

Chapter 8

Compliance and Enforcement

IDAPA 16.02.19.800. **COMPLIANCE AND ENFORCEMENT.**

IDAPA Sections 800 through 899 will be used for modifications and additions to Chapter 8 of the 2001 Food Code as referenced in Section 004 of these rules..

Parts

8-1 CODE APPLICABILITY

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8-3 PERMIT TO OPERATE

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8-1 CODE APPLICABILITY

Subparts

8-101 Use for Intended Purpose

8-102 Additional Requirements

8-103 Variances

Use for Intended Purpose

8-101.10 Public Health Protection.

(A) The REGULATORY AUTHORITY shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that FOOD is safe, unADULTERATED, and honestly presented when offered to the CONSUMER.

(B) In enforcing the provisions of this Code, the REGULATORY AUTHORITY shall assess existing facilities or EQUIPMENT that were in use before the effective date of this Code based on the following considerations:

- (1) Whether the facilities or EQUIPMENT are in good repair and capable of being maintained in a sanitary condition;

- (2) Whether FOOD-CONTACT SURFACES comply with Subpart 4-101;
- (3) Whether the capacities of cooling, heating, and holding EQUIPMENT are sufficient to comply with § 4-301.11; and
- (4) The existence of a documented agreement with the PERMIT HOLDER that the facilities or EQUIPMENT will be replaced as specified under ¶ 8-304.11(G) or upgraded or replaced as specified under ¶ 8-304.11(H).

Additional Requirements

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

(A) If necessary to protect against public health HAZARDS or nuisances, the REGULATORY AUTHORITY may impose specific requirements in addition to the requirements contained in this Code that are authorized by LAW.

(B) The REGULATORY AUTHORITY shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the PERMIT applicant or PERMIT HOLDER and a copy shall be maintained in the REGULATORY AUTHORITY's file for the FOOD ESTABLISHMENT.

Variances

8-103.10 Modifications and Waivers.

The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this Code if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE. If a VARIANCE is granted, the REGULATORY AUTHORITY shall retain the information specified under § 8-103.11 in its records for the FOOD ESTABLISHMENT.

8-103.11 Documentation of Proposed Variance and Justification.

Before a VARIANCE from a requirement of this Code is APPROVED, the information that shall be provided by the PERSON requesting the VARIANCE and retained in the REGULATORY AUTHORITY's file on the FOOD ESTABLISHMENT includes:

- (A) A statement of the proposed VARIANCE of the Code requirement citing relevant Code section numbers;
- (B) An analysis of the rationale for how the potential public health HAZARDS and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; and
- (C) A HACCP PLAN if required as specified under ¶ 8-201.13(A) that includes the information specified under § 8-201.14 as it is relevant to the VARIANCE requested.

8-103.12 Conformance with Approved Procedures.*

If the REGULATORY AUTHORITY grants a VARIANCE as specified in § 8-103.10, or a HACCP PLAN is otherwise required as specified under § 8-201.13, the PERMIT HOLDER shall:

(A) Comply with the HACCP PLANS and procedures that are submitted as specified under § 8-201.14 and APPROVED as a basis for the modification or waiver; and

(B) Maintain and provide to the REGULATORY AUTHORITY, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;

- (1) Procedures for monitoring CRITICAL CONTROL POINTS,
- (2) Monitoring of the CRITICAL CONTROL POINTS,
- (3) Verification of the effectiveness of an operation or process, and
- (4) Necessary corrective actions if there is failure at a CRITICAL CONTROL POINT.

8-2 PLAN SUBMISSION AND APPROVAL

Subparts

8-201 Facility and Operating Plans

8-202 Confidentiality

8-203 Construction Inspection and Approval

Facility and Operating Plans

8-201.11 When Plans Are Required.

A PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:

- (A) The construction of a FOOD ESTABLISHMENT;
- (B) The conversion of an existing structure for use as a FOOD ESTABLISHMENT; or
- (C) The remodeling of a FOOD ESTABLISHMENT or a change of type of FOOD ESTABLISHMENT or FOOD operation as specified under ¶ 8-302.14(C) if the REGULATORY AUTHORITY determines that plans and specifications are necessary to ensure compliance with this Code.

8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a FOOD ESTABLISHMENT, including a FOOD ESTABLISHMENT specified under § 8-201.13, shall include, as required by the REGULATORY AUTHORITY based on the type of operation, type of FOOD preparation, and FOODS prepared, the following information to demonstrate conformance with Code provisions:

- (A) Intended menu;
- (B) Anticipated volume of FOOD to be stored, prepared, and sold or served;
- (C) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (D) Proposed EQUIPMENT types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
- (F) Other information that may be required by the REGULATORY AUTHORITY for the proper review of the proposed construction, conversion or modification, and procedures for operating a FOOD ESTABLISHMENT.

8-201.13 When a HACCP Plan is Required.

(A) Before engaging in an activity that requires a HACCP PLAN, a PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY for approval a properly prepared HACCP PLAN as specified under § 8-201.14 and the relevant provisions of this Code if:

- (1) Submission of a HACCP PLAN is required according to LAW;
- (2) A VARIANCE is required as specified under § 3-502.11, ¶ 4-204.110(B), or Subparagraph 3-401.11(D)(3); or
- (3) The REGULATORY AUTHORITY determines that a FOOD preparation or processing method requires a VARIANCE based on a plan submittal specified under § 8-201.12, an inspectional finding, or a VARIANCE request.

(B) A PERMIT applicant or PERMIT HOLDER shall have a properly prepared HACCP PLAN as specified under § 3-502.12.

8-201.14 Contents of a HACCP Plan.

For a FOOD ESTABLISHMENT that is required under § 8-201.13 to have a HACCP PLAN, the plan and specifications shall indicate:

- (A) A categorization of the types of POTENTIALLY HAZARDOUS FOODS that are specified in the menu such as soups and sauces, salads, and bulk, solid FOODS such as MEAT roasts, or of other FOODS that are specified by the REGULATORY AUTHORITY;

(B) A flow diagram by specific FOOD or category type identifying CRITICAL CONTROL POINTS and providing information on the following:

(1) Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD, and

(2) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved;

(C) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

(D) A statement of standard operating procedures for the plan under consideration including clearly identifying:

(1) Each CRITICAL CONTROL POINT,

(2) The CRITICAL LIMITS for each CRITICAL CONTROL POINT,

(3) The method and frequency for monitoring and controlling each CRITICAL CONTROL POINT by the FOOD EMPLOYEE designated by the PERSON IN CHARGE,

(4) The method and frequency for the PERSON IN CHARGE to routinely verify that the FOOD EMPLOYEE is following standard operating procedures and monitoring CRITICAL CONTROL POINTS,

(5) Action to be taken by the PERSON IN CHARGE if the CRITICAL LIMITS for each CRITICAL CONTROL POINT are not met, and

(6) Records to be maintained by the PERSON IN CHARGE to demonstrate that the HACCP PLAN is properly operated and managed; and

(E) Additional scientific data or other information, as required by the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

Confidentiality

8-202.10 Trade Secrets.

The REGULATORY AUTHORITY shall treat as confidential in accordance with LAW, information that meets the criteria specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

Construction Inspection and Approval

8-203.10 Preoperational Inspections.

The REGULATORY AUTHORITY shall conduct one or more preoperational inspections to verify that the FOOD ESTABLISHMENT is constructed and equipped in accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with LAW and this Code.

8-3 PERMIT TO OPERATE

Subparts

- 8-301 Requirement**
- 8-302 Application Procedure**
- 8-303 Issuance**
- 8-304 Conditions of Retention**

Requirement

8-301.11 Prerequisite for Operation.

A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY

Application Procedure

IDAPA 16.02.19 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 110 of these rules.
- 02. Food License Expiration.** The license for an Idaho food establishment expires on December 31st of each year.
- 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.
- 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.
- 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.
- 06. License is Non-transferable.** A license may not be transferred when ownership changes, according to Section 8-304.20. The new owner must apply for his own license.

8-302.11 Submission 30 Calendar Days Before Proposed Opening

An applicant shall submit an application for a PERMIT at least 30 calendar days before the date planned for opening a FOOD ESTABLISHMENT or the expiration date of the current PERMIT for an existing facility.

8-302.12 Form of Submission.

A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the REGULATORY AUTHORITY a written application for a PERMIT on a form provided by the REGULATORY AUTHORITY.

8-302.13 Qualifications and Responsibilities of Applicants.

To qualify for a PERMIT, an applicant shall:

- (A) Be an owner of the FOOD ESTABLISHMENT or an officer of the legal ownership;
- (B) Comply with the requirements of this Code;
- (C) As specified under § 8-402.11, agree to allow access to the FOOD ESTABLISHMENT and to provide required information; and
- (D) Pay the applicable PERMIT fees at the time the application is submitted.

8-302.14 Contents of the Application.

The application shall include:

- (A) The name, birth date, mailing address, telephone number, and signature of the PERSON applying for the PERMIT and the name, mailing address, and location of the FOOD ESTABLISHMENT;
- (B) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity;
- (C) A statement specifying whether the FOOD ESTABLISHMENT:
 - (1) Is mobile or stationary and temporary or permanent, and
 - (2) Is an operation that includes one or more of the following:
 - (a) Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD:
 - (i) Only to order upon a CONSUMER'S request,

(ii) In advance in quantities based on projected CONSUMER demand and discards FOOD that is not sold or served at an APPROVED frequency, or

(iii) Using time as the public health control as specified under § 3-501.19,

(b) Prepares POTENTIALLY HAZARDOUS FOOD in advance using a FOOD preparation method that involves two or more steps which may include combining POTENTIALLY HAZARDOUS ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

(c) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for delivery to and consumption at a location off the premises of the FOOD ESTABLISHMENT where it is prepared,

(d) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for service to a HIGHLY SUSCEPTIBLE POPULATION,

(e) Prepares only FOOD that is not POTENTIALLY HAZARDOUS, or

(f) Does not prepare, but offers for sale only prePACKAGED FOOD that is not POTENTIALLY HAZARDOUS;

(D) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT;

(E) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified under ¶ (D) of this section such as the zone, district, or regional supervisor;

(F) The names, titles, and addresses of:

(1) The PERSONS comprising the legal ownership as specified under ¶ (B) of this section including the owners and officers, and

(2) The local resident agent if one is required based on the type of legal ownership;

(G) A statement signed by the applicant that:

(1) Attests to the accuracy of the information provided in the application, and

(2) Affirms that the applicant will:

(a) Comply with this Code, and

(b) Allow the REGULATORY AUTHORITY access to the establishment as specified under § 8-402.11 and to the records specified under §§ 3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and

(H) Other information required by the REGULATORY AUTHORITY.

Issuance

8-303.10 New, Converted, or Remodeled Establishments.

For FOOD ESTABLISHMENTS that are required to submit plans as specified under § 8-201.11 the REGULATORY AUTHORITY shall issue a PERMIT to the applicant after:

- (A) A properly completed application is submitted;
- (B) The required fee is submitted;
- (C) The required plans, specifications, and information are reviewed and APPROVED; and
- (D) A preoperational inspection as specified in § 8-203.10 shows that the establishment is built or remodeled in accordance with the APPROVED plans and specifications and that the establishment is in compliance with this Code.

8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.

The REGULATORY AUTHORITY may renew a PERMIT for an existing FOOD ESTABLISHMENT or may issue a PERMIT to a new owner of an existing FOOD ESTABLISHMENT after a properly completed application is submitted, reviewed, and APPROVED, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

8-303.30 Denial of Application for Permit, Notice.

If an application for a PERMIT to operate is denied, the REGULATORY AUTHORITY shall provide the applicant with a notice that includes:

- (A) The specific reasons and Code citations for the PERMIT denial;
- (B) The actions, if any, that the applicant must take to qualify for a PERMIT; and
- (C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in LAW.

Conditions of Retention

8-304.10 Responsibilities of the Regulatory Authority.

(A) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall provide to the PERMIT HOLDER a copy of this Code so that the PERMIT HOLDER is notified of the compliance requirements and the conditions of retention, as specified under § 8-304.11, that are applicable to the PERMIT.

(B) *Failure to provide the information specified in ¶ (A) of this section does not prevent the REGULATORY AUTHORITY from taking authorized action or seeking remedies if the PERMIT HOLDER fails to comply with this Code or an order, warning, or directive of the REGULATORY AUTHORITY.*

8-304.11 Responsibilities of the Permit Holder.

Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

(A) Post the PERMIT in a location in the FOOD ESTABLISHMENT that is conspicuous to CONSUMERS;

(B) Comply with the provisions of this Code including the conditions of a granted VARIANCE as specified under § 8-103.12, and APPROVED plans as specified under § 8-201.12;

(C) If a FOOD ESTABLISHMENT is required under § 8-201.13 to operate under a HACCP PLAN, comply with the plan as specified under § 8-103.12;

(D) Immediately contact the REGULATORY AUTHORITY to report an illness of a FOOD EMPLOYEE as specified under § 2-201.15;

(E) Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist as specified under § 8-404.11;

(F) Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under § 8-402.11;

(G) Except as specified under ¶ (H) of this section, replace existing facilities and EQUIPMENT specified in § 8-101.10 with facilities and EQUIPMENT that comply with this Code if:

- (1) The REGULATORY AUTHORITY directs the replacement because the facilities and EQUIPMENT constitute a public health HAZARD or nuisance or no longer comply with the criteria upon which the facilities and EQUIPMENT were accepted,
- (2) The REGULATORY AUTHORITY directs the replacement of the facilities and EQUIPMENT because of a change of ownership, or
- (3) The facilities and EQUIPMENT are replaced in the normal course of operation;

(H) Upgrade or replace refrigeration EQUIPMENT as specified under ¶ 3-501.16(A)(2)(b), if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, and 5 years pass after the REGULATORY AUTHORITY adopts this Code;

(I) Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the LICENSE HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies;

(J) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW; and

(K) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in LAW for failure to comply with this Code or a directive of the REGULATORY AUTHORITY, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

8-304.20 Permits Not Transferable.

A PERMIT may not be transferred from one PERSON to another PERSON, from one FOOD ESTABLISHMENT to another, or from one type of operation to another if the FOOD operation changes from the type of operation specified in the application as specified under ¶ 8-302.14(C) and the change in operation is not APPROVED.

IDAPA 16.02.19.831. Summary Suspension of License.

The regulatory authority may temporarily suspend a license to operate a food establishment when it determines that an imminent health hazard exists.

01. Reasons A Summary Suspension May Be Issued. When a food establishment does not follow the principles of food safety, or foodborne illness is found, or an environmental 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:

- a. Inspection of the food establishment shows critical violations;
- b. Examination of food shows the food is unsafe;
- c. Review of records shows that proper steps for food safety have not been met;
- d. Employees working with food are suspected of having a disease that is communicable through food; or
- e. An imminent health hazards exist.

02. Prior Notice 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.

03. Written Notice of Summary Suspension. The regulatory authority must give the license holder or person in charge written notice when suspending a license. The notice must include the following:

a. The specific reasons or violations the summary suspension is issued for with reference to the section of the Food Code which is in violation;

b. A statement notifying the food establishment its license is suspended and that all food operations are to cease immediately;

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;

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

e. A statement informing the food establishment that proceedings for revocation of the license shall be initiated by the regulatory authority after suspension, if violations are not immediately corrected.

f. The right to request an appeal to the Department as provided in Section 861 of these rules.

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.

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 conditions for the suspension no longer exist.

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.

8-4 INSPECTION AND CORRECTION OF VIOLATIONS

Subparts

8-401 Frequency

8-402 Access

8-403 Report of Findings

8-404 Imminent Health Hazard

| | |
|--------------|------------------------------|
| 8-405 | Critical Violation |
| 8-406 | Noncritical Violation |

Frequency

8-401.10 Establishing Inspection Interval.

IDAPA 16.02.19.840.01. **Inspection Interval.** Modification to 8-401.10 (A): Except as specified in 8-401.10 (C), the REGULATORY AUTHORITY must inspect a FOOD ESTABLISHMENT at least once a year.

IDAPA 16.02.19.840.02. Modification to Section 8-401.10(B) This section is deleted.

(C) The REGULATORY AUTHORITY shall periodically inspect throughout its PERMIT period a TEMPORARY FOOD ESTABLISHMENT that prepares, sells, or serves unPACKAGED POTENTIALLY HAZARDOUS FOOD and that:

- (1) Has improvised rather than permanent facilities or EQUIPMENT for accomplishing functions such as handwashing, FOOD preparation and protection, FOOD temperature control, WAREWASHING, providing DRINKING WATER, waste retention and disposal, and insect and rodent control; or
- (2) Has inexperienced FOOD EMPLOYEES.

8-401.20 Performance- and Risk-Based.

Within the parameters specified in § 8-401.10, the REGULATORY AUTHORITY shall prioritize, and conduct more frequent inspections based upon its assessment of a FOOD ESTABLISHMENT's history of compliance with this Code and the establishment's potential as a vector of foodborne illness by evaluating:

- (A) Past performance, for nonconformance with Code or HACCP PLAN requirements that are critical;
- (B) Past performance, for numerous or repeat violations of Code or HACCP PLAN requirements that are noncritical;
- (C) Past performance, for complaints investigated and found to be valid;
- (D) The HAZARDS associated with the particular FOODS that are prepared, stored, or served;
- (E) The type of operation including the methods and extent of FOOD storage, preparation, and service;
- (F) The number of people served; and

(G) Whether the population served is a HIGHLY SUSCEPTIBLE POPULATION.

Access

8-402.11 Allowed at Reasonable Times after Due Notice.

After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT's hours of operation and other reasonable times.

8-402.20 Refusal, Notification of Right to Access, and Final Request for Access.

If a PERSON denies access to the REGULATORY AUTHORITY, the REGULATORY AUTHORITY shall:

(A) Inform the PERSON that:

- (1) The PERMIT HOLDER is required to allow access to the REGULATORY AUTHORITY as specified under § 8-402.11 of this Code,
- (2) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT PERMIT to operate as specified under ¶ 8-304.11(F), and

(B) Make a final request for access.

8-402.30 Refusal, Reporting.

If after the REGULATORY AUTHORITY presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the PERSON IN CHARGE continues to REFUSE access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

8-402.40 Inspection Order to Gain Access.

If denied access to a FOOD ESTABLISHMENT for an authorized purpose and after complying with § 8-402.20, the REGULATORY AUTHORITY may issue, or apply for the issuance of, an inspection order to gain access as provided in LAW.

Report of Findings

8-403.10 Documenting Information and Observations.

The REGULATORY AUTHORITY shall document on an inspection report form:

(A) Administrative information about the FOOD ESTABLISHMENT's legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and other information such as type of water supply and SEWAGE disposal, status of the PERMIT, and personnel certificates that may be required; and

(B) Specific factual observations of violative conditions or other deviations from this Code that require correction by the PERMIT HOLDER including:

(1) Failure of the PERSON IN CHARGE to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code specified under § 2-102.11,

(2) Failure of FOOD EMPLOYEES and the PERSON IN CHARGE to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under § 2-201.14 and § 2-201.15,

(3) Nonconformance with CRITICAL ITEMS of this Code,

(4) Failure of the appropriate FOOD EMPLOYEES to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under § 8-103.12,

(5) Failure of the PERSON IN CHARGE to provide records required by the REGULATORY AUTHORITY for determining conformance with a HACCP PLAN as specified under Subparagraph 8-201.14(D)(6), and

(6) Nonconformance with CRITICAL LIMITS of a HACCP PLAN.

IDAPA 16.02.19.841. 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.

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.
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.
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.

8-403.20 Specifying Time Frame for Corrections.

The REGULATORY AUTHORITY shall specify on the inspection report form the time frame for correction of the violations as specified under § 8-404.11, § 8-405.11, and § 8-406.11.

8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to LAW, the REGULATORY AUTHORITY shall provide a copy of the completed inspection report and the notice to correct violations to the PERMIT HOLDER or to the PERSON IN CHARGE, and request a signed acknowledgment of receipt.

8-403.40 Refusal to Sign Acknowledgment.

The REGULATORY AUTHORITY shall:

(A) Inform a PERSON who declines to sign an acknowledgment of receipt of inspectional findings as specified in § 8-403.30 that:

- (1) An acknowledgment of receipt is not an agreement with findings,
- (2) Refusal to sign an acknowledgment of receipt will not affect the PERMIT HOLDER'S obligation to correct the violations noted in the inspection report within the time frames specified, and
- (3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the REGULATORY AUTHORITY's historical record for the FOOD ESTABLISHMENT; and

(B) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspectional findings.

8-403.50 Public Information.

Except as specified in § 8-202.10, the REGULATORY AUTHORITY shall treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW.

Imminent Health Hazard

8-404.11 Ceasing Operations and Reporting.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH

HAZARD may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(B) A PERMIT HOLDER *need not discontinue operations in an area of an establishment that is unaffected by the* IMMINENT HEALTH HAZARD.

8-404.12 Resumption of Operations.

If operations are discontinued as specified under § 8-404.11 or otherwise according to LAW, the PERMIT HOLDER shall obtain approval from the REGULATORY AUTHORITY before resuming operations.

Critical Violation

8-405.11 Timely Correction.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall at the time of inspection correct a critical violation of this Code and implement corrective actions for a HACCP PLAN provision that is not in compliance with its CRITICAL LIMIT.

(B) *Considering the nature of the potential HAZARD involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the PERMIT HOLDER to correct critical Code violations or HACCP PLAN deviations.*

8-405.20 Verification and Documentation of Correction.

(A) After observing at the time of inspection a correction of a critical violation or deviation, the REGULATORY AUTHORITY shall enter the violation and information about the corrective action on the inspection report.

(B) As specified under ¶ 8-405.11(B), after receiving notification that the PERMIT HOLDER has corrected a critical violation or HACCP PLAN deviation, or at the end of the specified period of time, the REGULATORY AUTHORITY shall verify correction of the violation, document the information on an inspection report, and enter the report in the REGULATORY AUTHORITY'S records.

IDAPA 16.02.19.845. **Verification and Documentation of Corrections.** In addition to Section 8-405.20, the on-site 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.

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.

- 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.
 - 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.
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.

Noncritical Violation

8-406.11 Time Frame for Correction.

(A) Except as specified in ¶ (B) of this section, the PERMIT HOLDER shall correct noncritical violations by a date and time agreed to or specified by the REGULATORY AUTHORITY but no later than 90 calendar days after the inspection.

(B) *The REGULATORY AUTHORITY may approve a compliance schedule that extends beyond the time limits specified under ¶ (A) of this section if a written schedule of compliance is submitted by the PERMIT HOLDER and no health hazard exists or will result from allowing an extended schedule for compliance.*

IDAPA 16.02.19. 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.

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.

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 enforcement inspections until the next annual inspection.

04. Regulatory Action. If the violations have not been corrected by the date of the enforcement inspection, regulatory action will be initiated to revoke or suspend the license issued to the food establishment.

TRANSMISSION BY EMPLOYEES

Subpart

8-501 Investigation and Control

Investigation and Control

8-501.10 Obtaining Information: personal History of Illness, Medical Examination, and Specimen Analysis.

The REGULATORY AUTHORITY shall act when it has reasonable cause to believe that a FOOD EMPLOYEE has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through FOOD; may be a carrier of infectious agents that cause a disease that is transmissible through FOOD; or is affected with a boil, an infected wound, or acute respiratory infection, by:

- (A) Securing a confidential medical history of the EMPLOYEE suspected of transmitting disease or making other investigations as deemed appropriate; and
- (B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other EMPLOYEES.

8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit.

Based on the findings of an investigation related to a FOOD EMPLOYEE who is suspected of being infected or diseased, the REGULATORY AUTHORITY may issue an order to the suspected FOOD EMPLOYEE or PERMIT HOLDER instituting one or more of the following control measures:

- (A) RESTRICTING the FOOD EMPLOYEE;
- (B) EXCLUDING the FOOD EMPLOYEE; or
- (C) Closing the FOOD ESTABLISHMENT by summarily suspending a PERMIT to operate in accordance with LAW.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the REGULATORY AUTHORITY may issue an order of RESTRICTION or EXCLUSION to a suspected FOOD EMPLOYEE or the PERMIT HOLDER without prior warning, notice of a hearing, or a hearing if the order:

- (A) States the reasons for the RESTRICTION or EXCLUSION that is ordered;

(B) States the evidence that the FOOD EMPLOYEE or PERMIT HOLDER shall provide in order to demonstrate that the reasons for the RESTRICTION or EXCLUSION are eliminated;

(C) States that the suspected FOOD EMPLOYEE or the PERMIT HOLDER may request an appeal hearing by submitting a timely request as provided in LAW; and

(D) Provides the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing may be made.

8-501.40 Release of Food employee from Restriction or Exclusion.

The REGULATORY AUTHORITY shall release a FOOD EMPLOYEE from RESTRICTION or EXCLUSION according to LAW and the following conditions:

(A) A FOOD EMPLOYEE who was infected with *Salmonella Typhi* if the FOOD EMPLOYEE's stools are negative for *S. Typhi* based on testing of at least 3 consecutive stool specimen cultures that are taken:

- (1) Not earlier than 1 month after onset,
- (2) At least 48 hours after discontinuance of antibiotics, and
- (3) At least 24 hours apart; and

(B) If one of the cultures taken as specified in ¶ (A) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.

(C) A FOOD EMPLOYEE who was infected with *Shigella* spp. or SHIGA TOXIN-PRODUCING *Escherichia coli* if the EMPLOYEE'S stools are negative for *Shigella* spp. or SHIGA TOXIN-PRODUCING *Escherichia coli* based on testing of 2 consecutive stool specimen cultures that are taken:

- (1) Not earlier than 48 hours after discontinuance of antibiotics; and
- (2) At least 24 hours apart.

(D) A FOOD EMPLOYEE who was infected with hepatitis A virus if:

- (1) Symptoms cease; or
- (2) At least 2 blood tests show falling liver enzymes.

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:

01. Servicing An Embargo Order. An embargo order must be served by one of the following ways:

a. Delivered personally to the license holder or person in charge of the food establishment; or

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.

02. The Embargo Order Is Effective When Served. The embargo order is effective at the time the notice is received by the license holder or the time of posting the notice.

03. Tagging Embargoed Food. The regulatory authority must securely place an official tag or label on food or containers identified as food subject to a hold order.

04. Storage of Embargoed Food. The regulatory authority shall allow 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.

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.

06. Embargo Release. The issue of release and removal of the embargo tag, label or other identification from the suspected food is not adulterated or misbranded must be done by the regulatory authority.

IDAPA 16.02.19.860. 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 is a substantial hazard to public health.

01. Reasons A License May Be Revoked.

a. The license holder or employee in charge of the food establishment violates any term or condition in Section 8-304.11 of the 2001 Food Code.

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 as permitted in Section 8-402.40 of the Food Code, before proceeding with revocation.

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.

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.

e. Failure to comply with any consent order issued after a compliance conference. See Section 861 of these rules.

f. Failure to comply with a regulatory authority's immediate suspension order when there is an imminent health hazard. See Section 831 of these rules on summary suspension of a license.

g. Failure to comply with an embargo order. See Section 851 of these rules on adulterated and misbranded food.

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.

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.

a. The specific reasons and sections of the Idaho Food Code which are in violation and the cause for action of the revocation;

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.

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.

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."

03. Effective Date of Revocation. The revocation will be effective fifteen (15) days following service of notice, unless a timely request for a compliance conference is made or an

appeal is filed. 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 made to 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 procedures.

IDAPA 16.02.19.861. 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.

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.

- 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 shall constitute an enforceable consent order.
- b.** Unless otherwise specifically stated in the consent order, the agreement shall be for the duration of the existing license only.

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.

- a.** The appeal must be in writing following the procedures in IDAPA 16.05.03 “Rules Governing Contested Case Proceedings and Declaratory Rulings.”
- b.** Procedures on appeal to the Director are governed by IDAPA 16.05.03 “Rules Governing Contested Case Proceedings and Declaratory Rulings.”

IDAPA 16.02.19.870. Service of Notice.

01. Service of Notice Issued. A notice is considered properly served by an individual or organization authorized to serve a civil process notice in any of the following ways:

- a.** The notice is personally delivered to the license holder, manager or person in charge of the food establishment.
- 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.

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 or receipt is acquired.

02. Proof of Service. Proof of service is determined when the person making the service 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.

IDAPA 16.02.19.890. Criminal and Civil Proceedings.

The regulatory authority may choose to enforce the provisions of these rules and its administrative orders through the courts.

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.

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 enabling statute, rule, federal regulation, license or order may be charged in the court proceeding. This action is brought to compel compliance with these rules, regulations, license or order for relief or remedies authorized in these rules.

03. Injunctive Relief. In addition to other remedies provided by law, Section 56-1009 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 that person or entity from violating these rules, regulations, statutes or administrative orders.