

TITLE 39  
HEALTH AND SAFETY

CHAPTER 16  
FOOD ESTABLISHMENT ACT

39-1601. STATEMENT OF PURPOSE. The legislative intent of this chapter is to protect the public health by establishing standards and provisions for the regulation of food establishments; by delegating authority to the board of health and welfare to adopt rules covering the health and sanitation aspects of food establishments, to collect a fee to cover a portion of the cost of the food safety inspection program and by delegating the authority to the director of the department of health and welfare to enforce the provisions of this chapter. This chapter is enacted to ensure that consumers are not exposed to adverse health conditions arising out of the operation of food establishments.

[39-1601, added 1991, ch. 142, sec. 2, p. 334; am. 1997, ch. 194, sec. 1, p. 548; repealed/new section added 1997, ch. 194, secs. 9 & 10, p. 551 (2007, ch. 96, repealed ch. 194, secs. 9 & 10)]

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

(1) "Commissary" means a place where food, containers or supplies are stored, prepared or packaged for transit, sale or service at other locations.

(2) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premises and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include:

(a) Private homes where food is prepared or served for individual family consumption;

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

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

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

(e) Any nonretail activity subject to regulation pursuant to the United States food and drug administration food safety modernization act, provided that such nonretail activity is subject to registration under

section 415 of the federal food, drug and cosmetic act. Such activities shall be subject to regulation by the Idaho state department of agriculture pursuant to the provisions of section [22-113](#), Idaho Code, in the event the state enacts legislation providing that it should seek federal authorization of such regulation;

(f) Agricultural markets; and

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

(3) "Intermittent food establishment" means 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 potentially hazardous food to the general public. Examples of a recurring event may be a farmers' or community market or a holiday market. "Intermittent food establishment" does not include the vendor of farm fresh ungraded eggs at a recurring event.

(4) "Mobile food establishment" means 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.

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

(a) Air-dried hard-boiled eggs with shells intact;

(b) Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less;

(c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;

(d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;

(f) Milk, half-and-half cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and

(g) Any other food items determined by the department of health and welfare not to be potentially hazardous.

(6) "Regulatory authority" means the director of the Idaho department of health and welfare or the director's designee.

(7) "Temporary food establishment" means a food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

548; am. 2004, ch. 185, sec. 1, p. 576; am. 2009, ch. 190, sec. 1, p. 619; am. 2016, ch. 172, sec. 2, p. 474.]

39-1603. POWERS AND DUTIES OF BOARD. The board of health and welfare shall promulgate rules governing:

- (1) The establishment and control of sanitation standards for food establishments;
- (2) The issuance, suspension and revocation of licenses;
- (3) The review of plans and specifications prior to construction or alteration of food establishments;
- (4) The procedure and scope of inspections to determine compliance with the standards and rules adopted under this chapter;
- (5) The criteria for the examination, embargo and destruction of food in compliance with section [37-118](#), Idaho Code; and
- (6) The establishment of a grading system for food establishments to be used at local option.

[39-1603, added 1991, ch. 142, sec. 2, p. 335; am. 1997, ch. 194, sec. 3, p. 549.]

39-1604. LICENSE REQUIREMENTS FOR FOOD ESTABLISHMENTS. No person, firm or corporation shall operate a food establishment, for which no other state or federal food safety inspection or license is required, without a license approved by the director of the department of health and welfare or his designee. Food establishment licenses shall not be transferable and the type of license and any restrictions will be specified on the license.

Terms and conditions of licensure are to be established by rules in accordance with the intent of this chapter. Any applicant or license holder aggrieved by an action of the regulatory authority which results in denial, suspension, or revocation of a license has the right to a hearing conducted pursuant to [chapter 52, title 67](#), Idaho Code, and appeal shall be provided therein.

[39-1604, added 1991, ch. 142, sec. 2, p. 335; am. 1997, ch. 194, sec. 4, p. 549.]

39-1605. INSPECTIONS. (1) The regulatory authority shall conduct unannounced inspections of every food establishment not subject to other state or federal food safety inspections to determine compliance or lack of compliance with the provisions of this chapter and the rules established by the board of health and welfare as often as deemed necessary by the authority.

(2) The application for, or the possession of a license is a consent to inspection. The regulatory authority representative upon presentation of proper credentials is to be permitted access to the premises of any food establishment during hours of operation in order to determine compliance with the rules adopted under this chapter. Failure to grant access shall be cause for nonissuance of a license or license revocation.

(3) The regulatory authority representative is to determine the degree of compliance by examining the food, including sampling as necessary, and by inspection in accordance with the rules adopted under this chapter.

(4) For inspection and enforcement purposes, an applicant for, or holder of, a license may specify that the license reflect separate departments or divisions within a single food establishment. In such cases, an enforcement action, when necessary, shall be taken against an individual

department or division within a single food establishment in lieu of an enforcement action against the food establishment as a whole, except when the department or division fails to comply with the rules established by the board of health and welfare.

(5) An inspection report, the form and manner to be determined by the board, will be generated by each inspection and be given to the person in charge of the food establishment.

[39-1605, added 1991, ch. 142, sec. 2, p. 335; am. 1997, ch. 194, sec. 5, p. 550.]

39-1606. CRIMINAL AND CIVIL PROCEEDINGS. The regulatory authority may seek to enforce the provisions of this chapter and any rule or standard adopted by the board pursuant to this chapter through a court of competent jurisdiction.

(1) Misdemeanor proceedings may be brought in accordance with sections [56-1008](#), [56-1010](#), [37-117](#) and [37-119](#), Idaho Code.

(2) Civil proceedings may be brought in accordance with sections [56-1009](#) and [56-1010](#), Idaho Code.

(3) Injunctive relief may be sought in accordance with sections [56-1009](#), [56-1010](#) and [37-116](#), Idaho Code.

[39-1606, added 1991, ch. 142, sec. 2, p. 336; am. 1997, ch. 194, sec. 6, p. 550; am. 2003, ch. 161, sec. 1, p. 455.]

39-1607. LICENSE AND OTHER FEES -- PROHIBITION ON ADDITIONAL FEES. (1) A fee may be charged by the department of health and welfare's regulatory authority for licensing a food establishment. The fee per food establishment per year for licenses shall be:

(a) Thirty-five dollars (\$35.00) for a temporary food establishment operating for one (1) day, forty-five dollars (\$45.00) for a temporary food establishment operating for two (2) or three (3) days, and seventy-two dollars (\$72.00) for a temporary food establishment operating for four (4) or more days or at multiple events;

(b) Sixty-five dollars (\$65.00) for intermittent food establishments and mobile food establishments without a commissary;

(c) Eighty-five dollars (\$85.00) for mobile food establishments with a commissary;

(d) One hundred twenty-five dollars (\$125) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and

(e) One hundred fifty dollars (\$150) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(2) Effective January 1, 2020, the fee per food establishment per year for licenses shall be:

(a) Thirty-five dollars (\$35.00) for a temporary food establishment operating for one (1) day, forty-five dollars (\$45.00) for a temporary food establishment operating for two (2) or three (3) days, and seventy-two dollars (\$72.00) for a temporary food establishment operating for four (4) or more days or at multiple events;

(b) Seventy-two dollars (\$72.00) for intermittent food establishments;

(c) Seventy-two dollars (\$72.00) for mobile food establishments without a commissary;

(d) Ninety-two dollars (\$92.00) for mobile food establishments with a commissary;

(e) One hundred sixty dollars (\$160) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and

(f) Two hundred dollars (\$200) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(3) Effective January 1, 2022, the fee per food establishment per year for licenses shall be:

(a) Thirty-five dollars (\$35.00) for a temporary food establishment operating for one (1) day, forty-five dollars (\$45.00) for a temporary food establishment operating for two (2) or three (3) days, and eighty dollars (\$80.00) for a temporary food establishment operating for four (4) or more days or at multiple events;

(b) Eighty dollars (\$80.00) for intermittent food establishments;

(c) Eighty dollars (\$80.00) for mobile food establishments without a commissary;

(d) One hundred dollars (\$100) for mobile food establishments with a commissary;

(e) Two hundred dollars (\$200) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and

(f) Two hundred fifty dollars (\$250) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(4) Effective July 1, 2019, in addition to other fees assessed by this section, the designated regulatory authority may assess:

(a) A plan review and preoperational inspection fee of one hundred dollars (\$100);

(b) A late fee for any fees paid past the applicable deadline;

(c) A license reinstatement fee of eighteen dollars (\$18.00);

(d) A request for variance fee of fifty dollars (\$50.00) per hour;

(e) A compliance conference fee of one hundred dollars (\$100) per hour;

(f) Enforcement and legal fees of one hundred fifty dollars (\$150) per hour; and

(g) Fees covering operational costs for inspections conducted pursuant to federal law or regulation.

(5) Fees collected for licensing a food establishment shall be used by the designated regulatory authority for funding a portion of the food safety inspection program. The designated regulatory authority may not impose fees on food establishments in addition to those provided by this section or specifically authorized by other applicable law.

(6) The regulatory authority shall review at three (3) year intervals the cost data associated with the operation of the food safety inspection program as well as actions taken to increase the efficiency of such program and provide a report on such review to the health and welfare committees of the Idaho legislature.

[39-1607, added 1997, ch. 194, sec. 7, p. 551; am. 2002, ch. 140, sec. 3, p. 392; am. 2007, ch. 96, sec. 1, p. 279; am. 2009, ch. 190, sec. 2, p. 620; am. 2019, ch. 95, sec. 1, p. 342.]