



**Indiana
Department
of
Health**



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DATE: June 16, 2022
TO: All Local Health Officers
FROM: Vivien McCurdy, RDN, MPA
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SUBJECT: Guidance for Uniform Use of House Enrolled Act 1149

PURPOSE

This document is intended to assist Local Health Departments (LHD) and other Indiana food regulatory agencies in the uniform use of House Enrolled Act (HEA) 1149. This guidance document takes precedence over any guidance document previously released by Indiana Department of Health (IDOH) relating to home based vendors (HBV).

[HEA 1149](#), effective July 1, 2022, specifies requirements for the preparation and sale of food products by a HBV. It also reorganizes provisions concerning the sale of certain food products by an individual vendor at a farmers' market or roadside stand. It also requires an individual who sells poultry, rabbits, or eggs and intends to be exempt from the food safety requirements of a food establishment to comply with certain requirements.

BACKGROUND

Indiana Code 16-42-5-29 was passed into law in 2009. HEA 1149 repealed IC 16-42-5-29 and added IC 16-42-5.3 as a new chapter. Prior to the passage of HEA 1149, individuals selling products made from their home could only sell these products at farmers' markets or roadside stands. The most pertinent changes made in HEA 1149 include the expansion of where HBVs may sell their products and the requirement of obtaining a food handler certificate for all HBVs.

A copy of HEA 1149 is attached.

DEFINITIONS

- a) "End consumer" means a person who is the last person to purchase any food products and who does not resell the food product.
- b) "Farmers' Market" means a common facility where two or more farmers or growers gather on a regular basis to sell a variety of fruits, vegetables, and other food products directly to consumers.
- c) "Home based vendor" (HBV) means an individual who complies with IC 16-42-5.3.

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- d) “Potentially Hazardous Food Product”, also referenced as Time/temperature control food, means
- (a) a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:
 - (1) The rapid and progressive growth of infectious or toxigenic microorganisms.
 - (2) The growth and toxin production of *Clostridium botulinum*.
 - (3) In raw shell eggs, the growth of *Salmonella enteritidis*.
 - (b) The term includes the following:
 - (1) A food of animal origin that is raw or heat-treated.
 - (2) A food of plant origin that is heat-treated or consists of raw seed sprouts.
 - (3) Cut melons.
 - (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subsection (a).
 - (c) The term does not include any of the following:
 - (1) An air-cooled hard-boiled egg with shell intact.
 - (2) A food with an water activity (aw) value of eighty-five hundredths (0.85) or less.
 - (3) A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit.
 - (4) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.
 - (5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, such as a food that:
 - (A) has an aw and a pH that are above the levels specified under subdivisions (2) and (3); and
 - (B) may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.
 - (6) A food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under subsection (a).
- e) “Poultry” means poultry products produced under [IC 15-17-5-11](#).
- f) “Rabbit” means a rabbit that is slaughtered and processed on the farm for the purpose of conducting limited sales on the farm, at a farmers’ market, and at a roadside stand.



- g) “Roadside Stand” means a structure including a tent, stand, vehicle, or trailer that is:
- (1) Visible from a road; and
 - (2) Located not more than one hundred (100) feet from the edge of the side of the road; where whole uncut produce, food products that are not potentially hazardous, poultry that is exempt under IC 15-17-5-11, rabbits, or eggs permitted for sale by the state egg board are sold to an end consumer.
- h) “Third Party Carrier” means an individual or business that is not the HBV but delivers products to end consumers for the sole purpose of transporting the food products on behalf of the HBV.

DISCUSSION

HBVs or individual vendors who solely sell certain poultry, eggs, or rabbits and meet certain requirements are exempt from food establishment requirements. See IC 16-42-5.3-3, 10-11. Accordingly, vendors that comply with IC 16-42-5.3 are not subject to regular inspection by Indiana regulatory authorities and are not required to comply with LHD’s permitting and licensing requirements.

This guidance document focuses on the conditions that must be met to be considered exempt from the Indiana food establishment requirements for a HBV or an individual vendor who solely sells certain poultry, eggs, or rabbits.

Each local jurisdiction should carefully review the business model and the food products of each operation to determine if the operation meets one of the exemptions to food establishment requirements.

I. Home Based Vendors

Home Based Vendor Defined IC 16-42-5.3-4

- Using proper sanitary procedures, a HBV must prepare and sell a food product that is not potentially hazardous that is made, grown, or raised by the individual at their primary residence. HBVs may sell the food product anywhere directly to end consumers in person, by mail, or shipping by a third party carrier inside the state of Indiana.
 - “Primary residence” includes any permanent structure that is on the same property as the residence. Notably, HBVs may not use leased spaces that are located off the property of a HBV’s primary residence to make, grow, or raise food products.



- The required sanitary procedures are detailed in IC 16-42-5.3-4(3).
- For additional guidance on what is considered a potentially hazardous food product, see IDOH's memorandum dated August 23, 2018.

Examples of HBV Products

- Baked items – cakes, fruit pies, cookies, brownies, dry noodles
- Candy and confections – caramels, chocolates, fudge, hard candy
- Whole, uncut produce
- Tree nuts and legumes
- Honey, molasses, sorghum, maple syrup
- Jams, jellies, preserves – only high acid fruit in sugar
- Wild mushrooms (IDOH strongly advises the mushrooms be identified by an IDOH-recognized mushroom expert)

Labeling IC 16-42-5.3-5

- IC 16-42-5.3-5 lists specific labeling requirements that must be present with and/or on the food at the point of sale regardless of whether the product is packaged. Unpackaged foods should be considered "labeled" when there is easily readable signage accompanying the food product stating all the listed items in section 5.
- These labeling requirements have essentially stayed the same as the previous HBV law, except the label/sign must state either the net weight **or** volume instead of net weight **and** volume. Further, the warning statement remains required on the package and must state, "This product is home produced and processed and the production area has not been inspected by the state department of health. **NOT FOR RESALE.**"
- HBVs must post the label information of each product on their online marketing platform.

Shipping IC 16-42-5.3-6

- HBVs must maintain an electronic or paper record of the shipping or delivery address of each end consumer the vendor sells a food product to for at least one (1) year after the date of sale. Such records may be requested at any time by IDOH, specifically for food complaints and outbreak investigations.
- All products must be protected by tamper resistant packaging to allow end consumers to visually determine if the products were tampered with.



Food Handler Certificate IC 16-42-5.3-7

- HBVs must obtain a food handler certificate from a certificate issuer accredited by the American National Standards Institute (ANSI). A HBV must provide a copy of the certificate to the local health department in the county where the HBV's residence is located. Further, upon request, the HBV must provide a copy of the certificate to the regulatory agency or an end consumer.
 - Information regarding ANSI certified courses can be found at <https://anabpd.ansi.org/accreditation/credentialing/certificate-issuers/AllDirectoryListing?prgID=212,238&statusID=4>
 - HBVs must keep the food handler certificate current, and not let it expire.
 - A Food Protection Manager Certificate that is accredited by ANSI meets this requirement.

Regulatory Authority IC 16-42-5.3-8

- HBVs remain subject to inspection and/or laboratory sampling if:
 - The HBV is non-compliant with IC 16-42-5.3
 - The HBV's food product is misbranded or adulterated
 - A consumer complaint is received
 - There is an imminent health hazard

II. Individual vendors who solely sell certain poultry, rabbits, or chicken eggs

- Vendors who solely sell certain poultry, rabbits, or chicken eggs and meet certain requirements are not considered HBVs but are exempt from food establishment requirements.
- Because vendors who solely sell poultry, rabbits or chicken eggs are not HBVs, they are exempt from the Food Handler Certificate requirement.

Vendors who Sell Poultry and Rabbits IC 16-42-5.3-10

- Poultry and rabbits are permitted to be sold only at roadside stands, producing farms, and/or farmers' markets.
- Poultry and rabbits sold on the farm where the product is produced must be kept refrigerated at the point of sale and through delivery by the producer to the end consumer.
- All poultry and rabbits sold at farmers' markets and roadside stands must be frozen at the point of sale.



- Rabbits must be labeled according to the same label requirements as in IC 16-42-5.3-5. Poultry must be labeled according to IC 15-17-5-11.
- BOAH regulates the slaughter and processing of poultry and poultry products. A vendor selling poultry should contact BOAH regarding additional requirements and abide by IC 15-17-5-11.

Vendors who Sell Chicken Eggs IC 16-42-5.3-11

- In-shell chicken eggs can be sold if the vendor is registered under and follows the guidelines of the Indiana State Egg Board.
- Vendors selling chicken eggs must follow IC 16-42-11, including the label requirements for eggs.

CONCLUSION

HEA 1149 allows HBVs who meet the requirements in the new law to sell food products anywhere in Indiana. With this less restrictive law comes a few additional requirements. Most notably, HBVs must obtain a food handler certificate from a certificate issuer that is accredited by ANSI. Until this requirement becomes more widely known and understood by vendors and potential vendors, Indiana food regulatory authorities should emphasize education on the new requirements over enforcement action. It is also encouraged to connect a HBV with their local Purdue Extension office for more ANSI training information.

It is the intent of the IDOH leadership to encourage local health officials to promote and educate the HBV, venue organizers, and community stakeholders of the certificate requirement to prevent any unforeseen circumstances. IDOH Food Protection Division representatives are available to assist with any questions or concerns.