

DATE: May 17, 2010

TO: All Local Health Departments and other Interested Parties

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SUBJECT: Guidance on Indiana Farmers' Markets Inspection Requirements

PURPOSE

The purpose of this guidance is to provide regulatory information on the authority, permits and inspection of farmers' markets. This guidance also briefly addresses the effect of House Enrolled Act 1309 (HEA 1309) passed during the 2009 legislature on farmers' markets. It may be used as companion guidance to the Home-Based Vendor document entitled, "Guidance for Uniform Use of House Enrolled Act 1309", dated June 11, 2009. For purposes of this document, the following definitions are used:

DEFINITIONS

- a.) "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 the consumer.
- b.) "Food Product" means a food item that is produced by an operator in compliance with all applicable state and federal food laws.
- c.) "Home-Based Vendor" (HBV) means an individual who:
 - has made a non-potentially hazardous food product in their primary residence;
 - is selling the food product they made, only at a roadside stand or at a farmers' market; and
 - complies with Indiana Code (IC) 16-42-5-29.
- d.) "Market Master" (MM) means the individual or group of individuals that are responsible for coordinating and organizing the farmers' market.
- e.) "Rule" means Indiana State Department of Health, Retail Food Establishment Sanitation Requirements, 410 IAC 7-24.
- f.) "Temporary Food Establishment" means the same as defined in Section 98 of the Rule. This would not include facilities that are not otherwise exempt from regulation, such as HBV or nonprofit organizations.
- g.) "Vendor" means an operator providing a food product at the farmers' market.

OVERVIEW

Over the years, many farmers' markets have become more complex by selling items which range from selling only fresh produce to selling completely prepared meals. With the passage of HEA 1309 by the Indiana State Legislature, a new type of vendor, referred to as a "home-based vendor" (HBV) has been

created. HBV's may prepare non-potentially hazardous foods and sell those products at farmers' markets and roadside stands without an inspection or permit by the state or local health department. Please refer to "Guidance for Uniform Use of House Enrolled Act 1309", dated June 11, 2009 for specific information. The following discusses the **authority** provided in law, the role of the **market master (MM)**, **permits**, **inspections** and **other agencies and regulations** that affect the vendors at the farmers' market.

AUTHORITY

There is a need for farmers' markets selling food products to be reviewed, inspected and regulated as a means to assure safe and wholesome food. Farmers' markets are under the inspection of the local health department (LHD), unless operating on state property or otherwise under state jurisdiction. The following statutes, rules and guidance documents govern food operations at farmers' markets in the State of Indiana. Please reference the website addresses in which the laws are available:

| Indiana Code (IC) and Indiana Administrative Rules (IAC) | Document Title | Website Address |
|--|---|--|
| IC16-20-1-19 | <i>Local Health Department: Power and Duties of the Local Health Department: Enforcement</i> | www.in.gov/legislative/ic/code/title16/ar20/ch1.html |
| IC16-20-1-23 | <i>Local Health Department: Power and Duties of the Local Health Department: Inspection of Private Property; Property in which Officer has Interest</i> | www.in.gov/legislative/ic/code/title16/ar20/ch1.html |
| IC16-20-8 | <i>Food Service Inspection</i> | www.in.gov/legislative/ic/code/title16/ar20/ch8.html |
| IC16-18-2-137 | <i>Definitions: Food Establishment</i> | www.in.gov/legislative/ic/code/title16/ar18/ch2.html |
| IC16-42-5 | <i>Food: Sanitary Requirements for Food Establishments</i> | www.in.gov/legislative/ic/code/title16/ar42/ch5.html |
| IC16-42-5.2 | <i>Food Handlers</i> | www.in.gov/legislative/ic/code/title16/ar42/ch5.2.html |
| 410 IAC 7-24 | <i>Retail Food Establishment Sanitation Requirements</i> | www.in.gov/isdh/files/410_iac_7-24.pdf |
| 410 IAC 7-22 | <i>Certification of Food Handlers</i> | www.in.gov/isdh/files/FoodHandler-Final.pdf |
| Value Added Product(s) Guidance | | Website Address |
| <i>"Guidance on Honey Production" July 31, 2006</i> | | www.in.gov/isdh/21054.htm |
| <i>"Final Guidance on Prepackaged Frozen Meat, Poultry and Rabbit for Retail Sale June 28, 2006"</i> | | www.in.gov/isdh/21054.htm |
| <i>"Final Guidance on Production of Maple Syrup June 28, 2006"</i> | | www.in.gov/isdh/21054.htm |
| <i>"Final Guidance on Whole Uncut Fresh Produce Storage and Distribution – December 12, 2006</i> | | www.in.gov/isdh/21054.htm |
| <i>"Guidance on Sorghum Production" March 19, 2008</i> | | www.in.gov/isdh/21054.htm |

MARKET MASTER (MM)

Farmers' markets are typically operated by a MM. The MM has control over the vendors who are allowed to participate and the product(s) each vendor may sell. If the market does not have a MM, the event organizer or committee will serve in the same capacity and maintain oversight over vendors allowed to participate. In either situation, the MM or organizer has the authority, above and beyond the LHD, to remove a vendor and/or food product from sale. It is recommended that the LHD educate MMs on HEA 1309 and the implications the bill may have on their particular market. The decision to allow the sale of products produced by an HBV lies with the MM and the MM can arbitrarily decide to allow or not allow food products from an HBV to be sold.

In addition, the Indiana State Department of Agriculture recommends that farmers' markets become officially organized as a legal entity with bylaws and a governing body, or operate as a part of such an entity. For example, some communities have organized their farmers' market as a committee under their Chamber of Commerce. Either of these approaches will provide the necessary authority for farmers' markets to control the activities of their operations. Operating under an existing entity is a good option for communities that may not have the resources to undertake the expense of forming a stand alone entity. The Purdue University New Ventures Program offers a "boot camp" training for prospective farmers' market operators and it is highly recommended that the MM and other organizers participate in this valuable program.

PERMITS

Food permits may be required prior to operation by the LHD. Permits and inspection fees are based upon the requirements of local ordinances.

It is important to remember that the food safety inspection officer (FSIO) will need to determine which vendors are exempt from permitting requirements. Senate Enrolled Act (SEA) 190 exempts certain religious and non-public educational settings, civic, fraternal, veterans', or charitable organizations and HEA 1309 exempts home-based vendors.

A farmers' market is a unique venue, but does not operate any differently than any other temporary event or celebration. The main difference between them is that the farmers' market typically operates on a set frequency every week during the warmer seasons, such as one day a week on Saturday mornings. Therefore it is suggested that a special permit be developed to address this type of intermittent operation, such as a "seasonal" or "farmers' market" permit, that will allow the LHD to effectively address this kind of operation. This will avoid the food vendors from having to apply for a new permit every week. Farmers' markets may fall under additional regulations from other agencies if conducting outdoor cooking under an awning, using scales, electric cords, etc. Check with local regulatory authorities, such as the fire department and/or zoning board, to learn about other requirements.

Vendors, other than HBVs', are required to have a base of operation. A base of operation is regulated using the Rule and all local ordinance requirements related to permits. It is also necessary for vendors, other than HBVs', to meet the requirements associated with temperature and food storage practices for the transporting of food items to, from and while operating at the farmers' market. If a personal vehicle is used, it is considered an element of the food establishment. The vehicle must be maintained clean and free of vermin and clutter. If the product requires temperature control then proper facilities within the vehicle must be provided to maintain correct temperatures.

Although the same food safety regulations are enforced throughout the state, each local health jurisdiction does have the authority to pass an ordinance referencing state law and allowing for the collection of fees and issuances of permits. Because of this fact, vendors will find a wide variation in fees and ordinances throughout the state, however, the Indiana State Department of Health (ISDH) recommends all local food ordinances be based on the Indiana Environmental Health Association's Model Food Ordinance to promote uniformity and consistency throughout Indiana.

INSPECTION

Inspections should occur at reasonable times and be unannounced. The MM can (and should) assist the vendors to comply with all state and local laws. The LHD should take any opportunity to educate the MM on the importance of safe food handling and practices and invite the MM to accompany him/her on the inspection. The MM should share this information with the vendors to assist them in complying with requirements. This process should be similar to any other relationship with an organizing committee or official of other events that the LHD currently regulates.

The process of inspecting and the questions to ask a vendor at a farmers' market are not any different than for any other retail food establishment, temporary retail food establishment and/or food establishment. All elements of the food operation, such as demonstration of knowledge, employee health, consumer advisory, approved source, time/temperature control of food, protection from contamination, bare hand contact with ready-to-eat foods, good hygienic practices and use of chemicals, should be inspected from source, storage, preparation, sampling and to the point the food is sold or discarded. As with any retail operation there should be sufficient control demonstrated at each step of the food flow.

The need for a certified food handler is dependent upon the menu type of food handled and the exemption status of the vendor. For examples of each of the exempt and non-exempt food items, review the "Frequently Asked Questions" available from our website at <http://www.in.gov/isdh/files/FAQMAR09.pdf>.

The document entitled "The Guide to Producing Safe Cider" can be of assistance in the inspection of an apple cider or other juice operation. Apple cider is not a potentially hazardous food, but is considered **High Risk** as a juice and should have high priority during inspections. For example, apple cider does not have to be pasteurized if sold retail. However, if cider, or any other juice, is not pasteurized it must be labeled stating "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." It should be kept cold (<41°F).

OTHER AGENCIES AND REGULATIONS

Indiana State Egg Board rules require that the retailer at a farmers' market be licensed by the Indiana State Egg Board and that the license be available upon request. A complete list of requirements is available from the Indiana State Egg Board's website at www.ansc.purdue.edu/ISEB/.

Weights and Measures Program at ISDH and/or the local Weights and Measures inspector regulate the scales used at farmers' markets. For any questions relating to scales at a farmers' markets call 317/356-7078. Weights and Measures' program regulations are available from their website at www.in.gov/isdh/23288.htm.

Women, Infant, Children (WIC) Program at ISDH is based on the USDA nutritional program and is involved in farmers' markets. For information pertaining to WIC's involvement in farmers' markets, contact Sara Renner, Director, WIC Program, ISDH at 317/233-7867 or srenner@isdh.in.gov

Organic Foods, although often seen at farmers’ markets, “organically grown” food does not necessarily impact food safety, but does affect the nutrition, taste and freshness. Certified organic foods are regulated by United States Department of Agriculture (USDA) and Indiana Code (IC) 25-4-12. Once certified, the producer may display the Green Circle – USDA certified. For more information, see the website at www.ams.usda.gov/AMSV1.0/nop and www.usda-fda.com/articles/organic.htm or call 202/720/3252.

The following table lists additional resources that have pertinence to farmers’ market operations:

| References: Codes, Regulations and Guidance | <u>Website</u> |
|---|---|
| <i>Purdue Farmers’ Market Guidebook</i> | www.ces.purdue.edu/extmedia/EC/EC-739.pdf |
| <i>Food Safety Regulation for Farmers’ Markets</i> | www.agecon.purdue.edu/newventures/Pubs/EC-740.pdf |
| <i>Licensing, Regulatory, and Tax Requirements for Indiana Businesses – A checklist Guide for New Businesses:</i> | www.agecon.purdue.edu/newventures/Pubs/EC733.pdf |
| <i>Food Protection general website</i> | http://www.in.gov/isdh/20640.htm |
| <i>“Guide to Producing Safe Cider”</i> | http://www.in.gov/isdh/21054.htm |
| <i>Model Food Ordinance</i> | http://www.iehaind.org/foodguidance.htm |
| <i>Temporary Food Establishment Checklist</i> | http://www.iehaind.org/foodprotinfo&checklist.htm and http://www.iehaind.org/ieha_files/TemporaryChecklist-Windows-XP.pdf |
| <i>Guidance for Uniform Use of House Enrolled Act 1309</i> | http://www.in.gov/isdh/24884.htm |
| <i>Guidance for Changes to Definition of “Food Establishment” Under Senate Enrolled Act 190 (IC 16-18-2-137)</i> | http://www.in.gov/isdh/24884.htm |

CONCLUSION

It is important that all LHDs work with market masters to provide education and expertise of food safety rules and guidelines. The local health department has the responsibility to regulate all food establishments including those operating at a farmers' market, not otherwise exempt from law, to ensure consumers visiting these operations are offered the same protection as other traditional food establishments. It is also extremely important that the LHD accurately and uniformly apply the state rules when regulating food establishments across jurisdictions. This is one of the most common complaints from the food industry about inconsistent rule application amongst jurisdictions. It is hoped this guidance document will serve as a basis of further understanding in how to properly regulate a famers' market and it is highly encouraged that the LHD meet with the organizers prior to beginning a new inspection initiative for your department. As always, representatives from this office are available to assist with guidance and interpretation of the rules to promote uniformity.