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Cottage Food Laws:

*New Jersey*



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# A National Agricultural Law Center Research Publication

## Cottage Food Laws: New Jersey

### New Jersey Admin. Code § 8:24-1.5 New Jersey Admin. Code § 8:24-11.1 through 11.8

#### **New Jersey Admin. Code § 8:24-1.5. Definitions**

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“**Cottage food product**” means non-TCS food that a cottage food operator prepares and includes:

1. Baked goods, including bread, rolls, biscuits, cakes, cupcakes, pastries, and cookies;
2. Candy, including brittle and toffee;
3. Chocolate-covered nuts and dried fruit;
4. Dried fruit;
5. Dried herbs and seasonings, and mixtures thereof;
6. Dried pasta;
7. Dry baking mix;
8. Fruit jams, fruit jellies, and fruit preserves;
9. Fruit pies, fruit empanadas, and fruit tamales (excluding pumpkin);
10. Fudge;
11. Granola, cereal, and trail mix;
12. Honey and sweet sorghum syrup;
13. Nuts and nut mixtures;
14. Nut butters;
15. Popcorn and caramel corn;
16. Roasted coffee and dried tea;
17. Vinegar and mustard;
18. Waffle cones and pizzelles; and
19. Upon written application to the Public Health and Food Protection Program, other non-TCS food.

“**Cottage food operator**” means a person who holds a New Jersey Cottage Food Operator Permit.

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“**TCS food**” means a food that requires time and/or temperature control for safety to limit pathogenic microorganism growth or toxin formation.

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**Credits** Adopted by R.2006 d.430, effective January 2, 2007. Amended by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021. Technical changes made by 53 N.J.R. 2196(a) R.2021, effective December 20, 2021.



## **N.J.A.C. § 8:24-11.1. Requirement and procedure to obtain a Cottage Food Operator Permit**

- (a) A person or entity that engages in the production, distribution, and/or sale of food to consumers shall:
  - 1. Have a Cottage Food Operator Permit; or
  - 2. Comply with applicable laws to retail food establishments.
- (b) A person seeking to obtain a Cottage Food Operator Permit shall submit to the Public Health and Food Protection Program:
  - 1. A completed application in the form at N.J.A.C. 8:24-11 Appendix, incorporated herein by reference, which is available at <https://www.nj.gov/health/forms> and on request to the Public Health and Food Protection Program;
  - 2. A copy of a certificate issued by an accredited program showing that the applicant is a food protection manager in good standing with the accredited program;
  - 3. If the cottage food operator's kitchen:
    - i. Uses private well water, a microbiological (total coliform) analysis of the private well water that is conducted using samples collected no earlier than 60 days prior to the filing date of the application, which is the postmark date, if the application is mailed, or the date of submission, if hand-delivered; and
    - ii. Does not use private well water, a copy of most recent water bill for the location of the cottage food kitchen; and
  - 4. The nonrefundable application fee established at N.J.A.C. 8:24-11.6, payable to the Treasurer, State of New Jersey.
- (c) The Department will conduct a completeness review of the application and notify the applicant in writing of any deficiency or incompleteness therein that the applicant must correct before the Department will process further the application.
  - 1. If an applicant fails to correct a deficient or incomplete application within 30 days of the issuance of a notice pursuant to (b) above, the Department will deem the application abandoned.
- (d) Upon determining an application to be complete, the Department shall issue a cottage food operator permit to the applicant.
- (e) An applicant for a cottage food operator permit shall ascertain and comply with applicable local laws of the municipality in which the applicant seeks to operate a cottage food operation.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.

## **N.J.A.C. § 8:24-11.2. Authorized cottage food operator activity**

- (a) A Cottage Food Operator Permit authorizes a holder thereof:



1. To produce cottage food products in the private kitchen of the operator's residence and at no other location; and
  2. Subject to N.J.A.C. 8:24–11.5, to distribute cottage food products to consumers thereof without being subject to initial or periodic inspection by a health authority and other requirements applicable to retail food establishments pursuant to this chapter and the Public Health Practice Standards of Performance for Local Boards of Health in New Jersey at N.J.A.C. 8:52, other than as specified in this subchapter.
- (b) A cottage food operator may transact activities that are ancillary to the delivery or relinquishment of cottage food products to a consumer by means of United States postal mail, common carrier, electronic communication, internet, and/or telephone, provided the delivery or relinquishment of cottage food products occurs in New Jersey in compliance with N.J.A.C. 8:24–11.3(a).
1. Authorized ancillary transactions include:
    - i. Accepting order placements;
    - ii. Receiving payments;
    - iii. Engaging in marketing or advertising activities; and
    - iv. Participating in other business activities other than cottage food product delivery and relinquishment.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.

### **N.J.A.C. § 8:24-11.3. Prohibited cottage food operator activity**

- (a) A cottage food operator shall not deliver or relinquish cottage food products:
1. At a location other than:
    - i. The home of the cottage food operator, but not for onsite consumption;
    - ii. The home of the consumer, provided the home is in New Jersey;
    - iii. A New Jersey farmers' market or farm stand;
    - iv. To consumers, at a New Jersey temporary retail food establishment; or
    - v. In New Jersey, to the consumer, provided applicable law does not otherwise prohibit the delivery or relinquishment at the location;
  2. To a person who is not the consumer;
  3. To a wholesale establishment as N.J.A.C. 8:21–9 defines that term;
  4. To a retail food establishment;
  5. By United States postal mail or a common carrier, subject to N.J.A.C. 8:24–11.2(b); and/or
  6. In interstate commerce, that is, outside of the State of New Jersey, subject to N.J.A.C. 8:24–11.2(b).
- (b) The gross annual sales (that is, before deductions of taxes and operating expenses) that a cottage food operator generates from the sale of cottage food products shall not exceed \$50,000.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.



## **N.J.A.C. § 8:24-11.4. Cottage food point-of-sale notice, packaging, and labeling**

- (a) A cottage food operator shall make available for inspection, on request, the operator's permit if the point of sale is the residence of the operator or the consumer.
- (b) If the point of sale is a location other than the residence of the operator or the consumer, the operator shall place at the point of sale, on conspicuous and unobstructed display, the cottage food permit and a placard that states, "This food is prepared pursuant to N.J.A.C. 8:24-11 in a home kitchen that has not been inspected by the Department of Health."
- (c) A cottage food operator shall affix one or more labels or tags on cottage food that collectively state at least the following:
  - 1. The common name of the cottage food product;
  - 2. The cottage food product ingredients in descending order of predominance by weight;
  - 3. If the cottage food product contains a major food allergen, the word, "Contains" followed by a list of the major food allergens that the cottage food product contains;
  - 4. The cottage food operator's name, business name, and Cottage Food Operator Permit number;
  - 5. The name of the municipality in which the cottage food operator prepares the cottage food product, which shall be the same as the municipality that appears of record with the Department as the cottage food operator's residence, followed by either "New Jersey" or "NJ"; and
  - 6. The statement, "This food is prepared pursuant to N.J.A.C. 8:24-11 in a home kitchen that has not been inspected by the Department of Health."

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.

## **N.J.A.C. § 8:24-11.5. Health authority's right of access**

- (a) Pursuant to N.J.S.A. 24:1-1 et seq., especially 24:2-1 et seq., and 24:3-1 et seq., and 26:1A-1 et seq., especially 26:1A-16, 17, 18, and 19, a health authority is authorized to enter upon, examine, and survey any premises, including the home kitchen of a cottage food operator, and things thereof, including materials, equipment, books, and records:
  - 1. To enforce or confirm compliance with any health law or other law under the official's jurisdiction; and/or
  - 2. To investigate complaints associated with cottage food products, such as contamination, foodborne illness, misbranding, or adulteration.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.



## **N.J.A.C. § 8:24-11.6. Application fees; permit duration; permit renewal**

- (a) The fee to apply for a Cottage Food Operator Permit is \$100.00.
- (b) A Cottage Food Operator Permit is valid for two years from date of issuance.
- (c) The fee to apply for renewal of a Cottage Food Operator Permit is \$100.00.
- (d) To prevent permit lapse, a cottage food operator permittee should submit an application for permit renewal by no later than 45 days before the expiration of the permit that is in effect.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.

## **N.J.A.C. § 8:24-11.7. Suspension, revocation, and/or denial of issuance of renewal of a permit; monetary penalties**

- (a) A person or entity that violates any provision of this chapter or refuses to comply with a lawful order or direction of a health authority is liable for penalties as provide by N.J.S.A. 24:17-1 et seq., and 26:1A-10, and/or injunctive action as provided by law.
- (b) The Department may impose a monetary penalty pursuant to N.J.S.A. 24:17-1 et seq., and 26:1A-10, and/or suspend, revoke, and/or refuse to issue or renew, a Cottage Food Operator Permit, if the applicant or permit holder fails to comply with applicable provisions of this chapter, Titles 24 and 26 of the Revised Statutes of New Jersey, and/or any other applicable rules or statutes, and/or if a health authority determines that the applicant or permit holder poses a threat to public health, safety, or welfare.
  - 1. The Department shall provide the applicant or permit holder notice of the monetary penalty, suspension, revocation, or denial of issuance or renewal, of a permit, and the reason for the action taken.
- (c) The Department may issue a summary suspension of the permit of a cottage food operator if the permit holder's continued operation poses an immediate or serious threat to public health, safety, or welfare.
  - 1. The Department shall provide the permit holder notice of a summary suspension and the reason for the action taken.
  - 2. A summary suspension is effective as of the date of issuance.
  - 3. A cottage food operator whose permit the Department summarily suspends shall have the right to apply for emergency relief, as provided at N.J.A.C. 8:24-11.8.
- (d) If a person, entity, or cottage food operator operates as a cottage food operator without a valid permit issued by the Department, fails or refuses to comply with an order of a health authority, poses a threat to public health, safety, and welfare, and/or engages in activity that is violative of applicable provisions of Titles 24 and 26 of the Revised Statutes of New Jersey and/or this chapter, the Department may:



1. Issue an order requiring the person, entity, or cottage food operator to cease and desist operations;
  2. Take action in the New Jersey Superior Court against the person, entity, or cottage food operator to enjoin its operations;
  3. Confiscate, condemn, seize, sell, destroy, detain, and/or embargo articles of food in accordance with N.J.S.A. 24:1-1 et seq., especially 24:4-1 et seq.; and/or
  4. Impose monetary penalties pursuant to N.J.S.A. 24:17-1 et seq., and 26:1A-10.
- (e) A monetary penalty that the Department imposes pursuant to N.J.S.A. 24:17-1.1 et seq., and/or 26:1A-10, shall become due 45 days after the deadline to file an appeal has ended.
1. If an applicant for a Cottage Food Operator Permit or a permit holder files an appeal with the Department, then the monetary penalty shall become due in accordance with N.J.A.C. 8:24-11.8(b).
- (f) Failure to pay a monetary penalty when it becomes due pursuant to (e) above and/or N.J.A.C. 8:24-11.8(b) may result in one or more of the following actions being imposed on the applicant for a cottage food operator permit or the permit holder:
1. Institution of a summary civil proceeding by the State, pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.;
  2. The Department's denial of, or refusal to issue, a permit or a permit renewal; and/or
  3. Revocation of an existing permit.

Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.

### **N.J.A.C. § 8:24-11.8. Hearing on enforcement actions**

- (a) When the Department summarily suspends the permit of a cottage food operator, the operator maintains the right to petition the Commissioner of the Department for emergency relief.
1. To request emergency relief, the cottage food operator must submit to the Department, within 30 days from the date of the notice of summary suspension, a request in writing accompanied by a response to the notice of summary suspension.
    - i. Failure to submit a request for emergency relief within 30 days from the date of the notice of summary suspension shall result in the cottage food operator's forfeiture of all rights to emergency relief.
  2. All applications for emergency relief will be handled in accordance with N.J.A.C. 1:1-12.6(c).
  3. Unless emergency relief is granted, the summary suspension shall remain in effect until lifted by either the Department or a court of competent jurisdiction.
  4. Nothing in this section shall be construed to prevent the Department from simultaneously, or thereafter, moving to



- suspend or revoke the permit of a cottage food operator or to issue the cottage food operator a monetary penalty.
- (b) If the Department issues a notice of proposed assessment of a monetary penalty, permit suspension or revocation, and/or denial of permit issuance or renewal, the Department shall afford the applicant or permit holder an opportunity for a hearing to contest the proposed action.
1. A monetary penalty, permit suspension (excluding summary suspensions) or revocation, and/or denial of permit issuance or renewal shall become effective and final 30 days from the date of the notice of proposed action, unless the applicant or permit holder, within that 30-day period, submits a written request for a hearing to the Department with a response to the proposed action.
    - i. Failure to submit a written request for a hearing within 30 days from the date of the notice of proposed action shall result in the applicant or permit holder forfeiting all rights to such a hearing.
    - ii. If the applicant or permit holder submits a timely request for a hearing, then the monetary penalty, and/or the suspension (excluding summary suspensions), revocation, and/or denial of permit renewal shall be held in abeyance until the hearing is concluded and a final decision is rendered.
    - iii. A monetary penalty that is the subject of a hearing, which the applicant or permit holder timely requests pursuant to this section, is due 45 days after the Commissioner's issuance of a final agency decision determining the penalty.
    - iv. A revocation, suspension, or denial of issuance or renewal of a Cottage Food Operator Permit is effective immediately upon the Commissioner's issuance of a final agency decision on the action.
- (c) The Department shall transmit hearing requests to the Office of Administrative Law.
- (d) Hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**Credits Adopted by 53 N.J.R. 1711(a) R.2021 d.087, effective October 4, 2021.**

