

IC 16-42-5

Chapter 5. Food: Sanitary Requirements for Food Establishments

IC 16-42-5-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 28 of this chapter by P.L.266-2001 apply to violations that occur after June 30, 2001.

As added by P.L.220-2011, SEC.322.

IC 16-42-5-0.3

Initial schedule of civil penalties; rules; enforcement of previously adopted local penalties

Sec. 0.3. (a) The state department of health may adopt rules establishing the initial schedule of civil penalties required under section 28 of this chapter, as added by P.L.266-2001, at any time after May 11, 2001, in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1. An emergency rule adopted under this section expires on the later of:

- (1) the date permanent rules are adopted to replace the emergency rules; or
- (2) July 1, 2003.

(b) A corporation or local health department that, before January 1, 2001, adopted monetary penalties for the violation of any state or local law or rule concerning food handling or food establishments may continue to enforce those locally prescribed monetary penalties (including the issuance of tickets or citations authorized by local law) and deposit the amounts collected as prescribed by local law until the later of:

- (1) the date permanent rules are adopted establishing the schedule of civil penalties required under section 28 of this chapter, as added by P.L.266-2001; or
- (2) July 1, 2003.

As added by P.L.220-2011, SEC.323.

IC 16-42-5-0.4

Enforcement of local standards for food handling or food establishments

Sec. 0.4. A corporation or local health department that, before January 1, 2001, adopted sanitary standards for food handling or food establishments that are different from the state rules concerning sanitary standards for food handling or food establishments may continue to enforce those locally prescribed sanitary standards until the later of:

- (1) the date that the state department adopts rules to modify or replace the state department's rules that were in effect on January 1, 2001, concerning sanitary standards for food handling or food establishments; or

(2) July 1, 2003.
As added by P.L.220-2011, SEC.324.

IC 16-42-5-0.5

Local standards or penalties regarding food handling or food establishments precluded

Sec. 0.5. Except as provided in this chapter, a corporation or local health department may not impose any:

- (1) sanitary standards on; or
- (2) locally prescribed monetary penalties for the violation of any state law or rule concerning;

food handling or food establishments.

As added by P.L.266-2001, SEC.9.

IC 16-42-5-0.7

Local standards regarding food handling machinery precluded

Sec. 0.7. (a) Except as provided in this chapter, a corporation or local health department may not impose any requirements or standards on the installation of food handling machinery in a food establishment regulated by this chapter.

(b) The installation of food handling machinery includes all activities associated with the machinery's installation, including the wiring, plumbing, air handling, and all other processes.

(c) This section does not limit the authority of the state fire marshal or other state agencies to regulate food establishments.

(d) This section does not limit the authority of a corporation or local health department to enforce requirements or standards established by state law or the state department for the installation of food handling machinery.

As added by P.L.266-2001, SEC.10. Amended by P.L.1-2006, SEC.306.

IC 16-42-5-0.9

Petitions for changes in rules

Sec. 0.9. (a) A corporation or local health department may petition the state department requesting one (1) or more modifications or changes in the state department's rules concerning:

- (1) food handling machinery;
- (2) sanitary standards for food handling or food establishments;
- or
- (3) civil penalties authorized under IC 16-42-5-28.

(b) Following the receipt of a petition described in subsection (a), the state department shall hold a public hearing concerning the corporation or local health department's requested modifications or changes and shall determine in writing whether to adopt rules under IC 4-22-2 to modify or change the state department's rules.

As added by P.L.266-2001, SEC.11.

IC 16-42-5-1

Repealed

(As added by P.L.2-1993, SEC.25. Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-2

Repealed

(As added by P.L.2-1993, SEC.25. Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-2.3

Food handling machinery defined

Sec. 2.3. As used in this chapter, "food handling machinery" means any of the following used for and in food handling:

- (1) Equipment.
- (2) Appliances.
- (3) Tools.
- (4) Plumbing and related fixtures.
- (5) Refrigeration devices.
- (6) Heating, ventilation, and cooling equipment.
- (7) Any other piece of equipment used for and in food handling.

As added by P.L.266-2001, SEC.12.

IC 16-42-5-3

Repealed

(As added by P.L.2-1993, SEC.25. Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-4

Repealed

(As added by P.L.2-1993, SEC.25. Amended by P.L.192-2002(ss), SEC.159; P.L.138-2006, SEC.11. Repealed by P.L.100-2007, SEC.2.)

IC 16-42-5-5

Rules

Sec. 5. The state department may adopt rules under IC 4-22-2 for the efficient enforcement of this chapter and to establish minimum sanitary standards for the operation of all food establishments.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-5.2

Variances from rules

Sec. 5.2. The state department may grant a variance from one (1) or more of the state rules concerning:

- (1) food handling machinery; or
 - (2) sanitary standards for the operation of food establishments;
- in accordance with IC 16-19-3-4.3.

As added by P.L.266-2001, SEC.13.

IC 16-42-5-6

Conditions of health and comfort

Sec. 6. A food establishment must meet the following conditions:

- (1) Be adequately lighted, heated, drained, and ventilated.
- (2) Be supplied with uncontaminated running water.
- (3) Have adequate sanitary facilities.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-7

Construction to facilitate cleanliness

Sec. 7. Each food establishment and the machinery used in each food establishment must be constructed so as to be easily and thoroughly cleaned.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-8

Cleanliness and sanitation of premises and vehicles

Sec. 8. The floors, sidewalls, ceiling, furniture, receptacles, implements, and machinery of a food establishment and a vehicle used to transport food products must at all times be clean and sanitary.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-9

Walls and ceilings; construction; washing

Sec. 9. (a) The sidewalls, woodwork, and ceiling of a food establishment must be made of an impervious material with a finish that is washable.

(b) The sidewalls, woodwork, and ceiling must be kept washed clean with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-10

Floors; construction; washing

Sec. 10. (a) The floor of a food establishment must be made of nonabsorbent material that can be flushed with water.

(b) The floor of a food establishment must be kept washed clean with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-11

Domestic animals; rodents; insects

Sec. 11. A food establishment must be protected by all reasonable means against the presence of and entrance of domestic animals, rodents, flies, and other insects.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-12

Garbage removal

Sec. 12. Refuse, dirt, and waste products subject to decomposition

and fermentation incident to food handling shall be removed daily from food establishments.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-13

Toilet room

Sec. 13. (a) A food establishment must have a convenient toilet room separate and apart from and not opening directly into a room that is used for food handling.

(b) The floor of the toilet room must be made of a nonabsorbent material.

(c) The floor of the toilet room shall be washed and scoured daily.

(d) Each toilet fixture and each toilet room must be adequately ventilated.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-14

Washrooms

Sec. 14. (a) A food establishment must have a washroom adjacent to each toilet room.

(b) The washroom shall be supplied with adequate lavatories, soap, hot and cold running water, and clean individual towels.

(c) The washroom shall be kept clean by washing with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-15

Food handling rooms; exclusive use

Sec. 15. A room that is used for food handling or that is equipped for use for food handling may not be used for any other purpose.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-16

Dressing rooms

Sec. 16. (a) Rooms separate and apart from rooms used for food handling must be provided for the changing and hanging of wearing apparel.

(b) The rooms for changing and hanging wearing apparel must be kept clean.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-17

Expectorating

Sec. 17. A person may not expectorate in or on the machinery, equipment, floor, sidewalls, or other structure of a food establishment.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-18

Sleeping in food handling rooms

Sec. 18. A person may not live or sleep in a room used for food handling or in a room opening directly into a food establishment.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-19

Diseases; employees

Sec. 19. A person who has a communicable or infectious disease may not work in a food establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-20

Wearing apparel; employees

Sec. 20. A person shall wear clean outer garments while working in a food establishment.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-21

Washing; employees

Sec. 21. A person who works in a food establishment shall wash the person's hands and arms thoroughly with soap and clean water before beginning work, before resuming work after a rest period, and before resuming work after visiting a toilet room.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-22

Sitting or lying on food handling equipment

Sec. 22. A person may not sit or lie upon equipment used or installed for use in handling food.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-23

Inspections

Sec. 23. The state department may do the following:
(1) Enter at any time a food establishment or place suspected of being a food establishment.
(2) Inspect the premises, utensils, fixtures, equipment, furniture, and machinery used in food handling.
As added by P.L.2-1993, SEC.25.

IC 16-42-5-24

Local health officers

Sec. 24. (a) For the purpose of enforcing IC 16-41-20, IC 16-41-23, IC 16-41-24, IC 16-41-34, or IC 16-42-5, the local health officers are food environmental health specialists subordinate to the state department.
(b) The state department shall provide to the local health officers

who are food environmental health specialists guidelines concerning the interpretation of the state department's rules concerning food handling and food establishments so that enforcement of the state laws and rules is uniform throughout the state.

As added by P.L.2-1993, SEC.25. Amended by P.L.137-1996, SEC.72; P.L.144-1996, SEC.13; P.L.266-2001, SEC.14; P.L.104-2003, SEC.7; P.L.86-2015, SEC.2.

IC 16-42-5-25

Prosecution of violators; orders to abate condition or violation

Sec. 25. If, upon inspection of a food establishment, a local health officer or food environmental health specialist finds an employer, operator, or other employee to be violating IC 16-41-20, IC 16-41-23, IC 16-41-24, IC 16-41-34, or this chapter, the local health officer or food environmental health specialist shall do at least one (1) of the following:

(1) Furnish evidence of the violation to the prosecuting attorney of the county or circuit in which the violation occurs. The prosecuting attorney shall prosecute all persons violating IC 16-41-20, IC 16-41-23, IC 16-41-24, IC 16-41-34, or this chapter, or rules adopted under those provisions.

(2) Report the condition and violation to the state health commissioner or the commissioner's legally authorized agent. The state health commissioner may issue an order to the person in authority at the offending establishment to abate the condition or violation within five (5) days or within another reasonable time required to abate the condition or violation. The proceedings to abate must be in accordance with IC 4-21.5.

As added by P.L.2-1993, SEC.25. Amended by P.L.137-1996, SEC.73; P.L.144-1996, SEC.14; P.L.104-2003, SEC.8; P.L.1-2009, SEC.118; P.L.86-2015, SEC.3.

IC 16-42-5-26

Noncompliance with order or requirement; offenses

Sec. 26. (a) A person who refuses to comply with a lawful order or requirement of the state health commissioner made in writing as provided in this chapter commits a Class B misdemeanor.

(b) Each day after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate the conditions as ordered by the state health commissioner constitutes a separate offense.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-27

Violations of chapter; offenses

Sec. 27. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-28

Civil penalties

Sec. 28. (a) The state department shall adopt rules under IC 4-22-2 establishing a schedule of civil penalties that may be imposed by the state department to enforce either of the following:

- (1) This chapter.
- (2) Rules adopted to implement this chapter.

(b) A penalty included in the schedule of civil penalties established under this section may not exceed one thousand dollars (\$1,000) for each violation per day.

(c) The civil penalties collected under this section shall be deposited in the state general fund.

(d) The state department may issue an order of compliance or impose a civil penalty included in the schedule of civil penalties established under this section, or both, against a person who does any of the following:

- (1) Fails to comply with this chapter or a rule adopted to implement this chapter.
- (2) Interferes with or obstructs the state department or the state department's designated agent in the performance of duties under this chapter.

(e) The state department may issue an order of compliance against a person described in subsection (d) under IC 4-21.5-3-6, IC 4-21.5-3-8, or IC 4-21.5-4. The state department may impose a civil penalty against a person described in subsection (d) only in a proceeding under IC 4-21.5-3-8.

(f) A proceeding commenced to impose a civil penalty under the schedule of civil penalties established under this section may be consolidated with any other proceeding commenced to enforce either of the following:

- (1) This chapter.
- (2) A rule adopted by the state department to implement this chapter.

(g) A corporation or a local health department:

- (1) may bring an administrative action to enforce this chapter, rules adopted to implement this chapter, or the schedule of civil penalties established by the state department under this section;
- (2) may use tickets or citations to enforce this chapter, rules adopted under this chapter, or the schedule of civil penalties established by the state department under this section; and
- (3) shall deposit in the general fund of the corporation or the local health department the civil penalties collected under this section.

(h) For each violation of the state law or rules concerning food handling or food establishments, the state or either:

- (1) a corporation; or
- (2) a local health department;

may bring an enforcement action against a food establishment.
As added by P.L.266-2001, SEC.15. Amended by P.L.97-2004, SEC.70.

IC 16-42-5-29

Exemption from food establishment requirements; standards for farmer's markets and roadside stands; samples; health hazards

Sec. 29. (a) This section applies to an individual vendor of a farmer's market or roadside stand.

(b) As used in this section, "end consumer" means a person who is the last person to purchase any food product and who does not resell the food product.

(c) An individual vendor of a farmer's market or roadside stand is not considered to be a food establishment and is exempt from the requirements of this title that apply to food establishments if the individual vendor's food product:

(1) is made, grown, or raised by an individual at the individual's primary residence, property owned by the individual, or property leased by the individual;

(2) is not a potentially hazardous food product;

(3) is prepared by an individual who practices proper sanitary procedures, including:

(A) proper hand washing;

(B) sanitation of the container or other packaging in which the food product is contained; and

(C) safe storage of the food product;

(4) is not resold; and

(5) includes a label that contains the following information:

(A) The name and address of the producer of the food product.

(B) The common or usual name of the food product.

(C) The ingredients of the food product, in descending order by predominance by weight.

(D) The net weight and volume of the food product by standard measure or numerical count.

(E) The date on which the food product was processed.

(F) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health."

(d) An individual vendor who meets the requirements in subsection (c) is subject to food sampling and inspection if:

(1) the state department determines that the individual vendor's food product is:

(A) misbranded under IC 16-42-2-3; or

(B) adulterated; or

(2) a consumer complaint has been received by the state department.

(e) If the state department has reason to believe that an imminent

health hazard exists with respect to an individual vendor's food product, the state department may order cessation of production and sale of the food product until the state department determines that the hazardous situation has been addressed.

(f) For purposes of this section, the state health commissioner or the commissioner's authorized representatives may take samples for analysis and conduct examinations and investigations through any officers or employees under the state health commissioner's supervision. Those officers and employees may enter, at reasonable times, the facilities of an individual vendor and inspect any food products in those places and all pertinent equipment, materials, containers, and labeling.

(g) The state health commissioner may develop guidelines for an individual vendor who seeks an exemption from regulation as a food establishment as described in subsection (c). The guidelines may include:

- (1) standards for best safe food handling practices;
- (2) disease control measures; and
- (3) standards for potable water sources.

(h) The department shall adopt rules that:

- (1) exclude slaughtering and processing of poultry on a farm for the purpose of conducting limited sales under 9 CFR 381.10, as adopted by reference in 345 IAC 10-2.1-1, from the definition of food establishment if the slaughtered and processed poultry or poultry product is sold only to the end consumer on the farm where the poultry is produced, at a farmer's market, through delivery to the end consumer, or at a roadside stand;
- (2) require that poultry processed under this section that is sold on a farm be refrigerated at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10;
- (3) allow rabbits to be slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmer's market, and at a roadside stand;
- (4) require that rabbits processed under this section be frozen at the point of sale; and
- (5) require that poultry processed under this section that is sold at a farmer's market, through delivery to the end consumer, or at a roadside stand be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10.

An individual vendor of a farmer's market or roadside stand operating under the exclusion provided in this subsection must slaughter and process poultry in compliance with the Indiana state board of animal health requirements for producers operating under 9 CFR 381.10. Poultry processed under the exclusion provided in this subsection must be used, sold, or frozen within seventy-two (72) hours of processing.

(i) An individual vendor of a farmer's market or roadside stand that sells eggs that meet the requirements under IC 16-42-11 is not considered to be a food establishment and is exempt from the

requirements of this title that apply to a food establishment relating to the sale of eggs.

(j) Notwithstanding any other law, a local unit of government (as defined in IC 14-22-31.5-1) may not by ordinance or resolution require any licensure, certification, or inspection of foods or food products of an individual vendor who meets the requirements in subsection (c), including an individual vendor who delivers the individual's food or food product directly to an end consumer.

As added by P.L.86-2009, SEC.3. Amended by P.L.86-2012, SEC.1; P.L.128-2013, SEC.1; P.L.154-2014, SEC.1; P.L.202-2015, SEC.7.

IC 16-42-5-30

Exemption from food establishment requirements; standards for farm winery and small brewery permit holders at festivals, fairs, and other temporary locations; licensure, registration, and certification requirements by local units prohibited

Sec. 30. (a) As used in this section, "permit holder" means the holder of:

- (1) a farm winery permit under IC 7.1-3-12-5; or
- (2) a brewer's permit under IC 7.1-3-2-7(5).

(b) A permit holder that sells or furnishes alcoholic beverages by the glass at a festival, fair, or other temporary location authorized by the permit holder's permit under IC 7.1, is not considered to be a food establishment and is exempt from the requirements of this title that apply to food establishments, if the following requirements are met:

- (1) The holder of a farm winery permit furnishes only the following for consumption on the premises, regardless of whether there is a charge:

- (A) Wine samples.
- (B) Wine by the glass.

The holder may not serve or furnish any food, including any fruit, condiment, flavoring, or garnish added to the wine after the wine is poured from its original container.

- (2) The holder of a brewer's permit furnishes only the following for consumption on the premises, regardless of whether there is a charge:

- (A) Beer samples.
- (B) Beer by the glass.

The holder may not serve or furnish any food, including any fruit, condiment, flavoring, or garnish added to the beer after the beer is poured from its original container.

(c) A local unit of government (as defined in IC 14-22-31.5-1) may not require any licensure, registration, or certification of a permit holder as a condition of providing alcoholic beverages at a festival, fair, or other temporary location authorized by the permit holder's permit under IC 7.1, if the permit holder meets the requirements of this section.

As added by P.L.144-2015, SEC.6.