

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 258

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO FOOD ESTABLISHMENTS; AMENDING SECTION 39-1602, IDAHO CODE, TO  
REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby  
amended to read as follows:

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 loca-  
tions.

(2) "Food establishment" means those operations in the food business  
such as, but not limited to, food processing establishments, canning fac-  
tories, 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 vehi-  
cles, satellite locations, divisions and departments, and remote feeding  
sites. The term includes operations which are conducted in permanent, tem-  
porary 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 consid-  
ered a single food establishment. The term "food establishment" does not  
include:

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

(b) Fraternal, benevolent or nonprofit charitable organizations which  
do not prepare or serve food on a regular basis. Food shall not be con-  
sidered 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) occa-  
sions 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) Agricultural markets; ~~and~~

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

(g) The home kitchen of a person's primary residence where food is pre-  
pared for sale directly to the public, provided that:

1           (i) Such food is not potentially hazardous as defined in subsec-  
 2           tion (5) (a), (b), (c), (e) or (g) of this section;

3           (ii) Such food is not a low-acid canned food or an acidified food  
 4           as defined in 21 CFR 113-114;

5           (iii) Such food is packaged with a label, which shall be provided  
 6           to the purchaser and which:

7                   1. Clearly states the name and address of the maker;

8                   2. Includes contact information for the maker;

9                   3. Discloses that the product was prepared in a home kitchen  
 10                   that is not subject to regulation and inspection by the regu-  
 11                   latory authority; and

12                   4. Includes a statement that the product may contain aller-  
 13                   gens.

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

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

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

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

36                   (b) Foods with a water activity (aw) value of eighty-five hundredths  
 37                   (0.85) or less;

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

41                   (d) Foods in unopened ~~hermetically-sealed~~ hermetically sealed con-  
 42                   tainers which have been commercially processed to achieve and maintain  
 43                   commercial sterility under conditions of nonrefrigerated storage and  
 44                   distribution;

45                   (e) Foods for which laboratory evidence, acceptable to the regulatory  
 46                   authority, demonstrates that rapid and progressive growth of infec-  
 47                   tious and toxigenic microorganisms or the slower growth of clostridium  
 48                   botulinum cannot occur;

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

1 (g) Any other food items determined by the department of health and wel-  
2 fare not to be potentially hazardous.

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

5 (7) "Temporary food establishment" means a food establishment that op-  
6 erates for a period of not more than fourteen (14) consecutive days in con-  
7 junction with a single event or celebration.