

TITLE 410 INDIANA DEPARTMENT OF HEALTH

Regulatory Analysis

LSA Document #XX-XXX

I. Description of Rule

a. History and Background of the Rule – HB 1577 from 2025 established a statewide mobile retail food establishment (food truck) license which requires the Indiana Department of Health (IDOH) to amend its retail food establishment rule, 410 IAC 7-26, to address the new licensure scheme. Historically, a mobile retail food establishment (MRFE) had to register/be permitted in each county it operated. HB 1577 allows mobile retail food establishment operators to register once and operate in multiple counties. The current rule, 410 IAC 7-26, was adopted in 2025 based on the 2022 FDA Model Food Code which does not address the new statutory scheme. In collaboration with the HB 1577 workgroup, which consists of a delegate from a local health department from each of the nine (9) Indiana Congressional Districts, a proposed interim rule has been introduced to revise select sections of the code to comply with HB 1577. The current rule was promulgated on April 16, 2025.

b. Scope of the Rule- This interim rule aligns the rules with HB 1577 and establishes the standards for the licensure, inspection, and operation of mobile retail food establishments in accordance with the new statewide licensing. The interim rules will only be in effect until IDOH can promulgate rule amendments.

c. Statement of Need – This interim rule is needed to set the requirements of the new licensing scheme established in HB 1577. The new state licensure is effective January 1, 2027. Without this interim rule, local health departments will have no guidance on how to inspect mobile retail food establishments that operate statewide. Regulated entities also require the issuance of this interim rule because the current rules in 410 IAC 7-26 creates a higher burden on the entities than was determined necessary by the HB 1577 workgroup. For the safety of the customers, efficiency of local health department operations, and effective state oversight of these vendors, this interim rule is necessary.

d. Statutory Authority for the Proposed Rule – Pursuant to IC 16-42-28-9, IDOH is required to adopt rules to implement the statewide mobile retail food establishment license by January 1, 2027. IC 16-42-28-4 requires IDOH to establish a statewide mobile retail food establishment license, establish standards for inspections and violations, and establish standards for the operation of a mobile retail food establishment.

e. Fees, Fines, and Civil Penalties – The rule does not add or increase any fees, fines, or civil penalties.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – January 1, 2027.

b. Estimated Fiscal Impact on State and Local Government – While there may be fiscal impact associated with the interim rule, those costs stem from HB 1577 and the obligation to establish a statewide mobile retail food establishment license. Local government will remain responsible for issuing licenses and conducting inspections under IC 16-42-28-8(a) and interim rule section 4(c)(6) clarifies the steps that must be taken.

Implementing the interim rule for mobile retail food establishments will undoubtedly come with a learning curve, impacting both the regulator and the mobile retail food establishment operators. Local health departments will require additional training to ensure the new rules are consistently interpreted across the state, thereby minimizing the risk of misinterpretation and the overregulation of mobile retail food establishments. IDOH is making a 2-hour virtual training course available to local health departments.

c. Sources of Expenditures or Revenues Affected by the Rule – Local health department revenues are affected by the change in the licensing scheme, but the changes are due to the change in the statute requiring state licensure and not by requirements in the interim rule.

III. Impacted Parties

The interim rule directly impacts approximately 4,506 mobile retail food establishments operating within the state of Indiana. This number was determined based on an IDOH survey of the 95 local health departments.

The 95 local health department are impacted by the requirements in interim rule section 4(d), but those requirements either implement IC 16-42-28 or clarify sections of current 410 IAC 7-26.

IV. Changes in Proposed Rule

<u>410 IAC 7-26 Original</u>	<u>INTERIM RULE</u>	<u>Justification</u>
410 IAC 7-26-75	Section 1	Indiana Code citation to reflect the definition of mobile retail food establishment based on the repeal of IC16-42-5.1.
410 IAC 7-26-124	Section 2	Clarifies that mobile retail food establishments are not included in the temporary food establishment definition and therefore implement requirements of IC 16-42-5.4.

410 IAC 7-26-477	Section 3	Removes incorrect reference to IC 16-42-1-6 which does not apply to retail food establishments.
New	Section 4(b)	Reflects basic requirements to obtain a state issued mobile retail food establishment license required by HB 1577 and 410 IAC 7-26-480. - Submit application - Complete plan review - Remit payment Moved all other requirements stated in 488(a) to new subsection 4(c).
New	Section 4(c)	Reflects applicable requirements mobile retail food establishments must comply with.
New	Section 4(c)(1)	Requires license to be posted conspicuously on all MRFEs.
New/Amendment	Section 4(c)(2)	Requires inspection reports to be posted conspicuously. Removes requirement for consultation with each county because license is now statewide.
New	Section 4(c)(3)	Requires notice of intent forms to be sent to LHD within 5-days of operating in a new jurisdiction.
410 IAC-7-26-488(a)(1)	Section 4(c)(4)	Implements a risk-based standard for MRFEs regarding when to return to a commissary or servicing area.
New	Section 4(c)(5)	Commissary change notification.
New	Section 4(c)(6)	Inspection frequency requirements based on IC 16-42-28-8(a)(4). Specifies the local health department that must conduct the inspection.
410 IAC 7-26-488(a)(3)	Section 4(c)(7)	Clarifies when a mobile retail food establishment must provide restroom access.
410 IAC 7-26-488(a)(4)	Section 4(c)(8)	Broadens the types of mobile retail food establishments that are exempt from water and sewage requirements, equipment and utensil cleaning requirements, and servicing area requirements.
New	Section 4(c)(9)	Implements a risk-based standard used by local health departments to determine when a mobile retail food

		establishment must return to a commissary or servicing area.
410 IAC 7-26-488(a)(5)	Section 4(c)(10)	No verbiage changes from promulgated rule. Ensures that mobile retail food establishments only provide single service utensils.
New	Section 4(c)(11)	MRFEs must provide a trash receptacle for consumer use.
410 IAC 7-26-488(a)(6)	Section 4(c)(12)	Updates current rule section based on new risk-based system from subsection 4(c)(9).
410 IAC 7-26-488(a)(7)	Section 4(c)(13)	No change to verbiage from promulgated rule. Ensures that mobile retail food establishments have sufficient wastewater tanks.
410 IAC 7-26-488(a)(8)	Section 4(c)(14)	No change to verbiage from promulgated rule. Ensures that mobile retail food establishments properly dispose of liquid waste to avoid creating a public nuisance.
New	Section 4(c)(15)	Requires mobile retail food establishments to notify the local health department of a change in menu or structure of the food establishment.
New	Section 4(c)(16)	Adds language clarifying that the interim rule does not supersede local requirements except when explicitly set forth or when provided by statute.
New	Section 4(d)	Reflects the local health department's responsibility for the following: - Ensuring operational requirements are met prior to issuing MRFE licenses - Utilizing state issued forms associated with MRFE operation - Completing plan reviews for each MRFE applying for a new license - Remitting all required payments to the Indiana Dept. of Health as required by IC 16-42-28-5(b)
410 IAC 7-26-488(b)	Section 4(e)	Violation levels updated to reflect new rule sections.

410 IAC 7-26-488(c)	Section 4(f)	Violation levels updated to reflect new rule sections.
410 IAC 7-26-488(d)	Section 4(g)	Violation levels updated to reflect new rule sections.

Several changes to this interim rule are either to correct errors from LSA 24-375 or implement statutory requirements from IC 16-42-5.4 and IC 16-42-28.

- Interim rule section 1 updates the definition of Mobile Retail Food Establishment because the current definition is being repealed effective January 1, 2027. The rule language implements the restriction in IC 16-42-28-8(b) because the only way to operate a retail food establishment is to have the statewide license created under IC 16-42-28-8 and this rule.
- Current 410 IAC 7-26-477 references a registration requirement from IC 16-42-1-6 but that requirement does not apply to retail food establishments. Section 3 of the interim rule removes the incorrect requirement.
- Section 4(d)(5) implements the restrictions in IC 16-42-28-7.

The requirements of section 4(c)(8), which are being included as part of the interim rulemaking, incorporate an existing agency standard.

The requirements of section 4(c)(9) promulgate an existing standard used by local health departments when determining whether a mobile retail food establishment needs to return to a commissary or servicing area daily. Promulgating this standard ensures that all mobile retail food establishments are held to the same risk-based standard and prevents overregulation because of unclear standards.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The primary benefit of this interim rule is providing clarity and process for the new statewide mobile retail food establishment license scheme so both the mobile retail food establishments and local health departments know how it will work. With the interim rule, mobile retail food establishments, like food trucks, are provided with clear, concise directions on how to operate. This approach not only protects public health but also supports the vitality of Indiana’s cultural and economic heritage.

The key provisions in the interim rule, other than the process additions, address information available to consumers, transparency, and waste management. Specifically, these provisions ensure customers can readily review food truck inspection reports and license information and that operators provide trash cans for consumer use after food consumption. Together, these changes provide greater clarity on operational expectations for food truck operators, offer consumers more resources to make informed decisions before purchasing food, and protect the environment from litter. This holistic approach strengthens food safety while promoting sustainability and consumer confidence in Indiana’s mobile food industry.

b. Estimate of Secondary or Indirect Benefits of the Rule – There are no known secondary or indirect benefits associated with this interim rule.

c. Estimate of Any Cost Savings to Regulated Industries – There are no cost savings specific to this interim rule. This interim rule effectuates the cost savings envisioned by HB 1577 by ensuring a single regulatory framework for mobile retail food establishments. MRFEs must currently complete applications and submit documents for plan review to be permitted by each local health department in each county where they operate. The statute changes the application and plan review requirement to one for the entire state so less time and money will be spent on them.

The promulgation of interim rule section 4(c)(9) will implement a risk-based system for determining when mobile retail food establishments must return to a commissary or servicing area and determining if a mobile retail food establishment can deviate from plumbing and sewage requirements. The current rule holds all mobile retail food establishments to a standard which treats all operations the same, despite differences in risk. Implementing interim rule section 4(c)(9) lowers the compliance level for many operations without sacrificing public health. While IDOH does not know exactly how many mobile retail food establishments operate in the state and therefore does not know how many operations would be affected by this change, IDOH estimates that at least twenty percent of operations would see lower compliance costs.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – This interim rule implements several changes from current 410 IAC 7-26 that have no cost to regulated entities. These changes include provisions implementing the new licensing scheme from HB 1577, such as including a reference to the statutory requirement for semiannual inspections or stating that local health departments must ensure the basic operational requirements of the interim rule are met. There are also changes that are a result of the reorganization of the rule to reflect interim rule status.

The interim rule requires MRFEs to provide local health departments with a notice of intent to operate in their jurisdiction for any jurisdiction beyond where they completed the statewide licensure. This notification form should take fifteen (15) minutes or less to complete. It is impossible to determine how many counties that a single MRFE intends to operate in. However, based on the information obtained by IDOH's survey of the local health departments, most MRFEs operate in less than five (5) counties each, with at least 80% of MRFEs only operating in a single county. The average food worker is paid \$18 per hour, so the form would be \$4.50 of staff time to complete each notification. If a MRFE operated in four (4) counties in addition to their initial licensure, the cost would be \$18 annually.

For the current 4,506 MRFEs that annual cost would be \$81,108. It is necessary for local health departments to have contact information for MRFEs operating in their county for enforcement purposes because there is no statewide registry containing license information.

The interim rule requires notification of a change to a commissary. IDOH does not know how often this happens so it cannot provide a specific dollar amount for the cost. However, the requirement for this notification will be simple and should not take long to complete. For the notification of a change in commissary, the local health department needs to review any change to ensure the commissary continues to meet the requirements of the interim rule and ensure that the new commissary allows the mobile retail food establishment to comply with this interim rule and 410 IAC 7-26.

There is a minimal cost of approximately \$20 associated with ensuring customers have access to waste receptacles, but this cost is outweighed by the business and environmental benefits. Some MRFEs may not need to purchase a waste receptacle because others already provide it, such as municipalities or event organizers. Some MRFEs may already do this voluntarily. This provision was added to both clarify the current rule and to respond to public health concerns from the workgroup members. MRFEs operating without customer access to trash receptacles has created a public nuisance due to litter and increased the likelihood of pests, which resulted in lower retail traffic to MRFEs and the surrounding businesses.

Subsections 4(c)(10), 4(c)(13), and 4(c)(14) maintain the language that currently exists in 410 IAC 7-26 and are expected to result in minimal to no compliance cost for mobile retail food establishments. These interim rule sections reflect requirements under the 2022 FDA Model Code and current administrative code that mobile retail food establishments have already been complying with under the ServSafe training. ServSafe is a nationally recognized food safety training course, operated by the National Restaurant Association, for retail food managers and its curriculum is developed on the FDA Model Food Code. Subsections 4(c)(8) and 4(c)(12) reflect reductions of regulation of mobile retail food establishments as currently envisioned by the 2022 Model Food Code and ServSafe and therefore create a cost savings to the industry.

There is a potential cost to mobile retail food establishments from proposed interim rule section 4(c)(6) because that section requires a mobile retail food establishment to return to the local health department that issued the mobile retail food establishment license for inspection. This was added because the local health department that issues the mobile retail food establishment license obtains a portion of the licensing fee to help pay for the cost of conducting the inspections. If a mobile retail food establishment were able to go to any local health department for inspection, they could choose a department that issues few, if any,

mobile retail food establishment licenses and doesn't have the funding or infrastructure to conduct necessary inspections.

There is an optional mobile retail food establishment labor cost of \$9 per MRFE associated with the completion of a virtual 30-minute food code update training video. This training is not required so it is not included in the rule implementation cost but is noted to demonstrate IDOH's guidance that will be available to help with implementation of the new statewide licensing scheme.

<u>Cost</u>	<u>Estimated # of affected entities</u>	<u>Estimated Cost for regulated entities</u>	<u>Cost Justification</u>
Costs Incurred by Mobile Retail Food Establishments			
15 minutes notification paperwork completion rate at \$18 (average hourly food worker wage) an hour.	4,506 mobile retail food establishments across the state	\$18 per establishment or \$81,108 annually if a MRFE operates in 4 jurisdictions in addition to the initial jurisdiction from the application	Labor costs are associated with completing required notice of intent form.
1 trash receptacle for consumer use Average \$20	4506 mobile retail food establishments across the state	\$90,120 for all mobiles across the state for MRFE. However, this estimate assumes that the MRFEs are not provided public trash receptacles by the city, park, event organizer, etc.	Only required for mobile retail food establishments that do not already have access to trash receptacles provided by municipalities, or event organizers.

b. Estimate of Administrative Expenses Imposed by the Rules – The largest administrative costs associated with the interim rule proposal are the time and labor cost associated with informing the regulatory authority of the intent to operate under interim rule section 4(c)(3) as set forth in the previous section and

notifying the regulatory authority of a commissary change under interim rule section 4(c)(5).

Other administrative costs stem from the requirement to post the statewide license and the most recent inspection reports. MRFEs receive copies of these documents so it should not be much of a cost to conspicuously post the documents. These posting requirements provide customers with information about the MFRE so they can verify the MRFE is licensed and obtain information about the establishment through its inspection report.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 –
This interim rule does not add or increase any fees, fines or civil penalties.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6)- The combined implementation costs of the proposed rule are not estimated to exceed the statutory threshold for businesses, units, and individuals over any two (2) year period.

VII. Sources of Information

a. Independent Verifications or Studies – Local health departments were surveyed to determine the current number of mobile retail food establishments operating within the state of Indiana. 81 out of 95 counties provided a response with an 85% response rate (survey results attached).

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – IDOH did not rely on any outside sources. IDOH did consult with the local health departments on this interim rule. The Indiana Restaurant & Lodging Association also attended several of the workgroup meetings that resulted in this interim rule.

VIII. Regulatory Analysis

It is estimated that the interim rule will affect all 4,506 MRFEs surveyed by 81 of Indiana's 95 local health departments. These estimates do not include out of -state food trucks that enter Indiana to participate- in major events.

Local health departments and IDOH will need to dedicate staff time and resources to creating new forms and training on the new requirements. Those costs are a result of the statutory change in the licensing scheme and are absorbable by current staff.

Several of the changes in the interim rule implements the statute and do not have an additional cost to them. Other changes are just a reorganization of the current rules because of other changes and do not have an additional cost. There are also costs that are so minimal they cannot be quantified, such as posting a license and posting the most recent inspection report.

Requiring notification of operation will have a minor cost to MRFEs. On average, an MRFE will spend fifteen (15) minutes per county completing required notification of

operation documents. Most MRFEs operate in five (5) counties or fewer, so this results in an annual cost of approximately \$18 per MRFE and \$81,108 for 4,506 MRFEs.

The reporting requirements for a change in commissary will have a cost, but it is difficult to quantify because IDOH does not know how many MRFEs will be affected by this requirement. IDOH does not know how often a MRFE will change commissary. However, the notifications will not be onerous and should take minimal time to complete because a single email to the local health department is sufficient notification.

Requiring every MRFE to provide access to a waste receptacle will have a cost of approximately \$20 per MRFE for a cost of \$90,120, which is likely needed only once during a two-year implementation window. This estimate is likely high because many MRFEs already have waste receptacles or have waste receptacles provided by a third-party, such as event organizers.

The implementation cost will not exceed \$252,336 for all 4,506 MRFEs, though this cost is expected to be lower since not all MRFEs are expected to operate in multiple counties. Ultimately, IDOH believes the benefits to the interim rules outweigh the financial costs of compliance with the interim rules because the reduction in waste reduces the spread of disease and reduces the likelihood of a public nuisance and the minimal burden to a MRFE from notifying a local health department of the intent to operate ensures that the local health department can conduct timely and proper contract tracing in the event of foodborne illness.

IX. Contact Information of Staff to Answer Substantive Questions

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Additional Information for OMB and SBA Review

The following information is required for OMB and State Budget Agency (SBA) review but will not be published along with the regulatory analysis.

X. Redline Draft of Proposed Rules

See attached.