

Purdue University Cooperative Extension

Fact Sheet on House Enrolled Act (HEA) No. 1309

Date: July 15, 2009

Dr. Richard Linton - Professor of Food Safety Purdue University

Scott Gilliam, MBA, CP-FS – Manager, Food Protection Program ISDH

Brief Overview

HEA 1309 provides three new provisions to the Indiana Code including: 1) an exemption from “food establishment requirements” in IC 16-18-2-137 for certain vendors of farmers markets and roadside stands that prepare and sell foods, 2) adds the term “potentially hazardous foods” (PHFs) to IC 16-18-2-287.8, and 3) adds a section on sanitary requirements for food establishments as new section IC 16-42-5-29. Most of the questions we are receiving in the state are related to the preparation and sale of food products from “Home Based Vendors” (HBV). The requirement for HBVs is that the food product is prepared at the vendor’s primary residence. Under the new act, HBVs are NOT considered retail food establishments (such as a restaurants, convenience stores, or grocery stores) and are exempt from many of the regulations for retail food establishments such as registration, licensing, and health department inspection. One of the important goals of HEA 1309 is to allow for the safe production and sale of certain foods that do not present an appreciable public health risk and to not allow for the production and sale of foods that may create a public health risk, also called “potentially hazardous foods,” or PHFs.

Examples of Foods that Can Be and Cannot Be Sold by HBVs

An important provision in HEA 1309 is to not allow for PHFs to be sold. The most basic definition of a PHF is a food that contains conditions (food ingredients, packaging, and/or storage) that allows disease-causing bacteria to grow, potentially leading to human illness. While the growth of bacteria in foods can be impacted by a number of factors, two of the most important factors are product acidity (measured by pH) and product moisture (measured by water activity). Foods that have an acidity value of pH greater than 4.6 AND a water activity greater than 0.85, allow disease-causing bacteria to grow. Conversely, foods that have a pH equal to or less than 4.6 OR have a water activity equal to or less than 0.85, are not considered PHFs. Table 1 (next page) provides some examples about what foods can be sold (non-PHF)s and foods that may NOT be sold (PHFs) by HBVs. This list is by no means comprehensive of all of the products that we may find at farmers markets and roadside stands. If you have specific questions about your product, you should contact your local health department and/or have your product evaluated by an outside expert/consultant.

Where can foods prepared by HBVs be sold?

Foods prepared by HBVs may only sell their foods at farmers’ markets and roadside stands. HBV foods may not be sold at any other venue including retail food establishments (foodservice, resultants, grocery stores), festivals, carnivals, or any other event.

Labeling Requirements of Foods Produced by HBVs

All HBV foods that are formulated and prepared must be labeled as “This product is home produced and processed and the production area has not been inspected by the State Department of Health.” Labels must contain other information such as the name of the food product, ingredients, net weight and volume, and date at which the product was processed.

Table 1. Examples of Foods that May Be and May Not Be Sold by HBVs

| Food Type | Foods that May Be Sold | Foods that May Not be Sold |
|----------------------------|---|--|
| Baked Goods | Cookies, cakes, fruit pies, cupcakes, bars, yeast breads, fruit breads, baguettes | Foods that contain meat, poultry, aquatic animals, non-baked dairy (cheese, butter, yogurt), non-baked egg containing products and whole eggs |
| Candies and Confections | Caramels, chocolate, fudge, peanut brittle, chocolate covered fruits, bon bons, buckeyes, chocolate covered nuts | Commercially prepared products (prepackaged items or drinks) |
| Fruit and Vegetables | Unprocessed, whole and uncut items such as cherries, blackberries, cranberries, grapefruit, strawberries, oranges, blueberries, plums, tomatoes, corn, lettuce, green beans, peppers, etc. Fruit –based jams and jellies (made from strawberries, blueberries, grapes, raspberries, blackberries, etc.) Fermented pickles that do not require acidification and do not require refrigeration. | Canned products that are shelf-stable an in hermetically sealed containers such as salsas, chutney, chow-chow, and canned vegetables. Pickled vegetables (beets, pickles) that are shelf-stable Cut tomatoes and cut melons Garlic in oil mixtures, herb and oil mixtures Raw seed sprouts Fruit butters (i.e. pear, pumpkin) |
| Meat, Poultry, and Seafood | None identified. | Canned products that are shelf-stable an in hermetically sealed containers such as canned vegetables, canned meats, and canned seafood. |
| Tree nuts and legumes | Peanuts, almonds, cashews, walnuts, pistachios, etc. | Reduced Oxygen Packaging (ROP) is not allowed (example: vacuum sealed foods) |
| Syrups | Honey, molasses, sorghum, maple syrup | |

Product Liability for Foods Produced by HBVs

Certainly, product liability is an important question for foods produced by HBVs. Because these foods are not inspected by regulatory agencies, liability insurance may be difficult to obtain. HBVs are advised to contact their legal counsel and/or insurance provider for advice on product liability issues.

Contact Resources for Foods Produced by HBVs

There are four important sources of resources that can provide help for questions related to HBV produced foods.

1. The first point of contact should be your local health department, and they should be able to answer most questions that you have. A list of local health department is at <http://www.in.gov/isdh/23926.htm>.
2. If your question goes unanswered, your second point of contact should be the ISDH Food Protection Program at 317-233-7360.
3. Purdue University may also be able to provide some assistance. A directory of Extension county offices is provided at www.ag.purdue.edu/extension/Pages/Counties.aspx. Dr. Richard Linton (linton@purdue.edu) and Dr. Kevin Keener (kkeener@purdue.edu) (Purdue Food Science) are also available to answer questions.
4. A special link has been created (<http://www.ag.purdue.edu/foodsci/Pages/IN-HEA-1309-info.aspx>) on the Purdue Food Science website. Here you will find a listing of frequently asked questions (updated periodically), the guidance document prepared by ISDH for HEA 1309, and a copy of HEA 1309.