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**IDAPA 16
TITLE 02
CHAPTER 19**

16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS

000. LEGAL AUTHORITY.

The State of Idaho Board of Health and Welfare is authorized under Sections 37-121 and 39-1603, Idaho Code, to adopt rules for the regulation of food establishments to protect public health.. (4-6-05)

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 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. 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)

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)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department has no written interpretations that apply to rules of this chapter. (4-6-05)

003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.

01. Administrative Appeals. Administrative appeals including compliance conferences are handled by the regulatory authority. See Sections 860 and 861 of these rules for compliance and revocation issues. (4-6-05)

02. Contested Cases. Department contested cases and appeals are governed by provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-6-05)

004. INCORPORATION BY REFERENCE.

The Department is adopting by reference the "Food Code, 2001 Recommendations of the United States Public Health Service Food and Drug Administration," published by National Technical Information Service, Publication PB2002-100819. 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.cfsan.fda.gov>". 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. This chapter has been adopted with no modifications. (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)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (4-6-05)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-6-05)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-6-05)

04. Telephone. (208) 334-5500. (4-6-05)

05. Internet Website. The Department's Internet website is found at <http://www.healthandwelfare.idaho.gov>". (4-6-05)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions in Title 9, Chapter 3, 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 9, Chapter 3, 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 2001 Food Code referenced in Section 004 of these rules, must be treated as confidential or trade secret information under Section 9-340D, Idaho Code. (4-6-05)

007. -- 049. (RESERVED).

050. TRAINING AND INFORMATIONAL MATERIALS.

The Department is authorized under Section 56-1007, Idaho Code, to establish a reasonable charge for training and informational materials that are provided to the public. (4-6-05)

051. -- 099. (RESERVED).

100. PURPOSES AND DEFINITIONS.

Sections 100 through 199 of these rules will be used for modifications and additions to Chapter 1 of the 2001 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 in the 2001 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. (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. 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)

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

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

06. 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)

07. 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)

08. Food Establishment. Modifications to Section 1-201.10(36) by deleting Section 1-201.10(36)(c)(iii) amends the definition of food establishment. (4-6-05)

09. 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. (4-6-05)

10. 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 foods. (4-6-05)

c. A variety of processes requiring hot and cold holding of potentially hazardous food. (4-6-05)

111. DEFINITIONS AND ABBREVIATIONS - L THROUGH Z.

The definitions defined in this section are modifications or additions to the definitions given in the 2001 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 2001 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 2001 Food Code. (4-6-05)

03. Low-Risk Food Establishment. A low-risk food establishment provides factory-sealed pre-packaged non-potentially hazardous foods. The establishment may have limited preparation of non-potentially hazardous 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 foods is restricted to single meal service. (4-6-05)

05. 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 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)

06. 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 2001 Food Code as incorporated in Section 004 of these rules. (4-6-05)

201. ASSIGNMENT OF PERSON IN CHARGE.

Modification to Section 2-101.11. The license holder will be the person in charge or will designate a person in charge and will ensure that a person in charge is present at the food establishment during all hours of food preparation and service. (4-6-05)

202. -- 209. (RESERVED).

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 2001 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)

211. -- 219. (RESERVED).

220. EMPLOYEE HEALTH.

Addition to Section 2-201.12. The person in charge of a food establishment must 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," Subsection 025.02. (4-6-05)

221. -- 299. (RESERVED).

300. FOOD.

Sections 300 through 399 of these rules will be used for modifications and additions to Chapter 3 of the 2001 Food Code as incorporated in Section 004 of these rules. (4-6-05)

301. -- 319. (RESERVED).

320. MEAT AND POULTRY.

01. Custom Meat. Meat that is processed for individual owner(s) by a custom butcher, under the custom exemption in 9 CFR 303.1 "Mandatory Meat Inspection Exemptions," must be marked "Not For Sale" and may not be sold, served or given away to any member of the public. This meat must be for the use in the household of such owner(s), their families, non-paying guest and employees only. (4-6-05)

02. Poultry Exemption. Poultry that is exempt in 9 CFR 381.10, Subpart C "Mandatory Poultry Products Inspection Exemptions" may be sold, served or given away in Idaho, if it is processed in a licensed food processing facility and is labeled "Exempt from USDA Inspection per PL 492". (4-6-05)

321. -- 324. (RESERVED).

325. GAME ANIMALS.

Modification to Section 3-201.17(A)(4), is made by deleting Section 3-201.17(A)(4) and replacing it with Subsections 325.01 through 325.03 of these rules. (4-6-05)

01. Field Dressed Game Animals. Uninspected wild game animals and wild poultry may be custom processed or prepared and served upon request by an individual having ownership of the animal, and must be processed for or served to that owner and for the family or guests of that individual animal owner only. (4-6-05)

02. Processing Game Animals. Game animals and birds are to be completely separated from other food during storage, processing, preparation and service with the use of separate equipment or areas or by scheduling and cleaning, providing there is compliance with the following: (4-6-05)

a. Slaughtering and cleaning of game animals or birds can not be done in the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

b. Game animals and other animal carcasses are free of any visible dirt, filth, fecal matter or hair before such carcasses enter the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

c. An identifying tag with the owner's name must be on each carcass or divided parts and packaged or wrapped parts; and (4-6-05)

d. Each carcass or divided parts and packaged or wrapped parts are marked or tagged with a "Not for sale" label. These may not be sold, given away, or served to any members of the public. (4-6-05)

03. Un-Inspected Game Animals. Any un-inspected game animals prepared and served in a food establishment may only be prepared and served at the request of the owner of the animals for the owner and invited family or friends at a private dinner. These animals may not be served, sold, or given away to any members of the public. (4-6-05)

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 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 Food Code, and Subsections 355.01 through 355.05 of these 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)

02. 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)

03. 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)

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

05. 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)

06. 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)

356. -- 359. (RESERVED).

360. ADVISING CONSUMERS OF HEALTH RISK OF RAW OR UNDERCOOKED FOODS.
Modification to Section 3-603.11. (4-6-05)

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. (4-6-05)

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 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". (4-6-05)

361. -- 369. (RESERVED).

370. ADULTERATED OR MISBRANDED FOOD.
The regulatory authority may order the license holder or other person who has custody of misbranded food to destroy, denature or recondition adulterated or misbranded food according to Section 37-118, Idaho Code. See Section 851 of these rules for embargo, tagging, storage and release of adulterated or misbranded food. (4-6-05)

371. -- 599. (RESERVED).

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

701. -- 719. (RESERVED).

720. RESTRICTION AND STORAGE OF MEDICINES.

Modifications to Section 7-207.11. (4-6-05)

01. Medicines Allowed in a Food Establishment. Only those medicines that are necessary for the health of employees, patients or residents in a care facility are allowed in a food establishment. Subsection 720.01 does not apply to medicines that are stored or displayed for retail sale. (4-6-05)

02. Labeling of Medicines. Medicines that are in a food establishment for the employees, patients or residents use must be labeled as specified under Section 7-101.11 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles. (4-6-05)

721. REFRIGERATED STORAGE OF MEDICINES.

Modification to Section 7-207.12. Medicines belonging to employees, patients or residents in a care facility that require refrigeration may be stored in a food refrigerator using the following criteria: (4-6-05)

01. Medicines Stored in a Leak Proof Container. Medicines must be stored in a package or container and kept inside a covered, leak proof container that is identified as a container for the storage of medicines. (4-6-05)

02. Accessibility of Stored Medicines. Medicines will be stored to permit access to self-medicating patients or residents to their individual medication. Authorized staff in a care facility also have access to these medications. (4-6-05)

722. -- 799. (RESERVED).

800. COMPLIANCE AND ENFORCEMENT.

Sections 800 through 899 of these rules will be used for modifications and additions to Chapter 8 of the 2001 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 License. To apply for an Idaho food 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 2001 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 2001 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)

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 violations and the number of repeat 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 violations exceed six (6), 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 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 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 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 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 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)

851. ENFORCEMENT PROCEDURES FOR ADULTERATED OR MISBRANDED FOOD.

The regulatory authority may order the license holder or other person who has custody of adulterated or misbranded food to destroy, denature or recondition adulterated or misbranded food according to Section 37-118, Idaho Code. The following procedures apply: (4-6-05)

01. Serving an Embargo Order. An embargo order must be served by one (1) of the following ways: (4-6-05)

a. Delivered personally to the license holder or person in charge of the food establishment; or (4-6-05)

b. Posted at a public entrance to the food establishment, provided a copy of the notice is sent by first-class mail to the license holder or the person in charge of the embargoed food. (4-6-05)

02. The Embargo Order is Effective When Served. The embargo order is effective at the time the notice is delivered to the license holder or person in charge, or when the notice is posted. (4-6-05)

03. Tagging Embargoed Food. The regulatory authority must securely place an official tag or label on food or containers identified as food subject to the hold order. (4-6-05)

04. Storage of Embargoed Food. The regulatory authority allows storage of food under conditions specified in the embargo order, unless storage is not possible without risk to the public health. The regulatory authority may order immediate destruction of the adulterated or misbranded food for public safety. (4-6-05)

05. Removal of Embargo Tag or Label. The removal of the embargo tag, label or other identification from food under embargo must be done by the regulatory authority. (4-6-05)

06. Embargo Release. The issue of release and removal of the embargo tag, label or other identification from the suspected food when it is not adulterated or misbranded must be done by the regulatory authority. (4-6-05)

852. -- 859. (RESERVED).

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 2001 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 2001 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 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 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)

861. APPEAL PROCESS.

A license holder may appeal a summary suspension, notice of revocation, other action, or failure to act by the regulatory authority which adversely affects the license holder. A summary suspension or other emergency order is not stayed during the appeal process. (4-6-05)

01. Compliance Conference. The license holder may request in writing a compliance conference with the regulatory authority within fifteen (15) days of receipt of the notice or action by the regulatory authority. If a timely request for a compliance conference is made, a compliance conference will be scheduled within twenty (20) days and conducted in an informal manner by the regulatory authority. At the compliance conference the license holder may explain the circumstances of the alleged violations and propose a resolution for the matter. (4-6-05)

a. If the compliance conference results in an agreement between the license holder and the regulatory authority to remedy circumstances giving rise to the action and to assure future compliance, the agreement must be put in written form and signed by both parties. This written agreement constitutes an enforceable consent order. (4-6-05)

b. Unless otherwise specifically stated in the consent order, the agreement will be for the duration of the existing license only. (4-6-05)

02. Appeal to The Director. The license holder may appeal in writing to the Director of the Department of Health and Welfare within fifteen (15) days of receipt of the notice of action by the regulatory authority, or if a timely request for a compliance conference was made, within five (5) working days following the completion of the compliance conference. (4-6-05)

a. The appeal must be in writing following the procedures in IDAPA 16.05.03 "Rules Governing Contested Case Proceedings and Declaratory Rulings". (4-6-05)

b. Procedures on appeal to the Director are governed by IDAPA 16.05.03 "Rules Governing Contested Case Proceedings and Declaratory Rulings". (4-6-05)

862. -- 869. (RESERVED).

870. SERVICE OF NOTICE.

01. Service of Notice. A notice is considered properly served by any individual, or organization authorized to serve a civil process notice in any of the following ways: (4-6-05)

a. The notice is personally delivered to the license holder, manager or person in charge of the food establishment. (4-6-05)

b. The notice is clearly posted at a public entrance to the food establishment and a copy of the notice is also sent by first-class mail to the license holder. (4-6-05)

c. The notice is sent to the license holder's last known address by registered or certified mail, or by other public means in which a written acknowledgement of receipt is acquired. (4-6-05)

02. Proof of Service. Proof of service is determined when the person delivering the notice signs a certificate stating the notice has been served or posted, or by admission of the signed receipt by the license holder or person in charge of the food establishment. (4-6-05)

871. -- 889. (RESERVED).

890. CRIMINAL AND CIVIL PROCEEDINGS.

The regulatory authority may choose to enforce the provisions of these rules and its administrative orders through the courts. (4-6-05)

01. Criminal Proceedings. Misdemeanor proceedings to enforce these rules, federal regulations, and the enabling statutes may be instituted as provided in Sections 37-117, 37-119, 37-2103, and 56-1008, Idaho Code. These statutes provide for fines or terms of imprisonment that may be sought through the court of competent jurisdiction. (4-6-05)

02. Civil Proceedings. Civil enforcement actions may be commenced and prosecuted in the district court in the county where the alleged violation occurred according to Sections 56-1009 and 56-1010, Idaho Code. The person who is alleged to have violated any statute, rule, federal regulation, license or order may be charged in the court proceeding. This action may be brought to compel compliance with these rules, regulations, license or order for relief or remedies authorized in these rules. (4-6-05)

03. Injunctive Relief. In addition to other remedies provided by law, Section 56-1009, Idaho Code, allows for a search warrant to gain access and injunctions to be issued in the name of the state against any person or entity to enjoin them from violating these rules, regulations, statutes or administrative orders. (4-6-05)

891. -- 999. (RESERVED).

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