

**Title 64 Series 106
Department of Health and Human Resources
Bureau for Public Health
Home-Based Food Production
Summary of Public Comments:**

COMMENTS AND RESPONSES

The descriptions of public comments below are a paraphrasing of the originally submitted comments. The full text of each public comment has been filed with the Secretary of State's Office.

General

Comment

Is the rule necessary since no legislation passed during the 2017 Regular Session authorizing microprocessors?

Response

Over at least the previous two legislative sessions, the Farmers Market Association has promoted legislation to exempt persons desiring to engage in food production in their home kitchen for sale at farmers markets from 64 CSR 46. In 2016, the bill (SB 434) passed the Senate but died in a House Committee. During the 2017 session, SB 27 passed the Senate, was amended slightly by the House and when it returned to the Senate for concurrence, the Senate amended the bill to include the authorization of retail sales of alcoholic liquors produced at a distillery or mini-distillery on Sunday. The House did not take up the Senate amendments before the expiration of the regular session, thus the bill died.

Prior to the conclusion of the 2017 regular legislative session, the Bureau did not support any exemption to its food manufacturing facilities rule (64 CSR 46). The Bureau believed that the provisions of the rule (which adopts the US FDA's Food Code by reference) were necessary to protect the public health. However, having "seen the writing on the wall", Commissioner Gupta has determined it is likely that legislation creating an exemption from the food manufacturing facilities rule will pass the legislature in the next one or two years. Consequently, the Commissioner has determined that it is in the best interests of the citizens of the state to permit the home-based food production for sale at farmers markets only, via a legislative rule.

The proposed rule attempts to implement reasonable standards for home-based food production. The Bureau drafted the proposed rule based on legislation that permits similar home-based food production in California, Colorado, Illinois, Nevada, New Hampshire, South Carolina, and Tennessee.

Comment

Conducting inspections cannot become an unfunded mandate for local health departments.

Response

The proposed rule does not mandate that local health departments perform inspections or perform duties outside of those already imposed by law. Under the proposed rule, the Bureau is responsible for the issuance of permits and necessary inspections, with the exception that local health departments are permitted to perform inspections to investigate the potential for an outbreak of illness. (See § 6.3). This authority and mandate is consistent with the local health officer's duties and responsibilities under current law.

Section 2 - Definitions

Comment

Who will determine the water activity as defined by subsection 2.15.

Response

Subsection 2.15 defines “water activity” or “Aw” for the purpose of defining “Time/temperature control of safety food” (See § 2.13). Time/temperature control of safety foods are food products which are subject to the provisions of the rule. The Bureau has the responsibility for administering the provisions of the rules and will determine whether a permittee is in compliance.

Section 3 – Home-Based Food Production Operation Permits

Comment

Who will determine the sourcing and the gross sales?

Response

The Bureau will make this determination pursuant to subsection 3.2. The sourcing and gross sales provisions contained in subsection 3.5 are a condition of a permit. The failure to continually comply with the provisions of the rules may be the basis for the revocation or suspension of a permit.