

Having Problems Getting a Homestead License? The NH Division of Public Health Services Food Protection Wants to Help

The New Hampshire Department of Health and Human Services' Division of Public Health Services Food Protection Section (DHHS DPHS FPS) is available to assist New Hampshire food manufacturing entrepreneurs with regulatory issues as they develop their businesses. The new homestead license option may be a good fit for many businesses, but incomplete applications and confusion about what is permissible to be made in a homestead kitchen have been a source of frustration for both the applicants and DHHS Food Protection staff.

DHHS DPHS FPS has statutory responsibility for licensing and inspecting milk producers, milk processors, beverage and bottled water producers and commercial shellfish processors statewide. Food Protection also licenses and inspects food service establishments in 218 of the 234 cities and towns in NH, and homestead licenses fall under this responsibility.

The DHHS DPHS FPS has had to return a number of applications for homestead licenses to potential licensees. We've also had to send some enforcement letters to individuals who have not renewed their licenses. This is surely frustrating to applicants and licensees. Our goal is to best serve homestead food producers. We hope the following information will assist in getting homestead license applications processed more smoothly.

Many states do not allow home food manufacturing because it can be dangerous if done improperly or in an unsanitary manner, and foodborne illness can result. Because home-canned food is one of the most common culprits of foodborne botulism, food canned in a home kitchen cannot be sold to others except standardized and tested recipes of jams and jellies.

New Hampshire allows home food manufacturing under certain rules. In 2006 the legislature passed RSA 143-A:12 which defined 'homestead' as a residential, non-commercial kitchen where homemade foods are manufactured or processed primarily for retail sales at farmers' markets, farm stands or residences. The law provides for a 2-Level homestead license: Level 1 for annual gross food sales of \$5,000 or less requires a one-time fee of \$25; a Level 2 license for annual sales greater than \$5,000 has an annual fee of \$125.00. Although the Level 1 license fee of \$25 must only be paid one time, **the Level 1 license must be renewed annually by filing an application and other required paper work, as follows.**

The Level 1 or Level 2 homestead license allows sale of certain foods: baked items, including but not limited to breads, rolls, muffins, cookies, brownies and cakes; double-crust fruit pies; candy and fudge; packaged dry products (which include but are not limited to spices and herbs); acid foods (including but not limited to vinegars and mustards); and jams and jellies.

Foods that require refrigeration cannot be made in a home kitchen under the homestead license. These foods are considered potentially hazardous and include items such as cheesecakes, pumpkin pies, custards, soups and sandwiches. Moist quick breads like zucchini bread, pumpkin bread and banana bread, are also potentially hazardous foods and cannot be made in a home kitchen. By definition, a potentially hazardous food is a food that has a pH greater than 4.6 and a water activity greater than 0.85. Harmful bacteria can grow in these conditions and that is why these foods require refrigeration. To determine whether or not a product is potentially hazardous, it can be tested for pH and water activity through the New Hampshire Public Health Laboratory. There is a fee for this testing.

Jams and jellies made using the exact tested and standardized recipes from the National Center for Home Preservation website (see below) are allowed without further review. However, a separate process review is required for each product made from any other recipes. Family recipes that may have been altered over the years or newly created recipes, or recipes from the National Center for Home Preservation website that have been altered in any way must be reviewed to ensure the process used will result in a safe, shelf-stable product. Traditionally, jams and jelly recipes contain only fruit, but recipes have evolved to add low-acid foods such as peppers, carrots and walnuts, and may alter the recipe so that it cannot qualify for production under a homestead license.

A complete list of products including process reviews, if applicable, must be submitted with every annual renewal application. A license holder must report to Food Protection information on any new product added between annual renewals, including any required process reviews, for inclusion in the licensee's file **prior to the product being sold/distributed**. Maintaining a complete product list with Food Protection benefits the homestead producer because any facility that buys product for resale is required to verify that products they are selling are from a safe, approved source, and will contact Food Protection for verification that the producer is indeed licensed to produce the specific product.

Anyone planning to obtain either a Level 1 or Level 2 license should review the Homestead rules at <http://www.gencourt.state.nh.us/rules/he-p2300.html> beginning with He-P 2328.

Out-of-state producers in residential, non-commercial kitchens must register their products with the DHHS DPHS FPS. An application must be filled out, with payment of a one-time \$25 registration fee. The applicant must also submit a copy of a sanitary inspection conducted within the previous 12 months by the regulatory authority with jurisdiction, a letter from the regulatory authority confirming compliance with local regulations or a health certificate for the facility issued within the previous 12 months, and a complete list of products sold in New Hampshire.

Questions should be directed to Food Protection at 603-271-4589 or foodprotection@dhhs.state.nh.us

The following checklists of what must be provided by an applicant for each license level can help streamline the application process for in-state homestead licenses.

Level 1 Homestead Application Checklist:

- A completed, legible "Application for Annual Food Service Licensure". Incomplete applications will not be processed and will be returned to the sender.
- A check or money order for one-time fee of \$25.00, if applicable. **ALL FEES ARE NONTRANSFERABLE AND NONREFUNDABLE.**
- The written results of a laboratory analysis of the well water intended for use (if applicable), which tests the level of the following:
 - Bacteria;
 - Nitrates.
- On a separate paper: Please submit a list of names, addresses, and contact information for locations where your products are being sold i.e. your residence, farmers markets, farm stands, retail stores, cafés, restaurants, and web sites.
- On a separate paper: Please submit a complete list of the products you are manufacturing. Please be specific for example, if you are making cookies, list all the kinds you make. If you add new products after submitting the current list, please submit an amended list and follow the procedures below prior to distributing the new products.
- For Jams and Jellies, if you are not using a standardized recipe from www.uga.edu/nchfp/publications/usda/utah_can_guide_07.pdf or www.uga.edu/nchfp/how/can7_jam_jelly.html a scheduled process review must be submitted per He-P 2330.06. Please submit copies of the test results with your application (this is an annual requirement). If you are using a standardized recipe from either of the web sites listed, you will need to state that.
- Many products containing ingredients such as banana, pumpkin, zucchini, and/or cream filling/icing are considered to be potentially hazardous foods. Per He-P 2328.05, "license holders producing food in a level 1 homestead shall not produce or sell potentially hazardous food, including any food which requires refrigeration." For this reason, if any of your products contain these ingredients, you will not be approved to make these products unless you have a water activity test and pH test done and the results show that the product is not potentially hazardous. To be non-potentially hazardous the water activity test must be less than .085 or the pH must be less than 4.6.

If you wish to have your product tested then the Public Health Lab can do pH and water activity tests to determine whether or not it is a potentially hazardous food. You can contact them at (603) 271-4661. Please submit copies of the test results with your application (this is an annual requirement). NOTE: all variations of a product that contain the ingredients above must be tested.

- Documentation must be provided that your gross income is less than \$5,000. (i.e. Federal Self-Employment Tax Form 1040, written statement)

Level 2 Homestead License Application Checklist:

- Same as for Level 1 and
- Documentation of having taken and passed a food protection employee certification program that meets the Conference for Food Protection, Standards for Accreditation of Food Protection Manager Certification Programs.
- A check or money order for applicable fee of \$125.00. **ALL FEES ARE NONTRANSFERABLE AND NONREFUNDABLE.**

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