



Arkansas Department of Health

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Governor Asa Hutchinson
José R. Romero, MD, Secretary of Health

ADH Rules Pertaining to Retail Food Establishments

PUBLIC COMMENT REPORT

(Public comment period – December 27, 2021 to January 27, 2022)

PUBLIC COMMENTS:

During the public comment period, comments were received from the following:

Mr. Jeffery Hugo – National Fire Sprinkler Association

Mr. William Hyde – Rogers Arkansas Fire Marshall

Mr. Brent Gleghorn - Fire Chief – Batesville, AR

Mr. Gary Yarno – Director of Fire Services – Benton County, AR

All individuals listed above referenced the following comment from Mr. Hugo with the National Fire Sprinkler Association:

This public comment references the changes to the retail food rules, specifically the mention of leaking sprinklers in several sections, such as, but not limited to 3-305.11, 4-401.11, and 4-903.12. While the National Fire Sprinkler Association (NFSA) agrees retail food should not be stored under leaking sprinklers, where leaking sprinklers are found, they are required to be replaced immediately per the fire code.

The 2012 Arkansas Fire Prevention Code per Section 901.6 require fire sprinkler systems to be inspected, tested, and maintained to the (referenced) 2011 edition of NFPA 25 (*Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*). NFPA 25, Section 5.2.1.1.1 and 5.2.1.1.2 states, "Sprinklers shall not show signs of leakage...any sprinkler with leakage shall be replaced..." Sprinklers are not manufactured to leak, at all, and when leaks are found, it often is a clue to a much larger problem with the establishments fire protection system. The fire code requires frequent inspections on fire sprinkler systems.

The retail food rules protect retail food, however, it should not ignore other state and local codes that protect consumers by other codes and standards. Where retail food inspections find leaking sprinklers, it should trigger the local code official, or state fire marshal to investigate and enforce the AR fire code to remedy the status of the fire protection system.

AGENCY RESPONSE:

The Arkansas Department of Health received a comment from the National Fire Sprinkler Association (NFSA), and several similar comments referencing the NSFA comment, from local fire officials in Arkansas. The Department contacted Mr. Gary West with the NFSA with assistance from Arkansas State Fire Marshall Major Lindsey Williams. In discussion with Mr. West, the concern from the association was the redundant references to leaking fire sprinklers, which could be interpreted as a common problem. The Department agrees, due to the very rare occasion of this type of malfunction, the wording should be updated.

CONCERN:

The Arkansas Retail Food Establishment rules are verbatim language from a recent version of the FDA Food Code with edits that are state specific. The Department uses this wording to maintain consistency with the FDA Food Code, as do other states. Most states and local jurisdictions at the city level use a version of the FDA Code.

SOLUTION:

The Department is facilitating the introduction of this concern to the Conference of Food Protection Officials by the NFSA, through Mr. West, to consider rewording these rule sections. If consensus is reached, the effort would result in a recommendation to FDA from the conference to update the wording. This would be the best solution for NFSA and Mr. West agrees.