

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Health

DIVISION: N/A

RULE IDENTIFIER: 216-RICR-50-10-1

RULE TITLE: Rhode Island Food Code

REASON FOR RULEMAKING: The purpose of this rule is to ensure compliance with statute allowing cottage food manufacture (Budget Article 9 – 2022).

ANY FINDINGS REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: N/A

TESTIMONY AND COMMENTS:

Public comment was received expressing concerns about enforcement, kitchen culture, and available subsidies for participants to renovate spaces to meet minimum code standards. Public comment suggested that the Program Director keep a keen eye as potential hazards could cause unwanted backlash from patrons of these new small businesses. The Rhode Island Department of Health has received state funding to hire an Environmental Health Food Inspector and a Health Service Regulations Licensing Aide I for the Cottage Food Manufacture Program. All Department food safety inspections are based on risk. The Department will prioritize foodborne illness complaints but will follow-up on all complaints. The Department is a regulatory agency and, as such, is not in the position to subsidize renovations for Cottage food Manufacture businesses. This comment will not be accepted at this time.

Public comment was received that the cap of \$50,000 is too high for home-based production because, at that level, production times could reach most of every day, blurring the lines between home and business space. Public comment further requested clarity whether selling over state lines directly to consumers is allowed. The Cottage food Manufacture statute was enacted by the General Assembly. The revenue cap of \$50,000 and registration fee of \$65.00 are included in the enacted statute. The Rhode Island Department of Health must implement the statute as written. Cottage foods cannot sell wholesale in or out of state. Advertising and sales by internet, mail, and phone are permissible provided the cottage food licensee or their designee delivers in person to the customer within the state.

Public comment requested whether cottage food producers are allowed to produce in two locations (home and commissary kitchen) and whether they are required to have a Rhode Island Department of Health Food Processer license if producing in a

commissary kitchen in addition to their homes. Regarding licensing, if the Cottage Food Manufacture applicant decides to produce in a commercial kitchen, then the retail processor license is required. If the applicant does a cottage food manufacture business in the home and works out of a commercial kitchen, both licenses are required.

Public comment requested clarification regarding reviews and inspections. As noted previously, inspections are done according to risk level. Bakery items are not considered potentially hazardous, but the Rhode Island Department of Health's Center for Food Protection will follow up on complaints and reports of foodborne illness.

Further comment was received requesting to see the fee schedule and how it compares to a Food Processor license. The fee schedule can be viewed on the Secretary of State's website here: <https://rules.sos.ri.gov/regulations/Part/216-10-05-2>.

Public comment was received requesting whether the annual gross sales documentation is submitted annually and to whom it is submitted. RIGLs 21-27.6.2 (6) state "The director of health shall request documentation to verify the annual gross sales figure of any cottage food operation". The Department will include a check box for the online renewal for an attestation that gross sales of cottage foods are under \$50,000. It is the Department's understanding that commercial space and a food processor license is needed if sales are over \$50,000.

Public comment was received stating that a mandatory two-compartment sink, with optional 150-degree dishwasher is desired. The Department cannot impose additional requirements beyond the requirements included in the statute. The Department can, however, provide clarity in the regulations when needed. This comment will not be accepted at this time.

Public comment was received that the overarching concern with the new law and regulations are its impact on food safety and the lack of enforcement. Public comment further noted that the Center for food Protection is severely understaffed, leaving them unable to inspect the existing restaurants in the State; and that the new law has massively expanded their duties, while only providing a small number of funds for new inspectors. The commenter continued that the chances of these cottage food manufacturers being properly inspected is incredibly low. As previously noted, the Rhode Island Department of Health has received state funding to hire an Environmental Health Food Inspector and a Health Service Regulations Licensing Aide I for the Cottage Food Manufacture Program. License approval will occur in the order that the Department receives applications. As previously noted, other inspection and enforcement activities will be based on risk of foodborne illness investigations being the highest priority.

Public comment was further noted that the proposed regulation does not include any details about the requirements that cottage food manufacturers register their business and certify the annual income with the Rhode Island Department of Health as required in RIGL 21-27-6.2 (4) and (6). It was further noted through public comment that this is

an important part of the enforcement process and the only way the State can ensure these businesses are complying with the requirements of the law. As noted previously, the Department will include a check box for the online renewal for an attestation that gross sales of cottage foods are under \$50,000. RIGLs 21-27.6.2 (4) states “The director of health shall have the authority to develop and issue a standard form for the affidavit of compliance to be used by persons applying for a certificate of registration; the form shall impose no requirements or certifications beyond those set forth in this section and 21-27-1 (6)”.

Public comment was received suggesting modifications to the proposed regulations to make the rule fully compliant with the relevant statutes (RIGL 21-27 and 23-1). Public comment further noted that while the proposed language in Part 1.10 (Farm Home Food Manufacturers) and 1.11 (Cottage food Manufacturers) of the proposed rule simply states that those two types of food manufacture must comply with the relevant Rhode Island General Laws, additional language is needed to clarify that compliance with the law is the only compliance requirement for Farm Home Manufacture and Cottage Food Manufacture under the Rhode Island food Code. The commenter further recommended that in order for the Rhode Island Department of Health to comply with RIGLs 21-27-6.1, that the following language be added as a second sentence in Part 1.11: “Other requirements found in Part 1 of this Subchapter that are not included in RIGLs 21-27-6.1 do not apply to Farm Home Food Manufacture” and “Other requirements found in Part 1 of this Subchapter that are not included in RIGLs 21-27-6.2 do not apply to Cottage food Manufacture.” Public comment further noted that if these modifications are not made, other Parts of the Rhode Island Food Code could be interpreted as imposing additional requirements of Farm Home food Manufacture and Cottage Food Manufacture that are not allowed under the law. Additionally, the commenter noted that one such example would involve the defined term “food business” (Part 1.3.13), which is reasonably to be interpreted as including Farm Home Food Manufacture and Cottage Food Manufacture. Public comment also noted that elsewhere in the Rhode Island Food Code, a “food business” is subject to additional requirements, including plan review and public water system requirements. The commenter continued that Rhode Island General Law expressly does not allow the Department to impose such requirements on Farm Home Food Manufacture and Cottage Food Manufacture. The Food Code (216-RICR-50-10-1) refer to Rhode Island General Laws 21-27-6.1 and 21-27-6.2 for Farm Home Food Manufacture and Cottage Food Manufacture, respectively. The specific exemptions to the Food Code are listed in the statute (RIGL 21-27-6.1 and 21-27-6.2) such as kitchen requirements, training, water testing, etc. These exceptions supersede other requirements such as connection with a public water system, inclusion of a 3-bay sink, and other provisions of the Food code that apply to other food businesses. The proposed Cottage Food Manufacture sections of the Food Code regulations is similar with other existing sections of the Food Code regulations that apply to mobile and temporary food establishments that are not expected to meet certain provisions of the Food Code. This comment will not be accepted at this time.

CHANGES TO THE TEXT OF THE RULE:

There are no changes to the text of the rule post-comment period.

REGULATORY ANALYSIS:

In development of this rule, consideration was given to:

- 1) Alternative approaches;
- 2) Overlap or duplication with other statutory and regulatory provisions; and
- 3) Significant economic impact on small business

No alternative approach, duplication or overlap was identified based on available information. RIDOH has determined that the benefits of the rule justify its costs.