

# **SEA 190 Guidance - 2008**

## **2008 Food Safety and Defense Symposium**

**Indiana State Department of Health  
Food Protection Program**

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# Background Information

- **July 2007 modifications were made to IC 16-18-2-137; Definition of Food Establishment (FE)**
- **New classifications of entities were included as NOT being part of the definition**
- **Religious, non-public educational organizations**

# Background Information

- **Clarified that private homes used for private purposes were not a FE**
- **Clarified that having a private gathering of individuals, whether on public property or not, is not a FE**
- **Clarified that using your own vehicle to transport food for the needy is not a FE**

# Background Information

- **Changed the 30 day allowance to 15 days per year for all other non-profits under the 501 code**
- **Eliminated the “waiver of inspection” for these non-profits**
- **Event organizers and regulators cannot require non-FE organizations to be inspected**

# **2nd Guidance Document**

- **New information as it relates to:**
  - **Religious organizations**
  - **Non-public educational organizations**
  - **Civic, fraternal, veterans and charitable organizations**
  - **Released soon after symposium**

# Religious Organizations

- **Organization often needs to become a “legal entity” for practical reasons**
- **Filing with IRS is one method**
- **Filing with the Secretary of State as a corporation is another**
- **Organizing documents, such as constitution and by-laws, or a legal opinion by an attorney**

# Religious Organizations

- **Regulatory authority can require proof of meeting the IRS code**
  - **Letters of determination or affirmation from the IRS**
  - **Signed legal documents, such as the by-laws or constitution**
  - **Written legal opinion from an attorney**
  - **Tax and financial records... as a last resort**

# Religious Organizations

- **“Church” is interpreted very broadly**
- **Includes wide variety of worship practices to any type of deity**
- **Common requirements include:**
  - **Congregation or membership**
  - **Regular meetings**
  - **No single person in control of every facet of the organization**
  - **Performs ceremonial acts**

# **Non-public Educational Organizations**

- **Includes private schools and activities operated under them as an umbrella entity**
- **Includes other organizations considered educational:**
  - **Youth sports leagues, boy scouts**
  - **YMCA, YWCA, booster clubs**

# **Non-public Educational Organizations**

- **Concession stands, fund raisers, etc., operating under the umbrella organization are not FEs**
- **If there is no umbrella organization, then the same requirements apply to the individual operation**
- **EXCEPT: IRS does not require filing if gross income is \$5K or less per year**

# **Non-public Educational Organizations**

- **Regulators can require the same proof of being a legal entity as with religious organizations**
- **Many of these operations formally viewed as a FE no longer meet the definition and must be removed from inspection rosters of LHDs**

# Public Schools

- **Public schools operating with taxpayer funds**
- **Governed by boards of publicly elected citizens**
- **Considered a FE and regulated**
- **Could have non-FE operations on the premises**
  - **These entities must have proof of 501 status**

# Extensive Menu

- **Not defined in law anywhere and no legal precedent established**
- **ISDH guidance recommends use of the food handler certification law as a basis for extensive menu**
- **Any non-FE exceeding the limits of food handling, as defined in IC 16-42-5.2 while operating a cafeteria or restaurant, is considered an FE**

# Other Indiana Non-profits

- **Essentially the only substantive change for these entities is scaling back the time allowance**
- **Formally 30 days or less per year**
- **Currently 15 days or less per year**
- **Regulatory authority can require same proof of documentation as other entities in making determinations**

# Event Based

- **Under sections (b)(2), (5) and (6): the non-FE operation must be tied to an event or celebration**
- **Must be construed broadly**
- **The routine operation of a food bank/pantry or a restaurant or cafeteria (with extensive menu) would be a FE and regulated**

# Event Based

- **Concession stands at sports events**
- **Bake sales, spaghetti dinners**
- **Boy scout troop chili dinner**
- **Church wedding receptions**
- **Funeral dinners, communions**
- **Bar and bat mitzvahs, baptisms, christenings, etc.**

# Courtesy Evaluations

- **Recommend not being involved in these unless absolutely necessary**
- **Are NOT inspections and NOT enforceable by the regulatory authority**
- **Obtain request in writing from event organizer**
- **Never put written findings on an inspection report and only conduct these if resources allow**

# Elimination of Inspections

- **Due to the new reference to the IRS 501 code, many facilities formerly regulated are no longer considered to be FEs**
- **Therefore, they cannot be permitted or inspected using state food laws or county food ordinances**

# Questions?