

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. 16-0219-1601).

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 10/21/2016. 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 11/18/2016.

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: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: October 3, 2016

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. 16-0219-1601)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.02.19. The purpose is to update terminology in the food safety rules to reflect current use. The new terms are "good retail practice violation" and "risk factor violation."

Negotiated rulemaking was not conducted due to the simple nature of the rule change. There is no negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to Sections 37-121 and 39-1603, Idaho Code, which authorize the promulgation of standards and rules relating to food safety.

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. 16-0219-1601

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 37-121 and 39-1603, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, September 15, 2016 - 1:30 pm (Local Time)

**Department of Health & Welfare
450 W. State Street
4th Floor Conference Room
Boise, ID**

Via Teleconference Call-In

**Toll Free: 1-877-820-7831
Participant Code: 738839**

The hearing site 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:

The Idaho Food Code rules are being amended to update the terminology used during inspections of retail food establishments by adding definitions of "risk factor" and "good retail practices." The inspection process for scoring for food safety practices during an inspection is also being updated to reflect the added terminology.

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

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 as a result of this rulemaking:

There is no anticipated fiscal impact to state general funds or any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because the changes being made are of a simple nature to add clarification for food safety inspectors when making on-site inspections.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, no materials are being incorporated by reference into these rules with this rulemaking.

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 28, 2016.

DATED this 5th Day of August, 2016.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0219-1601
(Only Those Sections With Amendments Are Shown.)

110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

01. Agricultural Market. 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). Agricultural market means the same as “farmers market” or “roadside stand.” (7-1-16)

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. (7-1-16)

04. 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.” (7-1-16)

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. (7-1-16)

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. (7-1-16)

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), (7-1-16)

09. Department. The Idaho Department of Health and Welfare as established in Section 56-1002,

Idaho Code. (4-6-05)

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

11. 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)

12. 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)

13. Farmers Market. Any fixed or mobile retail food establishment at which farmer producers sell agricultural products directly to the general public. Farmers market means the same as "agricultural market" and "roadside stand." (7-1-16)

14. Food Establishment. Modifications to Section 1-201.10 amends the definition of "food establishment" as follows: (7-1-16)

a. Delete Subparagraph 3(c) of the term "food establishment" in the 2013 Food Code; (7-1-16)

b. Add Subparagraph 3(h) to the term "food establishment" to clarify that a cottage food operation is not a food establishment. (7-1-16)

15. Food Processing Plant. Modification to Section 1-201.10 amends the definition of "food processing plant" by deleting Subparagraph 2 of the term "food processing plant" in the 2013 Food Code. (7-1-16)

16. Good Retail Practice Violation. Good retail practice violation means the preventive measures that include practices and procedures which effectively control the introduction of pathogens, chemicals, and physical objects into food. ()

167. 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 time/temperature control for safety (TCS) foods; or (7-1-16)

c. A variety of processes requiring hot and cold holding of time/temperature control for safety (TCS) foods. (7-1-16)

178. Intermittent Food Establishment. An intermittent food establishment is 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 (7-1-16)

111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

01. License. The term "license" is used in these rules the same as the term "permit" is used in the 2013 Food Code. (7-1-16)

02. License Holder. The term "license holder" is used in these rules the same as the term "permit holder" is used in the 2013 Food Code. (7-1-16)

03. Low-Risk Food Establishment. A low-risk food establishment provides factory-sealed pre-packaged non-time/temperature control for safety (non-TCS) foods. The establishment may have limited preparation of non-time/temperature control for safety (non-TCS) foods only. (7-1-16)

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 time/temperature control for safety (TCS) foods is restricted to single meal service. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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). (7-1-16)

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. (7-1-16)

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. (7-1-16)

10. 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 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. (7-1-16)

11. 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)

12. Risk Factor Violation. Risk factor violation means improper practices or procedures which are most frequently identified by epidemiologic investigation as a cause of foodborne illness or injury. ()

123. Roadside Stand. Any fixed or mobile retail food establishment at which an individual farmer producer sells own agricultural products directly to consumers. Roadside stand means the same as “agricultural market” and “farmers market.” (7-1-16)

(BREAK IN CONTINUITY OF SECTIONS)

841. INSPECTION SCORES.

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of ~~critical item~~ risk factor violations and the number of repeat ~~critical~~ risk factor violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total number of ~~potentially critical violations and non-critical~~ good retail practice violations and the number of repeat ~~potentially-critical violations and non-critical~~ good retail practice 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. (7-1-16)()

01. Medium-Risk Food Establishment. If the ~~critical~~ risk factor violations exceed three(3), ~~or the potentially-critical violations exceed six (6)~~, or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)()

02. High-Risk Food Establishment. If the ~~critical~~ risk factor violations exceed five (5), ~~or the potentially-critical violations exceed eight (8)~~, or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)()

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 2013 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. (7-1-16)

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~~ risk factor violations do not exceed three (3), ~~or the potentially-critical violations do not exceed six (6)~~, or the ~~non-critical~~ good retail practice violations do not exceed six (6), a follow-up inspection is not required for verification of correction. (7-1-16)()

b. High-risk food establishment. If the ~~critical~~ risk factor violations do not exceed five (5), ~~or the potentially-critical violations do not exceed eight (8)~~, or the ~~non-critical~~ good retail practice violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. (7-1-16)()

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)