

DATE: June 18, 2014

TO: All Local Health Departments and other Indiana Food Regulatory Agencies

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SUBJECT: Guidance for Uniform Use of SEA 179 (Supplemental guidance to HEA 1309)

PURPOSE

This document is provided for the purpose of assisting local health departments (LHD) and other Indiana food regulatory agencies in the uniform use of Senate Enrolled Act (SEA) 179, passed by the most recent legislative session and effective July 1, 2014. With the exception of restating definitions provided in an Indiana State Department of Health (ISDH) Food Protection Program guidance document dated June 11, 2009 (http://www.in.gov/isdh/files/HEA_1309_guidance_final_6_11_09.pdf), the emphasis of this document will be to discuss changes made to Indiana Code (IC) 16-42-5-29 and 16-42-11-9.5 by SEA 179.

BACKGROUND

This new law modifies two sections of IC 16-42-5-29, related to food establishments, and IC 16-42-11-9.5, related to whole, raw shell eggs of a domesticated chicken hen. These codes have been changed to:

- Allow, by an ISDH rule (which will be written at a later date), poultry farms to slaughter and process up to a certain number of poultry annually without inspection under federal regulations.
- Provide that a local unit of government may not by ordinance or resolution require licensure, certification, or inspection for food or food products of an individual vendor, farmer, or bona fide egg producer who meets the stated requirements.
- Allow, by ISDH rule, poultry that is sold on a farm to be refrigerated at the point of sale.
- Require, by ISDH rule, poultry that is sold at a farmer's market, through delivery, or at a roadside stand to be frozen at the point of sale.
- Require, by ISDH rule, poultry that is sold on a farm, through delivery or at a roadside stand to be used, sold, or frozen within seventy-two (72) hours of processing.

A copy of SEA 179 is attached.

DEFINITIONS

Except as changed by SEA 179, definitions announced in the ISDH Food Protection Program guidance document entitled "Guidance for Uniform Use of House Enrolled Act 1309" dated June 11, 2009 will continue to apply to IC 16-42-5-29. These definitions are repeated here for ease of referencing. Other definitions were not included as they were not applicable to this guidance.

“End Consumer” means a person who is the last person to purchase any food product and who does not resell the food product.

“Farmers’ Market” means a common facility where two or more farmers or growers gather on a regular recurring basis to sell a variety of fruits, vegetables, and other farm products directly to consumers.

“Home-Based Vendor” (HBV) means an individual who complies with IC 16-42-5-29. This individual may also be referred to as a “Section 29 Vendor”.

NOTE: These terms are not defined in statute; however, it is suggested that “home-based vendor (HBV),” or “section 29 vendor” should be used interchangeably to refer to an individual who complies with IC 16-42-5-29. The use of these terms should help to prevent confusion with terms, such as food establishment, retail food establishment, wholesale food establishment, and bed & breakfast establishment, which are defined in laws, rules and ordinances.

“Potentially Hazardous Food Product” means:

(a) a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:

- (1) The rapid and progressive growth of infectious or toxigenic microorganisms.
- (2) The growth and toxin production of *Clostridium botulinum*.
- (3) In raw shell eggs, the growth of *Salmonella enteritidis*

(b) The term includes the following:

- (1) A food of animal origin that is raw or heat treated.
- (2) A food of plant origin that is heat treated or consists of raw seed sprouts.
- (3) Cut melons.
- (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth described in subsection (a).

NOTE: This term, while not quite as specific, is essentially the same term and has the same meaning as the commonly recognized term “potentially hazardous food,” which is used in other Indiana food laws, rules, and ordinances. It is suggested that, for the purpose of preventing possible confusion over very subtle differences in the two terms, the term “potentially hazardous food” may be used interchangeably with, or substituted for, the term “potentially hazardous food product”. Scientifically recognized principles, such as pH, water activity (*A_w*), and other intrinsic factors, will be used to determine whether or not a food must be time or temperature controlled for safety.

“Roadside Stand” means a place, building or structure along, or near, a road, street, lane, avenue, boulevard, or highway where a home-based vendor (HBV) sells their food product(s) to the public.

NOTE: A roadside stand or farmers’ market should not be operated in violation of other federal, state or local laws and ordinances, such as those related to, but not limited to, highway/traffic, zoning/planning, fire/safety/building codes, or municipal selling laws, sometimes known as “peddlers” ordinances or “itinerant vendor” codes. A farmers’ market or roadside stand should be located where the land owner has given permission for the HBV to operate at the site.

GUIDANCE

In SEA 179, new subsection (c) of IC 16-42-5-29 lists a set of considerations, which when followed by an individual, causes the individual not to be considered a “food establishment”. SEA 179 adds the phrase “... (4) consists of eggs meeting the requirements of IC 16-42-11”. As it is written, this phrase suggests that if a HBV’s product is not eggs meeting the requirements of IC 16-42-11, the individual is not exempt from the requirements of 16-42-5, resulting in their being considered a food establishment. Our interpretation of this section is that you can still be considered a HBV whether or not these eggs are sold as part of the operation. In addition, eggs, other than those regulated under IC 16-42-11, such as turkey, duck and quail eggs, are not addressed in IC 16-42-11 and, therefore, establishments selling them are not exempted under Section 29. The Indiana State Egg Board will retain authority over the covered eggs and reserve the right to conduct an inspection where they are sold, whether it is considered a food establishment or not.

New subsection (h) of IC 16-42-5-29 requires ISDH to write rules regarding the slaughter, processing and sale of some poultry. This will likely involve modification of the current ISDH rule, 410 IAC 7-25, “On Farm Processor Exemption”, which was effective March 16, 2013. There is a related ISDH guidance document on the topic released on March 15, 2013. Topics yet to be addressed in rule are: 1.) Slaughter and processing of poultry on a farm; 2.) refrigeration of this poultry; and 3.) labeling of this poultry.

New subsection (i) of IC 16-42-5-29 prohibits local units of government, such as a LHD, from requiring any licensure, certification, or inspection of foods or food products of someone meeting the requirements of subsection (c), which extends to delivery of these poultry products to the end consumer.

In addition, SEA 179 affects IC 16-42-11 by prohibiting local units of government, such as a LHD, from licensure, certification, or inspection of whole, raw shell eggs of a domesticated chicken hen. An individual selling these eggs must have a permit issued by the Indiana State Egg Board.

CONCLUSION

The 2014 Indiana Legislature created SEA 179 that now exempts vendors of certain eggs from being considered food establishments and prevents local governmental unit permitting when the listed criteria for operation are met. The new law requires ISDH to write rules regarding exempted poultry. These rules will be forthcoming.

Due to other changes that have occurred in previous years in IC 16-42-5-29, there is a need to issue new guidance on other sections not addressed in this interim guidance. A more complete and comprehensive guidance will be developed over the summer and will be issued later this fall.

It is understood that the regulatory authority may need to inquire, ask questions, and examine food product labeling of the HBV (Section 29 Vendor) to ensure they are, in fact, in compliance with this law.

As with earlier modifications of this section of the Indiana Code, it is reasonable to expect that Indiana food regulatory authorities should emphasize education on the new requirements over enforcement action.

Regional Food Protection Program representatives are available to assist you with any questions you may have about situations or questionable products that may be encountered.