

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:

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

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

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

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

2. Includes contact information for the maker;

3. Discloses that the product was prepared in a home kitchen that is not subject to regulation and inspection by the regulatory authority; and

4. Includes a statement that the product may contain allergens.

(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~~ 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

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.