

**HEALTH**

**PUBLIC HEALTH SERVICES BRANCH**

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH**

**CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE**

**SANITATION IN RETAIL FOOD ESTABLISHMENTS, FOOD AND BEVERAGE**

**VENDING MACHINES, AND COTTAGE FOOD OPERATIONS**

**Cottage Food Operator Permit**

**Proposed Amendment: N.J.A.C. 8:24-1.5**

**Proposed New Rules: N.J.A.C. 8:24-11 and N.J.A.C. 8:24-11 Appendix A**

Authorized By: \_\_\_\_\_

Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, in consultation with the Public Health Council.

Authority: N.J.S.A. 24:1-1 et seq., particularly 24:2-1, 24:5-1 et seq., 24:6B-1 et seq., 24:10-57.20, 24:10-73.1, 24:12-12, and 24:17-1 et seq.; and N.J.S.A. 26:1A-7 and 10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-\_\_\_\_\_

**Submit written comments** by \_\_\_\_\_, 2020, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked on or

before \_\_\_\_\_, 2020, to:

Joy L. Lindo, Director

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Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

### **Summary**

N.J.S.A. 24:1-1 et seq., particularly 24:2-1, 24:5-1 et seq., 24:6B-1 et seq., 24:10-57.20, 24:10-73.1, 24:12-12; and N.J.S.A. 26:1A-7 require the Department of Health (Department) to promulgate standards for sanitation in establishments that prepare or otherwise offer food for retail distribution, that is, to the ultimate consumer rather than to an intermediary such as a wholesaler, a grocer, or a cold storage warehouse, and in food and beverage vending machines. Existing N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, establishes these requirements. Existing N.J.A.C. 8:21, Food and Drugs, establishes the sanitary standards applicable to food and drugs that are manufactured, stored, or distributed to intermediaries such as wholesalers.

Existing N.J.A.C. 8:24-2.1(c)1 prohibits the operation of a retail food establishment “in a private home or in a room used as living or sleeping quarters.” However, the definition of the term, “retail food establishment,” at existing N.J.A.C. 8:24-1.5, authorizes persons to sell or offer for human consumption food that is prepared in a

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“kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the health authority.” Thus, a person can distribute to consumers food that is not potentially hazardous (more commonly known as “shelf-stable” food because it does not require refrigeration) that is prepared in a home kitchen if the food is not sold for profit, provided the consumer is informed that the food was prepared in an unregulated facility.

Having reviewed the prohibition on the sale of home-made food, and having heard from stakeholders who desire to engage in for-profit sales of shelf-stable food (typically baked goods) they prepare in their home kitchens, and being persuaded by scientific evidence that supports a finding that shelf-stable food prepared in home kitchens is safe for consumers, provided certain regulatory safeguards are in place, the Department proposes to establish at N.J.A.C. 8:24 a regulatory scheme to authorize this activity through a “cottage food operator” permitting process that would require adherence to certain minimum standards to protect consumers and promote accountability.

The Department notes that several bills are pending before the 218th New Jersey Legislature (2020 through 2021 Legislative Session) that would authorize the prohibited activity, such as Assembly Bill Nos. A2315 and Senate Bill No. S73, which are in various stages of legislative action. The Department will monitor the progress of

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these bills to ensure consistency of the proposed amendment and new rules with any that might become law following publication of the notice of proposal.

Existing N.J.A.C. 8:24 at Subchapter 1 establishes general provisions. The Department proposes nonsubstantive amendments at existing N.J.A.C. 8:24-1.5, Definitions, to conform the introductory paragraph to New Jersey Administrative Code style convention; and to amend the existing definition of the term, “Department,” and uses of the term throughout the subchapter, to reflect the renaming of the Department pursuant to N.J.S.A. 26:1A-2.1.

The Department proposes to amend existing N.J.A.C. 8:24-1.5 to establish definitions therein of the following new terms: “cottage food,” “cottage food operator,” “major food allergen,” “Public Health and Food Protection Program,” and “TCS food.”

The Department proposes to amend the existing definition of the term, “retail food establishment,” at existing N.J.A.C. 8:24-1.5 to reorganize and consolidate the definition to conform to New Jersey Administrative Code style convention by relocating the text of existing subparagraph 2 to the introductory paragraph, and by changing the codification of the balance of the existing text. The Department proposes to establish new subparagraph 2 within the existing definition of this term, and thereunder recodify existing subparagraphs 1 through 6 as new i through vi. At new sub-subparagraph 2iii(1), the Department proposes to retain the existing exemption from regulation of non-hazardous food produced in home kitchens for charitable purposes, and at new sub-subparagraph 2iv(2), the Department proposes to exclude non-hazardous food

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produced pursuant to a cottage food operator permit from regulation under retail food establishment standards.

At existing N.J.A.C. 8:24-1.5, the Department proposes to amend the existing definition of the term “safe cooking temperatures,” to restate the term in the singular and to correct a spelling error at subparagraph 3, and to amend the existing definition of the term, “Shiga toxin-producing *Escherichia coli*,” at existing N.J.A.C. 8:24-1.5, to correct typographical and formatting errors in the presentation of this scientific term.

The Department proposes to establish new Subchapter 11, Cottage Food Operator Permit. Proposed new N.J.A.C. 8:24-11.1 would establish the procedure to obtain a cottage food operator permit, and would incorporate by reference the proposed form of cottage food operator permit at proposed Subchapter Appendix A. Proposed new N.J.A.C. 8:24-11.2 would establish authorized cottage food operator activity. Proposed new N.J.A.C. 8:24-11.3 would identify prohibited cottage food operator activity. Proposed new N.J.A.C. 8:24-11.4 would establish point-of-sale notice, packaging, and labeling requirements applicable to cottage food. Proposed new 8:24-11.5 would restate the statutory rights of the Department, and local health officials with jurisdiction, to have access to and enter upon premises (including cottage food operator’s kitchens) and to examine things (such as equipment and records) to enforce public health laws, and would establish enforcement procedures applicable to cottage food operators. Proposed new N.J.A.C. 8:24-11.6 would establish the applicable fees for applications to obtain and renew cottage food operator permits and the period of effectiveness of permits. Proposed new N.J.A.C. 8:24-11.7 would establish procedures

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for the suspension, revocation, and/or denial of issuance or renewal, of a permit, and/or the imposition of monetary penalties. Proposed new N.J.A.C. 8:24-11.8 would establish procedures for hearings on enforcement actions.

### **Social Impact**

The Department anticipates that the proposed amendment and new rules would have a beneficial social impact on those interested in engaging in the production and distribution of cottage food products for profit. By establishing the procedures, prerequisites, conditions, and fees to obtain a cottage food operator permit, identifying the cottage food products that permit holders can produce and distribute, providing a mechanism by which cottage food operators can request authorization to produce additional categories of non-TCS food products, and identifying the rights of access and enforcement procedures available to health authorities, the proposed amendment and new rules would ensure that operators have the information they need to proceed within the law and avoid uncertainty. By requiring cottage food operators to obtain, and maintain in good standing, certification as food protection managers, the proposed amendment and new rules would provide a measure of assurance that cottage food operators have awareness of, and presumably would implement, evolving best practices and measures to ensure food safety and thereby provide a level of professional accountability. By identifying the mechanisms and locations at which cottage food operators would be authorized to manufacture, sell, deliver, and relinquish cottage food products, prohibiting delivery of cottage food products by United States

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Postal Mail and common carrier, prohibiting sale or delivery out of State, and establishing maximum gross annual sales, the proposed amendment and new rules would ensure that a cottage food operator permit does not become a means to circumvent compliance with the more stringent requirements applicable to retail food establishments at N.J.A.C. 8:24 and in other laws, and would help to prevent cottage food products made in New Jersey from moving in interstate commerce, thereby facilitating containment and recall in the event of a finding of misbranding, adulteration, contamination, or foodborne illness outbreak. By specifying the minimum content of labeling and notices that cottage food operators are to use, post, and make available to consumers, the proposed amendment and new rules would help to make consumers aware that cottage food products are produced in uninspected residential kitchens.

The Department anticipates that the proposed amendment and new rules would have a beneficial social impact on the public by providing a regulatory structure in which a cottage food product industry in New Jersey could exist in accordance with minimum standards for health and safety.

To the extent persons might be engaging in the “underground” or unlawful production and distribution of foods made in home kitchens, the proposed amendment and new rules might have a beneficial social impact on the public by helping to end distribution of potentially unsafe foods through the establishment of minimum standards by which these persons could operate within the law, and this might prevent occurrences of foodborne illness associated with food produced by unregulated persons.

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## **Economic Impact**

Cottage food operator permit applicants and permittees would incur costs to comply with the proposed amendment and new rules. These costs would include the application fee to obtain initial permits and to renew those permits biennial thereafter, and the cost to obtain, and maintain in good standing over time, certification as food protection managers, such as tuition to obtain required training for initial certification and to participate in continuing education to maintain certification thereafter. Cottage food operators that do not comply with the proposed amendment and new rules are subject to a health authority's imposition of penalties pursuant to N.J.S.A. 24:17-1 et seq., and 26:1A-10, and might incur costs associated with responding to enforcement actions, such as attorneys' fees.

Cottage food operators would realize an economic benefit in that they would be able to participate in an income-generating activity without incurring the costs associating with maintaining compliance with more stringent State and local requirements that apply to retail food establishments.

The Department would incur costs to implement the proposed amendment and new rules. These costs would include salaries of personnel to process permit applications, respond to inquiries, and participate in enforcement activities. The State would realize income from permit fees and income taxes from cottage food operators.

To the extent persons might be engaging in the "underground" or unlawful production and distribution of foods made in home kitchens, the proposed amendment

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and new rules might provide an economic benefit to the public by helping to end distribution of potentially unsafe foods through the establishment of minimum standards, and thereby reduce costs associated with foodborne illness.

### **Federal Standards Statement**

The Department is not proposing the proposed amendment and new rules under the authority of, or to implement, comply with, or participate in, a program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. As the proposed amendment and new rules are not subject to any Federal standards or requirements, a Federal standards analysis is not applicable to this rulemaking.

### **Jobs Impact**

The proposed amendment and new rules would create a mechanism by which self-employed cottage food operators could generate income. To the extent this activity would constitute a “job” within the meaning of the Administrative Procedure Act, N.J.S.A. 52:14B-1, then the proposed amendment and new rules would generate jobs in the State. The number of jobs thus generated would depend on the number of persons who apply for cottage food operator permits.

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## **Agriculture Industry Impact**

The proposed amendment and new rules could have an impact on the agriculture industry of the State to the extent it would provide a mechanism by which home producers of agricultural products in the State could use these products to manufacture and sell cottage food products without having to comply with the more stringent standards applicable to retail food establishments.

## **Regulatory Flexibility Statement**

The proposed amendment and new rules would establish reporting, recordkeeping and other compliance requirements that are applicable exclusively to small businesses within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The number of small businesses to which the proposed amendment and new rules would apply would depend on the number of persons who apply for cottage food operator permits. The Summary, Social Impact, and Economic Impact, above, describe these requirements. Small businesses subject to the proposed amendment and new rules would be unlikely to require the retention of professional services to comply.

The proposed amendment and new rule would enable cottage food operators to operate lawfully under standards that are less stringent than those that otherwise would apply to them as retail food establishments, thereby minimizing the adverse economic impact that they would incur without the proposed amendment and new rules. The Department has determined that the proposed amendment and new rules would

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establish the minimum standards necessary to ensure food safety, sanitation, and non-adulteration, and thereby protect public health. Therefore, the Department proposes no lesser or differing standards based on business size.

### **Housing Affordability Impact Analysis**

The proposed amendment and new rules would impose an insignificant impact on the affordability of housing and there is an extreme unlikelihood that the rulemaking would evoke a change in the average costs associated with housing because the rulemaking addresses cottage food production and would have no bearing on housing costs.

### **Smart Growth Development Impact Analysis**

The proposed amendment and new rules would impose an insignificant impact on smart growth and there is an extreme unlikelihood that the rulemaking would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the rulemaking addresses cottage food production and would have no bearing on housing costs.

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## **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed amendment and new rules would have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

**Full text** of the proposal follows (additions indicated in boldface, **thus**; deletions indicated in brackets, [thus]):

### TITLE 8. HEALTH

#### CHAPTER 24. SANITATION IN RETAIL FOOD ESTABLISHMENTS [AND], FOOD AND BEVERAGE VENDING MACHINES, **AND COTTAGE FOOD OPERATIONS**

##### **SUBCHAPTER 1. GENERAL PROVISIONS**

###### 8:24-1.5 Definitions

[For the purpose of this chapter, the] **The** following words[, phrases, names] 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;**

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3. Chocolate-covered nuts and dried fruit;
4. Dried fruit;
5. Dried herbs, 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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“Department” means the New Jersey Department of Health [and Senior Services].

...

“Health authority” means [the duly licensed agent of the] **a local board of health with jurisdiction**, and/or [State] **the Department** [of Health and Senior Services [to act in the enforcement of its ordinances and sanitary laws of the State].

...

**“Major food allergen”:**

**1. Means any of the following, and/or a protein derived from any of the following:**

- i. Milk;**
- ii. Egg;**
- iii. Fish;**
- iv. Crustacean shellfish;**
- v. Tree nuts;**
- vi. Wheat;**
- vii. Peanuts; and**
- viii. Soybeans; and**

**2. Excludes:**

- i. Any highly refined oil derived from a food specified in subparagraph 1 above and any ingredient derived from such highly refined oil; and**

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ii. Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

...

“Public Health and Food Protection Program” means the program of the Department by that name for which the contact information is:

Public Health and Food Protection Program  
Consumer, Environmental and Occupational Health Service  
Division of Epidemiology, Environmental and Occupational Health  
NJ Department of Health  
PO Box 369  
Trenton, NJ 08625-0369  
Telephone: (609) 826-4935  
Email: [phfpp@doh.nj.gov](mailto:phfpp@doh.nj.gov)

...

“Retail food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption **to a consumer, or indirectly to consumers through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or a service that is provided by common carriers and:**

1. [Such as a] **Includes:**

i. **A restaurant;**

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ii. **A** satellite or catered feeding location;

iii. **A** catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;

iv. **A** market;

v. **A** vending location;

vi. **A** conveyance used to transport people;

vii. **An** institution; [or]

viii. **A** food bank; [and

2. That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

“Retail food establishment” includes:]

[1.] **ix.** An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the health authority; [or] **and**

[2.] **x.** An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location[; where], **regardless of whether** consumption [is] **occurs** on or off the premises[;] and regardless of whether there is a charge for the food[.

“Retail food establishment” does not include]; **and**

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## 2. Excludes:

Recodify existing 1 and 2 as new i and ii.

[3.] **iii.** A kitchen in a private home [if only food] that [is not potentially hazardous] **produces food that is non-TCS and:**

**(1) Is prepared for sale or service at a function such as a religious or charitable organization's bake sale if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the health authority; or**

**(2) Is prepared and sold, or otherwise relinquished, to the consumer, in accordance with a cottage food operator permit;**

[4.] **iv.** An area where food that is prepared as specified in [3] **2iii.** above is sold or offered for human consumption;

[5.] **v.** A kitchen in a private home, such as a family child-care home, as defined at N.J.A.C. 10:126-1.2; or a bed and breakfast guesthouse or bed and breakfast homestay as defined at N.J.A.C. 5:70-1.5, that prepares and offers food to guests if the home is owner occupied, and breakfast is the only meal offered; [or] **and/or**

[6.] **vi.** (No change in text.)

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“Safe cooking temperature[s]” means heating all parts of raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

1.-2. (No change.)

3. 165 degrees Fahrenheit or above for 15 seconds for poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or [ratities] **ratites**.

4. (No change.)

...

“Shiga toxin-producing [Escherichia coli] **Escherichia coli**” means any [E. coli] **Escherichia coli** capable of producing Shiga toxins (also called verocytotoxins or “Shiga-like” toxins)[. This] **and** includes, but is not limited to, [E. coli] **Escherichia coli** reported as serotype O157:H7, [O157NM] **O157:NM**, and O157:H-.

...

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

...

#### SUBCHAPTER 11. COTTAGE FOOD OPERATOR PERMIT

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**8:24-11.1 Requirement and procedure to obtain 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 Subchapter Appendix A, 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 copy of an analysis of the private well water conducted no earlier than one year before the date of the application;**

**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.**

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**(b) 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.**

**(c) Upon determining an application to be complete, the Department shall issue a cottage food operator permit to the applicant.**

**(d) 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.**

#### **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.**

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**8:24-11.3 Prohibited cottage food operator activity**

**(a) A cottage food operator shall not sell, 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;**

**iii. A farmer's market or farm stand; or**

**iv. A temporary retail food establishment to consumers;**

**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; and/or**

**6. In interstate commerce, that is, outside of the State of New Jersey.**

**(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.**

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#### **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:**
  - i. Name, business name, and physical and mailing addresses; and**
  - ii. Permit number; and**
- 5. 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."**

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#### **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 N.J.S.A. 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 thereat, 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.**

#### **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.**

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**8:24-11.7 Suspension, revocation, and/or denial of issuance or 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.**

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**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 at 24:4-1 et seq.; and/or**

**4. Impose monetary penalties pursuant to N.J.S.A. 24:17-1 et seq., and N.J.S.A. 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 N.J.S.A. 26:1A-10, shall become due 45 days after the deadline to file an appeal has ended.**

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**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 subsection (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.**

#### **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.**

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**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 herein 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 with a response to the proposed action.**

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**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 the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 et seq.**

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## APPENDIX A

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