

**COLORADO**Department of Public  
Health & Environment

To: Members of the State Board of Health

From: Troy Huffman, Retail Food Program Manager, Division of Environmental Health and Sustainability  
Sean C. Scott, Deputy Director  
Division of Environmental Health and Sustainability

Through: Jeff Lawrence, Director  
Division of Environmental Health and Sustainability (jL)

Date: November 15, 2023

Subject: Request for a Rulemaking Hearing concerning 6 CCR 1010-2 *Colorado Retail Food Establishment Regulations* with a request for a rulemaking hearing to be set for January 17, 2024.

---

The Division of Environmental Health and Sustainability (“division”) is proposing revisions to 6 CCR 1010-2, *Colorado Retail Food Establishment Regulations*, and is requesting that the Board of Health schedule a rulemaking hearing to consider adoption of the proposed amendments at the January 17, 2024, Board of Health meeting.

In compliance with the State Administrative Procedure Act, Section 24-4-103.3, C.R.S., the department is proposing amendments to update and align 6 CCR 1010-2, *Colorado Retail Food Establishment Regulations*, with the recently revised federal Food Code through incorporation by reference.

The amended and proposed regulation incorporates by reference of the *Food Code, 2022 Recommendations of the United States Public Health Service/Food and Drug Administration* (Food Code), as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration (FDA).

FDA’s Food Code serves as the official document setting forth the most current health and sanitation requirements, nationally recognized science and evidence-based standards to protect public health. Incorporation by reference of the 2022 Food Code continues Colorado’s conformance with the latest national standards while retaining the efficiency and effectiveness of the rulemaking process.

Electronic copies of FDA’s 2022 Food Code and the updated and proposed state regulation are available for review on the division website:

- <https://cdphe.colorado.gov/dehs-rulemaking>

In addition, the 2022 FDA Food Code is posted and available for review on the following FDA website:

- <https://www.fda.gov/food/fda-food-code/food-code-2022>

The division has engaged stakeholders and to date, none has expressed concern with the proposed amendments to the *Colorado Retail Food Establishment Regulations*. The division appreciates the Board’s consideration.

**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for Amendments to  
6 CCR 1010-2, *Colorado Retail Food Establishment Regulations***

**Basis and Purpose.**

State statute directs CDPHE to establish regulations and ensure uniform statewide administration, implementation and enforcement for the retail food program. The purpose of the *Colorado Retail Food Establishment Regulations*, 6 CCR 1010-2, is to protect the health of the Colorado's citizens and visitors by ensuring food consumed in and from Colorado retail food establishments is safe, unadulterated, and honestly presented. Food safety has broad quality-of-life, public health and economic impacts. The Centers for Disease Control and Prevention (CDC) estimates that each year roughly 48 million Americans (one in six) get sick, 128,000 are hospitalized, and 3,000 die of foodborne illnesses. Foodborne illnesses cost over \$50 billion each year. Reducing foodborne illness by just 10 percent would prevent approximately 5 million Americans from getting sick each year. Preventing a single fatal case of *E. coli O157* infection would save an estimated \$7 million dollars.

In compliance with the State Administrative Procedure Act (§24-4-103.3, C.R.S.), the department is proposing amendments to update and align 6 CCR 1010-2, *Colorado Retail Food Establishment Regulations* with the most current federal code. The amended and proposed regulation would continue the process to incorporate by reference:

- *Food Code, 2022 Recommendations of the United States Public Health Service/Food and Drug Administration* (Food Code), as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration (FDA).

An updated edition of the Food Code is published on a four-year cycle and is based on recommendations that are proposed every two years at the Conference for Food Protection (CFP). The CFP provides a national stakeholder process for the development of the Food Code. The structure of the CFP provides a representative and equitable partnership among regulators, industry, academia, professional organizations and consumers. The CFP process assists with Food Code development through a regimented deliberation and voting structure to address proposed changes to the current edition of the Food Code and supporting documents. CDPHE's retail food program manager is a voting delegate at CFP, and the program has been an active participant in the process for over 20 years. Substantive changes to the 2022 Food Code made through the CFP process include:

- *Certified Food Protection Manager*

Section 2-102.12(A) of the 2022 Food Code requires that the person in charge of a retail food establishment be a certified food protection manager. This is an expansion of the current requirement that at least one employee affiliated with the facility be a certified food protection manager.

Having educated food managers is an effective way to protect the public and retail food employees. Properly trained food handlers improve food safety and reduce risks and behaviors commonly associated with foodborne illness and outbreaks. The CDC has shown that food establishments with managers certified in food safety who are

actively working at the food establishment are less likely to have foodborne illness outbreaks and have fewer critical violations on their inspections.

Note: Industry partners requested a delayed implementation date for the certified food protection manager requirement in order to get staff appropriately trained. The delayed implementation date is reflected in the proposed regulation.

- *Allergen Notification*

Section 3-602.11 of the 2022 Food Code requires industry to notify consumers by written means of the presence of major food allergens as an ingredient in unpackaged food. This is an expansion of the current requirement to demonstrate knowledge of the major food allergens, which include wheat, peanuts, tree nuts, crustacean shellfish, fish, eggs, milk, soybeans and now also sesame.

- *Clean Up of Vomiting and Diarrheal Events*

Section 2-501.11 of the 2022 Food Code requires industry to have written procedures for clean-up of vomiting and diarrheal events. This is an expansion of the current requirement which did not require the procedures to be written.

- *Storage of Packaged and Unpackaged Food to Protect Them From Cross Contamination Through - Separation, Packaging and Segregation*

Section 3-302.11 of the 2022 Food Code requires industry to separate fruits and vegetables before they are washed from raw animal foods. This is an expansion of the current requirement to protect foods from other forms of contamination such as separating raw animal food from cooked ready to eat foods.

- *Manufacturer Cooking Instructions*

Section 3-401.15 of the 2022 Food Code requires that packaged food be cooked according to the manufacturer's cooking instructions before use unless the manufacturer specifies that the food may be consumed without cooking. This is a new requirement for foods where the manufacturer has intended those products to be cooked to control pathogens of concern prior to consumption.

- *Align definitions in the Food Code with state statute*

In the 2017 rulemaking, there was terminology used and defined in both the Food Code and Colorado statute. A term used in the Food Code shall continue to have the meaning contained in the Colorado Food Protection Act, Title 25, Article 4, Part 16, C.R.S.

The following sections of the 2022 Food Code were not incorporated by reference due to conflicts with state law or resource limitations:

- 6-501.115(D) - Pet Dogs on Patios: Section 25-4-1615, C.R.S., defines the actions that a retail food establishment shall follow if they should choose to allow pet dogs in the outdoor dining areas of their food establishments. 6-501-115(D) conflicts with the

statute, as the authority established in the Food Code is placed on the LPHA rather than with CDPHE, as required by Colorado statute.

- 8-203.10 - Preoperational Inspections: Section 25-4-1606(2), C.R.S. specifies that the department or a Local Public Health Agency (LPHA) under delegation agreement with the department may conduct a pre-opening inspection before licensing a retail food establishment. Section 8-203.10 of the Food Code requires that a preopening inspection be conducted. This conflicts with the intent of the statute, which takes into consideration local staffing resources and compliance circumstances that might or might not require a pre-opening inspection.
- 8-3 - Permit to Operate: The powers and duties of the department to grant or refuse licenses or certificates of licenses are specified in section 25-4-1604, C.R.S. As the delegation of these powers and duties are specified by statute, the incorporation of this section of the Food Code is not necessary.
- 8-4 - Inspection and Correction of Violations: In 2020, a Colorado statute change updated the approach to violation correction to a risk-based inspectional methodology. Factors such as food risk, operational risk, violation severity and pervasiveness and compliance history are now incorporated into the Colorado program. This section of the Food Code does not align with the current Colorado statutory process.

The current regulation draws upon FDA's 2013 edition of the Food Code and the 2015 Supplement. The advancement to incorporation by reference of the 2022 Food Code will keep Colorado retail food establishments consistent with current health and sanitation requirements and nationally recognized science, with evidence-based recommendations.

The proposed changes will maintain or increase public health protections while:

- maintaining access to federal resources, including multi-language materials, federal training and grant opportunities;
- promoting a uniform national standard to reduce complexity for retail food establishments;
- improving data within the state and the opportunity to draw comparisons to national data to inform decision-making;
- ensuring food safety regulations reflect the most current science available;
- affording the department and local public health agencies the opportunity to target their limited resources toward the greatest opportunities to protect public health; and
- maintain efficiency in the rulemaking process.

**Specific Statutory Authority.**

**Statutes that require or authorize rulemaking:** Sections 25-1-108(1)(c)(I), 25-4-1603, 25-4-1604(1)(b)(I), and 25-5-420, C.R.S.

---

**Is this rulemaking due to a change in state statute?**

Yes, the bill number is \_\_\_\_\_. Rules are \_\_\_ authorized \_\_\_ required.  
 No

**Does this rulemaking include proposed rule language that incorporate materials by reference?**

Yes <https://www.fda.gov/food/fda-food-code/food-code-2022>  
 No

**Does this rulemaking include proposed rule language to create or modify fines or fees?**

Yes  
 No

**Does the proposed rule language create (or increase) a state mandate on local government?**

No.

- The proposed rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed;
- The proposed rule requires a local government to perform or increase a specific activity because the local government has opted to perform an activity, or;
- The proposed rule reduces or eliminates a state mandate on local government.

**REGULATORY ANALYSIS**  
for Amendments to  
**6 CCR 1010-2, Colorado Retail Food Establishment Regulations**

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

Group of persons/entities Affected by the Proposed Rule	Size of the Group	Relationship to the Proposed Rule Select category: C/CLG/S/B
Local Public Health Agencies	35	CLG/S
Correctional Facilities	21	C
Public School Districts	178	C
Colorado Department of Public Health and Environment	~2500	S
Retail Food Establishments	~23,000	C
Retail Food consumers in Colorado	~5.8 million	S/B

While all are stakeholders, groups of persons/entities connect to the rule and the problem being solved by the rule in different ways. To better understand those different relationships, please use this relationship categorization key:

- C** = individuals/entities that implement or apply the rule.  
**CLG** = local governments that must implement the rule in order to remain in compliance with the law.  
**S** = individuals/entities that do not implement or apply the rule but are interested in others applying the rule.  
**B** = the individuals that are ultimately served, including the customers of our customers. These individuals may benefit, be harmed by or be at-risk because of the standard communicated in the rule or the manner in which the rule is implemented.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

**Economic outcomes**

Summarize the financial costs and benefits, include a description of costs that must be incurred, costs that may be incurred, any Department measures taken to reduce or eliminate these costs, any financial benefits.

**C:** Retail food establishments, correctional facilities, and public schools attaining compliance with new requirements regarding manager certification will incur costs associated with staff training. However, these costs are outweighed by the increased public health benefit this new requirement provides.

**CLG:** Currently, 35 local public health agencies (LPHA) implement the existing Colorado Retail Food Establishment Regulations. Costs to the LPHAs resulting from the proposed rule will be minimal and associated with staff training and

data system updates. The LPHAs will benefit from the revised regulation by maintaining access to the most current federal resources, including multi-language materials, federal training, and grant opportunities.

- S: No costs will be incurred by state and local regulatory agencies, or consumers of retail food because of the proposed rule revision. Cost savings to Colorado state regulatory agencies will be realized through the efficiency of the biennial Conference for Food Protection (CFP) and Colorado's state rulemaking processes and consistent interpretation of the FDA 2022 Food Code.
- B: Consumers of retail food in Colorado benefit from the continued incorporation by reference of FDA's Food Code into state regulation. Consumers of Colorado retail food because of the proposed rulemaking will incur no costs.

### **Non-economic outcomes**

**Summarize the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and, if known, the likelihood of the outcomes for each affected class of persons by the relationship category.**

- C: Colorado's retail food industry is already subject to the 2013 Food Code. The proposed incorporation by reference of FDA's 2022 Food Code advances public health protections for the short and long-term while providing industry clarification for consistent interpretation of retail food regulations through alignment with current and nationally accepted standards. No non-favorable non-economic outcomes for the retail food industry were identified.
- CLG: Adopting the 2022 Food Code will have minimal impact on LPHAs that regulate retail food establishments. Continued adoption of the Food Code allows for improved administrative efficiency as well as increased eligibility for the department and LPHAs for federal resources. Also, standardized national data allows Colorado to compare and use that data to make informed decisions and allocate efforts to areas of increased risk or opportunities to improve food safety. Improved data will also increase Colorado's compatibility with intra- and multi-state outbreak response protocols.
- S: The Food Code is developed and revised by FDA with the assistance of state and local retail food regulatory agencies, the retail food industry, and educational and research institutions for the purpose of assuring uniformity and effectiveness in state retail food programs. The 2022 Food Code also serves as the official document setting forth the most current health and sanitation requirements, nationally recognized science, and evidence-based standards to protect public health. Continued incorporation by reference of the Food Code maintains the efficiency and effectiveness of the rulemaking process. No non-favorable non-economic outcomes are anticipated for state and local regulatory agencies, or consumers of retail food.
- B: There are over 23,000 regulated retail food establishments throughout the state. Over 5.8 million potential consumers of retail food will benefit from the proposed rule revision by ensuring that the most current health and sanitation requirements, nationally recognized science, and evidence-based standards are

implemented in Colorado. No non-favorable non-economic outcomes are anticipated for consumers of retail food.

**3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

**A. Anticipated CDPHE personal services, operating costs or other expenditures: None**

Anticipated CDPHE Revenue: None

**B. Anticipated personal services, operating costs or other expenditures by another state agency: None**

Anticipated Revenues for another state agency: None

**4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

Along with the costs and benefits discussed above, the proposed revisions:

- Comply with a statutory mandate to promulgate rules.
- Comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- Maintain alignment with other states or national standards.
- Implement a Regulatory Efficiency Review (rule review) result
- Improve public and environmental health practice.
- Implement stakeholder feedback.

Advance the following CDPHE Strategic Plan priorities (select all that apply):

<p>1. Reduce Greenhouse Gas (GHG) emissions economy-wide from 125.716 million metric tons of CO<sub>2</sub>e (carbon dioxide equivalent) per year to 119.430 million metric tons of CO<sub>2</sub>e per year by June 30, 2020 and to 113.144 million metric tons of CO<sub>2</sub>e by June 30, 2023.</p> <p><input type="checkbox"/> Contributes to the blueprint for pollution reduction</p> <p><input type="checkbox"/> Reduces carbon dioxide from transportation</p> <p><input type="checkbox"/> Reduces methane emissions from oil and gas industry</p> <p><input type="checkbox"/> Reduces carbon dioxide emissions from electricity sector</p>
<p>2. Reduce ozone from 83 parts per billion (ppb) to 80 ppb by June 30, 2020 and 75 ppb by June 30, 2023.</p> <p><input type="checkbox"/> Reduces volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) from the oil and gas industry.</p> <p><input type="checkbox"/> Supports local agencies and COGCC in oil and gas regulations.</p> <p><input type="checkbox"/> Reduces VOC and NO<sub>x</sub> emissions from non-oil and gas contributors</p>
<p>3. Decrease the number of Colorado adults who have obesity by 2,838 by June 30, 2020 and by 12,207 by June 30, 2023.</p>



<input checked="" type="checkbox"/>	<p>Increases the consumption of healthy food and beverages through education, policy, practice and environmental changes.</p> <p>Increases physical activity by promoting local and state policies to improve active transportation and access to recreation.</p> <p>Increases the reach of the National Diabetes Prevention Program and Diabetes Self-Management Education and Support by collaborating with the Department of Health Care Policy and Financing.</p>
4.	<p>Decrease the number of Colorado children (age 2-4 years) who participate in the WIC Program and have obesity from 2120 to 2115 by June 30, 2020 and to 2100 by June 30, 2023.</p> <p>Ensures access to breastfeeding-friendly environments.</p>
5.	<p>Reverse the downward trend and increase the percent of kindergartners protected against measles, mumps and rubella (MMR) from 87.4% to 90% (1,669 more kids) by June 30, 2020 and increase to 95% by June 30, 2023.</p> <p>Reverses the downward trend and increase the percent of kindergartners protected against measles, mumps and rubella (MMR) from 87.4% to 90% (1,669 more kids) by June 30, 2020 and increase to 95% by June 30, 2023.</p> <p>Performs targeted programming to increase immunization rates.</p> <p>Supports legislation and policies that promote complete immunization and exemption data in the Colorado Immunization Information System (CIIS).</p>
6.	<p>Colorado will reduce the suicide death rate by 5% by June 30, 2020 and 15% by June 30, 2023.</p> <p>Creates a roadmap to address suicide in Colorado.</p> <p>Improves youth connections to school, positive peers and caring adults, and promotes healthy behaviors and positive school climate.</p> <p>Decreases stigma associated with mental health and suicide, and increases help-seeking behaviors among working-age males, particularly within high-risk industries.</p> <p>Saves health care costs by reducing reliance on emergency departments and connects to responsive community-based resources.</p>
7.	<p>The Office of Emergency Preparedness and Response (OEPR) will identify 100% of jurisdictional gaps to inform the required work of the Operational Readiness Review by June 30, 2020.</p> <p>Conducts a gap assessment.</p> <p>Updates existing plans to address identified gaps.</p> <p>Develops and conducts various exercises to close gaps.</p>
8.	<p>For each identified threat, increase the competency rating from 0% to 54% for outbreak/incident investigation steps by June 30, 2020 and increase to 92% competency rating by June 30, 2023.</p> <p>Uses an assessment tool to measure competency for CDPHE's response to an outbreak or environmental incident.</p>

<p><input type="checkbox"/> Works cross-departmentally to update and draft plans to address identified gaps noted in the assessment.</p> <p><input type="checkbox"/> Conducts exercises to measure and increase performance related to identified gaps in the outbreak or incident response plan.</p>
<p><b>9. 100% of new technology applications will be virtually available to customers, anytime and anywhere, by June 20, 2020 and 90 of the existing applications by June 30, 2023.</b></p> <p><input type="checkbox"/> Implements the CDPHE Digital Transformation Plan.</p> <p><input checked="" type="checkbox"/> <b>Optimizes processes prior to digitizing them.</b></p> <p><input checked="" type="checkbox"/> <b>Improves data dissemination and interoperability methods and timeliness.</b></p>
<p><b>10. Reduce CDPHE's Scope 1 &amp; 2 Greenhouse Gas emissions (GHG) from 6,561 metric tons (in FY2015) to 5,249 metric tons (20% reduction) by June 30, 2020 and 4,593 tons (30% reduction) by June 30, 2023.</b></p> <p><input type="checkbox"/> Reduces emissions from employee commuting</p> <p><input type="checkbox"/> Reduces emissions from CDPHE operations</p>
<p><b>11. Fully implement the roadmap to create and pilot using a budget equity assessment by June 30, 2020 and increase the percent of selected budgets using the equity assessment from 0% to 50% by June 30, 2023.</b></p> <p><input type="checkbox"/> Used a budget equity assessment</p>

**X Advance CDPHE Division-level strategic priorities.**

The division Workplan, within CDPHE's Strategic Plan, identifies "Easily accessible and digestible information" as Priority #3. Continued incorporation by reference of the 2022 FDA Food Code supports this priority.

**The costs and benefits of the proposed rule will not be incurred if inaction was chosen. Costs and benefits of inaction not previously discussed include: None**

**5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

Incorporation by reference and adoption of FDA's 2022 Food Code continues the high levels of retail food health and sanitation practices currently in place and maintains the allowance for the uniform application of a national retail food code. The proposed rulemaking is the least costly and intrusive method for achieving the purpose of the rule. The specific revisions to the FDA Food Code proposed in this rulemaking were developed in conjunction with a national stakeholder group through the CFP. The continued incorporation by reference of the most up to date national standards and the resulting efficiencies in the rulemaking process, the proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary and are the most feasible manner to achieve compliance with statute. The minimal short-term administrative cost associated with the federal and state rulemaking processes is far out-weighed by the operational efficiencies and continued protection of human health.

The department will update the incorporation by reference as needed to remain current with federal code.

**6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

No alternate rules or alternatives to the proposed rulemaking were considered. Current regulations incorporate by reference the 2013 edition of the Food Code and 2015 Supplement; therefore, adoption of the updated 2022 Food Code is considered the most equitable, effective and efficient approach to rulemaking while protecting public health and aligning Colorado to the national standards. Incorporation by reference and implementation of the 2022 Food Code will ensure short and long term consistency in the application of these requirements.

**7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short term and long term consequences.**

In August 2021, CDPHE's retail food program attended CFP. The CFP provides an opportunity for state delegates to provide feedback and vote on proposed, science based changes to the national standards. Amendments passed by state delegates at the CFP are represented in the 2022 Food Code. The continued incorporation by reference of the current retail food code will be a benefit to the department, the regulated community and the public, both in the short term and long term.

**STAKEHOLDER ENGAGEMENT**  
**for Amendments to**  
**6 CCR 1010-2, Colorado Retail Food Establishment Regulations**

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

**Early Stakeholder Engagement:**

The following individuals and/or entities invited to provide input and were included in the development of these proposed rules:

Organization	Representative Name and Title (if known)
Adams County Health Department	Alexei Poggenklass
Adams County Health Department	Ferah Jaura
Adams County Health Department	Ricky Ross
Adams County Health Department	Gilbert Cazier
Albertsons	Kelly Zielbauer
Alta Convenience Stores	Anita Gragg
Arapahoe County Public Health	Dylan Garrison
Arapahoe County Public Health	Meridith Hatterman
Arapahoe County Public Health	Vanessa Fiene
Boulder County Public Health	Lane Drager
Boulder County Public Health	Shawna Johnson
Broomfield Public Health and Environment	Brian Hanft
Broomfield Public Health and Environment	Dan Collins
Broomfield Public Health and Environment	Katie Kessler
Broomfield Public Health and Environment	Meghan Gray
Camp Gunnison	Treasa Fuerte-Stone
Camp Gunnison	Sharon Slyter
CDHS	Scott Cass
CDPHE - DEHS	Troy Huffman
CDPHE - DEHS	Andrew Lemmons
CDPHE - DEHS	Matt Brandt
CDPHE - DEHS	Robert Warwick
CDPHE - DEHS	Regina Clark
CDPHE - DEHS	Audrey Tyner
CDPHE - DEHS	Josh Gallegos
CDPHE - DEHS	Monica Dupler
CDPHE - DEHS	Megan Collins
CDPHE - DEHS	Cody Sprague
CDPHE - DEHS	Jeff Lawrence
CDPHE - DEHS	Sean Scott
CDPHE - DEHS	Cary Ruble
CDPHE - DEHS	Justin Trubee
CDPHE - DEHS	Rachel Roussel-Diamond
CDPHE - DEHS	Amy Gammel
CDPHE - DEHS	Greg McConnel
CDPHE - DEHS	Suzanne Wicklund
CDPHE - DEHS	Bradley Turpin
City of Aspen Environmental Health & Sustainability	Natalie Tsevdos
City of Aspen Environmental Health & Sustainability	Julie Kline
Chaffee County Public Health and Environmental Health	Andrea Carlstrom
Chaffee County Public Health and Environmental Health	Stefanie Nelson
CO DOC	Charleen Crockett
Colorado Bar Owners Association	Mickey Petrollini

Organization	Representative Name and Title (if known)
Colorado Brewers Guild	Laura Long
Colorado Hotel & Lodging Association	Amie Mayhew
Colorado Petroleum Association	Stan Dempsey
Colorado Restaurant Association	Sonia Riggs
Colorado Restaurant Association	Nick Hoover
Colorado Restaurant Association	Colin Laswon
Colorado Retail Council	Chris Howes
Colorado School Nutrition Association	Jen Johnson
Colorado Wyoming Petroleum Marketers Association	Grier Bailey
CSU - EH	Jeannine Riess
CSU Extension	Marisa Bunning
CU - EH	Nicole Grisham
Darden	Rebecca Wynne
Delta County Health Dept.	Greg Rajnowski
Delta County Health Dept.	Reiley Jones
Delta County Health Dept.	Matt Brattain
Denver Department of Public Health & Environment	Abby Davidson
Denver Department of Public Health & Environment	Maggie Steele
Denver Department of Public Health & Environment	Karl Schiemann
Douglas County Health Department	Skyler Sicard
Douglas County Health Department	Caitlin Gappa
Eagle County Health Department	Claire Lewandowski
Eagle County Health Department	Maricela Pinela
El Paso County Public Health	Samantha Lawson
El Paso County Public Health	Roy Kroeger
El Paso County Public Health	Danielle Hannaly-Gentle
El Paso County Public Health	Kara Cohen
El Paso County Public Health	Amanda Brannon-Nuce
El Paso County Public Health	Stacey Rinehart
FDA	Alisha Johnson
FDA	Tracynda Davis
Fremont County Environmental Health Services	Amy Jamison
Garfield County Public Health	Josh Williams
Garfield County Public Health	Janette Whitcomb
Garfield County Public Health	Nerida (Nettie) Mojarro
Gilpin County Public Health	Kelvin Decker
Grand County Public Health	Hannah Wynd
Gunnison County Public Health	Jenn Chavez
Gunnison County Public Health	Nicole Stone
Hicks & Associates	Jay Hicks
Hudson Government Affairs	Larry Hudson
Intermountain Health Grand Junction	Christina Billups
Jefferson County Public Health	Mindi Ramig
Jefferson County Public Health	Jessa Woodward
Jefferson County Public Health	Terri Leichtweis
King Soopers	Dave Vonfeldt
Kit Carson County Public Health	Kelly Alvarez
Kit Carson County Public Health	Valerie Boyd
Krogers	Kelli Mcgannon
Lake County Public Health Agency	Kelsy Maxie
Larimer County Health Department	Nicole Aguilar
Las Animas-Hueffano County District Health Department	Robin Sykes
Las Animas-Hueffano County District Health Department	Aaron Martinez
Mesa County Health Department	Sally Born
Montrose County Health and Human Services	Jim Austin
Montrose County Health and Human Services	Gina Simpson
Natural Grocers	Alan Lewis
Northeast Colorado Health Department	Mel Bustos

Organization	Representative Name and Title (if known)
Northeast Colorado Health Department	Heather Coin
Northeast Colorado Health Department	Kedge Stokke
Northeast Colorado Health Department	Karah Merrell
On the Ballot Consulting	Brett Moore
Otero County Health Department	Su Korbitz
Papa's Restaurants	Elsa Bruno
Prowers County Public Health	Conni Martinez
Pueblo City-County Health Department	Vicki Carlton
Red Robin	Emily Thompson
Rocky Mountain Food Industry Association	Mary Lou Chapman
Routt County Department of Environmental Health	Heather Savalox
San Juan County Public Health	Peter Diethrich
San Juan County Public Health	Aaron McDowell
San Juan County Public Health	Brian Devine
San Luis Valley Public Health Partnership	Gary Bruder
San Luis Valley Public Health Partnership	Chris Tracey
San Miguel Department of Health & Environment	Chris Smith
Silverthread Public Health District	Jodi Lindsey
Summit County Environmental Health Department	Maya Kulick
Teller County Environmental Health Department	Keri Pickett
Teller County Environmental Health Department	Austin May
The Tavern League	Stephanie Fransen
Weld County Department of Public Health & Environment	Nick Trautner
Weld County Department of Public Health & Environment	Gabri Vergara
Weld County Department of Public Health & Environment	Dan Joseph
Whole Foods	Matt Lichlyter
Yum Brand	Dan Tew

On August 11, 2023, the division met with local public health agency (LPHA) food managers that engage in the implementation of the existing Colorado Retail Food Establishment Regulations. The division reviewed the substantive changes to the regulations and the proposed incorporation by reference of the 2022 version of the federal Food Code.

On August 25, 2023, the division met with retail food industry partners to review substantive changes to the regulations and the proposed incorporation by reference of the 2022 version of the federal Food Code.

On September 8, 2023, the division held a comprehensive stakeholder meeting that included industry partners, LPHAs, and other stakeholders. The department reviewed all proposed changes to 6-CCR 1010-2. Following the review, the meeting was opened for discussion of the proposed changes and the proposed incorporation by reference of the 2022 FDA Food Code. Industry partners requested a delayed implementation date for the certified food protection manager requirement in order to get staff appropriately trained. There were no other questions or concerns and the meeting was adjourned.

Based on stakeholder engagement, consensus on the revised and proposed regulation was achieved with an agreement to delay the implementation date for the changes to the certified food protection manager requirements. All documents associated with stakeholder engagement were made available on the department's web site.

### Stakeholder Group Notification

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was

provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10<sup>th</sup> of the month following the Request for Rulemaking).

- Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.
- Yes.

**Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department’s efforts to address stakeholder feedback or why the Department was unable to accommodate the request.**

In order to maintain alignment with the current 2022 Food Code, the division began preparations for this rulemaking through participation at the CFP process in August 2021. The CFP provides an opportunity for state retail food delegates to provide feedback and vote on proposed changes to the FDA Food Code. Amendments passed at the CFP are represented in the 2022 Food Code.

Since the current *Colorado Retail Food Regulations* are recognized and understood by stakeholders and reflect current federal rules, there were no significant factual or policy issues encountered. Consensus was achieved on the proposed regulation, including the incorporation by reference of the 2022 Food Code, with an agreement to delay the implementation date for the changes to the certified food protection manager requirements.

**Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.**

**Overall, after considering the benefits, risks and costs, the proposed rule:**

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.		Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.		Reduces occupational hazards; improves an individual’s ability to secure or maintain employment; or, increases stability in an employer’s workforce.
X	Improves access to food and healthy food options.	X	Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.

X	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.	X	Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child’s ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
X	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.	X	Ensures a competent public and environmental health workforce or health care workforce.
	Other: _____ _____		Other: _____ _____

DRAFT



1 COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2  
3 Division of Environmental Health and Sustainability

4  
5 COLORADO RETAIL FOOD ESTABLISHMENT REGULATIONS

6  
7 6 CCR 1010-2

8  
9 Adopted by the Board of Health on ~~November 15, 2017~~ \_\_\_\_\_; effective, ~~January~~  
10 ~~1, 2019~~ (date TBD).

11  
12 2.1 Authority

13  
14 This regulation is adopted pursuant to Sections 25-1-108(1)(c)(I), 25-4-1603, 25-4-  
15 1604(1)(b)(I), and 25-5-420, Colorado Revised Statute (C.R.S.) and is consistent with the  
16 requirements of the State Administrative Procedure Act, Section 24-4-101, *et seq.*, C.R.S.

17  
18 2.2 Scope and Purpose

19  
20 A. This regulation shall be applied for the protection of public health by providing food to  
21 consumers that is safe, unadulterated, and honestly presented.

22  
23 B. This regulation establishes definitions; sets standards for management and personnel,  
24 food operations, equipment and facilities; and provides for food establishment  
25 inspection, employee restriction, and permit suspension.

26  
27 C. This regulation does not apply to facilities or conditions listed in Section 25-4-  
28 1602(14)(a)-(m), C.R.S.

29  
30 D. Section 2.6 of this regulation incorporates by reference:

31  
32 1. *Food Code, ~~2013-2022~~ Recommendations of the United States Public Health*  
33 *Service/Food and Drug Administration* as published by the U.S. Department of  
34 Health and Human Services, Public Health Service, Food and Drug  
35 Administration (*the Code*), as published on ~~November 15, 2017~~ January 18,  
36 2023.

37  
38 ~~2. *Supplement to the 2013 Food Code (2015), U.S. Department of Health and*~~  
39 ~~*Human Services, Public Health Service, Food and Drug Administration, (the*~~  
40 ~~*Supplement), as published on November 15, 2017.*~~

41  
42 2.3 Applicability

43  
44 A. Pursuant to the provisions of Sections 25-4-1602(14), 25-4-1603, and 25-4-  
45 1604(1)(b)(I), C.R.S., this regulation:

46  
47 1. Shall apply to a retail establishment that stores, prepares, or packages food for  
48 human consumption or serves or otherwise provides food for human  
49 consumption to consumers directly or indirectly through a delivery service,  
50 whether such food is consumed on or off the premises or whether there is a  
51 charge for such food.

52  
53 B. In accordance with Section 25-4-1604(1)(b)(II), C.R.S., this regulation shall include but  
54 not be limited to general overall retail food establishment and equipment design and  
55 construction; sanitary maintenance of equipment, utensils, and facilities for food  
56 preparation, service, and storage; wholesomeness of food and drink; source and  
57 protection of food and water; disposal of liquid and solid wastes; and other rules for  
58 the effective administration and enforcement of the Colorado Food Protection Act,  
59 part 16, article 4, title 25, C.R.S.

60  
61 C. The department shall utilize *the Code*, ~~*the Supplement*~~, department policy guidance  
62 pursuant to Section 25-4-1602(17), C.R.S., or other department-approved methods as  
63 authorized by statute and as appropriate to assure that retail food establishments  
64 comply with the Colorado Food Protection Act, part 16, article 4, title 25, C.R.S.

65  
66 D. Subpart 2-102.12 (A) (Certified Food Protection Manager), will be effective March 1,  
67 2025.

## 68 69 2.4 Definitions

70  
71 A. For the purpose of these rules and regulations:

- 72  
73 1. Food establishment (as used in the *Code* ~~and *Supplement*~~) means, for the  
74 purposes of this regulation, Retail Food Establishment as defined in Section 25-  
75 4-1602(14) C.R.S.  
76  
77 2. Inspection (as used in the *Code* ~~and *Supplement*~~) means, for the purposes of  
78 this regulation, Inspection as defined in Section 25-4-1602(7) C.R.S.  
79  
80 3. Permit (as used in the *Code* ~~and *Supplement*~~) means, for the purposes of this  
81 regulation, License as defined in Section 25-4-1602(8) C.R.S.  
82  
83 4. Permit holder (as used in the *Code* ~~and *Supplement*~~) means, for the purposes of  
84 this regulation, Licensee as defined in Section 25-4-1602(9) C.R.S.  
85  
86 5. Regulatory authority (as used in the *Code* ~~and *Supplement*~~) means, for the  
87 purposes of this regulation, Department as defined in section 25-4-1602(3),  
88 C.R.S. and any county or district board of health with powers and duties  
89 delegated by the department in accordance with Section 25-4-1604(1)(i),  
90 C.R.S.

## 91 92 2.5 License Requirements

93  
94 Retail food establishments in Colorado must be licensed in accordance with the Colorado Food  
95 Protection Act, part 16, article 4, title 25, C.R.S.

## 96 97 2.6 Incorporation by Reference

98  
99 A. Throughout these regulations, standards and requirements of outside organizations  
100 have been adopted and incorporated by reference. The material incorporated by  
101 reference cited herein includes only those versions that were in effect on ~~November~~  
102 ~~15, 2017~~ January 18, 2023, and no later amendments to the incorporated materials.

103 These regulations incorporate by reference:

104  
105 1. *Food Code, ~~2013-2022~~ Recommendations of the United States Public Health*  
106 *Service/Food and Drug Administration* as published by the U.S. Department of  
107 Health and Human Services, Public Health Service, Food and Drug  
108 Administration (*the Code*). ~~and~~

109  
110 ~~2. *Supplement to the 2013 Food Code (2015), U.S. Department of Health and*~~  
111 ~~*Human Services, Public Health Service, Food and Drug Administration, (the*~~  
112 ~~*Supplement).*~~

113  
114 B. Any provision included or incorporated herein by reference which conflicts with the  
115 Colorado Revised Statutes, including but not limited to Section 25-4-1601, *et seq.*,  
116 C.R.S. and Section 25-1.5-102, C.R.S., shall be null and void.

117  
118 To align with ~~Section 25-4-1601, et seq.~~ the Colorado Food Protection Act, part 16,  
119 article 4, title 25, C.R.S., these regulations do not incorporate by reference:

120  
121 1. Subpart 6-501-115 (D) (Pet Dogs on Patios) of the Food Code;

122  
123 ~~2. Subpart 8-203.10 (Preoperational Inspections) of the Food Code;~~

124  
125 ~~3. Section 8-3 (Permit to Operate) of the Food Code; and~~

126  
127 ~~3. Subpart 8-401.10 (Establishing Inspection Interval) of the Code; and~~

128  
129 ~~4. Subpart 8-401.20 (Performance and Risk-Based) of the Code.~~

130  
131 4. Section 8-4 (Inspection and Correction of Violations) of the Food Code.

132  
133 C. The Division of Environmental Health and Sustainability shall maintain certified copies  
134 of the complete text of the incorporated materials, which shall be available for public  
135 inspection during regular business hours, and shall provide certified copies of the  
136 materials at cost upon request. For information regarding how the incorporated  
137 materials may be obtained or examined, contact:

138  
139 Division Director  
140 Division of Environmental Health and Sustainability  
141 Colorado Department of Public Health and Environment  
142 4300 Cherry Creek Drive South  
143 Denver, Colorado 80246-1530

144  
145 D. The incorporated materials are available at:

146  
147 [www.colorado.gov/pacific/cdphe/food-regulations/food-code](http://www.colorado.gov/pacific/cdphe/food-regulations/food-code)  
148 <https://cdphe.colorado.gov/dehs-rulemaking>

## 149 150 2.7 Temporary Retail Food Establishments

151  
152 A. General

153

154 A temporary retail food establishment shall comply with all requirements of these  
155 rules and regulations except as approved by the Regulatory Authority. A temporary  
156 retail food establishment application, which shall include a list of food items to be  
157 sold, shall be submitted to the Regulatory Authority for each event. The application  
158 shall be submitted at least ten working days prior to the event.  
159

160 B. Operations

- 161 1. Approvals will be based upon the nature and extent of the proposed menu,  
162 equipment capacities, setup and the ability to handle and prepare food in a  
163 safe manner and protect against public health hazards.  
164
- 165 2. Temporary retail food establishment operators shall maintain records detailing  
166 the source of all foods being held, stored, offered for sale, sold and  
167 distributed. These records shall be made available to the Regulatory Authority  
168 when requested.  
169
- 170 3. Grease from grease-producing equipment and any wastewater shall not be  
171 discharged onto the ground or into any storm drainage system.  
172
- 173 4. All food shall be maintained at required temperatures during all aspects of the  
174 operation including transportation.  
175
- 176 5. A handwashing station, as required by the Regulatory Authority, shall be  
177 provided within the temporary retail food establishment that meets the  
178 operational needs of the establishment.  
179

180  
181 C. Commissary

- 182 1. The Regulatory Authority's decision whether to require auxiliary support  
183 services such as a commissary or servicing area will be based on the menu,  
184 type of operation, duration of event and availability of on-board equipment and  
185 support services at the event.  
186
  - 187 2. The location of the commissary or servicing area shall be adequate to support  
188 operations and the safe handling of food.  
189
- 190  
191