

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Department of Health
(DLS Control No. 23-141)**

Overview and Legal and Fiscal Impact

These regulations modify the definition of “cottage food business” in accordance with recent legislation, establish a definition for “consumer,” and make technical and clarifying changes to regulatory provisions related to farmer’s markets, bake sales, and cottage food businesses.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Department of Health:

Food: Food Service Facilities: COMAR 10.15.03.02

Food Service Facilities: COMAR 10.15.03.27

Legal Analysis

Background

Chapter 406 of 2022 increased the maximum annual revenues from the sale of cottage food products that a “cottage food business” may have from \$25,000 to \$50,000. The regulations implement this change.

Summary of Regulations

The regulations define “consumer” to mean a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food service facility or food processing plant, and does not offer the food for resale. The regulations also amend the definition of “cottage food business” to mean a business that among other things, has annual revenues from the sale of cottage food products in an amount not exceeding \$50,000.

Finally, the regulations amend COMAR 10.15.03.27, which addresses farmer’s market, bake sales, and cottage food businesses, by (1) replacing the phrase “approving authority” with “department” throughout Regulation .27; and (2) making several other clarifying and technical changes to phrasing.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Maryland Department of Health cites §§ 18-102, 21-101, 21-102, 21-202, 21-211, 21-234, 21-301, 21-304, 21-308, 21-309.1, 21-309.2, 21-324.1, and 21-330.1 of the Health – General Article as authority for the regulations. Section 18-102 requires the Secretary of Health to adopt rules and regulations necessary to prevent the spread and introduction of an infectious or contagious disease into the State or other disease that endangers public health in the State. Section 21-211 authorizes the Secretary to regulate the distribution of food in the State that may be contaminated with microorganisms and requires the Secretary to adopt rules and regulations that provide for the issuance of permits for food manufacturers, processors, or packers if certain findings are met. Section 21-234 authorizes the Secretary to adopt regulations to carry out the provisions of the Maryland Food, Drug, and Cosmetics Act. Section 21-301 defines terms pertaining to the cottage food industry, including “cottage food business.” Section 21-304 requires the department to adopt rules and regulations necessary to carry out the provisions of Title 21, Subtitle 3 of the Health – General Article, which governs food establishments. Section 21-309.1 requires the department to adopt regulations related to producer mobile farmer’s market licenses. Section 21-309.2 requires the department to adopt regulations related to seasonal farmer’s market producer sampling licenses. Section 21-330.1 requires department to adopt regulations related to cottage food businesses. The remaining cited authority is not relevant to the regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement Chapter 406 of 2022 (House Bill 178 of 2022), which increased the maximum annual revenues from the sale of cottage food products that a “cottage food business” may have from \$25,000 to \$50,000. The department advises that the regulations have no fiscal impact on State or local governments. The Department of Legislative Services concurs.

The fiscal and policy note for House Bill 178 assumed that general fund expenditures for the department would increase beginning in fiscal 2023 to hire a full-time administrative officer to review new applications and develop and issue additional identification numbers to new cottage food businesses. The fiscal and policy note assumed that the administrative officer would transition to part-time (25%) in fiscal 2024, reflecting a normalization in the number of new businesses requesting identification numbers. The department advises that it was not allocated a position nor funding for personnel to implement House Bill 178; thus, the department will use existing resources to complete the expected increased workload.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses. The Department of Legislative Services disagrees as this impact was already accounted for in the fiscal and policy note for House Bill 178, which estimated a potential meaningful impact on small businesses in the State. More specifically, the fiscal and policy note stated that increasing the maximum amount of annual revenues allowed for a business to be considered a cottage food business expands business opportunities by both encouraging new small businesses to enter the market and allowing existing businesses to expand.

Contact Information

Legal Analysis: Tyler N. Babich – (410) 946/(301) 970-5350

Fiscal Analysis: Ralph Kettell – (410) 946/(301) 970-5510