

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

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ENVIRONMENTAL HEALTH AND DRINKING WATER BRANCH

EHS Circular Letter 2021-32

To: Local Directors of Health
Chief Sanitarians
Certified Food Inspectors

From: Lori Mathieu 
Branch Chief, EHDW Branch

Date: April 26, 2021

Subject: Regulation of Food Sold Direct-to-Consumer

The Food Protection Program (FPP) and the Department of Consumer Protection (DCP) recently met to discuss questions received from local health departments (LHD) concerning regulatory oversight of operators who wish to sell their food products directly to the consumer, often through social media platforms. DPH also queried other states through the Conference for Food Protection to gain a better understanding as to how these types of business operations are currently regulated in other states.

Feedback received indicated that although some of these businesses are engaged in food production, because they are selling directly to the consumer and are not wholesaling the food products to other retail establishments, other states regulate them as retail food establishments. Therefore, in terms of Connecticut's regulatory structure, **we advise that they be regulated by local health departments as retail food establishments.** The Food and Drug Administration (FDA) also provided feedback indicating that they are currently evaluating these types of operations and will be soliciting additional information from stakeholders in the future.

Many of the questions from LHDs refer to licensing of these operations. While FPP and DCP both acknowledge that this can be difficult to determine in some instances, both agencies agree that the first step should be to determine which regulation applies best and then select the most appropriate license based on the type of foods being prepared, the processes involved, and



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method of delivery to the end-use consumer. The type of license provided may be different from operation to operation, such as a food establishment license versus a catering license but all would be regulated under 19-13-B42, 19-13-B49, or 19-13-B40 of the Regulations of Connecticut State Agencies. Below are some guidelines from DPH and DCP to assist LHDs when determining the most appropriate regulation to apply to these operations:

- Proposals that include special processes such as reduced oxygen packaging, curing, fermenting, etc. are not allowed at this time under 19a-13-B40, 19-13-B42, or 19-13-B49. Just as a retail food service establishment is not allowed to conduct these processes at this time (except for sous vide and acidification of sushi rice), this would also apply to a producer selling direct-to-consumer.
 - NOTE: Sous vide and acidification of sushi rice are the only special processes allowed in retail food service establishments and those must be pre-approved by DPH. However, if it is a retail food establishment licensed by DCP and regulated under the FDA Food Code, they may review the request for a special process.
- A commercial kitchen must be utilized to produce the food products for sale. If an operator is proposing to utilize their residential kitchen, they may contact DCP to apply for a Cottage Foods license, if appropriate.
 - NOTE: Cottage food regulations do not allow for online sales of food products and only non-time/temperature controlled for safety foods are allowed.
- LHDs will need to determine if the preparation, packaging, and delivery methods proposed by the operator are adequate for safe handling of the product. The FPP and DCP may be able to assist LHDs however, in some cases, a formal evaluation by a recognized process control authority may be required. There are resources available to the operator through Cornell University and the University of Maine for Process Authority evaluation.
- Packaged foods must be labeled in accordance with current federal labeling requirements. At minimum, the packages must contain the name of the business, address, ingredients list, and indicate any known allergens. DCP is available to assist with any questions related to proper labeling.
- Should a LHD discover a direct-to-consumer food business that does not have the proper license to operate, the LHD should issue a cease and desist order if a known business address is available and provide the operator with the information they need to bring their operation into compliance with all applicable laws.

Both the DPH FPP and DCP are available to assist LHDs with questions about these business proposals. Should you need assistance evaluating an inquiry or proposal from a potential operator, please contact the FPP at dph.foodprotprog@ct.gov and they will work with DCP to assist you. Please note that due to COVID-19, contact by email is preferred.

C: Tracey Weeks, Program Coordinator, Food Protection Program, DPH
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