isolated soy protein, provided such ingredients, individually or collectively, do not exceed 3 1/2 percent of the finished product, except that 2 percent of isolated soy protein shall be deemed to be the equivalent of 3 1/2 percent of any one or more of the other binders.
 6. Cooked sausages shall not be labeled with terms such as "All Meat" or "All (species)", or otherwise to indicate they do not contain nonmeat ingredients or are prepared only from meat. Sodium nitrate, sodium nitrite, potassium nitrate and potassium nitrite may be added to the product provided that total nitrates and nitrites are not in excess of 200 parts per million. Bacon shall not contain nitrates and nitrites in excess of 120 parts per million. Seasoning substances or additives including common salt, wood smoke, vinegar, flavorings, spices, or approved sugars, such as sucrose, can or beef sugar, maple sugar, dextrose, invert sugar, honey, corn syrup solids, corn syrup and glucose syrup may be added.
- H.** Labeling. All processed, blended or otherwise prepared meat or meat food products which are packed in any can, pot, tin, box, canvas or other receptacle or covering constituting an immediate or true container, shall be labeled. Labels shall contain, prominently and informatively, the following:
1. The true name of the product, identified with the manufacturer and place of manufacture.
 2. A list of the ingredients giving common or usual names of the ingredients, when there are two or more ingredients, and arranged in the order of their predominance. If ice or water is used to facilitate chopping or mixing in the preparation of sausage, it must be appropriately declared on the label.

R9-8-189. Inspections Repealed

Inspections of meat establishments will be performed by the Department at least once every six months. Additional inspections of meat establishments may be performed as often as necessary for the enforcement of these rules.

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In adopting voluntary grazing best management practices, A.R.S. § 49-202.01(C) requires the committee to consider:

1. The availability and effectiveness of alternative technologies,
2. The economic and social impacts of alternative technologies on grazing and associated industries,
3. The institutional considerations of alternative technologies, and
4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. 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

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

Proposing voluntary best management practices in this rulemaking allows the implementation of various strategies to help clean surface waters to meet and maintain water quality standards and makes long term economic sense for the rancher. For example, the Department recently completed a Water Quality Improvement Plan as part of the total maximum daily load allocation analysis for Nutrioso Creek on the Little Colorado River watershed. Working with the Department, the Nutrioso Creek Watershed group, which consists of local ranchers, developed an implementation plan consisting of riparian restoration and streambank stabilization activities. The Nutrioso Creek Watershed group believes the voluntary best management practices implemented on the Nutrioso Creek will not only reduce the problems of turbidity, but help improve ranching economics.

This rulemaking provides the state assurance that grazing operations that use these best management practices are not likely to pollute streams on federal, state, and private lands in Arizona.

A. *Estimated Costs and Benefits to the Department of Environmental Quality.*

Minimal costs are realized by the Department as a result of this rulemaking.

The Department currently has agreements with two federal agencies, the United States Department of Interior Bureau of Land Management and the United States Department of Agriculture Forest Service, Southwestern Region. These agreements serve to address nonpoint source pollution from activities, such as cattle grazing, that take place on federal lands.

The request for information under subsection (B) allows the Department access to a permittee's records if an investigation under A.R.S. § 49-203(B) must be implemented regarding the origination of polluted runoff from a nonpoint source.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking. (Any person engaged in livestock grazing activities.)*

The terms and conditions of the Surface Water Quality General Grazing Permit are voluntary. There are between 2,000 and 4,000 people who currently graze cattle in Arizona and most people who will participate in the program already use one or more of the voluntary best management practices listed in the rule.

Requiring a permittee to make the information specified under subsection (B) available for Department inspection will allow the permittee to verify compliance with the program. Most persons who engage in livestock grazing currently maintain some type of recordkeeping to evidence management methods. Persons engaged in grazing will have to keep records of all information relating to improvements on the grazing lands for tax and, where applicable, lease purposes.

The Grazing Best Management Practices Advisory Committee believes the voluntary best management practices specified under this rulemaking are currently part of a typical livestock/ranch management plan. Because implementation is voluntary, the rule imposes no costs. Any costs are voluntarily assumed.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking. However, this general licensing program will make the public aware that ranchers who comply with the voluntary best management procedures established in this rulemaking are committed to reducing or preventing the nonpoint source discharge of pollutants into navigable waters by grazing activities.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor grammatical and clarification changes were made throughout the rule package at the request of G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

None

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

None

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

None

14. Was this rule previously adopted as an emergency rule:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

Section

R18-9-501. Surface Water Quality General Grazing Permit

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:

- 1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;**
- 2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;**
- 3. Implements land treatments to help achieve Surface Water Quality Standards;**
- 4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.**

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:

- 1. The name and address of the person grazing livestock, and**
- 2. The best management practices selected for livestock grazing.**

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

PREAMBLE

1. Sections Affected

Article 4
R20-1-401
R20-1-402
R20-1-403
R20-1-404
R20-1-405
R20-1-406

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section

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

Authorizing statute: A.R.S. § 41-1504(B)(4)

Implementing statutes: A.R.S. §§ 41-1518.01, 41-2704, 43-1088.01, and 43-1179

3. The effective date of the rules:

April 6, 2001

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 6 A.A.R. 2790, July 28, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4803, December 29, 2000

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

Name: Joan Laurence

Address: Arizona Department of Commerce
3800 North Central Ave., Suite #1500
Phoenix, Arizona 85012

Telephone: (602) 280-8181

Fax: (602) 280-1358

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

During the 2000 legislative session, the Arizona legislature enacted the Technology Training Assistance Program, HB 2442 (Laws 2000, 2nd Regular Session, Ch. 239, Sections 1 through 3). This legislation requires the Department of Commerce to establish a program to encourage employers to provide their employees with continuing technology skills training. The Department is required to identify information technology skills and occupations that are in short supply and critical to the economic development of Arizona. The Department also certifies tax credits for qualifying technology skills training offered by accredited educational institutions when eligibility requirements are met. This rulemaking implements these statutory requirements.

Employers providing qualifying job training for their employees may apply for a tax credit not greater than 50% of the amount spent for training, and not to exceed \$1,500 per employee per year. An employer may train up to 20 employees a year under this program.

The rules define terms used throughout the Article.

These rules identify skills and occupations that are eligible for tax credits for training under the program. They specify the method of determining training course eligibility and designate additional tax credit eligibility requirements. They establish a process for a preliminary determination of course eligibility and an application process. These rules cover certification of an applicant's eligibility for a tax credit and determination of amount of the credit. They also establish a procedure by which determinations of eligibility or determinations of tax credit amount may be protested.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Relating to determination of information technology skills and occupations that are in short supply: "America's New Deficit: The Shortage of Information Technology Workers", 2000, U.S. Department of Commerce, Office of Technology Policy, 14th Street & Constitution Avenue, NW, Washington, DC 20230, 1-(202)482-3037 (www.ta.doc.gov) or National Technical Information Service, 1-(800)553-6847 (www.ntis.gov).

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

These rules are necessary to implement statutory provisions creating the Technology Training Program. They establish requirements for eligibility for program participation and the amount of tax credits for eligible participants. This is accomplished through a process that includes a pre-application determination of course eligibility and an application submitted following completion of training for which a tax credit is requested. The probable benefits of these rules outweigh the probable costs. The rules impact the following entities or groups.

Employers providing training to their employees ("employer") will incur an estimated cost of between \$12 and \$36 per request for the preparation and submission of a "Request for a Preliminary Determination of Course Eligibility." A separate request is required for each course that one or more employees will be taking. Following completion of training during a tax-year, the employer will incur an estimated cost of between \$12 and \$36 per application for preparation and submission. One application can cover multiple employees and courses. An employer may qualify for tax credits of as much as \$1,500 per employee per year, not to exceed 20 employees a year. Maximum annual tax credits could be as much as \$30,000.

The **Department of Commerce** ("Department") will incur a substantial one-time cost estimated to be more than \$7,500 for the development of these rules. The Department will incur minimal recurring annual costs estimated to be less than \$500 for drafting, printing, and distributing program forms and documents. The Department estimates cost to review each "Request for a Preliminary Determination of Course Eligibility" to be between \$7.50 and \$22.50 and anticipates receipt of between 150 and 250 requests annually. The Department estimates cost to review each application to be between \$11.25 and \$22.50 and anticipates receipt of between 150 and 200 applications annually. The Department's costs discussed above are necessary for performance of its statutory obligations.

Impact on **Training Providers** arises primarily from statute rather than from these rules.

Employees potentially eligible for training may benefit substantially from the program. However, these rules impact the employees only indirectly. Direct impact is on the employer.

The **Office of the Secretary of State** and the **Governor's Regulatory Review Council** will each incur minimal costs ordinarily associated with a rulemaking.

The burden imposed on small businesses by this rulemaking is not significant and is necessary for effective program implementation. No practical alternative methods are available to reduce impact.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

A number of minor grammatical corrections were made, including punctuation and formatting changes. Minor technical changes were made to rule text. Portions of the rule text were rearranged within the Article. Most changes were made at the suggestion of the Governor's Regulatory Review Council staff for the purpose of improving clarity, conciseness, and understandability.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any comments relating to the rules as published in the Notice of Proposed Rulemaking. No one attended the oral proceeding held on January 29, 2001.

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

Not applicable

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

None

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

ARTICLE 4. TECHNOLOGY TRAINING ASSISTANCE PROGRAM

Section

- R20-1-401. Definitions
- R20-1-402. Pre-Application and Application Process
- R20-1-403. Determination of Course Eligibility and Tax Credit
- R20-1-404. Tax Credit Eligibility
- R20-1-405. Tax Credit Amount
- R20-1-406. Protest

ARTICLE 4. TECHNOLOGY TRAINING ASSISTANCE PROGRAM

R20-1-401. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

1. “Accredited” means certified by an accrediting agency approved by the United States Department of Education.
2. “Applicant” means an employer seeking certification of a tax credit under the Technology Training Assistance Program under A.R.S. § 41-1518.01 and this Article.
3. “Course” means a single class.
4. “Department” means the Department of Commerce.
5. “Director” means the Director of the Department of Commerce.
6. “Interested party” means:
 - a. The same as in A.A.C. R2-7-901; and
 - b. Includes an employer submitting a “Request for a Preliminary Determination of Course Eligibility”; or
 - c. An applicant for a tax credit under this Article.
7. “Job-related training” or “job-related” means instruction to an applicant’s employee that:
 - a. Provides new skill or knowledge; or
 - b. Enhances existing skill or knowledge; and
 - c. Is necessary for efficient and productive performance of the employee’s current or intended position.
8. “Program” means the Technology Training Assistance Program.
9. “Request for a Preliminary Determination of Course Eligibility” means a Department form:
 - a. Containing the information required under this Article; and
 - b. Submitted to the Department under R20-1-402(A).
10. “Tax-year” means the same as “taxable year” in A.R.S. § 43-104.

R20-1-402. Pre-Application and Application Process

A. Pre-Application. Before enrolling an employee into a technology skills training course for which an employer intends to request a tax credit under this Article, the employer may request a preliminary determination of course eligibility by:

1. Selecting a course offered by an accredited training provider; and
2. Submitting a completed “Request for a Preliminary Determination of Course Eligibility” form to the Department for each course. The form shall include the following information:
 - a. Company name, address, electronic mail address, telephone number, and facsimile number;
 - b. Contact person;
 - c. Course name;
 - d. Training provider name, address, and telephone number;
 - e. Course description;
 - f. Proof that the provider is accredited;
 - g. Number of employees to attend the course;
 - h. Course start date and end date;
 - i. Cost per employee of:
 - i. Tuition; and
 - ii. Material that is mandatory under the course requirements;
 - j. Detailed description of:
 - i. Each position that requires a skill or is an occupation identified under R20-1-404; and
 - ii. The course that provides job-related training for each employee;
 - k. The employer’s signed and dated verification that the information provided is accurate and complete; and
 - l. The printed name and title of person signing the verification.

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B. Application. An applicant shall submit an application for a tax credit to the Department on a form provided by the Department between January 1 and January 15 following the calendar year in which the credit is claimed. The completed application shall contain the following information:

1. Tax-year;
2. Tax identification number;
3. Applicant's name, address, electronic mail address, telephone number, and facsimile number;
4. Contact person;
5. Whether the applicant files Arizona state income tax returns as a:
 - a. Sole proprietorship;
 - b. Partnership;
 - c. S corporation;
 - d. C corporation;
 - e. Limited liability company; or
 - f. Business form other than specified in subsections (a) through (e), including a description of the business form;
6. Whether the applicant files Arizona state income taxes on a calendar year basis, and if not, the tax-year beginning and end dates;
7. For each employee completing a course:
 - a. The employee's name;
 - b. The name of each course completed;
 - c. The completion date for each course; and
 - d. Whether the employee met the requirements of R20-1-404(B);
8. Applicant's total cost of all courses and materials for which a tax credit is requested, including a copy of the invoice for:
 - a. Tuition for each course completed; and
 - b. Material that is mandatory under the course requirements;
9. If the applicant has not filed a "Request for a Preliminary Determination of Course Eligibility" before filing the application, the applicant shall include the information required under subsection (A);
10. A verification signed and dated by the applicant that the information provided is accurate and complete; and
11. Printed name and title of person signing the verification.

R20-1-403. Determination of Course Eligibility and Tax Credit

A. Course Eligibility. The Department shall review the "Request for a Preliminary Determination of Course Eligibility" submitted under R20-1-402(A), and within 10 calendar days following receipt of the request notify the applicant in writing:

1. Whether the course is eligible because:
 - a. The employee's position requires a skill or is an occupation identified under R20-1-404;
 - b. The training is job-related; and
 - c. The training provider is accredited; or
2. If the Department makes a determination of ineligibility, the reason for the determination.

B. Tax Credit. The Department shall complete the review of an application submitted under R20-1-402(B) on or before February 15 of the year of submittal, and the Department shall:

1. Determine whether the course is eligible because:
 - a. The employee's position requires a skill or is an occupation identified under R20-1-404;
 - b. The training is job-related; and
 - c. The training provider is accredited; and
2. Determine whether the applicant is eligible for a tax credit;
3. Determine the amount of tax credit;
4. Issue a credit certificate to the applicant stating the amount of credit; and
5. Deliver a copy of the certificate to the Arizona Department of Revenue; or
6. Notify the applicant in writing of the reason for ineligibility, and the reason for the determination.

R20-1-404. Tax Credit Eligibility

A. Technology Skills and Occupations. The following are in short supply and critical to economic development in Arizona:

1. Study of computer-based information systems;
2. Design of computer-based information systems;
3. Development of computer-based information systems;
4. Implementation of computer-based information systems;
5. Support of computer-based information systems; and
6. Management of computer-based information systems.

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- B. Employee Requirements.** An employee trained under the Program shall:
1. Be employed in Arizona by the applicant for the entire duration of the course; and
 2. Successfully complete the course by receiving a:
 - a. Passing grade; or
 - b. Certificate of completion.

R20-1-405. Tax Credit Amount

- A.** The Department shall not certify a tax credit that is:
1. Greater than 50% of the actual amount that an applicant spent during the applicant's tax-year for eligible instruction for employees;
 2. More than \$1500 per employee; or
 3. For more than 20 employees during a tax-year.
- B.** The credit is limited to the cost of:
1. Tuition; and
 2. Materials that are mandatory under course requirements.
- C.** "Actual amount that an applicant spent" under subsection (A) does not include public funds from any source.

R20-1-406. Protest

- A.** An interested party may, under A.R.S. § 41-2704, file a protest of a determination of:
1. Course eligibility;
 2. Eligibility for a tax credit under this Article; or
 3. The amount of a tax credit certified under this Article.
- B.** The Director shall resolve protests under subsection (A).
- C.** An interested party may appeal the Director's resolution of a protest to the Director of the Department of Administration.
- D.** A protest under this Section shall be filed, processed, and resolved according to the rules of procedure contained in 2 A.A.C. 7, Article 9.