

Dear Senators HEIDER, Nuxoll, Schmidt, and
Representatives WOOD, Packer, Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.02.19 - Food Safety and Sanitation Standards for Food Establishments (The Idaho Food
Code) - Proposed Rule (Docket No. 16-0219-1501).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/22/2015. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/20/2015.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Legislative Research Analyst - Elizabeth Bowen

DATE: September 02, 2015

SUBJECT: Department of Health and Welfare

IDAPA 16.02.19 - Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)
- Proposed Rule (Docket No. 16-0219-1501)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.02.19. The proposed rule updates food establishment rules to be consistent with current industry practices and safety standards and incorporates the FDA's 2013 Model Food Code. Additionally, the proposed rule clarifies the status of cottage food operations and revises definitions for purposes of clarity.

Negotiated rulemaking was conducted, and there is no anticipated impact on the state general fund. According to the Department, the rulemaking is authorized pursuant to Sections 39-3505 and 56-1005, Idaho Code.

cc: Department of Health and Welfare
Bev Barr and Frank Powell

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS (THE IDAHO FOOD CODE)

DOCKET NO. 16-0219-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-3505, and 56-1005, Idaho Code.

MEETING SCHEDULE: Public hearings on the proposed rulemaking will be held at the following locations. All times listed are local time:

Tuesday, September 8, 2015 3:00 pm & 5:00 pm	Wednesday, September 9, 2015 3:00 pm & 5:00 pm	Thursday, September 10, 2015 1:00 pm & 3:00 pm
Panhandle Health Dist. Office Conference Room 322 Marion Sandpoint, ID 83864	Panhandle Health Dist. Office Shoshone Room 8500 N. Atlas Drive Hayden, ID 83885	Public Health - Idaho North Central Dist. Office Conference Room 333 E. Palouse River Drive Moscow, ID 83843
Friday, September 11, 2015 1:00 pm & 3:00 pm	Monday, September 14, 2015 3:00 pm	Tuesday, September 15, 2015 1:00 pm & 7:00 pm
Public Health - Idaho North Central District Large Conference Room 215 10th Street Lewiston, ID 83501	Southeastern Idaho Public Health Conference Rooms 1 & 2 1910 Alvin Ricken Drive Pocatello, ID 83201	Central District Health Dept. Syringa Room 707 N. Armstrong Place Boise, ID 83704
Tuesday, September 15, 2015 10:00 am & 3:00 pm	Tuesday, September 15, 2015 2:00 pm	Tuesday, September 15, 2015 3:00 pm
Southwest District Health Office Community Room 13307 Miami Lane Caldwell, ID 83607	South Central Public Health District Katz B Conference Room 1020 Washington St. N. Twin Falls ID 83301	Eastern Idaho Public Health South Conference Room 1250 Hollipark Drive Idaho Falls, ID 83401

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed rules update the current Idaho Food Code to better reflect industry practices and current food safety standards. This proposed rule incorporates, by reference, the 2013 FDA Model Food Code. Also included in these proposed rules is specific language that clarifies the status of "cottage food" operations in Idaho.

Based on comments that have been received during the negotiated rulemaking meetings, the proposed updates to the Idaho Food Code have been modified and include the following:

- 1) Clarification of definitions that have caused confusion;
- 2) Clarification of “cottage food operations” and a list of specific foods considered “cottage foods products;” and
- 3) Clarification of necessary requirements for producers of “acidified foods.”

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking has no fiscal impact to state general funds or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking published in the April 1, 2015, Idaho Administrative Bulletin, [Volume 15-4, pages 33 - 35](#), and May 6, 2015, Idaho Administrative Bulletin, [Volume 15-5, pages 57 and 58](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, documents have been incorporated by reference into these rules to give them the force and effect of law. The document is “Food Code, 2013 Recommendations of the United States Public Health Service Food and Drug Administration,” Publication PB2013-110462. The document currently incorporated in these rules, and is being updated from the 2001 edition to the 2013 edition.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patrick Guzzle at (208) 334-5936.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2015.

DATED this 13th Day of August, 2015.

Tamara Prisock, DHW
Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500/ Fax: (208) 334-6558
Email: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0219-1501
(Only Those Sections With Amendments Are Shown.)

001. TITLE, SCOPE AND APPLICABILITY.

01. Title. The title of this chapter is IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments,” and may also be known as “The Idaho Food Code.” (4-6-05)

02. Scope. The purpose of these rules is to establish standards for the provision of safe, unadulterated and honestly presented food for consumption by the public. These rules provide requirements for licensing,

inspections, review of plans, employee restriction, and license suspensions for food establishments and food processing plants. Also included are definitions and set standards for management, personnel, food operations, equipment and facilities. (4-6-05)

03. These Rules Apply to Food Establishments. Food establishments as defined in Section 39-1602, Idaho Code must follow these rules. Those facilities include but are not limited to the following: (4-6-05)

a. Restaurants, catering facilities, taverns, kiosks, vending facilities, commissaries, cafeterias, mobile food facilities, temporary food facilities; and (4-6-05)

b. Schools, senior centers, hospitals, residential care and treatment facilities, nursing homes, correctional facilities, camps, food banks, and church facilities; and (4-6-05)

c. Retail markets, meat, fish, delicatessen, bakery and supermarkets, convenience stores, health food stores, and neighborhood markets; and (4-6-05)

d. Food, water and beverage processing and bottling facilities that manufacture, process and distribute food, water and beverages within the state of Idaho, and are not inspected for food safety by a federal agency. (4-6-05)

04. These Rules Do Not Apply to These Establishments. These rules do not apply to the following establishments as exempted in Idaho Code. (4-6-05)

a. Agricultural markets as exempted in Section 39-1602, Idaho Code. (4-6-05)

b. Bed-and-breakfast operations that prepare and offer food for breakfast only to guests. The number of guest beds must not exceed ten (10) beds as defined in Section 39-1602, Idaho Code. (4-6-05)

c. Day care facilities regulated by Sections 39-1101 through 39-1119, Idaho Code. (4-6-05)

d. Licensed outfitters and guides regulated by Sections 36-2101 through 36-2119, Idaho Code. (4-6-05)

e. Low-risk food establishments, as exempted in Section 39-1602, Idaho Code, which offer only ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods. (4-6-05)()

f. Non-profit charitable, fraternal, or benevolent organizations that do not prepare or serve food on a regular basis as exempted in Section 39-1602, Idaho Code. Food is not considered to be served on a regular basis if it is not served for more than five (5) consecutive days on no more than three (3) occasions per year for foods which are ~~not potentially hazardous~~ non-time/temperature control for safety (non-TCS). For all other food, it must not be served more than one (1) meal per week. (4-6-05)()

g. Private homes where food is prepared or served for family consumption or receives catered or home-delivered food as exempted by Section 39-1602, Idaho Code. (4-6-05)

h. Cottage food operations, when the consumer is informed and must be provided contact information for the cottage food operations as follows: ()

i. By a clearly legible label on the product packaging; or a clearly visible placard at the sales or service location that also states: ()

ii. The food was prepared in a home kitchen that is not subject to regulation and inspection by the regulatory authority; and ()

iii. The food may contain allergens. ()

05. How to Use This Chapter of Rules. The rules in this chapter are modifications, additions or

deletions made to the federal publication incorporated by reference in Section 004 of these rules. In order to follow these rules the publication is required. Changes to those standards are listed in this chapter of rules by listing which section of the publication is being modified at the beginning of each section of rule. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The Department is adopting by reference the “Food Code, 2001³ Recommendations of the United States Public Health Service Food and Drug Administration,” *published by National Technical Information Service*, Publication ~~PB2002-100819~~ [PB2013-110462](#). A certified copy of this publication may be reviewed at the main office of the Department of Health and Welfare. It is also available online at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2001/default.htm> <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>. This publication is being adopted with modifications and additions as follows: (4-6-05)()

01. Chapter 1, Purpose and Definitions. Additions and modifications have been made to this chapter. See Sections 100 - 199 of these rules. (4-6-05)

02. Chapter 2, Management and Personnel. Modifications have been made to this chapter. See Sections 200 - 299 of these rules. (4-6-05)

03. Chapter 3, Food. Modifications have been made to this chapter. See Sections 300-399 of these rules. (4-6-05)

04. Chapter 4, Equipment, Utensils, and Linens. This chapter has been adopted with no modifications. (4-6-05)

05. Chapter 5, Water, Plumbing and Waste. This chapter has been adopted with no modifications. (4-6-05)

06. Chapter 6, Physical Facilities. ~~Modifications have been made to~~ this chapter ~~has been adopted with no modifications.~~ [See Sections 600-699 of these rules.](#) (4-6-05)()

07. Chapter 7, Poisonous or Toxic Materials. Modifications have been made in this chapter. See Sections 700 - 799 of these rules. (4-6-05)

08. Chapter 8, Compliance and Enforcement. Modifications have been made in this chapter. See Sections 800-899 of these rules. (4-6-05)

09. Annexes 1 Through 7 Are Excluded. These sections have not been adopted. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions in Title 74, Chapter 1, Idaho Code. Restrictions contained in Section 39-610, Idaho Code, and the Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, “Use and Disclosure of Department Records,” must also be followed. (4-6-05)

01. Contested Hearing and Appeal Records. All contested case hearings are open to the public, unless ordered closed at the discretion of the hearing officer based on compelling circumstances. A party to a hearing must maintain confidentiality of discussions that warrant closing the hearing to the public. (4-6-05)

02. Inspection Report. A completed inspection report is a public document and is available for public

disclosure to any person who requests the report as provided in Idaho's Public Records Law, Title 74, Chapter 1, Idaho Code. (4-6-05)

03. Medical Records. Medical information given to the Department or regulatory authority will be confidential and must follow IDAPA 16.05.01, "Use And Disclosure of Department Records." (4-6-05)

04. Plans and Specifications. Plans and specifications submitted to the regulatory authority as required in Chapter 8 of the 20013 Food Code referenced in Section 004 of these rules, must be treated as confidential or trade secret information under Section 74-107, Idaho Code. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

100. PURPOSES AND DEFINITIONS.

Sections 100 through 199 of these rules will be used for modifications and additions to Chapter 1 of the 20013 Food Code as incorporated in Section 004 of these rules. (4-6-05)()

101. -- 109. (RESERVED)

110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

The definitions defined in this section are modifications or additions to the definitions given and terms provided in the 20013 Food Code. (4-6-05)()

01. Agricultural Market. ~~Any fixed or mobile retail food establishment engaged in the sale of raw or fresh fruits, vegetables and nuts in the shell. It may also include the sale of factory sealed non-potentially hazardous foods~~ Any venue where a fixed or mobile retail food establishment can engage in the sale of raw or fresh fruits, vegetables, and nuts in the shell. It may also include the sale of factory sealed non-time/temperature control for safety foods (non-TCS). (4-6-05)()

02. Board. The State of Idaho Board of Health and Welfare as established in Section 56-1005, Idaho Code. (4-6-05)

03. Commissary. A commissary is a place where food containers or supplies are stored, prepared, or packaged for transit, sale, or service at other locations. ()

034. Consent Order. A consent order is an enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority. (4-6-05)

05. Core Item. Modifications to Section 1-201.10(B) by amending the term "core item" to mean the same as "non-critical item." ()

06. Cottage Food Operation. A cottage food operation is when a person or business prepares or produces cottage food products in the home kitchen of that person's primary residence or other designated kitchen or location. ()

07. Cottage Food Product. Cottage food products are non-time/temperature control for safety (non-TCS) foods that are sold directly to a consumer. Examples of cottage foods may include but are not limited to: baked goods, fruit jams and jellies, fruit pies, breads, cakes, pastries and cookies, candies and confections, dried fruits, dry herbs, seasonings and mixtures, cereals, trail mixes and granola, nuts, vinegar, popcorn and popcorn balls, and cotton candy. ()

08. Critical Item. A provision of this code that if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. A critical item includes items with a quantifiable measure to show control of hazards such as but not limited to, cooking, reheating, cooling, and hand washing. Critical item means the same as "priority item." Critical item is an item that is denoted with a superscript (P). ()

049. Department. The Idaho Department of Health and Welfare as established in Section 56-1002, Idaho Code. (4-6-05)

0510. Director. The Director of the Idaho Department of Health and Welfare as established in Section 56-1003, Idaho Code. (4-6-05)

0611. Embargo. An action taken by the regulatory authority that places a food product or equipment used in food production on hold until a determination is made on the product's safety. (4-6-05)

0712. Enforcement Inspection. An inspection conducted by the regulatory authority when compliance with these rules by a food establishment is lacking and violations remain uncorrected after the first follow-up inspection to a routine inspection. (4-6-05)

0813. Food Establishment. Modifications to Section 1-201.10(36) ~~by deleting Section 1-201.10(36)(c)(iii)~~ amends the definition of "food establishment" as follows:- (4-6-05)()

a. Delete Subparagraph 3(c) of the term "food establishment" in the 2013 Food Code; ()

b. Add Subparagraph 3(h) to the term "food establishment" to clarify that a cottage food operation is not a food establishment. ()

0914. Food Processing Plant. Modification to Section 1-201.10(37) ~~by deleting Section 1-201.10(37)(b)~~ amends the definition of "food processing plant" by deleting Subparagraph 2 of the term "food processing plant" in the 2013 Food Code. (4-6-05)()

105. High-Risk Food Establishment. A high-risk food establishment does the following operations: (4-6-05)

a. Extensive handling of raw ingredients; (4-6-05)

b. Preparation processes that include the cooking, cooling and reheating of potentially hazardous time/temperature control for safety (TCS) foods:- or (4-6-05)()

c. A variety of processes requiring hot and cold holding of potentially hazardous time/temperature control for safety (TCS) foods. (4-6-05)()

116. Intermittent Food Establishment. An intermittent food establishment is ~~one~~ a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers time/temperature control for safety (TCS) foods to the general public. Examples of a recurring event may be a farmers' or community market, or a holiday market. An intermittent food establishment does not include the vendor of farm fresh ungraded eggs at a recurring event (4-2-08)()

111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

The definitions defined in this section are modifications or additions to the definitions given and terms provided in the 20013 Food Code. (4-6-05)()

01. License. The term "license" is used in these rules the same as the term "permit" is used in the 20013 Food Code. (4-6-05)()

02. License Holder. The term "license holder" is used in these rules the same as the term "permit holder" is used in the 20013 Food Code. (4-6-05)()

03. Low-Risk Food Establishment. A low-risk food establishment provides factory-sealed pre-packaged ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods. The establishment may have limited preparation of ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods only. (4-6-05)()

- 04. Medium-Risk Food Establishment.** A medium-risk food establishment includes the following: (4-6-05)
- a. A limited menu of one (1) or two (2) items; or (4-6-05)
 - b. Pre-packaged raw ingredients cooked or prepared to order; or (4-6-05)
 - c. Raw ingredients requiring minimal assembly; or (4-6-05)
 - d. Most products are cooked or prepared and served immediately; or (4-6-05)
 - e. Hot and cold holding of ~~potentially hazardous~~ time/temperature control for safety (TCS) foods is restricted to single meal service. (~~4-6-05~~)()

05. Mobile Food Establishment. A mobile food establishment is a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft, or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations. ()

06. Non-Critical Item. A non-critical item is a provision of this Code that is not designated as a critical item or potentially-critical item. A non-critical item includes items that usually relate to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance. Non-critical item means the same as CORE ITEM. ()

07. Potentially-Critical Item. A potentially-critical item is a provision in this Code whose application supports, facilitates, or enables one (1) or more critical items. Potentially critical item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. Potentially-critical item means the same as priority foundation item. A potentially-critical item is an item that is denoted in this code with a superscript (Pf). ()

08. Priority Item. Modification to Section 1-201.10(B) by amending the term “priority item” to read priority item means the same as critical item. ()

09. Priority Foundation Item. Modification to Section 1-201.10(B) by amending the term “priority foundation item” to read priority foundation item means the same as potentially-critical item. ()

105. Regulatory Authority. The Department or its designee is the regulatory authority authorized to enforce compliance of these rules. (4-6-05)

a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments and guidelines. (4-6-05)

b. The seven (7) Public Health Districts and the ~~Bureau of Facility Standards~~ Division of Licensing and Certification have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules. (~~4-6-05~~)()

~~0611.~~ **Risk Control Plan.** Is a document describing the specific actions to be taken by the license holder to address and correct a continuing hazard or risk within the food establishment. (4-6-05)

112. -- 199. (RESERVED)

200. MANAGEMENT AND PERSONNEL.

Sections 200 through 299 of these rules will be used for modifications and additions to Chapter 2 of the 2001¹³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

210. DEMONSTRATION OF KNOWLEDGE.

Modification to Section 2-102.11. The person in charge of a food establishment may demonstrate knowledge on the risks of foodborne illness or health hazards by one (1) of the following. (4-6-05)

01. No Critical Violations. Complying with the 2001¹³ Food Code by not having any critical violations at the time of inspection; or (4-6-05)()

~~**02. Certification.** Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or (4-6-05)~~

~~**03. Time of Inspection Interview.** Responding correctly to the inspector's questions as they relate to the specific food operations as listed in Section 2-102.11(C) of the 2001 Food Code as incorporated in Section 004 of these rules; or (4-6-05)~~

~~**04. Approved Courses.** Completion of the Idaho Food Safety and Sanitation Course, or an equivalent course designed to meet the same training as the Idaho Food Safety and Sanitation Course. (4-6-05)~~

03. Certified Food Protection Manager. Modification to Section 2-102.12(A). Beginning July 1, 2018, at least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service must be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program. ()

~~211.—219. (RESERVED)~~

220. EMPLOYEE HEALTH.

~~**01. Reporting of Norovirus.** Addition to Section 2-201.11. The addition of Norovirus to illnesses required to be reported. (4-2-08)~~

~~**a.** A person diagnosed or ill with Norovirus within the past forty-eight (48) hours is required to report the illness to the person in charge. (4-2-08)~~

~~**b.** A food employee, who lives in the same household and has knowledge of a person who is diagnosed with Norovirus, is required to report that information to the person in charge. (4-2-08)~~

~~**02. Exclusion and Restrictions.** Addition to Section 2-201.12. In addition, the person in charge of a food establishment must: (4-2-08)~~

~~**a.** Notify the regulatory authority to obtain guidance on proper actions needed to protect the public if there is reason to suspect that any employee has a disease that is communicable through food as listed in IDAPA 16.02.10, "Idaho Reportable Diseases"; (4-2-08)~~

~~**b.** Exclude a food employee diagnosed with an infection from Norovirus when symptomatic; (4-2-08)~~

~~**c.** Restrict a food employee diagnosed with an infection from Norovirus when asymptomatic; and (4-2-08)~~

~~**d.** Exclude a food employee diagnosed with an infection from Norovirus whether symptomatic or asymptomatic when serving a highly susceptible population. (4-2-08)~~

~~03. **Removal of Exclusion and Restrictions.** Addition to Section 2-201.13. In addition, the person in charge may remove an employee diagnosed with Norovirus from restriction or exclusion when one (1) of the following conditions is met:~~ (4-2-08)

- ~~a. Written medical documentation is provided from a licensed medical practitioner;~~ (4-2-08)
- ~~b. Forty-eight (48) hours have passed since the employee became asymptomatic; or~~ (4-2-08)
- ~~c. Employee did not develop symptoms and more than forty-eight (48) hours have passed since the employee was diagnosed with Norovirus.~~ (4-2-08)

~~221. -- 299. (RESERVED)~~

300. FOOD.

Sections 300 through 399 of these rules will be used for modifications and additions to Chapter 3 of the 2001¹³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

~~326. -- 349. (RESERVED)~~

~~350. **TEMPERATURE REQUIREMENTS.**~~

~~Modifications are being made to the temperature guidelines in the following sections of the 2001 Food Code.~~ (4-6-05)

~~01. **Specifications for Receiving Potentially Hazardous Food.** Modification to Section 3-202.11(D). Food that is cooked to a temperature and for a time specified under Sections 3-401.11 through 3-401.13 and received hot, must be at a temperature of 57°C (135°F) or above.~~ (4-6-05)

~~02. **Preventing Contamination from In-Use Utensils, Between Use Storage.** Modification to Section 3-304.12(F). In a container of water, if the water is maintained at a temperature of at least 57°C (135°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).~~ (4-6-05)

~~03. **Plant Food Cooking for Hot Holding.** Modification to Section 3-401.13. Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 57°C (135°F).~~ (4-6-05)

~~04. **Reheating for Hot Holding Ready to Eat Food.** Modification to Section 3-403.11(C). 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 authority that has jurisdiction of the plant, must be heated to a temperature of at least 57°C (135°F) for hot holding.~~ (4-6-05)

~~05. **Cooling Cooked Potentially Hazardous Food.** Modification to Section 3-501.14(A). Cooked potentially hazardous food must be cooled:~~ (4-6-05)

- ~~a. Within two (2) hours from 57°C (135°F) to 21°C (70°F); and~~ (4-6-05)
- ~~b. Within six (6) hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Section 3-501.16(A)(2)(b) provided the food is cooled from 57°C (135°F) to 21°C (70°F) within the first two (2) hours.~~ (4-6-05)

~~06. **Potentially Hazardous Food, Hot and Cold Holding.** Modification to Section 3-501.16(A)(1). Potentially hazardous food must be maintained at 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified under Section 3-401.11(B) or reheated as specified in Section 3-403.11(E) may be held at a temperature of 54°C (130°F).~~ (4-6-05)

~~351. VARIANCE REQUIREMENTS FOR FOOD ESTABLISHMENTS.
Modifications to Section 3-502.11. Sections 3-502.11(E) and (F), are not adopted.~~

(4-6-05)

~~352.~~ 354. (RESERVED)

355. FOOD PROCESSING PLANTS.

Food processing plants, establishments, canning factories or operations must meet the requirements in Chapters 1 through 8 of the 2001~~3~~ Food Code, and Subsections 355.01 through 355.0~~5~~7 of ~~these~~ this rules. (4-6-05)()

01. Thermal Processing of Low-Acid Foods. Low-acid food products processed using thermal methods for canning must meet the requirements of 21 CFR 113. (4-6-05)

~~114.~~ **02. Processing of Acidified Foods.** Acidified food products must meet the requirements of 21 CFR 114. ()

023. Bottled Water Processing. Bottled drinking water processed in Idaho must be from a licensed processing facility that meets the requirements of 21 CFR 129. Bottled drinking water must also meet the quality and monitoring requirements in 21 CFR 165. (4-6-05)

034. Approval of Process Methods. A variance by the regulatory authority must be approved and granted for specialized processing methods for products listed in Section 3-502.11. (4-6-05)

045. Labels. Proposed labels must be submitted to the regulatory authority for review and approval before printing. (4-6-05)

056. Testing. The license holder is responsible for chemical, microbiological or extraneous material testing procedures to identify failures or food contamination of food products being processed or manufactured by the license holder. (4-6-05)

067. Quality Assurance Program. The license holder or his designated person must develop and submit to the regulatory authority for review and approval a quality assurance program or HACCP plan which covers the food processing operation. The program must include the following: (4-6-05)

- a. An organization chart identifying the person responsible for quality control operations; (4-6-05)
- b. A process flow diagram outlining the processing steps from the receipt of the raw materials to the production and packaging of the finished product(s) or group of related products; (4-6-05)
- c. A list of specific points in the process which are critical control points that must have scheduled monitoring; (4-6-05)
- d. Product codes that establish and identify the production date and batch; (4-6-05)
- e. A manual covering sanitary maintenance of the facility and hygienic practices to be followed by the employees; and (4-6-05)
- f. A records system allowing for review and evaluation of all operations including the quality assurance program results. These records must be kept for a period of time that exceeds the shelf life of the product by six (6) months or for two (2) years, whichever is less. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHYSICAL FACILITIES.

Sections 600 through 699 of these rules will be used for modifications and additions to Chapter 6 of the 2001~~3~~ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

601. -- 619. (RESERVED)

620. PRIVATE HOMES AND LIVING OR SLEEPING QUARTERS, USE PROHIBITION.

Modifications to Section 6-202.111. Except for cottage food operations, a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations. Residential care or assisted living facilities designed to be a homelike environment, are exempted from Section 6-202.111. (4-6-05)()

621. -- 699. (RESERVED)

700. POISONOUS OR TOXIC MATERIALS.

Sections 700 through 799 of these rules will be used for modifications and additions to Chapter 7 of the 2001³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

800. COMPLIANCE AND ENFORCEMENT.

Sections 800 through 899 of these rules will be used for modifications and additions to Chapter 8 of the 2001³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

801. -- 829. (RESERVED)

830. APPLICATION FOR A LICENSE.

01. To Apply for a Food Establishment License. To apply for an Idaho food establishment license, the application and fee is submitted to the “regulatory authority” as defined in Section 111 of these rules. (4-6-05)()

02. Food License Expiration. The license for an Idaho food establishment expires on December 31st of each year. (4-6-05)

03. Renewal of License. A renewal application and a license fee must be submitted to the regulatory authority by December 1st of each year for the next calendar year starting January 1st. (4-6-05)

04. Summary Suspension of License. A license may be immediately suspended under Section 831 of these rules. Reinstatement of a license after a summary suspension does not require a new application or fee unless the license is revoked. (4-6-05)

05. Revocation of License. When corrections have been made to a food establishment whose license has been revoked under Section 860 of these rules, a new application and fee must be submitted to the regulatory authority. (4-6-05)

06. License is Non-Transferable. A license may not be transferred when ownership changes according to Section 8-304.20, of the 2001³ Food Code. The new owner must apply for his own license. (4-6-05)()

831. SUMMARY SUSPENSION OF LICENSE.

The regulatory authority may summarily suspend a license to operate a food establishment when it determines an imminent health hazard exists. (4-6-05)

01. Reasons a Summary Suspension May Be Issued. When a food establishment does not follow the principles of food safety, or a foodborne illness is found, or an environmental health hazard exists and public safety cannot be assured by the continued operation of the food establishment, a summary suspension may be issued. The following are some reasons the regulatory authority may determine a summary suspension is necessary: (4-6-05)

- a. Inspection of the food establishment shows uncorrected critical violations; (4-6-05)
- b. Examination of food shows the food is unsafe; (4-6-05)
- c. Review of records shows that proper steps for food safety have not been met; (4-6-05)
- d. An employee working with food is suspected of having a disease that is communicable through food; or (4-6-05)
- e. An imminent health hazard exists. (4-6-05)

02. Prior Notification Is not Required for a Summary Suspension. Upon providing a written notice of summary suspension to the license holder or person in charge, the regulatory authority may suspend a food establishment's license without prior warning, notice of hearing, or hearing. (4-6-05)

03. Written Notice of Summary Suspension. The regulatory authority must give the license holder or person in charge a written notice when suspending a license. The notice must include the following: (4-6-05)

a. The specific reasons or violations the summary suspension is issued for with reference to the specific section of the 20013 Food Code which is in violation; (~~4-6-05~~)()

b. A statement notifying the food establishment its license is suspended and all food operations are to cease immediately; (4-6-05)

c. The name and address of the regulatory authority representative to whom a written request for re-inspection can be made and who can certify the reasons for the suspension have been eliminated; (4-6-05)

d. A statement notifying the food establishment of its right to an informal hearing with the regulatory authority upon submission of a written request within fifteen (15) days of receiving the summary suspension notice; and (4-6-05)

e. A statement informing the food establishment that proceedings for revocation of its license will be initiated by the regulatory authority, if violations are not corrected. (4-6-05)

f. The right to appeal to the Department as provided in Section 861 of these rules. (4-6-05)

04. Length of Summary Suspension. The suspension will remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority during a re-inspection. (4-6-05)

05. Re-Inspection of Food Establishment. The regulatory authority will conduct a re-inspection of the food establishment within two (2) working days of receiving a written request stating the condition for the suspension no longer exists. (4-6-05)

06. Reinstatement of License. The regulatory authority will immediately reinstate the suspended license if the re-inspection determines the public health hazard no longer exists. The regulatory authority will provide a written notice of reinstatement to the license holder or person in charge. (4-6-05)

832. -- 839. (RESERVED)

840. INSPECTIONS AND CORRECTION OF VIOLATIONS.

Modification to Section 8-401.10. (4-6-05)

01. Inspection Interval Section 8-401.10(A). Except as specified in Section 8-401.10(C), the regulatory authority must inspect a food establishment at least once a year. (4-6-05)

02. Section 8-401.10(B). This section has not been adopted. (4-6-05)

03. Section 8-401.10(C). This section is adopted as published. (4-6-05)

04. Section 8-405.11. This section is adopted with the following modifications: ()

a. Delete Section 8-405.11(B)(1); and ()

b. Amend Section 8-405-11(B)(2) to ten (10) calendar days after the inspection for the permit holder to correct critical or potentially-critical items or HACCP plan deviations. ()

841. INSPECTION SCORES.

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of critical item violations and the number of repeat critical violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total number of ~~non-critical~~ potentially-critical violations and non-critical violations and the number of repeat ~~non-critical~~ potentially-critical violations and non-critical violations. These scores will be used to determine if a follow-up inspection or a written report of correction is needed to verify corrections have been made. (4-6-05)()

01. **Medium-Risk Food Establishment.** If the critical violations exceed three(3), or the ~~non-critical~~ potentially-critical violations exceed six (6), or non-critical violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (4-6-05)()

02. **High-Risk Food Establishment.** If the critical violations exceed five (5), or the ~~non-critical~~ potentially-critical violations exceed eight (8), or non-critical violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (4-6-05)()

03. **Written Violation Correction Report.** A written violation correction report by the license holder may be provided to the regulatory authority if the total inspection score of the food establishment does not exceed those listed in Section 845 of these rules. The report must be mailed within five (5) days of the correction date identified on the inspection report. (4-6-05)

842. -- 844. (RESERVED)

845. VERIFICATION AND DOCUMENTATION OF CORRECTION.

In addition to Section 8-405.20 of the 2001~~3~~ Food Code, the on-site follow-up inspection may not be required for verification of correction if the regulatory authority chooses to accept a written report of correction from the license holder. (4-6-05)()

01. **Written Report of Correction.** The regulatory authority may choose to accept a written report of correction from the license holder stating that specific violations have been corrected. The license holder must submit this report to the regulatory authority within five (5) days after the correction date identified on the inspection report. (4-6-05)

a. Medium-risk food establishment. If the critical violations do not exceed three (3), or the ~~non-critical~~ potentially-critical violations do not exceed six (6), or the non-critical violations do not exceed six (6), a follow-up inspection is not required for verification of correction. (4-6-05)()

b. High-risk food establishment. If the critical violations do not exceed five (5), or the ~~non-critical~~ potentially-critical violations do not exceed eight (8), or the non-critical violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. (4-6-05)()

02. **Risk Control Plan.** The regulatory authority may require the development of a risk control plan as verification of correction. The risk control plan must provide documentation on how the license holder will obtain long term correction of critical violations that are repeated violations, including how control will be monitored and who will be responsible. (4-6-05)

846. -- 849. (RESERVED)

850. ENFORCEMENT INSPECTIONS.

01. **Follow-Up Inspection.** If a follow-up inspection reveals that critical, potentially-critical, or non-critical violations identified on a previous inspection have not been corrected or still exist, an enforcement inspection may be made. (4-6-05)()

02. **Written Notice.** The license holder will receive written notice on the inspection form of the specific date for an enforcement inspection. This date must be within fifteen (15) days of the current or follow-up inspection. (4-6-05)

03. **Enforcement Inspections on Consent Order.** When a compliance conference results in a consent order and includes a compliance schedule to correct violations without further regulatory action, all inspections by the regulatory authority to satisfy the compliance schedule will be considered enforcement inspections until the next annual inspection. (4-6-05)

04. **Regulatory Action.** If the violations have not been corrected by the date of the enforcement inspection, regulatory action will be initiated to revoke the license issued to the food establishment. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

860. REVOCATION OF LICENSE.

The regulatory authority may revoke the license issued to a food establishment when the license holder fails to comply with these rules or the operation of the food establishment is a hazard to public health. (4-6-05)

01. **Reasons a License May Be Revoked.** (4-6-05)

a. The license holder violates any term or condition in Section 8-304.11 of the 2001¹³ Food Code. (4-6-05)()

b. Access to the facility is denied or obstructed by an employee, agent, contractor or other representative during the performance of the regulatory authority's duties. It is not necessary for the regulatory authority to seek an inspection order to gain access as permitted in Section 8-402.40 of the 2001¹³ Food Code, before proceeding with revocation. (4-6-05)()

c. A public health hazard or critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation or hazard still exists. See Section 850 of these rules on enforcement inspections. (4-6-05)

d. A non-critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation still exists. See Section 845 of these rules on verification and documentation of correction. (4-6-05)

e. Failure to comply with any consent order issued after a compliance conference. See Section 861 of these rules on compliance conference. (4-6-05)

f. Failure to comply with a regulatory authority's summary suspension order. See Section 831 of these rules on summary suspension of a license. (4-6-05)

g. Failure to comply with an embargo order. See Section 851 of these rules on adulterated or misbranded food. (4-6-05)

h. Failure to comply with a regulatory authority order issued when an employee is suspected of having a communicable disease. See Section 220 of these rules Chapter 2 of the 2013 Food Code on employee health.

(4-6-05)()

02. Notice to Revoke a License. The regulatory authority must notify the license holder of the food establishment in writing of the intended revocation of the license. See Section 861 of these rules for appeal process. The notice must include ~~the~~ Subsections 860.02.a. through 860.02.c. of ~~these~~ this rules: (4-6-05)()

a. The specific reasons and sections of the Idaho Food Code which are in violation and the cause for the revocation; and (4-6-05)

b. The right of the license holder to request in writing a compliance conference with the regulatory authority within fifteen (15) days of the notice; and (4-6-05)

c. The right of the license holder to appeal in writing to the Department of Health and Welfare. See Subsection 861.02 of these rules. (4-6-05)

d. The following is sufficient notification of the license holder's appeal rights: "You have the right to request in writing a compliance conference with (name and address of designated health district official) within fifteen (15) days of the receipt of this notice. You may also appeal the revocation of your license to the Director of the Department of Health and Welfare by filing a written appeal with the Department as provided in IDAPA 16.05.03, "Rules Governing Contested Case Proceeding and Declaratory Rulings," within fifteen (15) days of the receipt of this notice, or if a timely request is made for a compliance conference and the matter is not resolved by a consent order, within five (5) working days following the conclusion of the compliance conference." (4-6-05)

03. Effective Date of Revocation. The revocation will be effective fifteen (15) days following the date of service of notice to the license holder, unless an appeal is filed or a timely request for a compliance conference is made. If a compliance conference is requested and the matter is not resolved by a consent order, the revocation will be effective five (5) working days following the end of the conference, unless an appeal is filed with the Director of the Department of Health and Welfare within that time. See Section 861 of these rules for compliance conference, consent order and appeal process. (4-6-05)