

Date: June 30, 2020

To: All Local Health Departments & Other Indiana Food Regulatory Agencies

From: Manda Clevenger, J.D., Director
Food Protection Division

Subject: HEA 1210 – Certified Food Protection Manager

Purpose

During the 2020 legislative session, House Enrolled Act 1210 (HEA 1210) was passed, making changes to the law on which the Certification of Food Handler Requirements rule, 410 IAC 7-22, was based. This document is being provided to answer questions and promote consistency among regulators at local health departments and other Indiana food regulatory agencies regarding this new law.

Background

Indiana Code 16-42-5.2 was amended in the Indiana State Department of Health's (ISDH) agency bill (HEA 1210) to be consistent with terminology used nationally by the food industry and to eliminate confusion over similarly named, differing levels of food handler training. The parts of the bill relative to "Certified Food Handlers" (CFH), now called "Certified Food Protection Managers" (CFPM), have been excerpted and is attached as Attachment A. The full text of HEA 1210 can be reviewed at: <http://iga.in.gov/legislative/2020/bills/house/1210>.

Quick Points

- The effective date for the new law is July 1, 2020.
- Persons formerly known as "Certified Food Handlers" (CFH), are now called "Certified Food Protection Managers" (CFPM).
- After July 1, 2020, the term **certified food protection manager** is equivalent to the term **certified food handler** used prior to that date.
- The new law clarifies which food establishments need to have a CFPM. IC 16-42-5.2-2 now provides a CFPM is not needed when the food establishment's food handling activities **do not include the cooking of raw food of animal origin or** are limited to one (1) or more of the following:

- (1) Heating or serving precooked foods.
 - (2) Preparing or serving a continental breakfast such as rolls, coffee, juice, milk, and cold cereal.
 - (3) Preparing or serving beverages or ice.
 - (4) Preparing or serving packaged or unpackaged **low hazard** foods, including elephant ears, funnel cakes, cotton candy, confectioneries, baked goods, popcorn, chips and grinding coffee beans.
 - (5) Providing prepackaged food in its original package.
- “Certificate” was defined in IC 16-42-5.2-3.7 as a “certificate, letter, or other document that verifies that the individual has passed an accreditation examination given by an accredited testing service recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the state department of health.”
 - Time requirements for new establishments obtaining and for establishments replacing a CFPM have not changed.
 - Organizations which were exempt from having a CFH continue to be exempt from having a CFPM, although they may employ one or more CFPM if they desire to do so.
 - Civil penalties are now established in IC 16-42-5.2-12 rather than by ISDH rule.
 - IC 16-42-5.2-8 provides, unless otherwise agreed to under a variance, an establishment required to have a CFPM must have one who is responsible for all periods of the food establishment’s operation, but need not be present at all times.
 - As before, a CFPM may be shared by the same individual operating more than one establishment on the same or contiguous properties.
 - HEA 1210 was formatted to include sections of 410 IAC 7-22 “Certification of Food Handler Requirements” to eliminate the need to promulgate a separate rule by the ISDH Executive Board.
 - 410 IAC 7-22, the “Certification of Food Handler Requirements,” will be repealed by the ISDH Executive Board in the future.

Conclusion

HEA 1210 was passed into law during the 2020 legislative session. While much of the new law is similar to the previous law, there are changes in:

- terms used (Certified Food Handler compared to Certified Food Protection Manager);
- clarification of who must have a CFPM;
- the promulgation/repeal of ISDH rules; and
- civil penalties established in the new law.

Questions related to this document or topic may be directed to your regional ISDH Food Protection Division field staff or to the ISDH Food Protection Division Central Office at 317-234-8569.

Attachment A**CFPM Excerpts from HOUSE ENROLLED ACT No. 1210**

Note: The full text of HEA 1210 can be found at: <http://iga.in.gov/legislative/2020/bills/house/1210>.

SECTION 2. IC 16-18-2-51.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:
 Sec. 51.5. "Certified food **protection manager**", for purposes of IC 16-42-5.2, has the meaning set forth in IC 16-42-5.2-4.

SECTION 3. IC 16-18-2-51.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:
(b) "Certificate", for purposes of IC 16-42-5.2, has the meaning set forth in IC 16-42-5.2-4.5.

SECTION 4. IC 16-18-2-138.3 IS REPEALED [EFFECTIVE JULY 1, 2020].
~~Sec. 138.3. "Food handler", for purposes of IC 16-42-5.2, has the meaning set forth in IC 16-42-5.2-5.~~

Note: Section 1(a)(11)(H) of HEA 1210 refers to ATC requirements. Sections 5-9 are not related to certified food protection managers.

SECTION 10. IC 16-42-5.2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:
 Sec. 1. Except as provided in this chapter, a corporation or local health department may not impose any registration, certification, or licensing requirements on food handling or **certified food protection managers**.

SECTION 11. IC 16-42-5.2-2, AS AMENDED BY P.L.139-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 2. (a) This chapter does not apply to a food establishment when the food establishment's food handling activities **do not include the cooking of raw food of animal origin** or are limited to one (1) or more of the following:

- (1) Heating or serving precooked foods.
- (2) Preparing or serving a continental breakfast such as rolls, coffee, juice, milk, and cold cereal.
- (3) Preparing or serving beverages or ice.
- (4) Preparing or serving packaged or unpackage**d low hazard** foods, including elephant ears, funnel cakes, cotton candy, confectioneries, baked goods, popcorn, and chips and grinding coffee beans.
- (5) Providing prepackaged food in its original package.

Note: Section 3 is unchanged from 2005

IC 16-42-5.2-3 Exempt entities

Sec. 3. This chapter does not apply to the following:

- (1) Hospitals licensed under IC 16-21.
- (2) Health facilities licensed under IC 16-28.
- (3) Housing with services establishments that are required to file disclosure statements under IC 12-10-15.
- (4) Continuing care retirement communities required to file disclosure statements under IC 23-2-4.
- (5) Community mental health centers (as defined in IC 12-7-2-38).
- (6) Private mental health institutions licensed under IC 12-25.
- (7) An area agency on aging designated under IC 12-10-1 that provides food under a nutrition service program. However, the premises where the food is prepared is not exempt from the requirements under this chapter.
- (8) A food pantry that:

- (A) is operated or affiliated with a nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and
- (B) distributes food, which may include food from the United States Department of Agriculture, to needy persons.

However, a food bank or other facility that distributes donated food to other organizations is not exempt from the requirements of this chapter.

SECTION 12. IC 16-42-5.2-3.5, AS ADDED BY P.L.139-2005, SECTION 3.5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 3.5. (a) An organization that is exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D) is exempt from complying with the requirements of this chapter. (b) This section does not prohibit an exempted organization from waiving the exemption and using a certified food **protection manager**.

SECTION 13. IC 16-42-5.2-3.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 3.7. As used in this chapter, "certificate" means a certificate, letter, or other document that verifies that the individual has passed an accreditation examination given by an accredited testing service recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the state department of health.

SECTION 14. IC 16-42-5.2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 4. As used in this chapter, "certified food **protection manager**" means a food handler who holds a certificate.

SECTION 15. IC 16-42-5.2-5 IS REPEALED [EFFECTIVE JULY 1, 2020].

~~Sec. 5. As used in this chapter, "food handler" means an individual who:~~

- ~~(1) is an owner, an operator, a manager, or an employee of a food establishment; and~~
- ~~(2) is responsible for or oversees the storage, preparation, display, or serving of food to the public.~~

SECTION 16. IC 16-42-5.2-6 IS REPEALED [EFFECTIVE JULY 1, 2020].

~~Sec. 6. After December 31, 2004, at least one (1) food handler at a food establishment must be a certified food handler.~~

SECTION 17. IC 16-42-5.2-7 IS REPEALED [EFFECTIVE JULY 1, 2020].

~~Sec. 7. A food handler who holds a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the state department of health meets the food borne illness prevention training requirements established by the state department of health.~~

SECTION 18. IC 16-42-5.2-7.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 7.1. (a) A certified food protection manager must do the following:

- (1) Provide the food establishment where the certified food protection manager is employed with a copy of the individual's certificate and photo identification card.**
- (2) Obtain a valid certificate every five (5) years.**

(b) An individual may not work as a certified food protection manager with an expired certificate.

SECTION 19. IC 16-42-5.2-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 7.5. An individual may not use the title "certified food protection manager" or indicate that the individual is a certified food protection manager unless the individual holds a valid certificate.

SECTION 20. IC 16-42-5.2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 8. **(a)** A food establishment must have at least one (1) certified food **protection manager** responsible for all periods of the food establishment's operation. However, a certified food **protection manager** need not be present at the food establishment during all hours of operation.

(b) Notwithstanding subsection (a), if the state department and food establishment enter into a variance concerning requirements for the operation of the food establishment, a certified food protection manager may be required to be present at the food establishment during all hours of operation if agreed upon in the variance.

SECTION 21. IC 16-42-5.2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 8.5. A food establishment must do the following:

(1) Provide the name and copies of the certificate and photo identification card for the certified food protection manager to an inspector from a governmental regulatory authority.

(2) Remove the certificate from the food establishment when the certified food protection manager terminates employment with the food establishment.

SECTION 22. IC 16-42-5.2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 9. A food establishment that begins operation or changes ownership shall comply with section 8 of this chapter not later than six (6) months after beginning operation or changing ownership.

SECTION 23. IC 16-42-5.2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 10. If a food establishment does not have a certified food **protection manager** because a certified food **protection manager** terminates employment with the food establishment, the owner or operator of the food establishment shall comply with section 8 of this chapter not later than three (3) months after the termination date of the previous certified food **protection manager**.

SECTION 24. IC 16-42-5.2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 11. If more than one (1) food establishment operated by the same individual is located on the same property or on contiguous properties, only one (1) certified food **protection manager** is required for the food establishments.

SECTION 25. IC 16-42-5.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 12. **(a)** An individual who violates any of the provisions of this chapter **before July 1, 2020**, is subject to the penalties prescribed by the executive board under section 13 of this chapter. **This subsection expires January 1, 2021.**

(b) After June 30, 2020, a person that violates section 7.1(b) of this chapter is subject to a civil penalty not to exceed fifty dollars (\$50) per day per violation.

(c) After June 30, 2020, a person that violates section 7.1(a)(1), 7.5, 8, 8.5, 9, or 10 of this chapter is subject to a civil penalty not to exceed one hundred dollars (\$100) per day per violation.

SECTION 26. IC 16-42-5.2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 13. The executive board **may** adopt rules under IC 4-22-2 establishing standards for:

(1) the administration of this chapter; and

(2) the imposition of penalties for violations of this chapter.

SECTION 27. IC 16-42-5.2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 14. This chapter does not limit the authority of a corporation or local health department to **require a permit for** retail food establishments.

SECTION 28. IC 16-42-5.2-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 16. (a) Except for an individual whose certification expires on July 1, 2020, an individual who was a certified food handler on June 30, 2020, is considered a certified food protection manager on July 1, 2020.

(b) This section expires June 30, 2021.

Note: Sections 29 & 30 of HEA 1210 are not related to certified food protection managers.