

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 499

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO FOOD; AMENDING CHAPTER 1, TITLE 22, IDAHO CODE, BY THE ADDITION  
2 OF A NEW SECTION 22-113, IDAHO CODE, TO PROVIDE THAT THE IDAHO STATE  
3 DEPARTMENT OF AGRICULTURE SHALL BE THE DELEGATED AUTHORITY TO REGULATE  
4 CERTAIN ACTIVITIES IF SPECIFIED CONDITIONS ARE MET AND TO CLARIFY REGU-  
5 LATORY AUTHORITY; AND AMENDING SECTION 39-1602, IDAHO CODE, TO PROVIDE  
6 AN EXCEPTION TO A DEFINITION AND TO CLARIFY REGULATORY AUTHORITY.  
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Chapter 1, Title 22, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 22-113, Idaho Code, and to read as follows:

12 22-113. FOOD SAFETY MODERNIZATION ACT. The Idaho state department of  
13 agriculture shall be the delegated state authority for regulation of any  
14 nonretail activities subject to the United States food and drug adminis-  
15 tration food safety modernization act, in the event the legislature enacts  
16 legislation directing that the state should seek federal authorization of  
17 such regulation, provided such nonretail activity is subject to registra-  
18 tion under section 415 of the federal food, drug and cosmetic act. Prior to  
19 the department of agriculture engaging in the regulation of any activities  
20 pursuant to the provisions of this section, the department of agriculture,  
21 in consultation and cooperation with the department of health and welfare,  
22 shall conduct negotiated rulemaking to provide for the implementation of  
23 such regulation. Processors conducting nonretail activities and not sub-  
24 ject to registration under section 415 of the federal food, drug and cosmetic  
25 act, shall not be subject to regulation by the Idaho state department of  
26 agriculture pursuant to the provisions of this section.

27 SECTION 2. That Section 39-1602, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 39-1602. DEFINITIONS. As used in this chapter:

30 (1) "Commissary" means a place where food, containers or supplies are  
31 stored, prepared or packaged for transit, sale or service at other loca-  
32 tions.

33 (2) "Food establishment" means those operations in the food business  
34 such as, but not limited to, food processing establishments, canning fac-  
35 tories, salvage processing facilities, food service establishments, cold  
36 storage plants, commissaries, warehouses, food vending machine operations  
37 and location, caterers, mobile food units and retail food stores. Such  
38 operations include all activities under the control of the license holder  
39 including preparation, processing, storage, service, transportation vehi-  
40 cles, satellite locations, divisions and departments, and remote feeding

1 sites. The term includes operations which are conducted in permanent, tem-  
 2 porary or mobile facilities or locations. It includes any food operation  
 3 regardless of whether consumption is on or off the premises and regardless of  
 4 whether there is a charge for the food. Individual divisions and departments  
 5 on one (1) premises and under common ownership shall as a whole be consid-  
 6 ered a single food establishment. The term "food establishment" does not  
 7 include:

8 (a) Private homes where food is prepared or served for individual fam-  
 9 ily consumption;

10 (b) Fraternal, benevolent or nonprofit charitable organizations which  
 11 do not prepare or serve food on a regular basis. Food shall not be con-  
 12 sidered to be served on a regular basis if the food is served for a period  
 13 not to exceed five (5) consecutive days on no more than three (3) occa-  
 14 sions per year for foods which are not potentially hazardous, or if the  
 15 food is served no more than one (1) meal a week for all other foods;

16 (c) Bed and breakfast establishments with ten (10) or fewer beds;

17 (d) Establishments which offer only factory-sealed foods that are not  
 18 potentially hazardous;

19 (e) Any nonretail activity subject to regulation pursuant to the United  
 20 States food and drug administration food safety modernization act,  
 21 provided that such nonretail activity is subject to registration under  
 22 section 415 of the federal food, drug and cosmetic act. Such activi-  
 23 ties shall be subject to regulation by the Idaho state department of  
 24 agriculture pursuant to the provisions of section 22-113, Idaho Code,  
 25 in the event the state enacts legislation providing that it should seek  
 26 federal authorization of such regulation;

27 (f) Agricultural markets; and

28 (~~f~~g) Agricultural equipment used for the extraction or harvest of an  
 29 agricultural product including, but not limited to, mint stills.

30 (3) "Intermittent food establishment" means a food vendor that oper-  
 31 ates for a period of time, not to exceed three (3) days per week, at a sin-  
 32 gle, specified location in conjunction with a recurring event and that of-  
 33 fers potentially hazardous food to the general public. Examples of a recur-  
 34 ring event may be a farmers' or community market or a holiday market. "In-  
 35 termittent food establishment" does not include the vendor of farm fresh un-  
 36 graded eggs at a recurring event.

37 (4) "Mobile food establishment" means a food establishment selling  
 38 or serving food for human consumption from any vehicle or other temporary  
 39 or itinerant station and includes any movable food service establishment,  
 40 truck, van, trailer, pushcart, bicycle, watercraft or other movable food  
 41 service with or without wheels, including hand-carried, portable containers  
 42 in or on which food or beverage is transported, stored or prepared for retail  
 43 sale or given away at temporary locations.

44 (5) "Potentially hazardous food" means any food or ingredient, natu-  
 45 ral or synthetic, in a form capable of supporting the rapid and progressive  
 46 growth of infectious or toxigenic microorganisms or the slower growth of  
 47 clostridium botulinum. Included is any food of animal origin, either raw  
 48 or heat treated and any food of plant origin which has been heat treated or  
 49 which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term  
 50 "potentially hazardous food" does not include:

- 1 (a) Air-dried hard-boiled eggs with shells intact;  
2 (b) Foods with a water activity (aw) value of eighty-five hundredths  
3 (0.85) or less;  
4 (c) Foods with a pH (hydrogen ion concentration) level of four and  
5 six-tenths (4.6) or below when measured at seventy-five (75) degrees  
6 Fahrenheit;  
7 (d) Foods in unopened hermetically-sealed containers which have been  
8 commercially processed to achieve and maintain commercial sterility  
9 under conditions of nonrefrigerated storage and distribution;  
10 (e) Foods for which laboratory evidence, acceptable to the regulatory  
11 authority, demonstrates that rapid and progressive growth of infec-  
12 tious and toxigenic microorganisms or the slower growth of clostridium  
13 botulinum cannot occur;  
14 (f) Milk, half-and-half cream, butter products, frozen dairy desserts  
15 and other fluid milk products, in the original unopened container; and  
16 (g) Any other food items determined by the department of health and wel-  
17 fare not to be potentially hazardous.
- 18 (6) "Regulatory authority" means the director of the Idaho department  
19 of health and welfare or the director's designee.
- 20 (7) "Temporary food establishment" means a food establishment that op-  
21 erates for a period of not more than fourteen (14) consecutive days in con-  
22 junction with a single event or celebration.