

Dear Senators VanOrden, Bjerke, Wintrow, and
Representatives Vander Woude, Erickson, Rubel:

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

IDAPA 16.02.19 - Idaho Food Code-Proposed Rule (Docket No. 16-0219-2601).

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 10/30/2026. 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 11/27/2026.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondoff
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 Drafting Attorney - Kyle Slominski
DATE: October 13, 2026
SUBJECT: Department of Health and Welfare

IDAPA 16.02.19 - Idaho Food Code-Proposed Rule (Docket No. 16-0219-2601)

Summary and Stated Reasons for the Rule

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.02.19 - Idaho Food Code (Docket No. 16-0219-2601). The Department states that the rulemaking was conducted in accordance with Section 67-5292, Idaho Code, as the chapter is due for its 8-year review. The Department states that the rule also implements changes enacted in Senate Bill 1283, the Idaho Direct-to-Consumers Act, enacted during the 2026 legislative session.

Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was conducted and that notice was published in the July 1, 2026, Idaho Administrative Bulletin, Volume 26-7, page 68. There is no fiscal impact anticipated with this rulemaking.

Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Department of Health and Welfare pursuant to Sections 37-121 and 39-1603, Idaho Code.

cc: Department of Health and Welfare
Jared Larsen

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Legislative Services Office	Matt Drake, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.19 – IDAHO FOOD CODE

DOCKET NO. 16-0219-2601

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: Public hearings concerning this rulemaking will be held as follows:

Thursday, October 15, 2026 3:00 p.m. (MT)
In Person: 450 W. State Street, 10th Floor Boise ID 83720 Conference Rm 10B Virtual: Meeting link: https://teams.microsoft.com/meet/245819167492274?p=GB7y5EYBnjfY1GgXM8 Meeting ID: 245 819 167 492 274 Passcode: kB6DU3nR Dial in by phone 1 972-454-4077 United States, Dallas Boise 1-208-609-5034 Phone conference ID: 644 819 217#

Monday, October 19, 2026 11:00 a.m. (MT)
In Person: 450 W. State Street, 10th Floor Boise ID 83720 Conference Rm 10B Virtual: Meeting link: https://teams.microsoft.com/meet/248872876825281?p=OF0yU63ZG4nAkghqha Meeting ID: 248 872 876 825 281: Passcode: BU78dF6B: Dial in by phone 1 972-454-4077 United States, Dallas Boise 1-208-609-5034 Phone conference ID: 860 794 288#

The hearing site(s) 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:

This rulemaking was conducted in accordance with Idaho Code Section [67-5292](#), whereas the chapter is due for 8-year review. The proposed rule implements changes enacted in [S.B. 1283](#), the Idaho Direct-to-Consumers Commerce Act, enacted during the 2026 legislative session.

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

There are no changes to fees.

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 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.

NEGOTIATED RULEMAKING: Pursuant to Section [67-5220\(1\)](#), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2026, Idaho Administrative Bulletin, [Vol. 26-7 page 68](#).

INCORPORATION BY REFERENCE: Pursuant to Section [67-5229\(2\)\(a\)](#), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The “Food Code, 2013 Recommendations of the United States Public Health Service Food and Drug Administration,” Publication PB2013-110462 is considered the model food code and is incorporated by reference. The Food Code is adopted with modifications and additions, to the extent it does not conflict with Chapter 2, Title 37, Idaho Code, or other applicable state statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Estela Cabrera at DHWRules@dhw.idaho.gov or (208) 334-5500.

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 October 28, 2026.

DATED this 7th day of October, 2026.

Jared Larsen
Chief of Staff
Idaho Department of Health & Welfare
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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0219-2601
(Only Those Sections With Amendments Are Shown.)

16.02.19 – IDAHO FOOD CODE

000. LEGAL AUTHORITY.

Sections 37-121 and 39-1603, Idaho Code, authorize the ~~Board~~ Department to adopt rules for the regulation of food establishments to protect public health. (4-6-23)()

001. APPLICABILITY.

01. These Rules Apply to Food Establishments. The following ~~F~~ food establishments ~~under Section 39-1602, Idaho Code,~~ must follow these rules. ~~Those facilities include the following:~~ (4-6-23)()

a. Restaurants, catering facilities, taverns, kiosks, vending facilities, commissaries, cafeterias, mobile food facilities, and temporary food facilities; (4-6-23)

b. Schools, senior centers, hospitals, residential care and treatment facilities, nursing homes, correctional facilities, camps, food banks, and church facilities; (4-6-23)

c. Retail markets, meat, fish, delicatessen, bakeries, supermarkets, convenience stores, health food stores, and neighborhood markets; and (4-6-23)

d. Food, water and beverage processing and bottling facilities that manufacture, process, and distribute food, water, and beverages, and are not inspected for food safety by a federal agency. (4-6-23)

~~**02. These Rules Do Not Apply to These Establishments Under Idaho Code.**~~ (4-6-23)

~~**a.** Agricultural markets as exempted in Section 39-1602, Idaho Code.~~ (4-6-23)

~~**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 under Section 39-1602, Idaho Code.~~ (4-6-23)

~~**c.** Day care facilities regulated by Sections 39-1101 through 39-1119, Idaho Code.~~ (4-6-23)

~~**d.** Licensed outfitters and guides regulated by Sections 36-2101 through 36-2119, Idaho Code.~~ (4-6-23)

~~**e.** Low-risk food establishments, as exempted in Section 39-1602, Idaho Code, which offer only non-TCS foods.~~ (4-6-23)

~~**f.** Farmers market vendors and roadside stands that only offer or sell non-TCS foods or cottage foods.~~ (4-6-23)

~~**g.** 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 that are non-TCS. For all other food, it must not be served more than one (1) meal per week.~~ (4-6-23)

~~**h.** 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.~~ (4-6-23)

~~i. Cottage food operations, when the consumer is informed and must be provided contact information for the cottage food operations by a clearly legible label on the product packaging; or a clearly visible placard at the sales or service location that also states:~~ (4-6-23)

~~i. The food was prepared in a home kitchen that is not subject to regulation and inspection by the regulatory authority; and~~ (4-6-23)

~~ii. The food may contain allergens.~~ (4-6-23)

032. How to Use This Chapter of Rules. These rules are modifications, additions, or deletions made to the federal publication incorporated by reference in Section 002 of these rules. To follow these rules the publication is required. Changes to those standards are listed in these rules by which section of the incorporated publication is being modified at the beginning of each Section of rule. Citations to the incorporated Food Code are in the format “x-xxx.xx.” (4-6-23)

002. INCORPORATION BY REFERENCE.

The Department adopted by reference the “Food Code, 2013 Recommendations of the United States Public Health Service Food and Drug Administration,” Publication PB2013-110462, hereafter referred to as the incorporated Food Code. A certified copy of this publication may be reviewed at the main office of the Department. It is also available online at <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>. This publication is being adopted with modifications and additions as follows, to the extent it does not conflict with Chapter 2, Title 37, Idaho Code, or other applicable state statute: (4-6-23)()

01. Chapter 1, Purpose and Definitions. Additions and modifications have been made to this chapter. See Sections 100 - 199 of these rules. (4-6-23)

02. Chapter 2, Management and Personnel. Modifications have been made to this chapter. See Sections 200 - 299 of these rules. (4-6-23)

03. Chapter 3, Food. Modifications have been made to this chapter. See Sections 300-399 of these rules. (4-6-23)

04. Chapter 4, Equipment, Utensils, and Linens. This chapter has been adopted with no modifications. (4-6-23)

05. Chapter 5, Water, Plumbing and Waste. This chapter has been adopted with no modifications. (4-6-23)

06. Chapter 6, Physical Facilities. Modifications have been made to this chapter. See Sections 600-699 of these rules. (4-6-23)

07. Chapter 7, Poisonous or Toxic Materials. Modifications have been made in this chapter. See Sections 700 - 799 of these rules. (4-6-23)

08. Chapter 8, Compliance and Enforcement. Modifications have been made in this chapter. See Sections 800-899 of these rules. (4-6-23)

09. Annexes 1 Through 7 Are Excluded. These sections have not been adopted. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

The definitions under this Section are modifications or additions to the definitions provided in the incorporated Food Code. (4-6-23)

01. Agricultural Market. Any venue ~~where a fixed or mobile retail food establishment can engage~~ **engaging** in the sale of raw or fresh fruits, vegetables, and nuts in the shell. It may also include the sale of factory sealed non-TCS foods. Agricultural market means the same as “farmers market” or “roadside stand.” (4-6-23)()

~~**02. Board.** The Idaho Board of Health and Welfare under Section 56-1005, Idaho Code.~~ (4-6-23)

~~**03. Consent Order.** An enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority.~~ (4-6-23)

~~**04. Core Item.** A provision in the incorporated Food Code that is not designated as a priority item or a priority foundation item and includes items that usually relate to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.~~ (4-6-23)

~~**05. Cottage Food Operation.** 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.~~ (4-6-23)

~~**06. Cottage Food Product.** Non-TCS foods that are sold directly to a consumer. Examples include: baked goods, fruit jams, jellies, fruit pies, breads, cakes, pastries, cookies, candies, confections, dried fruits, dry herbs, seasonings and mixtures, cereals, trail mixes, granola, nuts, vinegar, popcorn and popcorn balls, and cotton candy.~~ (4-6-23)

~~**07. Department.** The Idaho Department of Health and Welfare under Section 56-1002, Idaho Code, or its designee.~~ (4-6-23)

~~**08. Director.** The Director of the Idaho Department of Health and Welfare under Section 56-1003, Idaho Code.~~ (4-6-23)

~~**09. 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.~~ (4-6-23)

~~**10. 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.~~ (4-6-23)

~~**11. Farmers Market.** Any fixed or mobile retail food establishment at which farmer producers sell agricultural products directly to the public. Farmers market means the same as “agricultural market” and “roadside stand.”~~ (4-6-23)

~~**12. Food Establishment.** Modifications to Section 1-201.10 amend the definition of “food establishment” as follows:~~ (4-6-23)

a. Delete Subparagraph 3(c) of the term “food establishment” in the incorporated Food Code; (4-6-23)

b. Add Subparagraph 3(h) to the term “food establishment” to clarify that a ~~cottage~~ **homemade** food operation is not a food establishment. (4-6-23)()

~~**13. 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 incorporated Food Code.~~ (4-6-23)

~~**14. Good Retail Practice.** Preventive measures that include practices and procedures that effectively control the introduction of pathogens, chemicals, and physical objects into food.~~ (4-6-23)

15. High-Risk Food Establishment. Performs the following: (4-6-23)

- a. Extensive handling of raw ingredients; (4-6-23)
- b. Preparation processes that include the cooking, cooling, and reheating of TCS foods; or (4-6-23)
- c. A variety of processes requiring hot and cold holding of TCS foods. (4-6-23)

111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

The definitions under this Section are modifications or additions to the definitions provided in the incorporated Food Code. (4-6-23)

- 01. License.** Is used in these rules the same as the term “permit” is used in the incorporated Food Code. (4-6-23)
- 02. License Holder.** Is used in these rules the same as the term “permit holder” is used in the incorporated Food Code. (4-6-23)
- 03. Low-Risk Food Establishment.** Provides factory-sealed prepackaged non-TCS foods. The establishment may have limited preparation of non-TCS foods only. (4-6-23)
- 04. Medium-Risk Food Establishment.** Includes the following: (4-6-23)
 - a. A limited menu of one (1) or two (2) items; (4-6-23)
 - b. Prepackaged raw ingredients cooked or prepared to order; (4-6-23)
 - c. Raw ingredients requiring minimal assembly; (4-6-23)
 - d. Most products are cooked or prepared and served immediately; or (4-6-23)
 - e. Hot and cold holding of TCS foods is restricted to minimal holding between preparation and service. (4-6-23)
- 05. Priority Item.** A provision in the incorporated Food Code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury, and there is no other provision that more directly controls the hazard. A priority item includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing, and is an item that is denoted in the incorporated Food Code with a superscript (P). (4-6-23)
- 06. Priority Foundation Item.** A provision in the incorporated Food Code whose application supports, facilitates, or enables one (1) or more priority items. Priority foundation 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. A priority foundation item is an item that is denoted in the incorporated Food Code with a superscript (Pf). (4-6-23)()
- 07. Regulatory Authority.** The Department is the regulatory authority authorized to enforce compliance ~~of~~ with these rules. (4-6-23)()
 - a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments, and guidelines. (4-6-23)
 - b. The seven (7) Public Health Districts have been assigned and the Division of Licensing and Certification has 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. (4-6-23)
- 08. Risk Control Plan.** 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. (4-6-23)

09. Risk Factor Violation. Improper practices or procedures that are most frequently identified by epidemiologic investigation as a cause of foodborne illness or injury. (4-6-23)

~~**10. Roadside Stand.** Any fixed or mobile retail food establishment at which an individual farmer producer sells their own agricultural products directly to consumers. Roadside stand means the same as “agricultural market” and “farmers market.”~~ (4-6-23)

~~**10.**~~ **TCS.** Time/Temperature Control for Safety. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

360. ADVISING CONSUMERS OF HEALTH RISK OF RAW OR UNDERCOOKED FOODS.
Modification to Section 3-603.11. (4-6-23)

01. Consumption of Animal Foods That Are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens. Except as specified in Section 3-401.11(C) and Subparagraph 3-401.11(D)(3) and under Section 3-801.11(D), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item, or as a raw ingredient in another ready-to-eat food, the license holder must inform the consumers of health risks. (4-6-23)

02. How to Inform Consumers of Health Risk. The license holder must use any effective means to inform consumers of potential health risks. Some effective ways that may be used to inform consumers are: brochures, deli case placards, signs or ~~verbal~~ written warnings that state, “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.” (4-6-23)()