BEFORE THE INDIANA STATE DEPARTMENT OF HEALTH

AN ADMINISTRATIVE RULES HEARING
LSA DOCUMENT #12-431

HEARING OFFICER REPORT

This matter came before the duly appointed Hearing Officer, Manda Clevenger, on the 6th day of December, 2012, at 10:00 a.m., at the Indiana State Department of Health (ISDH), 2 North Meridian Street, Indianapolis, Indiana.

Notice of time and place of the hearing was given as provided by law by publishing in the *Indianapolis Star* and in the *Indiana Register* on November 7, 2012. Proof of publication of this notice has been received by the ISDH and the notice and proof are hereby incorporated into the record of this cause by reference and placed in the official files of the ISDH.

ORAL STATEMENT

Carol Ryan
Senior Team Leader
Marion County Health Department

Ms. Ryan testified at the hearing. Her comments can be found on pages 4 through 13 of the hearing transcript, incorporated by reference as **Exhibit 1.**

Jeff Sonnefield
Team Leader
Marion County Health Department

Mr. Sonnefield testified at the hearing. His comments can be found on pages 6 through 9 and 12 through 13 of the hearing transcript, incorporated by reference as **Exhibit 1.**

WRITTEN STATEMENT

No written statements were submitted.

The record was left open until December 6, 2012. No comments were submitted during that time period.

Dated at Indianapolis, Indiana this 3rd day of January, 2013.

Manda Clevenger
Hearing Officer

BEFORE THE STATE DEPARTMENT OF HEALTH

FOR THE STATE OF INDIANA

IN THE MATTER OF THE PUBLIC
HEARING ON THE FARM POULTRY
PROCESSOR EXEMPTION RULEMAKING

TRANSCRIPT OF PROCEEDINGS

HELD DECEMBER 6, 2012

BEFORE HEARING OFFICER MANDA CLEVENGER

Exhibit
1

CLEVENGER: This is a public hearing before the Indiana State Department of Health on the 6th day of December of 2012 at 10:00 A.M. at the Indiana State Department of Health, Monroe Conference Room, Two North Meridian Street, Indianapolis, Indiana and is docketed before the Executive Board of the State Department of Health as L. S. A. Docket Number 12-431, a rule to add 410 I. A. C. 7-25 to incorporate by reference 9 CFR 381.10(C) to allow poultry products slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmer's market or at a roadside stand and to require that poultry produced be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10. Notice of time and place of this hearing was given as provided by law by publishing in the Indianapolis Star and at the Indiana Register on November 7th, 2012. Proof of publication of this Notice has been received by the Department and the Notice and Proof are now incorporated in the record of this cause by reference and placed in the official files of the Department. My name is

Manda Clevenger and I have been appointed hearing officer by the State Department of Health to serve in this cause. The sign-in sheet should be completed by all individuals desiring to be shown as appearing of record and shall be completed by those who desire to be heard during this hearing. If you have not already signed the sheet, please do so at this time. You will also find at the back of the room a copy of the proposed rule, the Small Business Economic Impact Statement, and the Indiana Economic Development Corporation's comments on the Economic Impact Statement. You are welcome to take a copy of each. Additionally, the Proposed Rule and I. E. C. D. comments are posted on the Department's website at www.in.gov/isdh under rules. Oral statements will be heard and written statements may be handed to me, e-mailed to me at M-C-L-E-V, as in Victor, E-N-G-E-R, the number one (1)@isdh.in.gov or mailed to me at Two North Meridian Street, Section 3H-99, Indianapolis, Indiana, 46204 by today, December 6th, 2012. All written and verbal comments will be reported in my report on this

hearing to the Executive Board of the Indiana State Department of Health. Each person who speaks for the record is requested to clearly identify yourself by giving your name, spelling it, and identifying who you represent. Is there anyone that cares to be heard?

RYAN: I do. My name is Carol Ryan. I am a senior team leader in the Department of Food and Consumer Safety at the Marion County Health Department, and I mostly have questions. One of those questions is the House Bill that was passed, what was the pass date and which copy is that? Would there have been any changes after May 31st? 'Cause that's the last one I could find online.

CLEVENGER: Mostly at the public hearing you're just here to make comments and then we can always respond to those questions later.

RYAN: Okay. But I need to know, I need to know what I'm speaking, what I'm talking about before I can speak specifically to-- If I don't know which copy of the Bill passed, 'cause I've got several-- Or maybe I could just ask. One of the Bills talked about for purposes of this

Bill making this poultry a non-potentially hazardous food product. Has that been removed? No. We are against that at the Marion County Health Department. We also would like to know who is going to check for these small farmers to be in compliance so that we know for a fact that they're not slaughtering poultry that is dying, disabled or diseased and do not distribute poultry that has died before slaughter, and that they do process poultry safely, and that they do maintain proper temperature control of the poultry. And I'd like to know, so they're exempt from the normal inspection of food, of any other poultry that's sold to the public. How do we ensure that, that all of those things are being done?

CLEVENGER: So do you have any specific changes you would like to have done to the rule?

RYAN: I would like to know the answer to those questions before I would have any questions.

CLEVENGER: 'Cause the purpose of today's meeting is to, for you to let us know what you have...

RYAN: Okay. All right.

CLEVENGER: ...about the rule, so that we know what we

need to change.

RYAN: Okay. My question is why would you ever consider raw poultry a non-potentially hazardous food? Why would you not inspect poultry that is being sold to the public? I worked, I was the main person involved in the farmer's markets for the last five (5) years. I know farmers and farmer's markets intimately, and now Jeffrey supervises the farmer's market program and we, as well as our Administrator, Janelle Kauffman, are not in favor of these changes. Did you have anything you wanted to say?

SONNEFIELD: That pretty much said what I wanted to say. You know, I--

CLEVENGER: Go ahead and state your name for the record and spell it.

SONNEFIELD: My name is Jeff Sonnefield, S-O-N-N-E-F-I-E-L-D, and I am a team leader with Marion County Health Department. I also have concerns about selling the poultry without some sort of inspection or ensuring that sanitary practices are being maintained. I just think that, you know, poultry is one of the worst meats, one of the worst food items you could potentially

sell. It has salmonella. If it's not regulated or not handled properly it can be a very dangerous item. That's our concern is that if it put the public at risk for food borne illness.

HOWELL: Scott Gilliam is looking up the CFR.

GILLIAM: I'm trying to.

HOWELL: Much of what we have done with this is based on the Federal Regulation that allows farmers to sell up to a thousand (1,000) chickens per year uninspected. Legislature has suggested that this poultry be available at farmer's markets or from the home based on that USDA allowing of up to a thousand (1,000) birds a year. So any provider of birds beyond that thousand (1,000) birds is going to have to go through the regular inspection process. We're only codifying how it's used, that exemption is used in Indiana to allow them to sell at farmer's markets. One of the things to help make sure that poultry is handled as well as it can or at least protected as best as it can is the requirement that it be sold frozen.

RYAN: Right. So is this thousand (1,000) bird uninspected in effect at this time?

HOWELL: Yeah.

RYAN: It's not part of the new Food Safety Act?

HOWELL: It's part of the CFR. When it says here that it's codified regulations, it's already there.

RYAN: And where can they sell the--

HOWELL: I don't think the Code says, has any limitations.

SONNEFIELD: It's basically exempt from all regulations other than what we've...

GILLIAM: Added to it.

SONNEFIELD: ...this section about documenting their numbers and that kind of thing.

RYAN: Yeah.

HOWELL: And it was always, it's been exempt for years and years and years by USDA. But when we updated the Food Code we closed that gap...

RYAN: Okay.

HOWELL: ...years ago. But now Legislature's opened it back up.

RYAN: So even though you've opened it back up what you're really doing is narrowing the--

HOWELL: We're narrowing the window of where it can be sold.

RYAN: So that even though it really could be sold...

HOWELL: Anywhere.

RYAN: ...anywhere, we're narrowing it to that.

HOWELL: Yeah.

RYAN: I did not understand that.

GILLIAM: And requiring that it be frozen, which is significantly different from what Code-- 'Cause Code does, Federal Code does not require that.

RYAN: Yes.

GILLIAM: That was a step we put in there to ensure that it was just protected as best as we could protect it.

RYAN: Okay. All right. I did not know that. So we needed to do this because otherwise they would be able to, because-- Oh, okay.

SONNEFIELD: So it's making it more restrictive. So otherwise they would be able to sell it anywhere.

RYAN: See, like I said, we came here with no information and just told, you know, given a copy of the Bill and it's like, "Here you go." But--

SONNEFIELD: I still find it a little bit disturbing about selling poultry uninspected. I guess that's, my red flag goes up after being an inspector for so long. It's, I just find that--

HOWELL: I think all of us do that have been in the food protection business, find that a little difficult to accept. I'm aware of an individual in Virginia who slaughters on the farm. He has proven through cultures that his process is resulting in a cleaner bird than what you can buy in a supermarket. So I think there is some scientific evidence that farmers can do as good or a better job than a commercial producer, so I have to take both sides to that and see what can be done versus what my prejudices might be and allow for some flexibility.

RYAN: Sure. That makes sense.

GILLIAM: But I think the confusion was in the current Food Code we did close that loop even though the USDA exemption has been out there for years, and...

RYAN: Uh-huh. (Yes)

GILLIAM: ...but now this will change that in our Food Code. So you are right that we were prohibiting it but it was always allowed by USDA.

RYAN: And the Feds call it a non-potentially hazardous food?

GILLIAM: No.

HOWELL: It's not described as a non-potentially hazardous food.

RYAN: Well why do we have to have-- Oh, we have to put that in there to work with the rest of State Ordinance?

HOWELL: There is, I don't think there's anyplace anybody says this product is non-potentially hazardous. Now the farmer's market rule has some language as to that, but this only allows to sell the product frozen at farmer's markets. It doesn't move it into a classification of...

RYAN: Right.

HOWELL: ...non-potentially hazardous foods.

RYAN: So it's more for the home-based rule which says non-potentially hazardous foods. Okay. Thank you for clarifying.

HOWELL: I think the confusion comes in where they put this in the statute is in the same area where the other home-based vendors' exemptions are. So it doesn't just say it's a non-potentially hazardous food but it sort of alludes to it.

RYAN: Okay.

HOWELL: But the reality is it just allows the sale at

that location.

RYAN: Right. You just kind of worry about things mushrooming when you start to call one thing not potentially hazardous, but-- So--

HOWELL: Yeah. It's easily understandable 'cause it is in the same section as the exempt foods and everything else in there is a non-potentially hazardous food.

RYAN: Right. Okay.

HOWELL: And so the way around that was to require that it be frozen, and that's--

RYAN: Which is great, so-- I apologize. I hope that is not me. I'll turn it off.

CLEVENGER: So just to clarify, do you still stand by the first statement you made that you don't approve of the rule?

RYAN: We don't approve of the Federal Rule, but we approve of anything that can be done to tighten that rule, which the freezing and the only allowing the poultry to be sold at farmer's markets does do.

SONNEFIELD: Yeah. Pretty much I still think I disagree with the policy of selling the chicken on home-based vendor, as a home-based vendor at a farmer's market. I still have that red flag

with it.

CLEVENGER: Any other concerns?

RYAN: Nope.

CLEVENGER: Seeing and hearing everyone who wants to be heard at this time I want to thank each of you for your presentation and my report of the hearing will be in writing to the Executive Board of the Indiana State Department of Health for their consideration for a valid option. These proceedings pursuant to Notice are hereby concluded. This cause is therefore adjourned until final order of the Executive Board, and thank you all for coming.

RYAN: Thank you. Sorry for the misunderstanding.

STATE OF INDIANA)
) SS:
COUNTY OF LAWRENCE)

I, Christie A. Guthrie, a Notary Public in and for the County of Lawrence, State of Indiana, do hereby certify that the above and foregoing is a true and accurate transcript of the Public Hearing regarding Farm Poultry Processor Exemption Rulemaking held before Manda Clevenger, Hearing Officer for the Indiana State Department of Health, that the foregoing hearing was held in the offices of the Indiana State Department of Health, Two North Meridian Street, Indianapolis, Marion County, Indiana, on the 6th day of December, 2012; that said hearing was taken down by means of recording and afterwards reduced to typewriting by me.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of either party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for the respective parties.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of December, 2012.

Christie A. Guthrie
Christie A. Guthrie
Notary Public
A Resident of Lawrence Co., IN

My Commission Expires:
December 17, 2017