

Understanding Indiana House Enrolled Act (HEA) 1309

Farmers' Market Boot Camp

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House Enrolled Act 1309

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graph TD; A[House Enrolled Act 1309] --> B[Three statutory changes]; B --> C[Allow certain food products]; C --> D[Private residence]; D --> E[Limited regulatory oversight]; E --> F[Legally sold in two public places];
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Three statutory changes

Allow certain food products

Private residence

Limited regulatory oversight

Legally sold in two public places

Background

- A food establishment is defined in Indiana Code (IC) 16-18-2 and regulated under IC 16-42-5 (also known as “Sanitary Requirements for Food Establishments”)
- IC 16-42-5 gives ISDH authority to promulgate rules for food establishments

Examples of rules written with this authority –

- Retail Food Establishments covered under 410 IAC 7-24, Sanitation Requirements for Retail Food Establishments
- Wholesale Food Establishments covered under 410 IAC 7-21, Sanitation Requirements for Wholesale Food Establishments

Retail
410 IAC 7-24



Food Establishments
Regulated under IC 16-42-5



Wholesale
410 IAC 7-21

HEA 1309 Modifications to Indiana Code 16-18-2 and 16-42-5

- HEA 1309 passed in 2009 by Indiana Legislature made three changes to two Indiana statutes:
 - Changed the definition of “food establishment” by adding a new exclusion in IC 16-18-2-137
 - Added the term and definition of “potentially hazardous food product” in IC 16-18-2-287
 - Added section 29 to 16-42-5 outlining the requirements for home based vendors (HBV)

HEA 1309 Modifications to Indiana Statutes

- An individual vendor of a farmer's market or roadside stand is NOT a food establishment if the individual meets the requirements of IC 16-42-5-29
- In order to meet the exclusion, food products may be sold in ONLY two public places in Indiana:
 - Farmers' Markets
 - Roadside Stands
- Individual referred to as "Home-Based Vendor" (HBV)

Modification Resulting from HEA 1309

Regulated Entities

Food Establishments

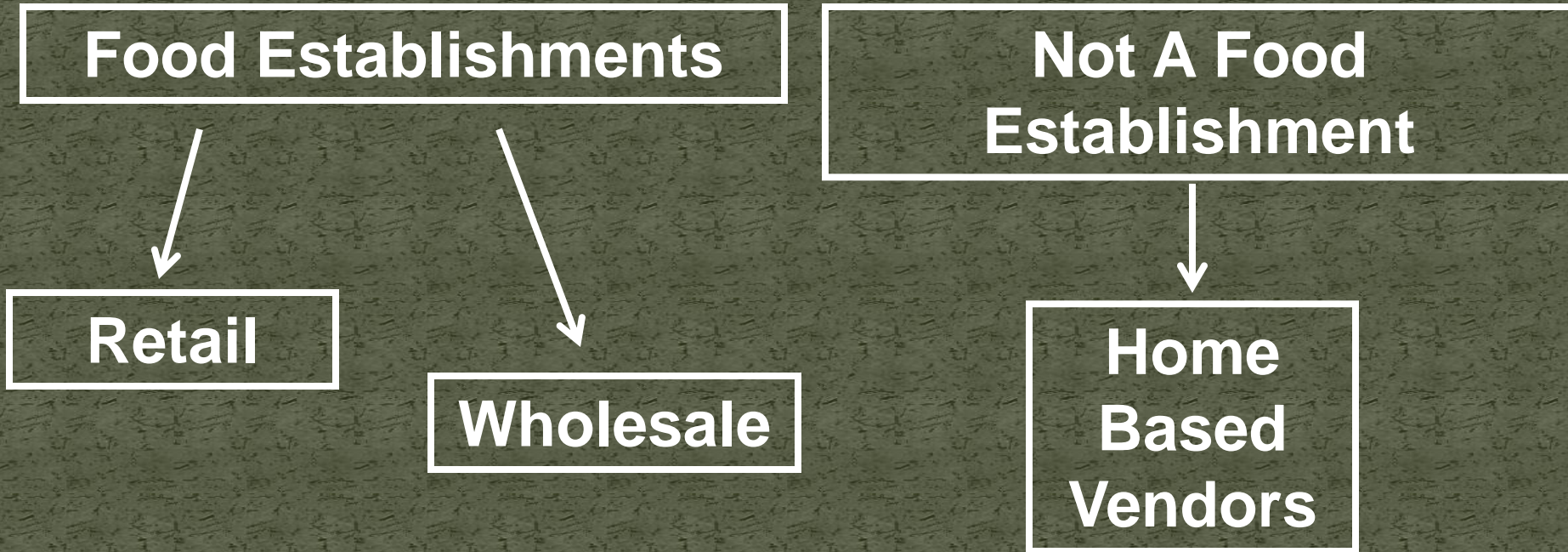
Retail

Wholesale

Limited Regulatory Oversight

Not A Food Establishment

Home Based Vendors



Relevant Definitions

- **Farmers' market: 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 consumers**
 - **Can be combined with other events, but must be with the farmer's market**
 - **This is NOT an individual produce market operated by a person or company**

Relevant Definitions

- **Roadside stand: a place, building, or structure along, or near, a road, street, lane, avenue, boulevard, or highway where a HBV sells food product(s) to the public.**
 - **This does NOT include the HBV's residence or a regulated food establishment**

Requirements of IC 16-42-5-29

The individual vendor (HBV) selling at a farmer's market/roadside stand is NOT considered to be a food establishment if the vendor's food product:

- Is MADE in the individual's primary residence (or in an adjacent area on the same property)
 - Cannot be a commercial kitchen (regulated food establishment)
- Is NOT a potentially hazardous food product

Restricted HBV-Produced Food Products

- Potentially hazardous food products (PHF)
- PHF are natural or synthetic foods that require temperature control because of capability to support:
 - Rapid and progressive growth of infectious/toxigenic microorganisms
 - *Clostridium botulinum*
 - *Salmonella enteritidis*
- pH (acidity), water activity (A_w) and other intrinsic factors are considered when making a determination

Examples of PHF

- **Meat (domestic or wild)**
- **Poultry**
- **Aquatic animal products**
- **Dairy* (including raw milk)**
- **Egg products***

***Excluding some baked items and dried noodles**

Additional Types of PHF

- Use of “reduced oxygen packaging” (ROP) methods
 - Canned or hermetically sealed containers of acidified or low-acid foods
- Cut melons
- Raw seed sprouts
- Non-modified garlic-in-oil mixtures
- Cut tomatoes and cut leafy greens (salads)

Specific Examples of Allowed HBV Food Products

- Baked goods – cakes, fruit pies, cookies, brownies, dry noodles
- Candy and confections – caramels, chocolates, fudge, hard candy
- Produce – whole and unprocessed
- Tree nuts and legumes
- Honey, molasses, sorghum, maple syrup
- Jams, jellies, preserves – only high acid fruit
- May be temperature controlled only for quality

Items for Clarification

- Shell eggs are considered a PHF
- Shell eggs cannot be sold by a HBV, but can be sold by a regulated food establishment*
- Pickles, if made by acidification, cannot be sold by a HBV
- Low acid and acidified foods must be commercially sterile – HBV cannot do this
 - Such as:
 - Green beans, pickled beets, salsa, etc.

* State Egg Board exemption on farmers property

Further Requirements of IC 16-42-5-29

The individual vendor (HBV) is NOT considered to be a food establishment if the vendor's food product:

- Is prepared by an individual who practices sanitary procedures
 - Proper hand washing
 - Sanitation of packaging
 - Safe storage of product
- Is not resold
- Includes a label with the required information

Labeling of HBV Food Products

- HBV food products must be labeled
- Label must include the following:
 - Producer's name and address
 - Common name of food product
 - Ingredients of food product
 - Net weight and volume
 - Date food product was processed
 - The following statement in 10 point type:

“This product is home produced and processed and the production area has not been inspected by the State Department of Health.”

Placards vs. Labels

- **In place of labeling on the product a placard may be used in some situations:**
 - **When the product sold is not packaged**
 - **Must contain all the same required labeling information**
 - **Labeling is encouraged in most situations**

Other Considerations

- **Food sampling by a HBV:**
 - **Sampling does not include the assembling of 2 or more HBV food products at point of sale**
 - **Sampling must be discontinued if not conducted in a sanitary manner**

Other Considerations

- **Points of clarification:**
 - **may not sell other commercially prepared products (prepackaged items)**
 - **shall not deliver to any location other than a farmer's market or roadside stand (pre-ordering is acceptable)**
 - **may not sell products in another state at a farmer's market or roadside stand without meeting the requirements of that state**

Role of the Regulatory Authority under HEA 1309

- A HBV is subject to inspection and/or samples of a HBV's food product can be taken by the regulatory authority if:
 - The HBV is non-compliant
 - The HBV's food product is misbranded or adulterated
 - A consumer complaint is received
 - There is an occurrence of an imminent health hazard

Role of the Regulatory Authority under HEA 1309

- The regulatory authority may require further information or testing of a food product to determine whether a food product is potentially hazardous or not
- Educate market masters and vendors
 - Refer questions to Food Safety Inspection Officer (FSIO) in the jurisdiction in which you are located or selling your products

HBV Review

- **HBV's:**
 - may only sell non-potentially hazardous food products made in their primary residence with limited regulatory oversight
 - may only sell their food products at a farmers' market and a roadside stand
 - may not sell their products with the intent to be resold
 - must meet the requirements listed in statute

HBV Review

- **A HBV who:**
 - **sells PHF**
 - **sells food products other than those produced in the home**
 - **sells wholesale**
 - **fails to meet the specified requirements**

becomes a food establishment and is subject to all applicable food safety laws

Resources

- **Purdue University website:**
 - **<http://www.ag.purdue.edu/foodsci/Pages/IN-HEA-1309-info.aspx>**
 - **Frequently asked questions about HEA 1309**
 - **Fact sheet on HEA 1309**
 - **ISDH guidance on HEA 1309**
 - **Final version of HEA 1309**
- **ISDH website – <http://www.in.gov/isdh/20640.htm>**

QUESTIONS?