

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH

CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE

PUBLIC HEALTH AND FOOD PROTECTION PROGRAM

SANITATION IN RETAIL FOOD ESTABLISHMENTS, FOOD AND BEVERAGE

VENDING MACHINES, AND COTTAGE FOOD OPERATIONS

Cottage Food Operator Permit

Adopted Amendment: N.J.A.C. 8:24-1.5

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

Proposed: April 20, 2020, at 52 N.J.R. 838(a). (The notice of proposal would have expired on April 20, 2021, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022.)

Adopted: July 16, 2021, by Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, in consultation with the Public Health Council, as amended and supplemented.

Filed: July 16, 2021, as R.2021 d.087, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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, 24:17-1 et seq., and 26:1A-7 and 10.

Effective Date: October 4, 2021.

Expiration Date: November 27, 2020.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 8:24 were scheduled to expire on November 27, 2020, as the Commissioner of the Department of Health (Health) timely filed this notice of proposal. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) and P.L. 2021, c. 104, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired and, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 104, this notice of adoption is filed while the rules are still legally effective.

Summary of Public Comments and Agency Responses:

The Department received comments from 745 persons. In addition, 24 persons registered to comment using the Department's online comment system, but submitted no comment. These persons are grouped as follows:

Group 1 comprises the following persons who identify themselves as affiliated with, or members of, an entity known as the New Jersey Home Bakers Association (NJHBA). Persons listed in Group 1 whose names are marked with an asterisk (*) also commented within the comment letter described in Group 2.

1. Tracey Andolini, Hawthorne, NJ
2. Sue Aris, Secaucus, NJ
3. Lara Bairamian*, Bogota, NJ
4. JC Becker, Somerville, NJ
5. Brittany Blue, Gibbstown, NJ

6. Chanell Burton, Sicklerville, NJ
7. Joon Choi*, Ridgefield, NJ
8. Travis Coatney, Atlantic Highlands, NJ
9. Mandy Coriston*, Newton, NJ
10. Remy Cosse*, Watchung, NJ
11. Claire Demetroules, Layton, NJ
12. Marian Desalvo-Rodgers, Jackson, NJ
13. Tina Devictoria, Hamilton, NJ
14. Ryan Dumapit, Metuchen, NJ
15. Jennifer Galling, River Vale, NJ
16. Suzann Gemelos*, Tinton Falls, NJ
17. Suzanne Guerin, Boonton, NJ
18. Christina Hadry, Penns Grove, NJ
19. Beverly Hansen*, Cherry Hill, NJ
20. Anna Helm, Maplewood, NJ
21. Melissa Iellimo, West Caldwell, NJ
22. Marilyn Jensen, Point Pleasant Borough, NJ
23. Vanessa Kelusak*, Whiting, NJ
24. Rebecca Levenson,* Vineland, NJ
25. Mari Ligotti, Plainfield, NJ
26. Bonnie MacDonald*, Cherry Hill, NJ
27. Eric Maitland*, East Brunswick, NJ
28. April Mannarino, Florham Park, NJ

29. Paola Martinez*, Jersey City, NJ
30. Gregory Marx*, Jersey City, NJ
31. Donna Mattia, Nutley, NJ
32. Elisabeth McKay, West Long Branch, NJ
33. Robert McKay, West Long Branch, NJ
34. Merrilee McMurray*, Annandale, NJ
35. Arletha Miller, Jersey City, NJ
36. Alice Olayinka*, Franklin Park, NJ
37. Kristin Oley, Scotch Plains, NJ
38. Grace Pak*, West New York, NJ
39. Sarah Parker*, Hoboken, NJ
40. Shaylen Pearson, Williamstown, NJ
41. Joelle Peterson, West Orange, NJ
42. Martha Rabello, Fanwood, NJ
43. Sarah Reggimenti*, Robbinsville, NJ
44. Nelmarie Rennison*, Stirling, NJ
45. Jenna Rippman*, Turnersville, NJ
46. Jennifer Roth, Ewing, NJ
47. Lisa Russinko, Franklin, NJ
48. Lori Sandell, Oakland, NJ
49. Audrey Santos, Rahway, NJ
50. David Shindle, Totowa, NJ
51. Althea Shuler*, Hackensack, NJ

- 52. Marta Silva*, Wharton, NJ
- 53. Rebecca Stauffer, Point Pleasant, NJ
- 54. Mary Troost, Cherry Hill, NJ
- 55. Jill Weiss, Montville, NJ
- 56. Ryan White*, Manville, NJ

Group 2 comprises the following persons, whose individual comments appear within the body of a letter submitted by Commenter 42 in Group 1. Commenter 42 identifies these persons as members of the NJHBA. Commenter 42 incorrectly states that the letter contains the comments of 173 persons, due to duplications, 166 unique commenters submitted comments within the letter of Commenter 42. Of these, 22 persons commented separately in response to the notice of proposal as part of Group 1, and 15 commented separately in response to the notice of proposal as part of Group 3. Those persons whose names appear as commenters in Group 1 or Group 3 and who also submitted comments within the letter of Commenter 42, are listed in Groups 1 or 3 with an asterisk (*), and are omitted from the list below, to ensure an accurate count of commenters.

- 57. Michelle Achong, Orange, NJ
- 58. Seharish Ahmed, East Windsor, NJ
- 59. Ashley Allen, Scotch Plains, NJ
- 60. Sue Aris, Secaucus, NJ
- 61. Amber Aspres, Edison, NJ
- 62. Elyethe Assad, Union, NJ
- 63. Marie Ayars, Shiloh, NJ

64. April Barnes, Millville, NJ
65. April Barnes, Millville, NJ
66. Holley Barreto, Princeton, NJ
67. Holly Basko, Jackson, NJ
68. Timothy Belmont, Rutherford, NJ
69. Christine Birnbaum, Bernardsville, NJ
70. Marianne Blizzard, Bridgeton, NJ
71. Carley Brandau, Pittstown, NJ
72. LaTasha Brown, Ewing, NJ
73. Chanell Burton, Sicklerville, NJ
74. Kristen Byrne, Tewksbury, NJ
75. Jill Camp, Parsippany, NJ
76. Robin Caputo, Old Bridge, NJ
77. Alexis Cardoze, Hoboken, NJ
78. Marius Ciosek, Lodi, NJ
79. Lisa Coleman, Bridgeton, NJ
80. Stacey Conti, Hazlet, NJ
81. Valere Corson-Rios, Port Norris, NJ
82. Karen Crawford, Little Falls, NJ
83. Karen Crumsho, Mantua, NJ
84. Alexandra Danner, Aberdeen, NJ
85. Bob David, Toms River, NJ
86. Courtney Day, Montclair, NJ

87. Sue Della Gatta, Toms River, NJ
88. Michelle Dellaperute, Little Egg Harbor, NJ
89. Halina DeSantis, Morris Plains, NJ
90. Katrina DeSanto, Penns Grove, NJ
91. Kandis DiGiovanni, Forked River, NJ
92. Ann Donoflio, Vineland, NJ
93. Chrissy Eckert, Rancocas, NJ
94. Felicita Espinosa, Kearny, NJ
95. Daniella Everhart, Lebanon, NJ
96. Andrea Falcone, Oradell, NJ
97. Amanda Fierro, Riverdale, NJ
98. Ashley Fox, Toms River, NJ
99. Nanette Galati, Jamesburg, NJ
100. Tina Galati, Old Bridge, NJ
101. Hector Garcia, Bound Brook, NJ
102. Doreen Garelick, Princeton Junction, NJ
103. Jeanette Geary, Jefferson, NJ
104. Deborah Gerbman, Fair Haven, NJ
105. Hope Green, Parlin, NJ
106. Jenna Hanley, Lebanon, NJ
107. Dennis Hart, Brick, NJ
108. Robin Hart, North Brunswick, NJ
109. Devi Hawley-Krakowski, Jersey City, NJ

110. Michael Hayes, Millburn, NJ
111. Kathleen Haynicz, Monroeville, NJ
112. Maria Veronica Hossary, East Brunswick, NJ
113. Lorraine Hubbard, Pittstown, NJ
114. Sharon Hubbell, Branchville, NJ
115. Chris Jimenez, Toms River, NJ
116. Jamila Johnson, Roselle, NJ
117. Helen Joseph, Fair Lawn, NJ
118. Maya Kang, Cherry Hill, NJ
119. Lauren Kelly, Westfield, NJ
120. Renee Kirby, Lake Havasu City, NJ
121. Jacqueline Kocur, Bloomsbury, NJ
122. Maria Kupczak, Ringoes, NJ
123. Loren Lee, Paramus, NJ
124. Christine Lenox, Toms River, NJ
125. Lidia Leon, [West?] New York, NJ
126. Jeannette Lopez, Vineland, NJ
127. Linda Lutz, Avalon, NJ
128. Rosario Malhotra, Piscataway, NJ
129. Katie Maloof, Mount Arlington, NJ
130. Rebecca Marks, Haddon Township, NJ
131. Joyce Marroquin, Brick, NJ
132. Monica McCall, Red Bank, NJ

133. Ben Meaker, Maplewood, NJ
134. Elizabeth Mendoza, Teaneck, NJ
135. Rebecca Meyer, Washington, NJ
136. Gorgina Mizzi, Toms River, NJ
137. Jennifer Morales, Vineland, NJ
138. Blessie Morelli, Bloomingdale, NJ
139. Luciano Moretti, Montclair, NJ
140. Rob Moretti, Montclair, NJ
141. Rob Moretti, Newark, NJ
142. Jessica Morone, Wayne, NJ
143. Annmarie Muino, Sparta, NJ
144. Regina Musolf, Edison, NJ
145. Shara Nazario, Sewell, NJ
146. Luciano Neves, Montclair, NJ
147. Jaimey Nguyen, Marlton, NJ
148. Mayra Nieves, Clifton, NJ
149. Bess Nowroozi, Elmwood Park, NJ
150. Isoken Osemwota, Jersey City, NJ
151. Meghan Palabrica, Maplewood, NJ
152. Rosann Palasciano, Colonia, NJ
153. John Parise, Howell, NJ
154. Dhruvi Patel, East Windsor, NJ
155. Lindsey Perez, Cape May, NJ

156. Cristine Perna, Galloway, NJ
157. Melissa Petrella, Westwood, NJ
158. Linda Pizzi, Belleville, NJ
159. Margaret Regan Levine, Jackson, NJ
160. Rosemund Reid, North Plainfield, NJ
161. Rose Rickey, Wharton, NJ
162. Romyana Ruseva, Weehawken, NJ
163. Amanda Salter, Toms River, NJ
164. Vittoria Santorella, Colonia, NJ
165. Nicole Scerbo, Matawan, NJ
166. Helen Schuckman, Fair Lawn, NJ
167. Marissa Seely, Union Beach, NJ
168. Greg Seligman, Wayne, NJ
169. Estelle Seymour, Dover, NJ
170. Molly Sidney, Bayonne, NJ
171. Priya Singhal, Jersey City, NJ
172. Lauren Slodowski, South Plainfield, NJ
173. Melissa Strelec, Morristown, NJ
174. Sarah Stribling, Englewood, NJ
175. Megan Thomas, Mansfield Township, NJ
176. Xenoniah Thompson, Willingboro, NJ
177. Emily Van Boerum, Branchville, NJ
178. Marta Velez, Old Bridge, NJ

179. June Vickers, Galloway, NJ
180. Chelsie Volpe, Mays Landing, NJ
181. Nicholas Wenzke, Pitman, NJ
182. Allison Whartenby, Allentown, NJ
183. Lynda Wisnoski, Haddon Heights, NJ
184. Susan Yu, Paramus, NJ
185. Kady Zimmermann, Franklin Township, NJ

Group 3 comprises the following persons who do not indicate an affiliation with any group and whose comments are consistent with the comments expressed by the commenters in Groups 1 and 2 above. As stated above, persons whose names are marked with an asterisk (*) in the list below also commented within the letter described above in Group 2, which Commenter 42 submitted as reflecting comments of members of the NJHBA.

186. Evie Aguia, Fairlawn, NJ
187. Frances Albury, Howell, NJ
188. Norma Alers, Piscataway, NJ
189. Heather Altamura, Oak Ridge, NJ
190. Limarie Alvarado, Sayreville, NJ
191. Grace Amori, Newark, NJ
192. Joycelyn Andes, Union, NJ
193. Anthony Antonelli, Randolph, NJ
194. Andrea Apramian, Old Tappan, NJ
195. Brittany Arnett, Englewood Cliffs, NJ

196. Sara Asher, Rutherford, NJ
197. Ann Marie Atwell, Parsippany, NJ
198. Fred Backer, Annandale, NJ
199. Maia Baff, Summit, NJ
200. Patricia Baglivi*, Hackensack, NJ
201. Faith Bahadurian, Princeton, NJ
202. David Bairamian, Bogota, NJ
203. Diane Bairamian, Old Tappan, NJ
204. Seta Bairamian, Old Tappan, NJ
205. Rosine Baklayan, Paramus, NJ
206. Talar Baklayan, Paramus, NJ
207. Ruxt Baquero, New Milford, NJ
208. Grace Barger, Lawrenceville, NJ
209. Lindsay Basko, Plumsted Township, NJ
210. Rudy Basso, North Plainfield, NJ
211. Beth Battista, Pompton Plains, NJ
212. Maryann Baumohl, West Milford, NJ
213. Elise Behn, Oak Ridge, NJ
214. Rosemarie Behnke, Ridgefield, NJ
215. Christine Bello, Newton, NJ
216. Megan Belluscio, Whiting, NJ
217. Alexan Berberian, Upper Saddle River, NJ
218. Theodore Betoni, Moorestown, NJ

219. Justine Bevan, Warren, NJ
220. Carol Birchwaler, Old Tappan, NJ
221. Pamela Bitner, Boonton Township, NJ
222. Debbie Bolton, Cherry Hill, NJ
223. Erin Borino, Morris Plains, NJ
224. Cynthia Boseski, Fair Lawn, NJ
225. Zuleyka Bosque, Perth Amboy, NJ
226. Amy Breitenbach, Sussex, NJ
227. Dottie Brienza, Bedminster, NJ
228. Karen Bringham, Berlin, NJ
229. Rosemary Broadfield, Clifton, NJ
230. Lisa Brunell, Franklin, NJ
231. Jasmine Bruno, North Bergen, NJ
232. Mollie Bruno, Brick, NJ
233. Dee Bucca, Madison, NJ
234. Jennifer Buneta, Morristown, NJ
235. Cassandra Bunk, Mine Hill Township, NJ
236. Anita Bunnens, Moorestown, NJ
237. Caroline Burgos, Mount Holly, NJ
238. Robin Buser, Burlington, NJ
239. Ann Marie Bushell, Sparta, NJ
240. Annette Byer, Fredon, NJ
241. Kayla Calderon, Jackson Township, NJ

242. Belinda Campos, Hawthorne, NJ
243. Sevim Can, Dumont, NJ
244. Doris Canales, Sicklerville, NJ
245. Sam Canales, Sicklerville, NJ
246. Virginia Canales*, Sicklerville, NJ
247. Lynda Carbone, Mantua, NJ
248. Donna Carlson, Sparta, NJ
249. Anne Cavaliere, Moorestown, NJ
250. Kim Chamberlain, Oak Ridge, NJ
251. Kristine Chamberlain, Branchburg, NJ
252. Aimee Cheshire, Maplewood, NJ
253. Eunbee Cho, Ridgefield Park, NJ
254. Amanda Chubb, Egg Harbor Township, NJ
255. Shaina Ciaccio, Robbinsville, NJ
256. Dina Ciccone, Absecon, NJ
257. Kristen Cicero, Bergenfield, NJ
258. Lenore Ciullo, Chatham, NJ
259. Brianna Clater, Lawrenceville, NJ
260. Laura Cleirbaut, Flanders, NJ
261. Susan Cleland, Edison, NJ
262. Marc Clouse, Emerson, NJ
263. David Coffin, Lakewood Township, NJ
264. Jessica Coffin*, Brick, NJ

265. Melissa Cohen, Cherry Hill, NJ
266. Krista Coleman, Branchburg, NJ
267. Vicki Collins, Monroe Township, NJ
268. Gayle Colucci, Clark, NJ
269. Donna Combos, Lake Hopatcong, NJ
270. Sue Conklin, Jackson, NJ
271. Doreen Cook, Newton, NJ
272. Liz Cordasco, West Orange, NJ
273. Erin Coriston, Andover, NJ
274. Patricia Corson, Port Norris, NJ
275. Jodi Cotugno, Rutherford, NJ
276. Abby Crane, Pine Brook, NJ
277. Michelle Cromwell, Robbinsville, NJ
278. Kathleen Cullina, Roseland, NJ
279. Ashley D, Williamstown, NJ
280. Jillian Daidone, Hamilton, NJ
281. Eleanor Daingerfield, Middleville, NJ
282. Katie Daly, Flemington, NJ
283. Will Daly, Flemington, NJ
284. Margaret Damm, Hamilton Square, NJ
285. Tom Damm, Hamilton Square, NJ
286. Trisha Danze, Robbinsville, NJ
287. Antonella Dattilo, Wayne, NJ

288. Angela Daurio, Bound Brook, NJ
289. Linda Day, Bridgeton, NJ
290. Jessica DeJesus, Matawan, NJ
291. Susan Delia, Kendall Park, NJ
292. Anne DeSalvo, Morristown, NJ
293. Erica Desimone, Bernardsville, NJ
294. Bethany Dewitt, Brookside NJ, NJ
295. Stephanie Diaz, Roebling, NJ
296. Francesca DiBella, Howell, NJ
297. Jill DiCerbo, Wayne, NJ
298. Zoraya DiSena, Garfield, NJ
299. Bernadette Dlugosz, Avenel, NJ
300. Susan Dolinko, West Orange, NJ
301. Harriette Doll, Green Brook, NJ
302. Heather Doyle, Newton, NJ
303. Kelly Dubé, Bloomfield, NJ
304. Lisa Eastman, Burlington, NJ
305. Nikeya Eato, North Brunswick, NJ
306. Pennell Eckert, Rancocas, NJ
307. Gina Edmond, West Milford, NJ
308. Vana Ekmekjian, Fair Lawn, NJ
309. Susan Elias, Newton, NJ
310. Carolyn Elliott, Westampton, NJ

311. Jill Emmich, Jersey City, NJ
312. Janne Enciso, Robbinsville, NJ
313. Leticia Fabian, Dumont, NJ
314. Melissa Farkas, Dayton, NJ
315. Carole Fenton, Fair Lawn, NJ
316. Marilyn Fernandez, Cliffside Park, NJ
317. Valerie Ferrara-Ryan, Allentown, NJ
318. Doraliza Ferreira, Hackensack, NJ
319. Antonio Ferrer, Somerset, NJ
320. Nicolas Ferrer, Nutley, NJ
321. Tricia Ferrigno, Hamilton, NJ
322. Jennifer Fischer, Hamilton, NJ
323. Christine Fleming, Wyckoff, NJ
324. Neris Fleming, Clifton, NJ
325. Steven Fleming, Wyckoff, NJ
326. Kristine Floren, East Windsor, NJ
327. Gianna Foglia, Cranbury, NJ
328. Cbristy Fondevilla, Gillette, NJ
329. Brian Francella, Morristown, NJ
330. Jane Francella, Morristown, NJ
331. Laura Francella, Rockaway, NJ
332. Lynn Francisco, Lebanon, NJ
333. Emily Frankel, Brigantine, NJ

334. Nancy Frattolillo, Robbinsville, NJ
335. Maureen Frio, Morris Plains, NJ
336. Lori Frohwirth, Jersey City, NJ
337. Shannon Gafgen, Robbinsville, NJ
338. Jordyn Gallagher, Bloomfield, NJ
339. Kelly Garcia, Newton, NJ
340. Melinda Gerdts, West Caldwell, NJ
341. Salpi Ghougas, Emerson, NJ
342. Sela Ghougasian, Emerson, NJ
343. Deborah Gianuzzi, Newton, NJ
344. Jennifer Giblin, Princeton, NJ
345. Caroline Giegerich, Jersey City, NJ
346. Heidi Godoy, Wayne, NJ
347. Avo Goldian, Emerson, NJ
348. Amanda Gorla, Ridgewood, NJ
349. Anthony Grieco, Wayne, NJ
350. Sharon Grunwald, Andover, NJ
351. Suzanne Guerin, Boonton, NJ
352. Tina Guerra Miller, Lebanon, NJ
353. Gianna Gugliuzza, Turnersville, NJ
354. Lynn Guretse, Asbury, NJ
355. Patricia Hampson, Riverside, NJ
356. Patricia Handzus, Sparta, NJ

357. Lori Hanna, Andover, NJ
358. Micah Harris, Somerdale, NJ
359. Erika Hartman, Mount Laurel, NJ
360. Susan Headley, Oak Ridge, NJ
361. Donna Lee Healy, Burlington, NJ
362. Laura Heintz, Hopewell, NJ
363. Kim Heisler, Oak Ridge, NJ
364. Anna Helm, Maplewood, NJ
365. Brandon Henderson, Long Branch, NJ
366. Randi Henley, Blackwood, NJ
367. Dorothy Henneberry, Robbinsville, NJ
368. Elizabeth Hicks, Blairstown, NJ
369. Jeffrey Himelson, Pine Brook, NJ
370. Kimberlee Ho, Morganville, NJ
371. Shavona Holiday, Rahway, NJ
372. Jean Ann Honig, North Plainfield, NJ
373. Cynthia House, Kendall Park, NJ
374. Rita House, Wenonah, NJ
375. Natalie Huerta, Perth Amboy, NJ
376. Leslie Hurff, Medford, NJ
377. John Ibrahim, Cresskill, NJ
378. Taline Ibrahim, Cresskill, NJ
379. Francesca Ierardi, Deptford Township, NJ

380. Camille Introcaso, Haddon Township, NJ
381. Camille Introcaso, Collingswood, NJ
382. Cristin Introcaso, Haddon Township, NJ
383. James Introcaso, Cherry Hill, NJ
384. Ellaine Irizarry, Cresskill, NJ
385. Rowena Jaico, Livingston, NJ
386. Loni Jakub, Robbinsville Township, NJ
387. Haley James*, Mount Arlington, NJ
388. Kristina Jaoude, Robbinsville, NJ
389. Joyce Jewelle, Roseland, NJ
390. Jennifer Jones-Rodriguez, Hammonton, NJ
391. Ruth Joyce, East Brunswick, NJ
392. Jason Karl, Somerville, NJ
393. Antoinette Kassas, Paramus, NJ
394. Marissa Keddis, Allentown, NJ
395. Michael Keenan, Brielle, NJ
396. Paige Kendall*, Red Bank, NJ
397. Cristina Kennedy, Raritan, NJ
398. Narine Kevorkian, Emerson, NJ
399. Linda Kissell, South Plainfield, NJ
400. Mary Klein, Bayonne, NJ
401. Taleen Klick, Fort Lee, NJ
402. Cheryl Kobren, New Egypt, NJ

403. Magdalena Kon, Wallington, NJ
404. Maureen Koplow, Deptford, NJ
405. Janet Kotsakis, Cinnaminson, NJ
406. Wendy Kovacs, Brick, NJ
407. Patricia Kraemer, Budd Lake, NJ
408. Patsy Kreitman, Parsippany, NJ
409. Gail Kucharski, Newton, NJ
410. Jennifer Kucharski, Nutley, NJ
411. Jim Kucharski, Newton, NJ
412. Nagesh Kuppuraju, Robbinsville, NJ
413. Sonia Kuris, Glen Rock, NJ
414. Chris Lamagra, Toms River, NJ
415. Larissa Lamont*, Wayne, NJ
416. Kevin Lancaster, Runnemede, NJ
417. Frances Landy, Lake Hopatcong, NJ
418. Beverly Lange, Oakland, NJ
419. Christine Lanni, Toms River, NJ
420. Carrie Lansberry, Robbinsville, NJ
421. Gayle Lapoma, Succasunna, NJ
422. Sarah Laspina, Oakland, NJ
423. Katie Lattig, Newton, NJ
424. Donald Lee, Robbinsville, NJ
425. Maggy Lee, Princeton Junction, NJ

426. Kelly Leight, South Orange, NJ
427. Rosemary Lepore, Cresskill, NJ
428. Aaron Leung, Boonton Township, NJ
429. Peter Lippert, Newton, NJ
430. Dennis Loalbo, Manchester Township, NJ
431. Jackie Longcore, Andover, NJ
432. Chris Looney, Newton, NJ
433. Tana Loy, Stewartsville, NJ
434. Jules Lumbres*, Jersey City, NJ
435. Berlinda Luong, Union, NJ
436. John Lynch, Lake Hopatcong, NJ
437. Lucinda Lynch, Lake Hopatcong, NJ
438. Rosealie Lynch, Lake Hopatcong, NJ
439. Rose Mackenzie, Robbinsville Township, NJ
440. Caitlin Maffei*, Galloway, NJ
441. Makai Magat-Davis, Bergenfield, NJ
442. David Mager, Mount Tabor, NJ
443. Gennifer Maggipinto, Robbinsville, NJ
444. Patrick Maley, Andover, NJ
445. Erin Manfre, Eatontown, NJ
446. Jennifer Marotta, Mountain Lakes, NJ
447. Debra Martin, * Denville, NJ
448. Tracey Martino, Stanhope, NJ

449. Myrianthe Marton, East Brunswick, NJ
450. Nicole Massoud, Paramus, NJ
451. Carlton Matthews, Farmingdale, NJ
452. Desiree Mazich, Sparta, NJ
453. Cindy McFarland, Shamong, NJ
454. Lucia McGrath, Whippany, NJ
455. Dawn McHenry, Ocean View, NJ
456. Jessica McMahan, Freehold, NJ
457. Ben Meaker, Maplewood, NJ
458. Dori Mendel, Ramsey, NJ
459. Mathew Mendel, Ramsey, NJ
460. Annie Mendez, Paterson, NJ
461. Christina Mendoza, Lincoln Park, NJ
462. Lauren Mendoza, Wayne, NJ
463. Sarah Mendoza, Teaneck, NJ
464. Barbara Messina, East Hanover, NJ
465. Maria Messina*, Morris Plains, NJ
466. Salvatore Messina, Morris Plains, NJ
467. Sandra M Midili, Jackson, NJ
468. Alije Miftari, Freehold, NJ
469. Deshira Miftari, Freehold, NJ
470. Sandy Miklush, Newton, NJ
471. Renee Milak, Springfield, NJ

472. Virginia Millard, Montvale, NJ
473. Geri Miller, Irvington, NJ
474. Sarah Miller, Budd Lake, NJ
475. Theresa Miller, Budd Lake, NJ
476. Dina Millett, Madison, NJ
477. Margaret Mills, Farmingdale, NJ
478. Arielle Mindel, Cherry Hill, NJ
479. Cecilia Miraglia*, Howell, NJ
480. Dawn Miraglia, Monroe, NJ
481. Rocco Miraglia, Howell, NJ
482. Stephanie Mitterko, Hillsborough, NJ
483. Keri Moliterno, North Middletown, NJ
484. Abraham Moncion, Garfield, NJ
485. Lillian Moncion, Garfield, NJ
486. Cleah Marie Monroe, Edgewater Park, NJ
487. Evelyn Montague, Oak Ridge, NJ
488. Jennifer Morgan, Bridgewater, NJ
489. Marie Moschella, Absecon, NJ
490. Linda Moser, Lumberton, NJ
491. Ann Marie Moyle, Morristown, NJ
492. Fabrizio Muzi, Fanwood, NJ
493. Tara Nehil, Robbinsville, NJ
494. Carmen Nieves, Perth Amboy, NJ

495. Lisa Nix, Mt Laurel, NJ
496. Michelle Norris, Washington, NJ
497. David Nostrant, Ocean, NJ
498. Nastassja Ocasio, Millburn, NJ
499. Tatevik Ohanian, New Milford, NJ
500. Lyn Ohlson, Belmar, NJ
501. Abosede Olayinka, Newark, NJ
502. Tanya O'Shea, Newton, NJ
503. Jessica Osorio, Gloucester City, NJ
504. Mary P., Ridgewood, NJ
505. Jill Pacelli, Oradell, NJ
506. Reena Pagnoni, Robbinsville, NJ
507. Dongtak Pak, Saddle River, NJ
508. Dianne Pannorfi, Morris Plains, NJ
509. Gina Pannorfi, Morris Plains, NJ
510. Kristin Pannorfi, Ringwood, NJ
511. Thomas Pannorfi, Morris Plains, NJ
512. Tom Pannorfi, Ringwood, NJ
513. Ani Panossian, Denville, NJ
514. Emily Papadopoulos, Morris Plains, NJ
515. David Parnell, Ridgewood, NJ
516. Kimberley Parnell, Ridgewood, NJ
517. Linda Parr, Sparta, NJ

- 518. Avni Patel, Monroe, NJ
- 519. Kathleen Paterson, Waretown, NJ
- 520. Linda Paterson*, Tinton Falls, NJ
- 521. Cora Patnode, Branchville, NJ
- 522. Melanie Patrick, East Windsor, NJ
- 523. Melissa Penas, Elizabeth, NJ
- 524. Aimee Peppel, Chester, NJ
- 525. Dorina Peralta, Paramus, NJ
- 526. Jacqueline Pereira, Parsippany, NJ
- 527. Yadira Perez, Elizabeth, NJ
- 528. Brittany Peterson, Bridgewater, NJ
- 529. Patti Pfeifer, Woodland Park, NJ
- 530. Leah Picone, Spotswood, NJ
- 531. Janet Pilewski, Lake Hopatcong, NJ
- 532. Susan Pizza, Parsippany-Troy Hills, NJ
- 533. Monika Pollick, Bloomfield, NJ
- 534. Alisson Ponce, Rockaway, NJ
- 535. Felix Ponce, Rockaway, NJ
- 536. Ramona Pontelandolfo, Pittsgrove, NJ
- 537. Paola Pose, Newark, NJ
- 538. Sharon Prawetz, Clifton, NJ
- 539. Nancy Prescott, Oak Ridge, NJ
- 540. Shereen Quattromani, Hamilton Square, NJ

541. Samhita Raman*, Plainsboro, NJ
542. Stephanie Ramirez, Hamilton, NJ
543. Alpana Rana, Dayton, NJ
544. Bryan Read, Lawrenceville, NJ
545. Mary Reduzzi, Blairstown, NJ
546. Alexandra Reed, Hawthorne, NJ
547. Joel Reed, Hawthorne, NJ
548. Eileen M Reeve, Madison, NJ
549. Jackie Reich, Ewing, NJ
550. Bea Relvas, Rockaway, NJ
551. Eric Relvas, Union, NJ
552. Krysten Relvas, Rockaway, NJ
553. Tony Relvas, Rockaway, NJ
554. Colleen Renzi, Robbinsville, NJ
555. Linda Rhyne, Bay Head, NJ
556. Courtney Ricard, Newton, NJ
557. Natalie Riddiford, Basking Ridge, NJ
558. Daniel Rios, Port Norris, NJ
559. Joan Rizal, Chester, NJ
560. Keri Roberts, Linwood, NJ
561. Kathleen Robertson, Robbinsville, NJ
562. Pamila Robinson, Parsippany, NJ
563. Catherine Rocchio, Cliffside Park, NJ

564. Valeria Roome, Weehawken, NJ
565. Justin Rosario, Glen Rock, NJ
566. Elaine Rosen, Metuchen, NJ
567. Jennifer Roth, Ewing, NJ
568. Harmony Ru, Forked River, NJ
569. Deborah Russo, Brick, NJ
570. Karen Salter, East Windsor, NJ
571. Nancy Sambul, Jersey City, NJ
572. Elsy Sandhusen, Upper Montclair, NJ
573. Kelly Santalucia, Sparta, NJ
574. Antonia Santarsiero, Chesterfield, NJ
575. Don Schaffner, Freehold, NJ
576. Ben Schuckman, Matawan, NJ
577. Ellie Schuckman, Fair Lawn, NJ
578. Jeff Schuckman, Fair Lawn, NJ
579. Lisa Schwartz, Hamilton Square, NJ
580. Victoria Schwartz, Bordentown, NJ
581. Jeff Scull, Lake Como, NJ
582. Michael Seeley, Barrington, NJ
583. Delia Sequeira, Edison, NJ
584. Chris Seykot, Sewell, NJ
585. Ellory Shaw-Fallas, Sparta, NJ
586. Allisyn Shindle, Brick, NJ

587. Diane Shindle, Roseland, NJ
588. Ellen Shindle, Pine Brook, NJ
589. Kenneth Shindle, Brick, NJ
590. Lori Bright Shindle, Brick, NJ
591. Robert Shindle, Brick, NJ
592. Vanessa Shindle, Pompton Plains, NJ
593. Rachel Siegel, Robbinsville, NJ
594. Samantha Simmermon, Hawthorne, NJ
595. Corina Simms, Hamilton Township, NJ
596. Stephanie Singh, Ledgewood, NJ
597. Pegeen Skennion, Parsippany, NJ
598. Diana Slisky, Kendall Park, NJ
599. Karla Sloan, Burlington, NJ
600. Margaret "Maggi" Smith*, Barnegat, NJ
601. Melissa Smith, Morristown, NJ
602. Tatiana Smith, Jersey City, NJ
603. Eve Soares, Franklin, NJ
604. Ana Soto, Camden, NJ
605. Sharleen Spahiu, Lyndhurst, NJ
606. Zachary Standig, Morganville, NJ
607. Danielle Stein, Robbinsville, NJ
608. Sheera Stern, Metuchen, NJ
609. Jonathan Stone, Morristown, NJ

610. Sara Stone, Morristown, NJ
611. Haydee St Vuldray, Linden, NJ
612. Cathy Sunshine, Columbus, NJ
613. Suzy Supnet, High Bridge, NJ
614. Katie Sweeting, Jersey City, NJ
615. Jennifer Talarico, Haddon Township, NJ
616. Burak Tamac, Bridgewater, NJ
617. Emily Tarikt, Merchantville, NJ
618. Lisa Temple, Robbinsville, NJ
619. Dan Terr, Parsippany, NJ
620. Linda Testa, Franklin, NJ
621. Suzanne Testino, Franklin, NJ
622. Barbara Theis, Howell Township, NJ
623. Viki Therrell, Edgewater Park, NJ
624. Harry Thomson, Paramus, NJ
625. Lili Timmes, Princeton, NJ
626. Barbara Tirado, West Milford, NJ
627. Gina Todd, Robbinsville, NJ
628. Anthony Torres, Elizabeth, NJ
629. Christopher Totaro, Jersey City, NJ
630. Olivia Totaro, Brick, NJ
631. Trish Totaro, Brick, NJ
632. Marion Udwin, Closter, NJ

633. Seth Unger, Closter, NJ
634. Melissa Uva, Swedesboro, NJ
635. Nancy Van Dyke, Piscataway, NJ
636. Kathleen VanLangen, Glen Rock, NJ
637. Mamie VanLangen, Rutherford, NJ
638. Jonathan Vargas, Teaneck, NJ
639. Maral Vartanian, Ridgefield, NJ
640. Kathryn Vassallo, Haddon Heights, NJ
641. Melissa Velez, Clifton, NJ
642. Susana Ventura, Teaneck, NJ
643. Sandra Vicuna, Nutley, NJ
644. Darla Viereck, Logan Township, NJ
645. Karen Viereck, Woolwich Township, NJ
646. Elizabeth Wagner, Wildwood, NJ
647. Phillis Walls, Rockaway, NJ
648. Andrea Wells, Franklin, NJ
649. Lee Whitby, Newton, NJ
650. Aniela Williams, Belleville, NJ
651. Jean Williams, Port Norris, NJ
652. Pam Wolfe, Woodbury, NJ
653. Lisa Wollek, Long Branch, NJ
654. Jessica Wood*, Red Bank, NJ
655. Marianela Wood, Old Bridge, NJ

- 656. Amy Woolley, Sparta, NJ
- 657. Maria Worbetz, Galloway, NJ
- 658. John Wrobleski, Newton, NJ
- 659. Jennifer Wynne, Sussex, NJ
- 660. Andrew Young, Columbia, NJ
- 661. Garrett Young, Columbia, NJ
- 662. Joan Young, Columbia, NJ
- 663. Loida Zanowic, Bayonne, NJ
- 664. Michelle Zeas, Wharton, NJ
- 665. Christine Zelenka, Clifton, NJ
- 666. Kelly Zsamar, Pennington, NJ
- 667. Elias Zwillenberg, Maplewood, NJ

Group 4 comprises the following persons, who identify themselves as representing, or having affiliation with, the indicated municipal and county governments and/or local health agencies throughout the State.

- 668. Thomas Cantisano, Pequannock Health Department, Pequannock, NJ
- 669. Tricia Cowell, Bernards Township Health Department, Bernards Township, NJ
- 670. Eric Cuperwich, REHS, Hamilton Township Division of Health, Hamilton Township, Mercer County, NJ
- 671. Lauren Herbig, Hackensack Health Department, Hackensack, NJ

672. BJ Lahovich, Hamilton Township Division of Health, Hamilton Township, Mercer County, NJ

673. Maya Lordo, Essex County Health Department, Newark, NJ

674. Chuck McGroarty, PP, AICP, Director of Planning, Mount Olive Township, Morris County NJ

675. Pedro Moreno, Wharton Borough Housing and Zoning Department, Wharton, NJ

676. Judith Muniz, Passaic County Health Department, Paterson, NJ

677. Steven Peters, Passaic County Health Department, Paterson, NJ

678. Michele Picone, Parsippany Township Health Department, Parsippany Township, NJ

679. Lisa Surtees, Hamilton Township Division of Health, Hamilton Township, Mercer County, NJ

680. Kelly Thomas, Hamilton Township Division of Health, Hamilton Township, Mercer County, NJ

Group 5 comprises the following persons commenting as representatives of the indicated public health and/or food safety advocacy organizations:

681. Jessica Coronato, Westwood, NJ, as President of the New Jersey Association for Food Protection

682. Linda Doherty, President and CEO, New Jersey Food Council, Trenton, NJ

683. Stephanie Gorman, Morristown, NJ, on behalf of the New Jersey Association of City and County Health Officers, Freehold, NJ

684. Derrick Webb, Mount Olive Township Health Department, Mount Olive Township, NJ, on behalf of the New Jersey New Jersey Environmental Health Association, Freehold, NJ

Group 6 comprises the following persons, who reside in states other than New Jersey and do not indicate an affiliation with any group, and whose comments are consistent with the comments expressed by the commenters in Groups 1, 2, and 3:

685. Margaret Dehaye, Birmingham, AL

686. Kyrie Rabello, Glendale, CA

687. Nancy Del Giudice, East Haven, CT

688. Angela Claribel Donoso, Branford, CT

689. Anna Steiger, Camden, DE

690. Lucia Barone, Naples, FL

691. Felix Josie, Clermont, FL

692. Rachel Lyle, Tampa, FL

693. Lenitza Pereira, Kissimmee, FL

694. Johanna Proctor, Orlando, FL

695. Pura Terrero, Naples, FL

696. Rebecca Lutz, Suwanee, GA

697. Adele Gleason, Chicago, IL

698. Gayle Hess, Bloomington, IL

699. Joan Bright, Eudora, KS

700. Meredith Lovell-Thayer, Cumberland, MD

701. Estrella Palispis, Las Vegas, NV

702. Francis Palispis, Las Vegas, NV
703. Maita Palispis, Las Vegas, NV
704. Jennifer Dargenio, Rye, NH
705. Vivienne Ahtner, Ronkonkoma, NY
706. Aghogho Ajueyitsi, Brooklyn, NY
707. Carly Coleman, Greenlawn, NY
708. Pamela DeMicco, Yaphank, NY
709. Jen Fung, Stony Brook, NY
710. Karen Gomez, Webster, NY
711. Pat Harte, Hartsdale, NY
712. Aram Lee, Brooklyn, NY
713. Stefana Lipari, Lindenhurst, NY
714. Adam Mamawala, Astoria, NY
715. Joseph Petrillo, Central Islip, NY
716. Steev Podoll, Tuckahoe, NY
717. Jennifer Rabich, Middle Village, NY
718. Linda Ratushenko, Amityville, NY
719. Nami Russo, Sunnyside, NY
720. Rosaria Russo, Lindenhurst, NY
721. Keri Somerlad, Medford, NY
722. Jose Vargas, New York, NY
723. Alexis Zappia, Malverne, NY
724. Junia Cedano, Fayetteville, NC

- 725. Francesca Canale, Annville, PA
- 726. Barbara Dietsche, Macungie, PA
- 727. Marcie Hosie-Courtright, Dingmans Ferry, PA
- 728. Deborah Mathews, Lansdale, PA
- 729. Shayo Olay, Pennsburg, PA
- 730. Larry Oye, Pennsburg, PA
- 731. Melodie Peoples, Berwick, PA
- 732. Maureen Shindle, Mount Bethel, PA
- 733. Lori Ann Spallina, Hatfield, PA
- 734. Nicole Steadman, Newtown, PA
- 735. J Evans, Knoxville, TN
- 736. Tracye Linney, Collierville, TN
- 737. Andrea Clater, Woodbridge VA
- 738. Dave Clemens, Charlottesville VA
- 739. Katie VanLangen, Charlottesville VA

Group 7 comprises the following persons who oppose the proposed amendment and new rules and do not indicate affiliation with an organization:

- 740. Tracey Good, Hamilton, NJ
- 741. Mary Meddahi, Robbinsville, NJ
- 742. Jan P., Wayne, NJ

Group 8 comprises the following persons who are attorneys for the Institute for Justice, of Arlington, Virginia and Minneapolis, Minnesota, commenting on behalf of that

entity and its clients, the New Jersey Home Bakers Association, Heather Russinko, Elizabeth Cibotariu, and Martha Rabello:

743. Tatiana Pino, Esq., Institute for Justice, Arlington, VA

744. Robert Peccola, Esq., Institute for Justice, Arlington, VA

745. Jaimie Cavanaugh, Esq., Institute for Justice, Minneapolis, MN

Group 9 comprises the following persons who registered to comment in the Department's online comment system, but for whom no comment was recorded.

746. Debra Aagre, Dover, Morris County, NJ

747. Tracey Andolini, Hawthorne, NJ

748. Melanie Bergstrom, Bloomfield Health Department, North Haledon,

NJ

749. Ann Bianchi, Woodbury, NJ

750. Joan Bright, Eudora, KS

751. Garry Del Greco, Rockaway Township, NJ

752. Georgia DiMartino, Dix Hills, NY

753. Lisa Esposito, Bridgewater, NJ

754. Ashly Estrada, West New York, NJ

755. Ana Guadalupe, Fords, NJ

756. Courtney Havrilla, Ringwood, NJ

757. Melissa Iellimo, West Caldwell, NJ

758. Jacqueline Longcore, Andover, NJ

759. Haydee Lopez, Northvale, NJ

760. Kathleen Magoon, Willingboro, NJ

761. Maria Musacchio, East Islip, NY

762. Jennifer Ocasio, Edison, NJ

763. Audrey Piatti, Leonardo, NJ

764. Andrea Prendamano, Westwood, NJ

765. Grace Rizzo, Islip, NY

766. Alexia Ryan, Leonardo, NJ

767. Kathleen Segelken, Metuchen, NJ

768. Zach Truempy, Califon, NJ

769. Elaine Valente, Babylon, NY

Quoted, summarized, and/or paraphrased below, are the comments and the Department's responses. The numbers in parentheses following the comments below correspond to the commenter numbers above.

1. COMMENT: Several commenters expressed no specific substantive objections to the proposed amendment and new rules, and one of these commenters expressed support of the rulemaking as being "long overdue as most (all?) other states allow some [form] of cottage food production." These commenters did express an objection to the fact that the notice of proposal did not encompass a chapter-wide revision and modernization to bring N.J.A.C. 8:24 into alignment with updated national retail food standards and best practices. (575 and 684)

2. COMMENT: A commenter states that existing N.J.A.C. 8:24 is, "based on the 2001 version of the FDA Food Code and [has] not been updated since 2007. Since the last ... revision in 2007, the FDA Food Code has been updated several times, resulting in countless updates that recognize advances in food safety and technology, and enhance

our ability to recognize and enforce food safety and sanitation in retail food establishments in NJ. So, why is the [Department] amending [N.J.A.C. 8:24] to add a new subchapter permitting food to be prepared in private home kitchens without updating the other sections of the rules to reflect the current FDA Food Code provisions?” (681)

3. COMMENT: On behalf of, “a trade association representing food retailers, including supermarkets, independent grocers and convenience stores, and their supplier partners,” a commenter states, “This proposal would allow cottage food operators to operate legally under different minimum standards than those that apply to food retail establishments. [The commenter] would be able to consider ... support of this proposal only as part of a more comprehensive review of [existing N.J.A.C. 8:24, commonly referred to as] the New Jersey Retail Food Code. [Members of the association that the commenter represents (members)] have been participating in the Department’s stakeholder meetings pertaining to ... revisions to [existing N.J.A.C. 8:24,] support the Department adopting the FDA Food Code by reference, and ... are very concerned that this rule proposal does not include this adoption. Many ... members operate in multiple states and this adoption would provide uniform rules. New Jersey’s current code is outdated and not based on the latest science.

During the course of the past few years, ... members who participated in the stakeholder meetings made a number of recommended revisions to [existing N.J.A.C. 8:24], and it is important that these proposed revisions are addressed in this rule proposal. [It] is imperative that the findings and recommendations of this balanced stakeholder working group be included in this rule. If not, we ask why not?” (682)

RESPONSE TO COMMENTS 1, 2, AND 3: The commenters correctly note that existing N.J.A.C. 8:24, commonly referred to as the “retail food code,” requires updating. The Department is developing rulemaking, in consultation with a working group comprising representatives of the entities with which some of the commenters are affiliated or that they represent, that would update and modernize the retail food code at N.J.A.C. 8:24 to conform to national retail food standards and best practices, including the 2017 FDA Food Code (9th edition), as amended and supplemented by the Supplement to the 2017 FDA Food Code, issued December 23, 2019.

The proposed amendment and new rules would not have a substantive impact on the compliance obligations that are applicable to the traditional retail food industry of the State; rather, they would establish a permit process for a new category of entity subject to regulation, known as a cottage food operator. The establishment of the proposed amendment and new rules would not impede the Department's efforts to update N.J.A.C. 8:24, and the Department does not perceive the need for revision of existing N.J.A.C. 8:24 as providing a cognizable basis to refrain from moving forward with rulemaking to establish this new operator category.

The Department acknowledges some of the commenters' expression of support for the proposed establishment of a Cottage Food Operator Permit as “long overdue.” Except for this expression of support, the commenters do not express substantive concerns regarding the proposed amendment and new rules. The commenters' assertion, that the Department should update existing N.J.A.C. 8:24, exceeds the scope and subject matter of the proposed rulemaking. For these reasons, the Department will make no change on adoption in response to the comments.

4. COMMENT: Commenters in Groups 1, 2, 3, and 6 expressed support of the proposed amendment and new rules establishing procedures for persons to obtain Cottage Food Operator Permits. In expressing their support, many of these commenters identified numerous reasons why the Department should adopt the rulemaking, which are listed below. Among these were commenter-specific personal reasons, not listed below, describing how income that the commenters might generate from being able to engage in cottage food operations would help their individual situations.

4.1. New Jersey is the only state in the United States that does not permit activities akin to cottage food operations.

4.2. There have been no reported incidents of food-borne illness associated with homemade food products.

4.3. To allow the charitable donation, but not the sale, of homemade products is contradictory, “absurd,” and “nonsensical.”

4.4. Renting a commercial kitchen that is compliant with the existing retail food code to produce cottage food for sale is:

4.4.1. Too expensive to be economically profitable, because typical producers of cottage food generate more limited quantities of saleable goods and realize narrower profit margins than would be necessary to make this option financially viable;

4.4.2. Inconvenient and burdensome, because commercial kitchens that are available for rent typically require users, each time they use the kitchen, to bring and

then remove their own equipment, which can be heavy and cumbersome to load and unload;

4.4.3. Impracticable if one has caregiver responsibilities for home-bound persons;

4.4.4. Difficult to manage and potentially unsafe if one must bring and supervise children while using a commercial kitchen;

4.4.5. Not viable financially if one must retain childcare services while using a commercial kitchen; and

4.4.6. Not practicable in parts of the State where commercial kitchens are not available to rent.

4.5. Authorizing cottage food operations would:

4.5.1. Generate income for the State from taxes and permit fees;

4.5.2. Help the State's economy;

4.5.3. Support local community businesses ancillary to cottage food operations by:

4.5.4. Increase demand for the services of liability insurance, accounting, and other financial services providers; and

4.5.5. Support local suppliers of ingredients used in homemade products because cottage food operators would be more likely to source their ingredients locally and in smaller (retail rather than wholesale) quantities than larger commercial operators;

4.5.6. Increase New Jerseyans' access to locally prepared and minimally processed foods, and reduce dependence on large-scale industrially produced food;

4.5.7. Increase access in New Jersey communities that have limited access to fresh food, such as cities;

4.5.8. Provide an alternative to reliance on unemployment insurance;

4.5.9. Provide a source of replacement income for persons who have lost their employment and/or closed their businesses, due to circumstances related to the COVID-19 pandemic;

4.5.10. Provide a means of generating income for college students and persons for whom the ability to work outside their homes is limited, difficult, or impracticable, such as:

4.5.10.1. Full-time caregivers;

4.5.10.2. Single parents;

4.5.10.3. Parents who home-school their children;

4.5.10.4. Persons who have health-related issues, including traumatic brain injury and depression;

4.5.10.5. Persons who are differently abled, including people with autism spectrum disorder;

4.5.10.6. Retirees and senior citizens whose incomes are limited;

4.5.10.7. Military spouses whose families frequently relocate, which makes it difficult to maintain steady employment outside the home; and

4.5.10.8. Persons who are “sheltering in place” from home during the COVID-19 pandemic, especially persons at a higher risk of negative outcomes due to pre-existing conditions; and

4.5.11. Provide intangible benefits to individuals, such as:

- 4.5.11.1. Fulfillment of the “American Dream” of entrepreneurship;
- 4.5.11.2. Protection of freedom of choice and opportunity;
- 4.5.11.3. Establishment or enhancement of one’s sense of personal pride, self-worth, independence, and empowerment associated with earning an income;
- 4.5.11.4. Enhancement of one’s sense of belonging and connection to one’s community;
- 4.5.11.5. Reduction of stress by the act of creating;
- 4.5.11.6. Provision of business experience to persons who are new to working outside the home;
- 4.5.11.7. Facilitation of one’s ability to express love, passion, dedication, and creativity through production of homemade food products; and
- 4.5.11.8. Demonstration of the unique food production talents of New Jerseyans, which can include niche food products.

4.6. Not allowing cottage food operations:

4.6.1. Has a disproportionately negative economic impact on women, who comprise most producers of homemade food products and most stay-at-home caregivers, by limiting their ability to generate income;

4.6.2. Limits New Jerseyans’ ability to supplement their incomes, which is a disadvantage that New Jerseyans experience acutely because New Jersey is a particularly expensive place in which to live, especially the northern counties of the State; this implicates residents’ need for sources of extra income, without which residents might decide to participate in an “exodus” from New Jersey due to the high cost of living; and

4.6.3. Limits the ability of New Jerseyans to have access to and enjoy homemade food products that:

4.6.3.1. Reflect and represent the diverse cuisines and traditions of various cultures and ethnicities that exist in the State;

4.6.3.2. Demonstrate the work of the many persons in the State who are exceptionally talented in culinary arts;

4.6.3.3. Address special food concerns, such as allergies, gluten sensitivities, celiac disease, veganism, carbohydrate abstention, religious observances, and diabetes; and

4.6.3.4. Can be customized to consumers' desires.

(Groups 1, 2, 3, and 6)

5. COMMENT: A commenter states, "New Jersey stands alone as the only state with no manner of cottage food law, a glaring display of lack of faith in New Jersey home bakers to uphold the standards of food safety and best business practices. And yet, home bakers are permitted, in most [New Jersey] municipalities, to donate or sell baked goods for charitable purposes. The same [illegal] baked goods they might sell for profit—made in the same kitchen, with the same ingredients, by the same baker—become legal when the money goes to anyone other than the baker. It doesn't seem fair when it's laid out like that, does it?"

As a board member of the NJHBA, I have seen the work of the talented bakers around our great [State]. I know the care that each and every one of us (myself included) puts into every baked good we produce.

[The proposed amendment and new rules are] a welcome development, ... which we feel was too long in coming, but which I am, along with my colleagues, grateful for. The chance to bake from home will change the lives of hundreds, if not thousands of New Jersey residents who are ambitious, insanely talented, and ready to help build and rebuild the economy of this State. They will contribute to local business, they will share their goods with their communities, and they will provide consumers with the freedom of choice to know exactly who made their food and where it was made.

The ... proposal is largely made up of requirements that were included in the home bakers' bills that passed the State Assembly unanimously, not once, but three times. These requirements also fall in line with the allowances we were asking for in our lawsuit. I appreciate the time and effort that the Department of Health has put into making sure that our desires and our demands were not ignored, and it's my fervent hope that this rule proposal will be seen through and the statute will be adjusted- for the sake of New Jersey's home bakers, the sake of our consumers, and the sake of the economy. We've proven that home-baked goods can be just as safe as those made in a commercial kitchen. Now we are hoping that the Department of Health can prove it believes in us." (9)

6. COMMENT: The following commenter expresses themes that are common to many of the comments raised by the persons listed in Groups 1, 2, 3, and 6. The commenter states, "Now, more than ever with the devastating global pandemic, we need help from our ... government officials to establish a Cottage Food Operator Permit. I live in [New Jersey] and work in a bakery in [New York City] and with new restrictions in place due to COVID-19 and the dangers of being in proximity to others, I

have not been able to work for the last [four] months. With the unemployment rate at an all-time high, I am looking to ... government to help the residents of [New Jersey] to bring some extra income into our household.

With the coronavirus, lives have changed drastically for so many. We all have loved ones we want to care for and this becomes extremely difficult when it comes to being so restricted with our jobs. I live with [an] elderly [relative] who is among the vulnerable population, and even more so than before the coronavirus, it is hard for me to leave home because of the fear of exposing [the relative] to the virus. Also[,] as [the relative] gets older, it is becoming harder to simply leave [the relative] alone at home for an extended amount of time. Know there are hundreds of thousands of others like me on the same boat. And I know you personally know someone like this as well. It's extraordinarily challenging when it comes down to having to choose between staying home to take care of your family versus going out and making money, which is also in order to provide for and take care of your family. The [proposed amendment and new rules establishing a Cottage Food Operator Permit would] be a perfect solution to this dilemma: to be able to make some money working at home so that we can have more time to be there for our families. Flexibility like this is so important to a lot of us and will benefit us tremendously, not just financially, but also humanely. And I believe in [government] to solve this problem for so many of us who want to be there for our loved ones.

While [New Jersey] is the only [State] that has not [allowed cottage food operations], I understand where the main concern comes from. Safety and health. I hold a ServSafe Food Manager Certificate and ... the [New York City] Food Protection

Certificate. Most bakers I know have a food safety certificate and many hobby bakers also have taken a course to familiarize themselves on this matter, because why wouldn't they? Most of us bake for our friends and family and the health and safety of our loved ones is our top priority. Also, baked items, unlike other foods, are shelf-stable and don't require specific temperature holding.

The [adoption of the proposed amendment and new rules] would be [New Jersey's] testament to the improvement of our livelihood. Being the sole [State] to not pass this law could have been simply due to tangible issues like safety, but what is being overlooked are the intangible aspects. For so many of us, this has to do with flexibility, opportunities, and most importantly, the betterment of life." (39)

7. COMMENT: A commenter states that it supports the proposed amendment and new rules "to end the ban on the sale of safe, homemade, shelf-stable foods. Although the proposed rules are not perfect, the [commenter] commends the Department's efforts, as the proposed rules would allow home bakers across New Jersey to provide for themselves and their families and bring New Jersey in line with the rest of the country."

The commenter provides "a collection of individual comments from [NJHBA] members explaining how the proposed rules, if adopted, will positively impact their lives." The members' comments are consistent with the assertions contained in Comment 1. (42, Group 2, and commenters in Groups 1 and 3 marked with an asterisk)

8. COMMENT: "The proposed labeling of products provides consumers complete transparency as to who the baker is, where they live and when the product was made. It also provides a list of all ingredients and allergens. The public is capable of deciding

for themselves what they want to buy and what they feel safe eating, personally preservatives are more a concern to me.” (488)

9. COMMENT: A commenter is “pleased that the ... Department... is ending the [State’s] blanket prohibition on the sale of cottage foods. Adopting the [proposed amendment and new rules] will bring New Jersey in line with the rest of the nation, where the sale of cottage foods is allowed. This action will further support bakers and entrepreneurs throughout the [State] who want to support themselves and their families by selling safe, homemade cottage foods.” The commenter states, “The Department should allow the widespread sale of cottage foods for three reasons. First, cottage foods ... are safe. Second, adopting the [proposed amendment and new rules] will create important sources of income for many families. Third, consumers should have more choices when buying food, not fewer.

First, cottage foods are safe. The [proposal Summary] acknowledges that the Department has been “persuaded by scientific evidence that supports a finding that shelf-stable food prepared in home kitchens is safe for consumers [(citation omitted)].” This is confirmed by the fact that every other state and [the District of Columbia] also allow the sale of cottage foods with no adverse public health repercussions.

Currently, home bakers may sell cottage foods in New Jersey so long as the profits go to a charity or religious organization. See N.J.A.C. 8:24-1.5. If there are any real health or safety risks posed by the sale of cottage foods, this charity exemption would be unreasonable. But the charity exemption has both existed and been widely used for years because cottage foods are perfectly safe. Therefore, the Department’s explanation that its regulations will prevent foodborne illness or otherwise end the

distribution of “unsafe foods” is untrue and misleading [(citation omitted)]. By the Department’s own definition, cottage foods are safe, and the Department should correct these misstatements when adopting [the proposal].

Second, adopting the Proposed Rules is necessary because doing so will create jobs or otherwise allow families to earn additional income [(citations omitted)].

Increasing opportunities for employment is always a laudable goal, but now more than ever, it is a necessity, not a luxury. In fact, the unemployment rate in New Jersey has steadily increased over the last few months and residents are looking for more creative ways to support themselves and their families. Adopting the Proposed Rules could mean the difference between making ends meet and not being able to meet essential needs right now.

Third, consumers are becoming increasingly interested in learning where their food comes from and how it is produced. Consumers have an easier time accomplishing this goal when they can purchase food directly from small, local producers, who are often also their friends and neighbors. When you know the baker, you can ask him or her about their ingredients and baking practices. For example, by communicating directly with the seller in person, people with dietary restrictions and food sensitivities can immediately discover whether the foods contain certain ingredients or whether they comply with religious (e.g., kosher) standards. And during the pandemic, buying cottage food from a neighbor means fewer trips to a crowded grocery store. For all of these commonsense reasons, the [commenter urges] the Department to adopt the [proposed amendment and new rules].” (Group 8)

RESPONSE TO COMMENTS 4 THROUGH 9: The Department acknowledges the commenters' support of the proposed amendment and new rules. The Department takes no position as to the accuracy of the commenters' factual assertions.

The Department acknowledges that there is 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 intends, by this rulemaking, to neither recommend, nor dissuade, consumer purchases of cottage food products.

Many New Jerseyans have experienced financial challenges associated with the ongoing public health emergency. Some commenters assert that this should be reason enough to warrant adoption of the proposed amendment and new rules. However, the public health emergency is subsiding, but the proposed amendment and new rules, if adopted, will remain. Therefore, the Department declines to allocate overriding weight to this assertion. Indeed, some commenters suggest, below, that the ease with which the COVID-19 virus is transmissible among humans warrants against a decision to adopt the proposed amendment and new rules, due to the potential spread of the virus through cottage food products and/or associated transactions. At the same time, the Department acknowledges these comments as suggesting that allowing cottage food operations could provide a means by which those who might realize negative financial impacts from periodic downturns in the State or national economy could supplement or replace income.

10. COMMENT: A commenter states, "Baked good [sic] should include chips, which can be baked at home." (369)

RESPONSE: The proposed amendment at existing N.J.A.C. 8:24-1.5 defining the term, “cottage food product,” would include, at paragraph 19, other non-TCS (more commonly known as “shelf-stable”) food, upon written application to the Department. An applicant would need to show that a food proposed for addition to the list of cottage food products is a non-TCS food. The commenter makes no such demonstration in the comment with respect to “chips” but could do so upon written application to the Department. In the alternative, the commenter could show that the food is one of the other listed types of “cottage food products.” As the proposed amendment and new rules would establish a process for inclusion of “chips” as a cottage food product, provided it is a non-TCS food, the Department will make no change on adoption in response to the comment.

11. COMMENT: A commenter states that proposed new N.J.A.C. 8:24-11.1 does not, “specify how long the Department has to review applications. To avoid uncertainty and allow home bakers to begin earning extra income as soon as possible, the Department should clarify that all applicants will receive a response within a set time frame, perhaps 14 days.” The commenter further states that the Department should, “specify a time by which it will consider applications to sell cottage foods that are currently not expressly listed in the rule, as contemplated in [paragraph 19 of the definition of ‘cottage food product’ at N.J.A.C. 8:24-1.5 as proposed for amendment].” (Group 8)

RESPONSE: Given the number of comments the Department has received in support of the rulemaking from persons who express interest in obtaining New Jersey cottage food operator permits, should the Department adopt the proposed amendment and new rules, the Department anticipates that it might receive an initial influx of several hundred

applications, without a corresponding increase in the resources needed to process these applications. As Department personnel routinely do with respect to other types of applications, Department personnel would work diligently to process cottage food operator permit applications as promptly as possible within the limits of its available resources. However, it would be imprudent and unrealistic for the Department to guarantee that it could process at least the first wave of applications within 14 days of receipt. As the Department develops efficiencies in processing cottage food operator applications, and after resolution of the first round of applications, the Department anticipates that the time it would require to process applications correspondingly would decrease.

The Department lacks sufficient information to estimate the number of applicants who would seek authorization to process cottage foods other than those that N.J.A.C. 8:24-1.5, as proposed for amendment, lists within the definition of the term, "cottage food product," at paragraphs 1 through 18. Likewise, the Department has insufficient information with which to estimate the time needed to review and process these applications, which likely would depend on the amount and quality of the information each applicant submits to support the determination of whether the product is a non-TCS food. Therefore, the Department declines to establish a processing deadline within which it would process requests for authorization of otherwise unlisted cottage food products.

For these reasons, the Department will make no change on adoption in response to the comment.

12. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:24-11.1(c)1 to “increase time to 90 days to correct any deficiencies before [an] application is abandoned [because an applicant might] need to retain a contractor or third party to correct and 30 days is too short a time frame.” (44)

RESPONSE: Upon the Department’s adoption of the proposed amendment and new rules and the application form, an applicant for a cottage food operator permit would know, before submitting the application, the required informational components that the applicant must submit in support thereof. Therefore, the Department can envision few justifications for an application to be incomplete upon submission, absent a request for approval of a unique cottage food product or other special circumstances requiring enhanced review or scrutiny. Absent special circumstances, a completeness review would essentially serve as a courtesy, such as if an applicant, through inadvertent oversight, neglected to submit the application fee or provide a required element of contact information. Therefore, it is unlikely that an applicant would require more than 30 days to submit such a routine element of payment or information. Moreover, the Department does not expect that permit applicants would need to retain contractors to supply the information the Department needs to find a permit application to be complete.

For these reasons, the Department will make no change on adoption in response to the comment.

13. COMMENT: A commenter describes the application form at proposed new N.J.A.C. 8:24-11 Subchapter Appendix, which proposed new N.J.A.C. 8:24-11.1 would incorporate by reference, as requiring applicants, “to detail every type of cottage food

they intend to sell upon applying for a permit.” The commenter states, “This is illogical and could unnecessarily delay the Department’s review of applications without providing any health or safety benefits to the public. Further, requiring this level of detail on an application may undermine the licensing regime. For example, when [the District of Columbia] imposed this requirement, it backfired because people felt that the requirement was confusing and too rigid. Although [the] cottage food law [of the District of Columbia] was first enacted in 2013, by the beginning of 2019, only two cottage food producers had registered; in reality, home bakers continued to operate illegally because it was not worth navigating this requirement. [There] is no valid reason for requiring cottage food permit holders to list what cottage foods they will sell in the next two years at the time of application. The [proposed amendment and new rules] already severely limit what types of cottage foods can be sold by a cottage food permit holder [(citation omitted)].

Moreover, [proposed new N.J.A.C.] 8:24-11.4(c) requires home bakers to attach labels or tags that list ingredients and allergens on each product they sell. Thus, the Department already knows every possible cottage food that home bakers can potentially sell in New Jersey, and consumers will know the ingredients and allergens in each item at the time of sale. Moreover, the application requires the applicant to list the ingredients in each cottage food, but it does not explain what happens if a baker changes or experiments with their recipe. If Cindy from ‘Cindy’s Cookies’ wants to substitute cinnamon for nutmeg in her cookie recipe, will she have to submit an entirely new application for her cottage food business and pay an additional application fee? What if Cindy is forced to substitute a hard-to-find ingredient? What if a customer asks

her to make a custom order? What if, in her original application, she listed only classic cookies, but come October and December, she wants to sell unique Halloween and Christmas cookies? Each of these standard baking practices would force bakers down labyrinthine regulatory corridors. The current application fails to account for the real-world nature of small businesses. The ... Department [should] remove the 'Product Type' section from the application or clarify that home bakers may sell additional cottage foods beyond those listed on their applications." (Group 8)

RESPONSE: The Department agrees with the commenter's assertion that requiring applicants to list in their applications the non-allergenic ingredients of the cottage food products applicants intend to manufacture would not increase the protection of public health and could impose an undue burden on applicants, as the commenter describes. The Department will make a change upon adoption to the Cottage Food Operator Permit Application form at proposed N.J.A.C. 8:24-11 Subchapter Appendix A to delete the requirement that applicants list every ingredient in each type of cottage food product the applicant intends to produce. The Department will retain the requirement that the operator must identify each type of cottage food product the operator intends to produce, and for each such item, each major food allergen that the product might contain. Moreover, the Department will retain the requirement that applicants seeking authorization to produce a non-TCS food product, other than those listed within the definition of the term, "cottage food product," at paragraphs 1 through 18, at N.J.A.C. 8:24-1.5, as proposed for amendment, must provide a list of the ingredients and major food allergens that the product would usually contain, to enable the Department to determine that the proposed item is a non-TCS food.

14. COMMENT: A commenter states, “Zoning regulations may ... be a factor to consider,” and “Residences that have septic systems would need to upgrade the system to accommodate the additional flow from the business. This would be considered a change in use. In homes that are tied into the public sewer system may increase the volume of grease being discharged causing issues for the sewer plants.” (669)

15. COMMENT: A commenter states that proposed new N.J.A.C. 8:24-11.5(a), “doesn’t even begin to touch upon any violations with local building, fire, or zoning regulations that exist with cottage food producers using their personal residences for retail food purposes. The commenter inquires, with respect to proposed new N.J.A.C. 8:24-11.1(e), “as the [State] is issuing the permit, who is checking on the local laws of the municipality? Furthermore, if the local health authority cannot issue fines for a cottage food operator or revoke their permit, this may be a problem. The local health authority should be allowed to review cottage food operator applications prior to their issuance to ensure there is no violation of local ordinances or regulations.” (670, 672, 679, and 680)

16. COMMENT: A commenter requests confirmation that proposed new N.J.A.C. 8:24-11.1(e) would mean that if engaging in cottage food operations is not a permitted use, “as a home occupation for example, then it will not be allowed.” (674)

RESPONSE TO COMMENTS 14, 15, AND 16: Proposed new N.J.A.C. 8:24-11.1(e) would require Cottage Food Operator Permit applicants to “ascertain and comply with applicable local laws of the municipality in which the applicant seeks to operate a cottage food operation.” This means that applicants for cottage food operator permits would need to identify applicable local laws addressing matters such as zoning, waste

disposal, and sewage, and indicate within their applications that their proposed conduct of cottage food operations at their residences would not conflict with those local laws. The Department will not issue or renew a Cottage Food Operator Permit if issuance would be inconsistent with local laws. An applicant is responsible to determine the applicability and effect of local laws on the applicant's ability to establish a cottage food operation. If an applicant inaccurately represents that a proposed cottage food operation would comply with local law, the applicant risks the Department voiding the permit for noncompliance with applicable local law. Because applicants would need to ascertain applicable local laws and confirm that the conduct of cottage food operations at their residences would not violate those laws, the Department will make no change on adoption in response to the comments.

17. COMMENT: With respect to proposed new N.J.A.C. 8:24-11.1(e), a commenter states, "Regardless of municipal authority to regulate zoning or other local issues, the Department should clarify that it intends the sale of cottage foods to be allowed throughout the [State] and that no other regulations or ordinances should otherwise restrict or prohibit the sale of cottage foods. The Department should explain that these regulations are intended to govern uniformly [Statewide] and that these regulations will preempt any local regulations that, on their face or as applied, prohibit, or restrict cottage food sales. This will ensure that local health authorities and municipal governments neither attempt to circumvent the Department's authority to regulate by further restricting or outright banning the sale of cottage foods nor otherwise undermine the Department's intent in promulgating uniform regulations, which has happened in other states [(citation omitted)]." (Group 8)

RESPONSE: The Department does not expect any confusion to exist as to the Statewide applicability of the proposed amendment and new rules, because they would comprise part of the State Sanitary Code. At the same time, the Department is without authority to declare that the chapter preempts local laws.

N.J.S.A. 26:1A-9. Force and effect of Code; enforcement; local regulations, states, in pertinent part: “The provisions of the State Sanitary Code shall have the force and effect of law. Such code shall be observed throughout the State and shall be enforced by each local board of health, the local police authorities and other enforcement agencies. Nothing herein contained however shall be deemed to limit the right of any local board of health to adopt such ordinances, rules and regulations, as, in its opinion, may be necessary for the particular locality under its jurisdiction; but such ordinances, rules and regulations shall not be in conflict with the laws of this State or the provisions of the State Sanitary Code, except, however, that such ordinances, rules and regulations may be more restrictive than the provisions of the State Sanitary Code.”

Thus, while the State Sanitary Code is to be “observed throughout the State,” local boards of health retain statutory authority to establish “ordinances, rules and regulations as ... may be necessary for the particular locality” that are “more restrictive than the provisions of the State Sanitary Code.” The Department cannot change a statute by rulemaking. For these reasons, the Department will make no change on adoption in response to the comment.

18. COMMENT: Commenters note that proposed new N.J.A.C. 8:24-11.6(b) would establish that Cottage Food Operator Permits would be valid for two years from date of issuance and that proposed new N.J.A.C. 8:24-11.1(b)3i would require an

applicant for issuance or renewal of a permit whose kitchen uses private well water to submit, “a copy of an analysis of the private well water conducted no earlier than one year before the date of the application.” The commenters state, “This means that a private well water sample would not need to be provided for up to three years. This imposes a great health risk, as private wells may not be properly maintained during food preparation to prevent the spread of communicable disease. It ... also does not agree with the sampling which is required by retail food establishments.” (670, 672, 679, and 680)

RESPONSE: The commenters correctly note that proposed new N.J.A.C. 8:24-11.6(b) would allow up to three years to elapse between analyses of private well water used to produce cottage foods. The Safe Drinking Water Act rules at N.J.A.C. 7:10, implement the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. (NJSDWA).

N.J.A.C. 7:10 would characterize a typical well water system used in retail food production as “public transient noncommunity water system.” N.J.A.C. 7:10-1.3. The commenters correctly note that a public transient noncommunity water system is subject to quarterly microbiological monitoring (that is, total coliform bacteria testing). N.J.A.C. 7:10-5.8(a)2.

In contrast, N.J.A.C. 7:10-1.3 would characterize a typical well water system that supplies potable water to individual dwellings as a “nonpublic water system.” Nonpublic water systems are not subject to the microbiological monitoring requirement at N.J.A.C. 7:10-5.8. In fact, until the enactment in 2001 of the Private Well Testing Act, P.L. 2001, c. 40 (approved March 23, 2001), codified at N.J.S.A. 58:12A-26 through 37 (PWTA), existing private residential wells were never subject to any testing requirements. State

rules requiring private well testing applied only to the construction of new, altered, or replacement wells. N.J.A.C. 7:10-12 Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems. Even the PWTA requires private well water used to supply potable water to a residential property to be tested only as a precondition to a sale of the property and, with respect to leased premises, only once every five years by landlords. N.J.S.A. 58:12A-27 and 32; and see N.J.A.C. 7:9E, Private Well Testing Act Rules.

The Department disagrees with the commenter's assertion that the passage of up to three years between tests of nonpublic water systems used to supply water to cottage food operators would impose "a great health risk" to consumers of cottage food products. The proposed amendment at existing N.J.A.C. 8:24-1.3 would define "cottage food product" to mean either mixed dried products that require minimal or no water for processing, or products that are subject to processes that kill microbiological organisms (coliforms), including fermentation (such as vinegar), boiling (jams and syrups), or baking (baked goods). Moreover, the quantities of food that the rules would authorize cottage food operators to produce are not of the scale that retail food operators can produce in unlimited quantities, thereby further reducing the risk of illness. For these reasons, the Department declines to require cottage food operators to obtain analyses of private well water used in cottage food production at the same frequency applicable to well water used by retail food establishments in food production.

However, the Private Well Testing Act rules (PWTA) invalidate coliform analytical results, for purposes of a sale of residential real property for which a private well located on the property supplies potable water for the residence, if the well water samples used

to conduct the analysis were collected over six months prior to the closing on the sale of the property. N.J.A.C. 7:9E-3.3(b). Therefore, for general consistency with this aspect of the PWTA, the Department will make a change upon adoption at proposed new N.J.A.C. 8:24-11.1(b)3i and 8:24-11 Subchapter Appendix at Section IV Applicant Representation and Certification, to require the private well water analysis to have been conducted using water samples collected no earlier than 60 days prior to the filing of an application for issuance or renewal of a cottage food operator permit.

The Department does not anticipate that this change on adoption would increase the burden on persons planning to apply for initial issuance of a cottage food operator permit, as it is unlikely that any potential applicant would have already obtained an analysis in speculative anticipation of the adoption of the proposed amendment and new rules. The change would enhance the protection of the rules, in the sense the commenter suggests, by narrowing the period between well water testing from three years to no more than 26 months.

Except as stated above, the Department will make no change on adoption in response to the comment.

19. COMMENT: A commenter states that the proposed amendment and new rules “do not provide ... a mechanism ([that is, a Statewide] registry) that would capture and track licensed operators or egregious actions of same. Further, no means for documenting expanding or contracting staff has been identified in the proposed regulations, or safety risks inherent in additional food handlers.” (683)

RESPONSE: The proposed amendment and new rules would identify the Department as the permitting agency and would establish that permits would be valid for two years,

thereby obliging a cottage food operator to submit an application for permit renewal prior to expiration, to avoid permit lapse. The Department would maintain a Statewide registry of permit holders and would make that registry publicly available by posting it to the Department's website. If the Department institutes an enforcement action against a permit holder, the Department will post information about the action in accordance with Executive Order No. 227 (2017).

The commenter does not describe the "safety risks inherent in additional food handlers" or how these would be greater in cottage food operator kitchens than they are in retail food operators' facilities. The existing retail food code at N.J.A.C. 8:24 does not require retail food operators to "document expanding or contracting staff" or otherwise report the identity of their personnel to the State (except as necessary to comply with applicable wage and hour, occupational safety, and other labor and taxation standards that Federal and State regulatory authorities administer). Absent a reason implicating the need for the greater oversight, the Department declines to impose on cottage food operators a greater reporting burden with respect to food handlers than it does on retail food operators.

Implicit in food safety training, which the proposed amendment and new rules would require cottage food operators to obtain and comply with in processing cottage food, is the obligation to instruct and supervise the food handlers under an operator's control to ensure adherence to applicable best practices for safe food handling. For these reasons, the Department will make no change on adoption in response to the comment.

20. COMMENT: A commenter states that the proposed amendment and new rules, “and the corresponding licensing procedure,” would not preclude “the significant potential for transient, non-compliant operators to relocate their kitchen without local or [State] knowledge.” (683)

RESPONSE: Proposed new N.J.A.C. 8:24-11.1 would require a cottage food operator to specify the location of the operator’s home kitchen in which the applicant would prepare cottage food. The permit the Department issues is specific to the location the applicant identifies in the application. Cottage food product labels must state the product’s manufacturing location. A Cottage Food Operator Permit is not transferrable to another person or another location. If local health officials want to confirm that a cottage food operator’s production activity occurs at the location shown on the permit, they retain authority to confirm this. If they suspect that production is occurring other than at the location the permit specifies, local health officials can notify the Department of the suspected permit violation, so that the Department can pursue enforcement activities. Therefore, the Department disagrees with the assertion that the proposed amendment and new rules fail to address production at a location other than the operator’s home kitchen. For these reasons, the Department will make no change on adoption in response to the comment.

21. COMMENT: A commenter states that a cottage food operator’s “home kitchen would need to be inspected and the process in which the foodstuff is prepared and packaged should be safely and properly done as well as randomly inspected. This would also create new jobs as inspectors of said home food sources.” (222)

22. COMMENT: A commenter states, “Inspectors having to go into private homes to conduct an inspection [raises] concerns.” (669)

23. COMMENT: A commenter states that the proposed amendment and new rules would impose “a burden on all local public health departments and residents. For example, enforcement agencies will have a hard time to regulate [homeowner-occupied] kitchens.” (671)

24. COMMENT: A commenter states that the proposed amendment and new rules would impose “an overly cumbersome burden on local health departments. Local health departments are already stretched beyond reasonable capacity to address normal retail food establishment inspections, along with all other types of complaints and inspections.” (677)

25. COMMENT: A commenter states that cooking in a home in which there is illness would “[spread] illness to inspectors.” The commenter states that the proposed amendment and new rules would result in “Added [administration] and inspection costs to [local health agencies,] which are strapped already.” The commenter further states, “Unannounced health inspections will put inspectors at risk. What else is going on in the home? Who else is there? Concerned for their safety. Must send two inspectors into the home; again[,] extra cost to Health Departments.” (678)

26. COMMENT: A commenter states that the proposed amendment and new rules would impose on local health agencies an “unfunded mandate, by virtue of significantly increased inspections, licensed facilities, complaint investigations and enforcement activities [and] would require public officials to enter private homes for purposes of enforcement, yet it is not clear if legislators have examined and provided for

possible conflicts with regard to personal property rights and potential rights to refuse entry. Any such violations to these proposed code changes could result in an extensive strain on resources due to necessary, comprehensive legal proceedings and potential challenges to same.” The commenter further states, “Because the proposed code calls for some oversight to emanate from the ... Department ... with other responsibilities falling within local health authorities, there is a complete lack of continuity in administering and executing the proposed code changes.” (683)

RESPONSE TO COMMENTS 21 THROUGH 26: The proposed amendment and new rules would require neither local health officials nor the Department to perform routine, random, or prescheduled inspections of home kitchens, as a condition of the Department’s issuance or renewal of a Cottage Food Operator Permit, or during the period of a permit’s validity. Pursuant to proposed new N.J.A.C. 8:24-11.4, cottage food operators would apply labels to the products they sell to alert consumers to the absence of a health authority’s inspection of the kitchens in which the offered products were produced. This would enable consumers to make informed decisions in deciding whether to purchase cottage food products made in uninspected kitchens.

The Department would serve as the primary authority for Cottage Food Operator Permit issuance and complaint investigation, and it would retain jurisdiction to enforce the proposed amendment and new rules. The proposed amendment and new rules, in and of themselves, would neither impose inspection or enforcement obligations on local health officials nor require them to enter any premises. Cottage food operators, like other residents of a municipality, must comply with applicable local and public health

laws, and municipal officials would retain their existing authority and obligation to enforce the laws under their jurisdiction.

In addition, if a local health official suspects that a person is violating the Cottage Food Operator Permit rules, in any way, including by noncompliance with local laws, the official can elect to notify the Department, which would exercise its enforcement jurisdiction. If a person has neither a locally issued retail food establishment permit nor a Cottage Food Operator Permit, but engages in activities that would require one to have either permit, then local health officials would retain their existing jurisdiction to enforce noncompliance with the existing rules at N.J.A.C. 8:24 and local retail food permit ordinances.

To avoid imposing an “unfunded mandate” on local governments, while at the same time responding to the request for revision of N.J.A.C. 8:24 to authorize cottage food operations, the Department proposes to assume and retain jurisdiction for the issuance of Cottage Food Operator Permits and the administration and enforcement of the proposed amendment and new rules. Upon occasion, the Department might request a local health official’s assistance in administering or enforcing some aspect of the proposed amendment and new rules, through either a formal or informal request or a delegation of authority, for example, pursuant to N.J.S.A. 24:12 or 26:1A-20 or 35. However, the Department does not intend to require local health officials to administer or enforce the proposed amendment and new rules.

Therefore, the Department disagrees with the assertions that the proposed amendment and new rules would reflect a lack of enforcement continuity between the Department and local health agencies; impose an unfunded mandate on local health

agencies; or increase the risk to which local health officials are exposed during the routine exercise of their existing authority and jurisdiction. For these reasons, the Department will make no change on adoption in response to the comments.

27. COMMENT: A commenter states that the “Department properly recognizes that initial and periodic inspection are not necessary [and, therefore,] supports [proposed new N.J.A.C. 8:24-11.2(a)2], which will allow home bakers to receive a permit without undergoing any initial or periodic inspection. [The cottage food] laws and regulations in most states have no inspection provisions whatsoever. Therefore, in more than half of [the] states, home bakers’ kitchens are never inspected, and yet there are no reports around the country of unsafe cottage foods. Again, because cottage foods are safe and home bakers, like all small business owners, have every reason to protect their business reputation, inspecting home kitchens does not increase public health or safety.

The public already consumes cottage foods prepared in uninspected home kitchens ... in New Jersey without incident[. Existing N.J.A.C. 8:24 allows] New Jersey home bakers to sell or donate cottage foods to the public so long as the proceeds benefit a charity or religious organization. [(citation omitted).] This exemption is widely used throughout the [State] and there are no cases of anyone becoming sick from a baked good or other cottage food. This demonstrates that there is no reason to subject home bakers to inspections. Additionally, the application process requires home bakers to affirm that their kitchen meets minimum requirements, that they are ... certified food protection [managers] in good standing, and that they will comply with certain sanitation, preparation, and packaging requirements. [They] must undergo food protection

manager training and comply with these sanitation requirements or risk penalties that include losing their license or fines of up to \$1,000 per violation. In light of the foregoing, subjecting home bakers to initial or periodic inspection would be all burden with no added public benefits.” (Group 8)

RESPONSE: The Department acknowledges the commenter’s support for the proposed amendment and new rules. The Department takes no position as to the commenter’s factual assertions.

28. COMMENT: A commenter states that the Department should not authorize “the sale of shelf stable foods from a private residence. The likelihood of comingling of food products from the home and for sale are high. Proper procedures and equipment use may not be followed. The risk of cross-contamination is also a concern.” The commenter further states that the purpose of existing N.J.A.C. 8:24 is “to protect the public from harm. By allowing the cottage rule to pass I feel it will do a disservice to the food industry and standards.” (669)

29. COMMENT: A commenter states, “issues that could be found in an in-home kitchen could be violations such as pets within the household and kitchen, regular sanitation practices, and other critical violations like cross-contamination. These potential violations cannot be enforced or guaranteed that the operator will follow by these chapter 24 standards.” The commenter states, “there is a lot of room for error and misconduct that can make the public sick and only extend the public health concern for residents.” (671)

30. COMMENT: A commenter expresses “great concern with cottage kitchens. During several inspections through the years [, the commenter has] seen people cook

out of their homes. Some with animals and some without any food safety knowledge. There are numerous churches, catering halls and other businesses who are licensed through the towns in which they would probably be delighted to earn a fee for someone to use their licensed kitchen.” The commenter further states, “some do not realize that they have medical issues that can shed ... bacteria [such] as [Hepatitis] A. Some do not have proper refrigeration or even understand how to cool properly. At this time [cottage kitchens] are opening more [foodborne] illnesses for the public. Maybe in years to come but [at] this time I Strongly Vote against this proposal.” (676)

31. COMMENT: A commenter states that it would be “Impossible to keep children, dogs, and sick family members out of kitchen; the heart of the home;” and that “Inspectors and food at risk of contamination by ill family members. Brick and mortars can send the ill home, but cottage industry ill are already home! Cooking will occur in spite of illness[,] thereby potentially contaminating food.” The commenter inquires, “Shouldn’t we be heading the other way towards more stringent rules? Again, brick and mortar penalized; food at risk of contamination through substandard handling, finishes, equipment, sanitizing procedures; etc.” (678)

32. COMMENT: A commenter states, “The provision for home cooked/baked goods does not assure or otherwise require the installation and use of commercial grade equipment and utensils, which are necessary to adequately protect against the spread of foodborne pathogens.” The commenter further states, “Permission for preparation of foods in home kitchens does not account for potential sources of contamination not found in approved commercial and non-profit kitchens, like the presence of pets or family members in one’s kitchen.” (683)

33. COMMENT: A commenter does not support the proposed amendment and new rules because “There wouldn’t be enough safety checks in place to ensure food safety.” (741)

34. COMMENT: A commenter states, “I vote no!!!!!! Please do not allow this! There are too many risk factors that these home bakers do not understand. [Will] you require insurance if a liability happens, will they pay taxes like us business owners, will they have kitchen inspections, will they be allowed to cook with their cats on the counters[? So] many questions, not enough answers. [Look] at this [defiant Wayne New Jersey mom. Two times] the health [inspector] talked to her and she still posts her business on [Facebook. Is] she reporting taxes? No.” (742)

RESPONSE TO COMMENTS 28 THROUGH 34: Given the limited types and quantities of non-TCS foods that the proposed amendment and new rules would authorize cottage food operators to produce, the Department has determined that requiring a cottage food operator to incur the costs associated with obtaining and using commercial-grade equipment in a home kitchen to produce and store cottage foods in accordance with the retail food establishment standards would not have a corresponding benefit in terms of protection of the public from foodborne pathogens, and that other requirements in the proposed amendment and new rules would establish cost-effective and reasonable measures to help prevent the spread of foodborne illness resulting from cottage food operations. Specifically, the proposed amendment and new rules would require an applicant for a Cottage Food Operator Permit to complete food safety training and to obtain, and, thereafter, maintain, in good standing, a food protection manager certification; to agree to control the entry of children, pets, and other sources of

contamination from a home kitchen during cottage food production; to acknowledge the obligation and agree to maintain the home kitchen in a safe and sanitary manner; to produce only non-TCS foods (which require no refrigeration because they do not support the growth and proliferation of the bacteria that cause foodborne illness); to adhere to a gross sales limit (and, thereby, limit the quantity of cottage food that may be prepared and/or stored); and to limit distribution of cottage food to in-person, consumer-direct delivery.

A cottage food operator who offers cottage food products for sale at farmers' markets or temporary food events, thereby, subjects those products to visible inspection by a local health official who might be overseeing food operations at that market or event. If the local health official identifies an irregularity and elects to alert the Department about a potential violation, this provides an additional opportunity to prevent the spread of foodborne illness, because the Department would be able to take follow-up actions, such as conducting an inspection and imposing enforcement remedies.

Existing retail food establishments typically are open for business for fixed hours and days of operation. In contrast, the constraints of fixed work schedules are less likely to apply to cottage food operators. One person would produce most cottage food products. Given the flexibility that cottage food operators would enjoy with respect to their working hours, cottage food operators would have greater autonomy to decide to refrain from working while they are unwell. Thus, the Department anticipates that the public and local health officials might be as likely, if not more likely, to be exposed to unwell persons, and the food they have prepared in retail food establishments, than they would in consuming or inspecting cottage food products.

Hepatitis A is a virus, not a bacterium, which is reportable upon diagnosis to the local health department with jurisdiction. Pursuant to existing N.J.A.C. 8:57-1.13, the Department and local health officials can preclude a person who has a communicable foodborne illness from working with food pending confirmation that the illness is no longer transmissible. The situation the commenter posits, that a cottage food operator might produce food before knowing of the contraction of a foodborne illness, likewise might occur in retail food establishments.

The proposed amendment and new rules would require cottage food operators to obtain, and adhere to, food safety training. The training addresses prevention of foodborne illness transmission by requiring adherence to personal hand hygiene controls, such as timely handwashing, prohibiting persons who have a transmissible foodborne illness from working with food, and prohibiting the presence of animals during food preparation.

The Department acknowledges that conditions for improper sanitation, such as those the commenters suggest, might occur in uninspected private residential kitchens of cottage food operators, just as they might in commercial kitchens of retail food establishments, which local health officials typically inspect no more than once annually. Retail food establishments and cottage food operators have the same interest in ensuring that the food they produce is sanitary and does not harm people, to ensure repeat business and to avoid liability for personal injury. The required labeling would alert consumers of cottage food products to the lack of health authority inspection of the kitchens in which the products are prepared.

Given the absence of broad-based nationwide prohibitions of cottage food operations and product sales throughout the country, the proposed labeling and other notification requirements to inform consumers of the lack of home kitchen inspection, and the limitation of cottage food products to non-TCS foods, the Department believes that establishment of a Cottage Food Operator Permit process in New Jersey would not subject the people of New Jersey to a patently unreasonable risk of a foodborne illness, relative to the other states that authorize this activity.

Therefore, the Department disagrees with the assertion that the proposed amendment and new rules would fail to account for potential sources of contamination and would subject the public to a greater risk of a foodborne illness than the risks that already might exist in the State from the operation of retail food establishments. For these reasons, the Department will make no change on adoption in response to the comments.

35. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:24-11.3(a)1iii to “expand time community fair, religious event, school event or any other community event” (*sic*). (44)

RESPONSE: The commenter appears to be suggesting that the Department should add, “community fairs,” and “religious events,” to the list of locations at which a cottage food operator is authorized to deliver and relinquish cottage food products to a consumer. Existing N.J.A.C. 8:24-1.5 defines, “temporary retail food establishment,” to mean “a retail food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.” Therefore, because proposed new N.J.A.C. 8:24-11.3(a)1iii would capture the locations and events the

commenter describes, the Department will make no change on adoption in response to the comment.

36. COMMENT: A commenter states, “Sales through the internet should also be permissible.” (276)

37. COMMENT: A commenter requests that the Department “reconsider [its] restrictions on digital transactions, shipping[,] and sales across state borders. In 2020, especially in the wake of the coronavirus pandemic and social distancing protocols, our society relies on digital forms of payment and shipping ... to survive. Without these resources, [cottage food operators] would very likely lose potential customers without an easy and safe way to order, pay for or receive their goods [and this would] prevent [them] from earning thousands of dollars in additional income. If goods are shipped, [cottage food operators] have a [better] chance at tracking their sales in the unlikely chance of a recall because they will have the address and contact info of their customers. For some [cottage food operators] who live close to [the] borders [of Pennsylvania, New York, and Delaware], restricting sales to [within New Jersey] will eliminate a broad market of customers. If necessary, the Department could ask that those [cottage food operators] who want to sell through an online marketplace and/or sell to customers in other states be subject to a higher permit fee or an inspection of their production kitchen.” (383)

38. COMMENT: Commenters state that proposed new N.J.A.C. 8:24-11.3(a)6, “doesn’t make it one hundred percent clear that it includes online sales.” (670, 672, 679, and 680)

39. COMMENT: A commenter states that the “Department should not restrict the sales venues for cottage foods. If the Department finds it necessary to restrict the sales venue for cottage foods at all, the [proposed amendment and new rules] should list only the few locations where cottage foods may not be sold. Currently, [proposed new N.J.A.C. 8:24-11.3(a)] needlessly [restricts] where cottage food sales may take place. ... There is no reason, however, for [proposed new N.J.A.C. 8:24-11.3(a)] to list the locations where cottage foods can be sold. Although many sales will take place in the aforementioned locations, home bakers and consumers need flexibility. Many customers want their orders delivered to event venues, like a hotel ballroom for a wedding or a local hall for a party. Further, for safety reasons, consumers and bakers should feel free to meet at public locations if that would better suit their needs.” The commenter notes that “New Jersey local police departments have already established ‘safe transaction zones’ in parking lots with signs and security cameras, other high-traffic public spaces, or within police station lobbies, to facilitate safe transactions between strangers.”

With respect to proposed new N.J.A.C. 8:24-11.3(a)5 and 6, which would prohibit cottage food operators from selling, delivering, or relinquishing cottage food products by “United States postal mail or a common carrier; and/or [in] interstate commerce, that is, outside of the State of New Jersey,” a commenter notes that existing N.J.A.C. 8:24 allows retail food establishments to engage in these activities. The commenter states, “There is no legitimate health or safety reason for treating home bakers differently from retail food establishments in this respect when home bakers are already limited to selling shelf stable foods only. The Department attempts to justify this distinction by

suggesting that retail food establishments can sell to consumers indirectly or via mail because retail food establishments are more heavily regulated than home bakers [(citation omitted)]. This justification is irrational: Once a food product leaves the control of the retail food establishment, it is no longer subject to those regulations. Both cottage foods and commercially produced food are equally safe to ship. The risks, if any, are equal once the food leaves the hands of the producer and is under a third-party's control.”

The commenter further states, “There is no health or safety reason to limit home bakers to in-[State] sales [(citation omitted)]. Food made in New Jersey remains safe if it is delivered to a consumer or sold at a [farmers’] market in a neighboring state. Pennsylvania does not prohibit interstate cottage food sales (subject to [Federal] interstate commerce requirements).” The commenter notes that food sales in interstate commerce must comply with Federal labeling requirements, such as those in the Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-61.

The commenter further states, “Aside from the logical reason for eliminating this restriction, it is also blatantly unconstitutional. The [United States] Supreme Court has held that blocking the sale of interstate commerce at a state’s border triggers ‘the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives’ [(citation omitted)]. Here, the Department suggests that the ban on interstate sales is necessary because (1) home bakers are generally subject to fewer regulations than retail food establishments and (2) the ban will facilitate administrative convenience in the event of a food recall [(citation omitted)]. However, neither reason is sufficient to justify this blanket ban on interstate sales of cottage foods.

First, the Department states it should treat home bakers differently than retail food establishments because the latter are subjected to more onerous regulations. However, this alone does not mean that cottage food operators should have more limited access to clientele than commercial food producers. Rather, this statement merely reiterates the intent of [the proposed amendment and new rules]: to exempt cottage food operators from the regulations governing retail food establishments and subject them to less stringent requirements because, as the Department has recognized in proposing these Rules, “scientific evidence ... supports a finding that shelf-stable food prepared in home kitchens is safe for consumers.” Instead, this restriction suggests that the Department’s true motive may be to protect retail food establishments from competition; but economic protectionism is never a legitimate government interest. [(citation omitted)].

Second, the Department states that preventing out-of-[State] sales by home bakers is necessary to “facilitate containment and recall in the event of a finding of misbranding, adulteration, contamination, or foodborne illness outbreak” [(citation omitted)]. This argument fails because the risk of harm from consuming a cottage food is essentially zero. By definition, cottage foods cannot support pathogenic growth or toxin formation [(citation omitted)]. As the Department and every state have already recognized, cottage foods are safe. Moreover, cottage food producers are small-scale producers. In the highly unlikely event of a cottage food recall, reaching out to a home baker’s consumers would be relatively simple and straightforward, especially compared to responding to a multi-state food recall, as happens often at retail food establishments. [(citation omitted)]. Therefore, there is no reason to restrict home

bakers' abilities to sell safe cottage foods in other states based on speculation about a highly unlikely event." (Group 8)

RESPONSE TO COMMENTS 36, 37, 38, AND 39: The Department agrees that the location at which an electronic or paper financial transaction, advertising activity, or purchase order occurs in connection with the sale of a cottage food product is irrelevant to public health protection. However, the location at which the actual handoff of the cottage food product to the consumer occurs, in satisfaction of a financial transaction or purchase order, is relevant. The transfer of the cottage food product produced by a person holding a New Jersey Cottage Food Operator Permit must occur within the State of New Jersey to ensure that the Department maintains jurisdiction over the operator's activities and the cottage food product itself. The Department acknowledges that transactions involving interstate commerce trigger the concurrent jurisdiction of the Federal government and other states, and notes that every state that authorizes cottage food operations, except for Pennsylvania, prohibits sales across state lines.

At temporary food events and farmers' markets, payment for, and delivery of, goods to the customer occurs in a single transaction. In these situations, local health officials are on hand to provide an additional opportunity for oversight, as they can review the condition of the food products on offer, ensure that distribution is limited to non-TCS foods as specified on the Cottage Food Operator Permit, review essential labeling information for potential misbranding and allergen issues, and alert the Department to the need for follow-up enforcement activity.

In other situations, such as advance special orders, partial or full payment might occur upon order placement, while delivery of goods might occur later. The requirement

of in-person delivery, rather than use of a commercial or governmental common carrier, provides the consumer the opportunity to examine the goods and review the labeling before acceptance.

The proposed amendment and new rules would not prohibit “digital transactions.” As proposed, N.J.A.C. 8:24-11.3(a)5 would have prohibited cottage food operators from selling, delivering, or relinquishing cottage food products by United States postal mail or a common carrier. The Department intended N.J.A.C. 8:24-11.3(a)5 to prohibit the delivery of cottage food products by mail or by common carrier; but did not intend to prohibit activities attendant to a cottage food transaction other than delivery to occur by electronic means or by mail or common carrier. See the notice of proposal Social Impact (describing the rules as “prohibiting delivery of cottage food products by United States Postal Mail and common carrier”). To the extent the prohibition of “selling” cottage food products, as used in proposed new N.J.A.C. 8:24-11.3(a)5, could be viewed as prohibiting activities attendant to cottage food product transactions other than delivery and receipt, such as online, electronic, telephonic, or mailed order placement, payment acceptance, and/or advertising, the term is imprecise as used in this context.

To conform the rule text to the Department’s stated intention on proposal, the Department will make a change upon adoption to add new N.J.A.C. 8:24-11.2(b) to authorize activities other than product delivery with entities in New Jersey and in other states to occur using electronic means or through the use of the mail and other delivery services, provided the actual “handoff,” that is, the delivery and receipt of cottage food products, occurs in person, in New Jersey, and not by means of the mail or a common carrier. In addition, the Department will make a change upon adoption at N.J.A.C. 8:24-

11.3(a) to delete the word, “sell,” which might be construed as including the portion of a transaction that occurs electronically or on paper.

The Department acknowledges that cottage food operators, for reasons of personal safety, might prefer to deliver goods to consumers in public locations other than in their homes, and that consumers who preorder cottage foods appropriately might request cottage food products to be delivered to event venues. To accommodate these circumstances, the Department will make a change upon adoption by adding new N.J.A.C. 8:24-11.3(a)1v, which would authorize the relinquishment or delivery of cottage food products to the consumer at any location within New Jersey, provided this activity at the location is otherwise lawful.

Except for these clarifications, the Department will make no change on adoption in response to the comments.

40. COMMENT: A commenter states, “Traffic? No, it’s only pick up. Neighbors are not disturbed.” (454)

41. COMMENT: A commenter supports the proposed amendment and new rules “and the opportunity for small cottage home baked good businesses.... The only part that concerns me is that baked goods can be sold from the home. How will this impact a neighborhood? More traffic in and out without proper parking opportunities? ... Hope the rule is accepted.... At this time, New Jersey needs to support our economic growth with an eye towards safety, environmental concerns, and support of small business. Keep in mind the concerns of added traffic in the neighborhood of the cottage industry.” (472)

42. COMMENT: A commenter states, “You could do it like other states where the consumer/customer cannot enter the residence. Aka a roadside-driveway stand.” (540)

43. COMMENT: A commenter states that authorizing cottage food operations would result in “More traffic on residential streets for pick up and delivery.” (678)

RESPONSE TO COMMENTS 40, 41, 42, AND 43: While cottage food operations might increase residential traffic for cottage food product pickup by customers or delivery by operators, the Department does not anticipate that an increase in traffic volume would be so noticeable or remarkable that it would rise to the level of a nuisance condition, especially in view of the proposed cap on gross sales, which would limit the volume of cottage food that a cottage food operator could produce, and the proposed prohibition of sampling, which would help to prevent traffic issues caused by extended times consumers might linger at a residence. For these reasons, the Department will make no change on adoption in response to the comment.

44. COMMENT: A commenter notes that proposed new N.J.A.C. 8:24-11.3(a)1i would prohibit the onsite consumption of cottage foods, and states, “That means that a customer cannot consume a baked good, or even sample it, at the site of its purchase. This prohibition makes little sense. People have a basic right to share foods with friends and neighbors throughout their communities, whether they charge for their food or not. Vendors and consumers benefit from offering and tasting free samples. Sampling a piece of bread or consuming a purchased brownie on-the-go at [farmers’] markets, farm [stands], or a seller’s home is just as safe as eating it in one’s car minutes after purchase. Thus, the only logical reason to include such a prohibition is to protect retail food establishments, like cafés, from competition, rather than to further a

legitimate government interest [(citation omitted)]. Accordingly, the Department should clarify that the onsite consumption prohibition does not apply to free samples or on-the-go consumption of purchased cottage foods.” (Group 8)

RESPONSE: Feedback the Department received from local health officials in developing the proposed amendment and new rules included concerns that operators in multiple dwelling units and closely situated homes might create “café-like” situations in their home kitchens, thus impeding their neighbors’ rights to quiet enjoyment of their homes by fostering commercial activity, including traffic, noise, and longer-term parking issues (that is, parking for longer than the time needed for a quick pick-up) in residential settings, and enabling operators to circumvent public health, safety, and zoning standards applicable to retail food establishments that serve food for onsite consumption. Depending on the municipality, some of these might include, among other requirements, obligations to ensure adequate parking, access for disabled persons, restrooms for customers, fire and life safety measures, annual inspections, and restrictions on hours of operation.

The concerns expressed by local health officials also reflect the probable concerns of local residents. In contrast to an application for a variance to a local zoning ordinance to authorize the operation of a retail food establishment in a location that is not zoned for that activity, members of the public will have no opportunity to be heard as to the issuance of a cottage food operation permit to a neighboring resident. Therefore, the Department must consider the potential objections of persons who otherwise would have no say in the issuance of a permit.

The commenter's suggestion, that the proposed prohibition of sampling in a home kitchen would constitute Department protectionism of café-style retail food establishments from "competition," indicates that the commenter envisions cottage food operators' engaging in café-style activities on a level comparable or equivalent to retail food establishments, under the guise of providing "samples." This suggestion underscores the potential for abuse if the rules were to authorize cottage food operators to provide samples as a means of avoiding compliance with the enhanced public health and safety standards applicable to the lawful operation of a café-style retail food establishment and justifies local health officials' concerns for potential nuisances arising from cottage food operations. Therefore, the Department will maintain the prohibition as proposed.

Another problem with allowing cottage food operators to employ typical public sampling methods as at a community event or farmers' market, such as by providing small bites on a plate with toothpicks, would be the absence of packaging and labeling to alert consumers that the product was prepared in a home kitchen that was not inspected by a public health authority. A consumer at a community event or farmers' market who is examining a display for the purpose of deciding to purchase cottage foods might notice the required placard, but one who is briefly passing a table and grabbing "free food" might pay less attention to placards and might fail to examine labels on adjacent products on offer.

For these reasons, the Department will make no change on adoption in response to the comment.

45. COMMENT: A commenter opposes the proposed income cap of \$50,000 because some operators, such as those that can charge from \$1,000 or \$2,000 for special occasion cakes, would meet this limit too quickly. (220)

46. COMMENT: A commenter questions “the logic of the \$50K per year income cap. If a baker has the ability to be more successful, what possible health/safety benefit is there to limit their yearly income. This income limit sounds un-American.” (356)

47. COMMENT: A commenter states, “it would be beneficial for innovation to increase the gross annual sales cut off to \$100,000.” (369)

48. COMMENT: A commenter states, “a revenue cap is unnecessary because the nature and size of home kitchens naturally limits the amount of business an entrepreneur can do ... Home bakers need flexibility. Some only sell cottage foods occasionally or seasonally, while others do so more regularly. And many home bakers have other jobs or sources of income. The proposed revenue cap will allow new and seasoned home bakers alike to sell cottage foods. The cap will also allow those who choose to do so, to rely on cottage food sales for all or most of their income.

[Cottage] food sales have very thin profit margins, even if expensive commercial kitchens are out of the equation. Home bakers must still account for costs such as ingredients, tools, booth fees for markets and events, taxes, insurance, etc. Many cottage food producers struggle to make ends meet and work multiple jobs. In fact, states and [the District of Columbia] impose no revenue cap on the sale of cottage foods. Those states recognize that the inherent space and equipment limitations of home kitchens will naturally limit a home baker’s annual revenues. The ... potential to earn meaningful income by working from home can be lifechanging for many New

Jersey families. If the Department feels it is necessary to include a revenue cap, the \$50,000 gross revenue cap is acceptable.” (Group 8)

RESPONSE TO COMMENTS 45, 46, 47, AND 48: The Department declines to remove or decrease the proposed \$50,000 per year sales cap for cottage food operators at proposed new N.J.A.C. 8:24-11.3(b). Increasing the sales cap would encourage operators to increase the amount of cottage food products they produce and store. This would increase the pressure on the physical capabilities of the operator’s private home kitchen to produce and store cottage food products in accordance with applicable sanitation standards. In addition, the Department believes that attainment of \$50,000 per year would be a good indicator of when a cottage food operator should expand operations and obtain a retail food operator permit as a licensed commercial business.

49. COMMENT: A commenter inquires whether “the health department [would] have to ask for tax returns to determine the business has not exceeded \$50,000.” (669)

RESPONSE: Local health agencies would have no role in reviewing applications for issuance or renewal of Cottage Food Operator Permits. The Department would undertake application review and processing and would have the responsibility to determine whether a cottage food operator exceeded the gross annual sales cap of \$50,000. Local health officials who suspect that cottage food operators are exceeding the sales cap can elect to report this to the Department, which would exercise its existing inspection, audit, and enforcement authority, reiterated at proposed new N.J.A.C. 8:24-11.5, to ensure compliance with the chapter. In addition, the Department could exercise this authority in reviewing permit renewal applications, which applicants

would submit under the penalty of perjury. For these reasons, the Department will make no change on adoption in response to the comments.

50. COMMENT: A commenter states that proposed new N.J.A.C. 8:24-11.4(a), “does not make it clear whether or not it includes locations listed in proposed new [N.J.A.C. 8:24-]11.3(a)ii-iv.” (670, 672, 679, and 680)

RESPONSE: Proposed new N.J.A.C. 8:24-11.4(a) would recognize that it would be impracticable or awkward to require a cottage food operator to display a permit in the operator’s home kitchen or in the home of a consumer accepting delivery of cottage food products. Proposed new N.J.A.C. 8:24-11.4(a) would not apply to locations listed at proposed new N.J.A.C. 8:24-11.3(a)ii, iii, or iv because proposed new N.J.A.C. 8:24-11.4(b) already would require cottage food operators to “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,’” if “the point of sale is a location other than the residence of the operator or the consumer.” For these reasons, the Department will make no change on adoption in response to the comment.

51. COMMENT: With respect to proposed new N.J.A.C. 8:24-11.4(c)4, a commenter states, “The Department should not require that home bakers provide their home address and mailing address on the labels or tags on their foods [(citation omitted)]. There is no valid reason for labels to include this information. Many bakers will choose to include their home or mailing address or other appropriate contact information on their labels. But there are dire safety reasons not to force home bakers to include their home address on their labels. Home bakers are often women, many live

in rural areas of modest means, and most have children [(citation omitted)]. The commenters are aware of [NJHBA] members who would feel unsafe publicly sharing their home address with strangers—or with people known to be dangerous. And this fear is not abstract—tragically, cottage food operators have been attacked in their homes by dangerous people posing as customers [(citation omitted)]. And for most, if not all, home bakers, their home address and mailing address will be the same.

For safety reasons, other states avoid requiring home bakers to include their home addresses on their labels. For example, [the District of Columbia] does not require bakers to list their addresses on their products. Instead, cottage food producers must list a unique identification number given to them by the health department. Likewise, [the States of Maryland] and Washington ... amended their cottage food laws this year to replace the home address label requirement with a permit number [(citation omitted)]. [Proposed new N.J.A.C. 8:24-11.4(c)4ii would] require home bakers to include their permit number on their labels. Requiring a permit number in addition to physical and mailing addresses is unnecessary, redundant, and poses grave safety concerns. Based on a baker's permit application, the Department will have records of each baker's address. Thus, requiring home bakers to include their permit number on labels will provide the Department sufficient opportunity to contact a home baker if a consumer files a complaint. Any other personal information is unnecessary on a label and should not be required." (Group 8)

RESPONSE: The Department acknowledges the potential security concerns with requiring a cottage food operator to provide the operator's residential street address on cottage food product labels. Upon reconsideration, the Department has determined that

requiring a cottage food operator to provide the operator's municipality of record, alongside the other required information (the operator's name and individual permit number) adequately would address the need for consumers and health officials to be able to identify cottage food operators in the event of a problem with the product.

Therefore, the Department will make changes on adoption at proposed new N.J.A.C. 8:24-11.4(c)4 to delete the requirement that a cottage food operator's physical and mailing addresses appear on product labels, and will add new N.J.A.C. 8:24-11.4(c)5 to require the municipality in which the residential kitchen, at which the cottage food operator prepares cottage food products, is located, which shall be consistent with the information that appears of record with the Department.

The cottage food operator permit application provides applicants the option of providing an "address of record," which can be a post office box, in addition to the applicant's actual residential address, that is, the address at which the operator would prepare cottage foods. The Department would disclose the address of record to the public on request as public information and would disclose the actual residential address to public health officials, as needed, to implement public health laws under their jurisdiction.

Cottage Food Operator Permit holders and applicants, and other "qualified persons," including family members, having particularized concerns regarding disclosure of their residential addresses, such as in connection with an order for protection associated with a domestic, reproductive health, or criminal matter, can elect to avail themselves of the protections afforded by the Address Confidentiality Program Act, N.J.S.A. 47:4-1 et seq., in accordance with the rules promulgated pursuant thereto

at N.J.A.C. 3A:71, Address Confidentiality Program. The Division on Women of the New Jersey Department of Children and Families administers the Address Confidentiality Program.

Except as described above, the Department will make no change on adoption in response to the comment.

52. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:24-11.5(a) to require the Department, and/or a local health agency having jurisdiction, to provide cottage food operators, “a few days prior notice to [obtain access to the operator’s] home premises.” (44)

53. COMMENT: A commenter states, “It might be useful for the health authority to have the power to suspend operations when ... violations pose an imminent public health hazard while review of ... documented violations or conditions by the Department ... is pending. Furthermore, the local health authority should be empowered to [pursue] legal action should the cottage food operator fail to abide by the suspension ordered by the local health authority while said review by the Department is pending. Power should also be granted to the local health authority to embargo all potentially hazardous misbranded or adulterated food product discovered during complaint investigations or other visits for cause, to the cottage food operation.” (668)

54. COMMENT: Commenters state that proposed new N.J.A.C. 8:24-11.5(a)1 would allow “the health authority to ‘enter upon, examine, and survey [any] premises’ to enforce any health law under the official’s jurisdiction. Previous proposals of this law did not allow for restrictive ordinances by local health authorities to impose further regulate (*sic*) cottage food sales and production. This seems to be contradictory and

should be clarified further, as local regulatory authorities should be able to create regulations to help ensure the safe production of cottage foods in conjunction with N.J.A.C. 8:24 revisions.”

The commenters construe proposed new N.J.A.C. 8:24-11.5. to mean, “that the only other time examinations can occur from a health authority is to investigate ‘complaints associated with cottage food products.’ This severely limits the ability to enforce any general safe food handling practices. More importantly, there is no way to truly determine the sanitary conditions of the areas in which food for retail sale is being prepared and whether or not these cottage food producers are following any regulations pertaining to this proposed addition to N.J.A.C. 8:24.” (670, 672, 679, and 680)

RESPONSE TO COMMENTS 52, 53, AND 54: The Department issued no proposals in advance of the notice of proposal published at 52 N.J.R. 838(a).

Proposed new N.J.A.C. 8:24-11.5 would collect and paraphrase various statutory provisions that specify State and local health authorities’ powers with respect to the enforcement of public health laws. The proposed amendment and new rules would neither establish new, nor detract from existing, obligations or authority of municipal and local health officials to establish or enforce statutes, rules, or ordinances as to matters that are within their existing jurisdiction. Local health officials would retain their existing authority to take actions they deem necessary and appropriate to prevent an imminent threat to public health and safety, including their powers to embargo misbranded or adulterated goods, and to enter and inspect any premises and things, including a cottage food operator’s home kitchen, to enforce public health laws under their jurisdiction.

The proposed amendment and new rules would exempt persons having Cottage Food Operator Permits from compliance with the obligations in N.J.A.C. 8:24 that apply to retail food establishments. Local health officials would have no obligation to enforce proposed new N.J.A.C. 8:24-11 against a person holding a Cottage Food Operator Permit. Local health officials' authority to exercise the powers listed in proposed new N.J.A.C. 8:24-11.5 would need to emanate from laws other than those that apply exclusively to retail food establishments.

55. COMMENT: A commenter states that proposed new N.J.A.C. 8:24-11.5 contains, "broad language to describe the Department's inspection authority [(citation omitted)]," and the commenter requests, "that the Department clarify it will: (1) only inspect a home baker's kitchen in response to a verified consumer complaint, (2) provide reasonable notice to cottage food producers prior to an inspection, and (3) obtain a search warrant based on particularized probable cause prior to entry." The commenter states, "even if [the Department adopts proposed new N.J.A.C. 8:24-11.5] exactly as written, the Department retains discretion in deciding when and how to initiate an inspection. Therefore, the Department should clarify that it and its employees and agents will never take any action that would unreasonably infringe on an individual's privacy rights."

The commenter states, "there is no public health or safety reason to require inspections, other than in response to a complaint. In fact, [proposed new N.J.A.C. 8:24-11.4(b) would require cottage food operators to notify] consumers ... at the point of sale that: 'This food is prepared [...] in a home kitchen that has not been inspected by the Department of Health' [(citation omitted)]. This allows consumers to make informed

decisions about the food they purchase. The Department should not force home bakers to notify the public that their kitchens are uninspected while also insisting on inspecting home kitchens whenever and however it chooses. It effectively forces cottage food producers to make an untruthful representation to their customers. The practical thing to do, because cottage foods are safe, is to remove this contradiction by amending [proposed new N.J.A.C. 8:24-11.5] to provide that the Department will only inspect home bakers' kitchens in response to a verified consumer complaint.

Home bakers have many reasons to keep their kitchens clean aside from the threat of inspection. First, a small business survives entirely on its reputation. Entrepreneurs who open up shop do so because they are proud to show the world their products. They would not risk putting their name on a cottage food that was substandard. A single bad Facebook review or word of mouth review is much more damaging to a home baker than the threat of a health inspection. Second, home bakers also use their kitchens to cook for themselves and their families. Thus, if for no other reason, they keep the space clean to ensure their own safety. Given the foregoing, it is hard to imagine what additional benefits inspections could possibly offer.

Moreover, the current sweeping right of entry—and seizure— [at proposed new N.J.A.C. 8:24-11.5] runs afoul of both the Fourth Amendment to the U.S. Constitution and Article I, Paragraph 7 of the New Jersey Constitution, which provides protections against government intrusion in the home. Although the language of Article I, Paragraph 7 is nearly identical to the Fourth Amendment to the U.S. Constitution, the New Jersey Supreme Court has found, time and again, that it 'affords our citizens greater protection against unreasonable searches and seizures than does the fourth amendment.' *State*

v. Novembrino, 519 A.2d 820 (1987) (holding Article I, Paragraph 7, unlike Fourth Amendment, does not provide for good-faith exception to the exclusionary rule).

New Jersey's heightened privacy protections are at their zenith where, as here, the government seeks entry into the home. The New Jersey Supreme Court has 'repeatedly observed' that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' *State v. Wright*, 114 A.3d 340, 346 (N.J. 2015). Accordingly, 'a warrantless search of a private dwelling is presumptively invalid and calls for particularly careful scrutiny.' *Id.* (citations omitted); *State v. Johnson*, 775 A.2d 1273, 1283 (N.J. 2001) ('An individual's privacy interests are nowhere more clearly defined or rigorously protected by the courts than in the home.' (citation omitted)). The New Jersey high court has even held that a landlord's request for a safety check on an unresponsive tenant cannot justify a warrantless search of a home. *State v. Vargas*, 63 A.3d 175, 187 (N.J. 2013) ('Without the presence of consent or some species of exigent circumstances, the community-caretaking doctrine is not a basis for the warrantless entry into and search of a home.').

Here, to access the home bakers' kitchens, a government inspector will necessarily enter parts of the home where bakers live their lives and raise their families. Upon entry, inspectors can view information about a baker's religion, political beliefs, personal relationships, medications, and a host of other private affairs. These personal privacy concerns are the precisely what New Jersey courts have zealously protected over the years. And there is nothing in New Jersey jurisprudence suggesting that having a regulated home-based business means surrendering Fourth Amendment and Article I, Paragraph 7 privacy rights. Indeed, in the regulatory context, the New Jersey

Supreme Court has only upheld intrusion into a private residence where the regulations show a high regard for the right of privacy—and have done all they reasonably could to avoid unnecessary intrusion. See *N.J. Dep’t of Env’tl. Prot. v. Huber*, 63 A.3d 197 (N.J. 2013) (permitting back yard regulatory inspection where it was limited to the exterior of the home, gave sufficient notice, and included a process by which the homeowner could challenge the search). For all of these reasons, the [commenter requests] that the Department clarify it will: (1) only inspect a home baker’s kitchen in response to a verified consumer complaint, (2) provide reasonable notice to cottage food producers prior to an inspection, and (3) obtain a search warrant based on particularized probable cause prior to entry. This clarification can be informal insofar as the Department can clarify that, even if the [proposed amendment and new rules] are promulgated as written, it will not ever actually inspect a home [baker’s] kitchen unless it is responding to a complaint. Alternatively, if the Department chooses to amend the [proposed amendment and new rules], it should amend this provision too.” (Group 8)

RESPONSE: Proposed new N.J.A.C. 8:24-11.5(a) restates and collects certain powers and duties of the Department and local health authorities that the New Jersey Statutes provide, at Title 24 Food and Drugs, Subtitle 1, Chapters 1 through 17, codified at N.J.S.A. 24:1-1 et seq., and at Title 26 Health and Vital Statistics, codified at N.J.S.A. 26:1-1 et seq.

The powers and duties that Title 24, Subtitle 1, vests in local boards of health with respect to food sanitation were established decades ago, and some have been in existence for over a century, predating even the establishment of the Department in 1915 by the enactment of P.L. 1915, c. 288 (approved April 14, 1915, and effective July

1, 1915). For example, existing N.J.S.A. 24:3-1, quoted below, has existed, throughout various restatements of the laws of New Jersey, since its enactment in 1886 as P.L.

1886, c. 84, §17 (approved March 22, 1886):

N.J.S.A. 24:3-1. Right of entry; opening packages;
inspection

The State department and the local board, and any officer or employee thereof, in the performance of any duty imposed by this subtitle, shall have full access to any premises or place, container or conveyance used in the production, preparation, manufacture, packing, storage, transportation, handling, distribution or sale of any food, drug, cosmetic or device, and may inspect any of the aforesaid premises, places or conveyances to determine if it meets the sanitary requirements set forth in this subtitle, and may examine and open any package or container which is believed to contain any food, drug, cosmetic or device manufactured, sold, exposed for sale or had in possession with intent to sell in violation of any provision of this subtitle and inspect the contents thereof and take therefrom samples for analysis, whether or not the container or package be sealed or locked and whether or not it be in transit.

Likewise, the powers and duties of the Department and local boards of health with respect to the administration and enforcement of the State Sanitary Code, pursuant

to Title 26 of the New Jersey Statutes, have existed for three-quarters of a century. For example, see N.J.S.A. 26:1A-16 through 19, below, enacted in 1947. P.L. 1947, c. 177, §§ 16 through 19 (approved May 22, 1947, effective July 1, 1947). N.J.S.A. 26:1A-17, in particular, reflects the fact that local boards of health acted autonomously in establishing and enforcing public health laws and ordinances before the Department's establishment in 1915 as a Statewide authority empowered to enforce the State's public health laws.

N.J.S.A. 26:1A-16. Access to premises for examination

The commissioner shall have full access to any premises for the purpose of examination if [she] has reason to believe that on the premises there exists a violation of any health law of the State or any provision of the State Sanitary Code.

N.J.S.A. 26:1A-17. Inspection, right of

The commissioner shall have the same right of inspection in regard to all matters affecting the public health as has been or may be conferred upon the local boards of health.

N.J.S.A. 26:1A-18. General supervision over sanitation and hygiene matters

The commissioner shall exercise general supervision over all matters relating to sanitation and hygiene throughout the State. Whenever in the opinion of the commissioner it is necessary or advisable, a sanitary survey of the whole or of any part of the State shall be made. The commissioner may enter upon, examine and survey any source and means of ... any premises in which [she] has reason to believe there exists a violation of any health law of the State, any provision of the State Sanitary Code, or any law which [she] has the duty of administering.

Thus, proposed new N.J.A.C. 8:24-11.5(a) would not create these powers because these powers already exist in statute. Moreover, subsection (a) would limit the inspection area to the home kitchen, and is subject to paragraphs (a)1 and 2, which are consistent with the commenter's request that the Department and local health authorities exercise these powers reasonably, in that these paragraphs establish the actual reasons a health official must have to enter premises. The Department has neither the inclination nor the personnel to exercise these powers in a malicious, arbitrary, or capricious manner. The purpose of proposed new N.J.A.C. 8:24-11.5 is to alert cottage food operators that these powers exist.

With respect to the commenter's suggestion that the Department refrain from the exercise of these powers absent a "verified" consumer complaint, and assuming the commenter is using the term "verified" in the lay (that is, truthful, accurate, or justified), rather than the legal (that is, sworn to under oath), sense of the term, the commenter

does not explain how Department inspectors and other administrative personnel are to distinguish between truthful and untruthful complaints sufficient to justify the exercise of the statutory powers listed at N.J.A.C. 8:24-11.5. Moreover, the commenter's suggestion improperly would limit the health officials' ability to respond to potential public health law violations based on information and belief, and/or reasonable suspicion, when actual knowledge is unavailable.

With respect to the commenter's request that the Department provide advance notice or obtain a search warrant, the statutes listed at proposed new N.J.A.C. 8:24-11.5 do not require the Department to provide prior notice or obtain a warrant when it enters premises to enforce public health laws. The "heightened privacy protections" that the commenter asserts exist, "where, as here, the government seeks entry into the home," are less compelling when a resident of the home voluntarily turns a private home kitchen into a place of commerce, specifically, a manufacturing space at which the production of food for sale to consumers occurs, and, in so doing, avoids the strictures of public health standards that ordinarily attend to this activity when performed by a retail food establishment.

As a matter of law, the Commissioner and her agents have jurisdiction to "exercise general supervision over all matters relating to sanitation and hygiene throughout the State" and, when "it is necessary or advisable," must conduct "a sanitary survey of the whole or of any part of the State." N.J.S.A. 26:1A-18. At the same time, absent widespread violations, irregularities, or complaints, operators' home kitchens would not be inspected. As both statements are true and do not conflict, the commenter's assertion, that requiring cottage food operators to notify consumers

through labeling that operators' home kitchens are uninspected would be "an untruthful representation to their customers," is incorrect.

For the reasons stated above, the Department will make no change on adoption in response to the comments.

56. COMMENT: Commenters note that proposed new N.J.A.C. 8:24-11.7(b) would authorize the Department to "impose monetary fines, [and to] revoke/suspend/refuse to issue or renew a cottage food operator license." The commenters state, "the local health authority may not be able to enforce any violations or penalties pursuant to this chapter, rendering what little enforcement ability that the local health authority has useless." (670, 672, 679, and 680)

RESPONSE: As stated in response to previous comments, the Department does not intend to require local health officials to implement or enforce the proposed amendment and new rules, absent a mutually agreeable delegation of authority or response to a request for assistance. Local health officials would retain their existing authority to enforce public health laws within their jurisdiction, but it would be improper for local health officials to attempt to enforce retail food establishment standards against a person holding a Cottage Food Operator Permit.

57. COMMENT: A commenter supports "reducing the permitting fee ... to a token amount of no more than [\$10.00] per year/lifetime. Why does the [State] deserve [\$50.00] a year simply for allowing me to use my own kitchen, buy my own supplies, work to make my own baked goods, and offer them for sale to the public? There are already several food safety education and water quality requirements in the bill, which I support on the principle of safety, but which will still present a financial and logistical

hurdle. The addition of a high fee makes this legislation look grabby and pyrrhic, keeping the permit out of the hands of those who are struggling financially.” (41)

RESPONSE: The Department expects that the establishment of a Cottage Food Operator Permit program would require Department personnel to assume many new responsibilities. These activities would include receiving and acknowledging permit applications; reviewing permit applications to ensure compliance with the chapter and to confirm the non-TCS nature of the food products an applicant seeks to produce; performing application completeness reviews and following up with applicants to obtain missing information; confirming compliance with local laws, as needed, and reviewing private well water inspection reports; responding to inquiries from potential applicants, applicants, permit holders, local health officials, and the public; issuing permits; maintaining records; establishing and maintaining a public-facing informational website and a database of permit holders; collaborating, as needed, with local health officers in the event of a suspected or confirmed outbreak of foodborne illness associated with a cottage food product; and accepting and processing complaints and performing attendant activities, such as inspections, issuance of reports, recordkeeping, and prosecuting enforcement and penalty proceedings.

New Jersey taxpayers would incur the costs associated with the performance of these tasks by Department personnel. These costs are likely to far exceed the total fees the Department would realize from the proposed fee of \$100.00 for a two-year permit at proposed new N.J.A.C. 8:24-11.6. In establishing this fee, the Department sought to offset some of these costs to taxpayers, if only by a nominal amount, while taking into consideration the need to establish a fee that would not be prohibitively large

in view of the chapter's intended applicability exclusively to small businesses.

Therefore, the Department will make no change on adoption in response to the comment.

58. COMMENT: A commenter states that it does not “object to the two-year application renewal provision,” which would require permit holders to renew their permits every two years. The commenter states that this “renewal period is reasonable and will not unduly burden bakers, while also allowing the Department to maintain updated records.” (Group 8)

RESPONSE: The Department acknowledges the commenter's support of the proposed amendment and new rules.

59. COMMENT: A commenter states, “Consistent with principles of fairness and due process, [proposed new N.J.A.C. 8:21-11.8(a)1i and (b)1i] should specify that a home baker's failure to request emergency relief or a hearing within 30 days of the respective notice shall result in the forfeiture of the right to relief, unless good cause for the delay is demonstrated. There are many reasonable life events or obligations that may prevent a home baker from responding to a notice within 30 days. For example, events, such as health emergencies, vacations, family emergencies, pandemics, or natural disasters should not also cause a home baker to lose their cottage food permit, which would forfeit a source of income. But that is exactly what the [proposed amendment and new rules would] allow.

Worse, if a home baker misses the 30-day deadline to request a hearing or emergency relief, any proposed monetary penalty—which can be up to \$1,000 per violation—automatically becomes final [and] if a home baker fails to timely pay a

monetary penalty, the baker can be subject to further penalties, even if he or she had good cause for the failure [(citations omitted)]. To ensure that that the [proposed amendment and new rules] comply with minimum standards of fairness and due process, the Department should clarify that permittees retain a right to show good cause for non-compliance with any of the ... procedural requirements [of the proposed amendment and new rules].” (Group 8)

RESPONSE: The commenter’s suggestion, that the Department should change proposed new N.J.A.C. 8:24-11.8 to allow an extension of the time within which to request a hearing or seek emergency relief upon a demonstration of “good cause” for the failure to meet a deadline, would be the equivalent of establishing no deadline at all, because it would extend, infinitely, the period during which an administrative decision could be the subject of appeal. The Department should have the right to eventual finality in the exercise of its administrative duties, 30 days within which to submit a request would be reasonable and typical of other existing hearing processes of the Department and other State agencies. See, for example, N.J.A.C. 8:33-4.15 (granting 30 days to request a hearing on denial of an application for a certificate of need); 8:34-5.8 (allowing an applicant for licensure as a nursing home administrator 30 days to request a hearing to challenge a disqualification from examination admission); 8:40A-10.3 (affording an emergency medical technician 30 days to request a hearing to challenge an enforcement action); and 8:40-7.3 (providing an ambulance provider 30 days to request a hearing to challenge an enforcement action). For these reasons, the Department will make no change on adoption in response to the comment.

60. COMMENT: A commenter states, “In the current COVID-19 culture[,] to allow [at-home] preparation without knowledge if that home is being used as an isolation or quarantine for individuals poses serious public health issues.” (673)

61. COMMENT: A commenter states, “The coronavirus is a perfect example that this cannot happen during this pandemic since we don’t know if you can spread it through food.” (676)

RESPONSE TO COMMENTS 60 AND 61: According to the Centers for Disease Control and Prevention, there presently exists “no evidence that food is associated with spreading the virus that causes COVID-19. The risk of infection by the virus from food products, food packaging, or bags is thought to be very low. Currently, no cases of COVID-19 have been identified where infection was thought to have occurred by touching food, food packaging, or shopping bags. Although some people who work in food production and processing facilities have gotten COVID-19, there is no evidence of the virus spreading to consumers through the food or packaging that workers in these facilities may have handled.” See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/food-and-COVID-19.html> (accessed June 10, 2021).

Moreover, existing retail food establishments are susceptible to the presence of asymptomatic food workers who are unknowingly infected with COVID-19, and whose supervisory personnel and customers likewise are unaware of the worker’s infected status. Therefore, the Department does not view the risk of cottage food operators spreading COVID-19 to be greater than the risk posed by existing retail food operators. For these reasons, the Department will make no change on adoption in response to the comments.

62. COMMENT: A commenter states, “Taking money from the businesses? I’m sure that these home bakers/chefs are not making ‘big bucks.’ They probably just break even—but do it out of necessity or the love of the craft. Let them prove that this type of business in New Jersey can be successful. Restaurants and bakeries are not going to suffer—there are plenty of hungry people around. I just don’t see any downside to this.” (454)

63. COMMENT: A commenter states, “I strongly support the [proposed amendment and new rules] and the ability for bakers at home to sell their creations. Doubt if it will impact our local store front bakeries but rather enhance them. New Jersey has a very sweet tooth.” (472)

64. COMMENT: A commenter states, “It would not be fair to businesses, like bakeries, [which] adhere to the commercial kitchen requirements in order to prepare and sell food.” (669)

65. COMMENT: A commenter states that the proposed amendment and new rules, “overall can economically impact many of the local retail food establishments throughout the [State]. It may not be a stretch to say that thousands of business owners that provide similar baked goods allowed in this proposed regulation have substantial business[-]related expenses just to open up a shop and to pay for utilities, staffing, supplies, and taxes. While licensed cottage food producers will have the benefit of avoiding all of these costs, they will also reap the economic benefits and undercut the sales to retail food establishments that operate commercially. Considering how COVID-19 has had such a disastrous impact on the economic stability of the businesses, pushing through this proposal would recklessly hurt the economic backbone of the

communities in the state of New Jersey. This ... should be taken into thoughtful consideration before passing this amendment and rule change. Accepting these revisions that have been proposed can detrimentally impact the public health and well-being of New Jersey.” (670, 672, 679, and 680)

66. COMMENT: A commenter states that the proposed amendment and new rules would be “unfair to small business owners who struggle to pay rent and operate a restaurant within [New Jersey] municipalities.” (671)

67. COMMENT: A commenter states that the proposed amendment and new rules, “is one of the worst things I have ever seen[.] I have dealt with this issue in the past in Wharton Borough, where subjects were baking and preparing food in their homes then bringing it to their work places to sell. This is very unhealthy, people get sick, and taxes are evaded.

We have several industrial sites that employ many people. Usually at lunch time these employees will utilize the services of our town’s mom and pop eateries. [The proposed amendment and new rules] will put these businesses under for sure, in this pandemic time.

Who is this regulation supposed to benefit ... ? Obviously[,] somebody does not have their head in the right place.” (675)

68. COMMENT: A commenter states that the proposed amendment and new rules would result in more “competition for brick and mortar which struggle as is,” and that, “Once you open the door, what is next? Home-cooked potentially hazardous meals offered? In summary, New Jersey has so many brick and mortar retail foods competing, being the most densely populated state. Is it wise to add more?” (678)

69. COMMENT: A commenter states, “No. This should not be allowed anywhere, but especially in [a] densely populated state like [New Jersey]. Bakeries already have to struggle against grocery and box store prices. With a baker in every corner the business will be saturated and all of the people who have done it right for years will be pushed out by underpricing and less honest permit holders who won’t stick with ... policed shelf stable products.” (740)

RESPONSE TO COMMENTS 62 THROUGH 69: Proposed new N.J.A.C. 8:24-11.3(b) would limit cottage food operators’ gross sales to \$50,000 per year. N.J.A.C. 8:24-1.5 (definition of “cottage food product”) would limit cottage food operators’ production and distribution to the listed non-TCS food. Existing N.J.A.C. 8:24 would continue to prohibit sales of “home-cooked potentially hazardous meals” absent compliance with the provisions of N.J.A.C. 8:24 and local laws that apply to retail food establishments. Therefore, the Department disagrees with the assertion that, as a result of the proposed amendment and new rules, commercial retail bakeries will realize a financial hardship and/or economic instability and disagrees with the suggestion that the establishment of a Cottage Food Operator Permit process inevitably would lead to sales of “home-cooked potentially hazardous meals.” For these reasons, the Department will make no change on adoption in response to the comments.

Federal Standards Statement

The Department is not adopting 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 adopted amendment and new rules are not subject to any Federal standards or requirements, a Federal standards analysis is not applicable to this rulemaking.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***, deletions from proposal indicated by brackets with asterisks *[thus]*):

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:

...

“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. (No change from proposal.)

2. Excludes:

i.-iii. (No change from proposal.)

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

v.-vi. (No change from proposal.)

8:24-11.1 Requirement and procedure to obtain a Cottage Food Operator Permit

(a) (No change from proposal.)

(b) A person seeking to obtain a Cottage Food Operator Permit shall submit to the Public Health and Food Protection Program:

1. -2. (No change from proposal.)

3. If the cottage food operator's kitchen:

i. Uses private well water, a ***[copy of an]* *microbiological (total coliform)*** analysis of the private well water ***that is*** conducted ***using samples collected*** no earlier than ***[one year before]* *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. (No change from proposal.)

4. (No change from proposal.)

(c)-(e) (No change from proposal.)

8:24-11.2 Authorized cottage food operator activity

(a) (No change from proposal.)

***(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.*

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. (No change from proposal.)

ii. The home of the consumer*, **provided the home is in New Jersey***;

iii. A *[farmer's]* **New Jersey farmers'** market or farm stand; *[or]*

iv. *[A]* **To consumers, at a New Jersey*** temporary retail food establishment *[to consumers]*; ***or**

v. In New Jersey, to the consumer, provided applicable law does not otherwise prohibit the delivery or relinquishment at the location;*

2.- 4. (No change from proposal.)

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) (No change from proposal.)

8:24-11.4 Cottage food point-of-sale notice, packaging, and labeling

(a)-(b) (No change from proposal.)

(c) A cottage food operator shall affix one or more labels or tags on cottage food that collectively state at least the following:

1.-3. (No change from proposal.)

4. The cottage food operator's*[:

i. Name]* ***name***, business name, and *[physical and mailing addresses; and

ii.]* ***Cottage Food Operator** Permit number; *[and]*

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

[5.] ***6.*** (No change in text from proposal.)

(Agency Note: The text of N.J.A.C. 8:24-11 Appendix follows without boldface or brackets indicating changes upon adoption. The Appendix is intended to be final and the changes upon adoption are discussed in the Summary of Comments and Responses above.)

STATE USE ONLY

APPLICATION FOR COTTAGE FOOD OPERATOR PERMIT

- Complete all information. The Department will not process incomplete applications.
- Mail completed application, application fee, and required attachments to the Department at the address above.
- Application fees are non-refundable.

IMPORTANT: This application is subject to public access and disclosure pursuant to N.J.S.A. 47:1A-1 et seq., and other laws. If privacy or confidentiality concerns exist with respect to information the applicant must supply in support of this application, please telephone the Public Health and Food Protection Program before submitting application.

SECTION I – APPLICATION INFORMATION		
Application Date	Check or Money Order/Payment Confirmation Number	Payment Date
Type of Request	A new permit. Renewal of an existing permit. License number: _____	

SECTION II – APPLICANT INFORMATION					
Applicant Name	First Name	Middle Initial	Last Name		
Business trade name or "doing business as" (DBA) name (if applicable)					
Applicant Residential Street Address	<i>(this must be the same as the location of the kitchen at which applicant will prepare cottage food products)</i>				
Street Address 1	Street Address 2	City	State	Zip Code	
Mailing Address	<i>(if different than applicant residential address)</i>				
Street Address 1	Street Address 2	City	State	Zip Code	
Telephone Number	Email Address (at which applicant will receive official Department communications)				

SECTION III – COTTAGE FOOD PRODUCT INFORMATION					
Indicate the information below for the non-TCS food that the applicant will produce as a cottage food operator. Applicant should indicate each major food allergen that a product type is likely to contain, click all that apply. Enter more products on page 3. *Note: Requests for approval of other non-TCS food products not listed may be submitted to the Department in writing pursuant to N.J.A.C. 8:24-11.					
Product Type	Product Name	Major Food Allergens	Milk Tree Nuts Eggs	Peanuts Fish Wheat	Shellfish Soybean
Product Type	Product Name	Major Food Allergens	Milk Tree Nuts Eggs	Peanuts Fish Wheat	Shellfish Soybean
Product Type	Product Name	Major Food Allergens	Milk Tree Nuts Eggs	Peanuts Fish Wheat	Shellfish Soybean
Product Type	Product Name	Major Food Allergens	Milk Tree Nuts Eggs	Peanuts Fish Wheat	Shellfish Soybean

SECTION IV – APPLICANT REPRESENTATIONS AND CERTIFICATION

Facility Requirements

The cottage food operation is in a private dwelling where I reside.

All cottage food products are prepared in the private kitchen within my home.

Sleeping quarters are excluded from areas used for cottage food preparation and storage.

Sanitation Requirements

Handwashing facilities are conveniently located, accessible, and supplied with warm running water, soap, and clean paper towels

Kitchen equipment and utensils used for cottage food preparation are clean and in good repair.

Food contact surfaces are cleaned and sanitized before each use.

The premises are maintained free of rodents and insects.

Cottage Food Preparation and Packaging Requirements

Food workers wash their hands before working with food, and after any activity that contaminates the hands such as after using the restroom, eating, smoking, or touching pets.

Food workers do not handle ready-to-eat food with their bare hands. Single-use gloves, tongs, or other effective means are used.

If used, single-use gloves are changed or replaced as often as handwashing is necessary.

Limitations/Exclusions During Cottage Food Preparation and Packaging

Domestic activities such as family meal preparation, dishwashing, clothes washing, and kitchen cleaning are not conducted.

Infants, children and pets are excluded from the kitchen.

Potable drinking water is used for handwashing and warewashing, and as a cottage food product ingredient.

Smoking is prohibited.

Ill food workers are excluded from the kitchen.

Prerequisite Information

I have checked with my local municipal government and there are no local ordinances or zoning requirements that would prevent me from operating a home-based food business.

Does the cottage food kitchen use private well water?

-If Yes, submit a copy of 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 this application.

-If No, submit a copy of most recent water bill for the location of the cottage food kitchen.

I am a certified food protection manager in good standing with the accredited program. I attach a true copy of my food protection manager certificate or other proof of my credential.

I am aware that my gross annual sales from cottage food products cannot exceed \$50,000. If this is an application to renew my existing cottage food operator permit, I represent that in the past year, gross sales receipts from cottage food products did not exceed \$50,000.

Photocopies of original records that I am submitting with this application are true, complete, and correct copies of the original records.

I certify that the statements I make in this application are true. I am aware that if any statement I make in this application is willfully false, I am subject to civil administrative penalties under N.J.A.C. 8:24-8.9, denial of my application and/or revocation of my permit. By typing my name below, I intend to sign this Application for Cottage Food Operator Permit.

Name of Applicant: _____ **Date:** _____

