

Regulation of Cottage Food Businesses in the Northeast

By: Julia Singer Bansal, Senior Legislative Attorney
July 2, 2024 | 2024-R-0087

Issue

This report describes (1) Connecticut's cottage food licensing regulations; (2) the legislative history of Connecticut's annual gross sales (revenue) cap and requirement that sellers directly deliver goods to customers; and (3) New York's and the other New England states' sales thresholds and limitations on sales venues and delivery methods.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Connecticut's cottage food licensure law, enacted in 2018, allows cottage food operation license holders to prepare and sell certain foods directly to customers without undergoing commercial kitchen licensing requirements. Since its passage in 2018, the maximum annual gross revenue threshold has only been amended once, when it was doubled in 2022 from \$25,000 to \$50,000. The legislature has not made changes to the direct sales requirement. In addition to setting a cap on annual sales, Connecticut law regulates, among other things, what qualifications a licensee must have, which foods may be sold, how products are sold and delivered, and how products are labeled. Notably, Connecticut law does not require kitchen inspections before a cottage food operation credential is awarded. But state and local officials may inspect kitchens at any time, as they deem appropriate.

All of the New England states and New York have laws on cottage food operations and regulate similar aspects of their operations. Regarding revenue limits, the majority of these states do not have a limit. Like Connecticut, Rhode Island has a \$50,000 annual limit, and in Vermont, while

there is no sales limit, licensure requirements apply to home bakeries with \$6,500 or more in annual sales. And regarding sales venues and delivery methods, these states vary significantly in their approaches, as outlined in the below table. Some states allow cottage food operators to sell from a narrow range of locations (e.g., their home or farmers market), while others do not closely regulate distribution.

We found that state laws were not consistent in directly addressing the parameters around shipping. But according to [a publication](#) from Harvard Law School's Food Law and Policy Clinic, while states have primary authority to create laws that affect the public health and safety of their residents and to control commerce within state lines (e.g., food sold in restaurants and retail stores), the federal government has authority over food circulating in interstate commerce. We did not identify any federal law specifically exempting cottage food operators from food safety laws that are generally applicable to federally regulated food manufacturers and establishments.

Connecticut's Law

Summary

A summary of Connecticut's cottage food licensing law is available in this [OLR Issue Brief](#).

As the issue brief notes, an individual may apply for a cottage food operation license from the state Department of Consumer Protection (DCP) if they (1) plan to produce cottage food products only in their private residential dwelling's home kitchen and for sale directly to the consumer and (2) do not operate as a food service establishment (e.g., restaurant), food retailer, distributor, or manufacturer. Under Connecticut law, licensees:

1. may not have annual gross sales over \$50,000;
2. may not prepare potentially hazardous foods (i.e., products that require time and temperature control for safety to limit pathogenic microorganism growth or toxin formation); and
3. or a designee, may only sell products directly to a customer, though they may advertise and take orders for a product online, by phone, or mail, if they will be directly delivered.

Legislative History of Revenue Cap and Direct Delivery Requirements

We reviewed the floor debate and committee hearing transcripts from 2018 (when the legislation was first passed) and 2022 (when the revenue cap was doubled). We provide highlights from the discussions below. (Note, (1) there are no transcripts from 2018 committee proceedings and (2) some of the other states' laws have changed since individuals testified about them.)

2018 House and Senate Debates. The House floor debate from the original passage of Connecticut’s cottage food licensure law does not specify why the revenue cap was set at \$25,000, nor why only direct sales are permitted. But the General Law Committee’s chairperson, Rep. D’Agostino, when explaining the legislation on the floor, noted the bill would help “small scale operations where they bake or cook certain items in their home.” He went on to note that “we’re trying to balance here an appropriate regulatory environment, to protect [t]he health safety and welfare of the people of Connecticut, but at the same time, encourage a new, forgive the pun, cottage industry in Connecticut.”

In the Senate, the General Law Committee’s ranking member, Sen. Witkos mentioned the revenue cap in the context of explaining that, under the legislation, food manufacturing laws would still apply to larger operations.

2022 House and Senate Debates. When the law was amended to double the revenue cap, from \$25,000 to \$50,000, the General Law Committee’s ranking member, Rep. Rutigliano, in the House floor debate, explained the change as follows:

“[s]o basically, this is an inflation adjustment. We’re taking it from 25,000 to 50,000, with a commitment to relook at the statutes next year to sort of put a regulatory scheme in to increase that limit even higher.”

Another legislator, Rep. Carney, supporting the change, added:

“I’m thrilled to see that we are doing something[;] this came to me from some constituents and some other folks throughout the state and actually other states who are looking to move to Connecticut, to be able to continue their cottage food operation... This will make it so more people will be able to make more money from this industry, baking cakes, baking cookies, baking bread, most of us probably have a lot of these folks in our district. As we know COVID kept a lot of people home. A lot of people needed to find extra income. So it would be reasonable to say that more people got involved in industries like this. Putting it to 50,000 is good policy.”

In the Senate, the General Law Committee chairperson, Sen. Maroney, explained the change:

“one of the things we’ve seen during the pandemic is more people have started businesses from home and this enables them, I’ve just recently seen a cupcake and a cookie making business started in my own district, and this will enable them to grow to \$50,000 of revenue before they need to seek out a commercial facility.”

Supporting the change in the Senate, the General Law Committee ranking member, Sen Witkos, added:

“we’ve seen an expansion of those cottage food producers here in the state of Connecticut. These entrepreneurs that are just trying to start up their businesses before they move on to

the next phase and go lease out a space of the commercial kitchen...how do you get all the startup [cash]? So this is the way it enables them to actually start up their business right there in their own kitchen. ...it's been at \$25,000 for a number of years. And we all see what inflation has done and the cost of raw material and just anything that has to do with the production of that product. So we felt it was important to double that number. A lot of folks came to in the public hearing and asked us to eliminate the ceiling, if you will, but we didn't feel comfortable at this time to do that because these kitchens are not inspected, like they are in other states, by the Department of Public Health. ...It's one baby step forward to allow them to enhance and increase their business models."

Sen. Formica asked a few questions about the change and, while noting his support, added:

"[w]e want people to start, you know, doing business in the state of Connecticut and the proliferation of farmers markets and other novelty food sale operations, makes some sense to me, but I am getting nervous as we get to the point where we start bypassing Department of Public Health for situations like this."

2022 Public Hearing. The public hearing testimony from 2022 provides similar insights into the reasons for the revenue cap change—fostering small businesses until they are ready to transition to brick-and-mortar operations, reflecting increased costs and inflation, and providing a meaningful source of income for individuals who may only work part time. It also includes discussions about whether to allow cottage food operators to ship their products. Several people noted allowing shipments by mail would benefit their businesses without increasing public health risks.

An individual from the Institute for Justice with expertise in cottage food businesses, Jennifer McDonald, suggested removing the cap, noting that:

"[o]nly 12 other states have a sales cap that is \$50,000 or lower and 31 states do not have a cap at all, and that includes the rest of the New England states." She added "...some really want to use their cottage food business as a way to test the waters before expanding into a brick-and-mortar bakery."

With regard to the law's limits on sales methods, she also requested the bill be amended to allow shipments through the mail:

"We're seeing a lot of people ordering products online, particularly through social media sites, because people want custom products and they want to get them from a small business owner. Now, allowing producers to mail their cookies to customers on the other side of the state would be a small change to the law, but it would be a huge opportunity for these entrepreneurs. And 35 other states, including your neighbor Massachusetts, do allow products to be shipped through the mail."

She answered a question from Rep. Rutigliano about when cottage food producers should start operating from commercial kitchens subject to inspections and further regulations:

“[w]e find that the producers know when they’re ready to move on to commercial kitchen space, because there is a natural limit just to how much you can produce in your home kitchen. The problem with the dollar cap is, you know, you can sell a lot more cookies than you can, for example, wedding cakes which tend to get very expensive when you're talking about custom cakes. So the producers know, you know, I want to expand my business and I can't keep working at this volume without a commercial space. And so we really have seen that, it's kind of this organic process and the producers who are really expanding that far are really excited about getting their commercial license and getting to move into a brick and mortar kind of situation.”

Rep. Young testified in support of the bill with changes:

“I contend that the cap should be raised even higher to \$100,000 or unlimited... Volume is how the food industry survives, so limiting sales to \$50,000 is a daunting task in any way, shape or form. With that in mind, I also suggest the addition of mail sales for nonperishable shelf-stable products, in addition to retail and delivery sales. This would give the cottage food operation a chance to really get better.”

A cottage food baker, Jessica Brainsky, testified that:

“Only seven other states have a sales cap that is \$25,000 or lower, with 11 other states having sales caps between \$35,000 and \$250,000. Further, no other neighboring states limit how much revenue cottage food producers can make, including all of New England and New York... Home based businesses, they check so many boxes, specifically for women. Given that many home bakers are females, these limitations are particularly stifling for women who desire to work from home and still be able to raise young families... I think if we're going to put a limit on it, I think anything less than \$100,000 would be stifling... I would say, probably about 50% of the inquiries I get are for people who are looking for me to ship.”

Another cottage food baker, Aaron Perrott, testified:

“I was faced with a choice; either search for another job or grow [my home business]. Unfortunately, due to the sales cap on cottage food operations, I was forced to pursue other employment and not grow my small business. It would be impossible to have a livable income for my family with a minuscule sales cap that after subtracting cost of ingredients, packaging materials, vehicle wear and tear, taxes, license fees, market entry fees, and equipment purchases, left only a small amount of actual profit let alone a paycheck. Removing the sales cap would allow many cottage operators to support themselves without having to face the massive financial risk of starting a brick-and-mortar store... I have had to turn away their business because of an arbitrary prohibition on shipping non-hazardous items... The concern with shipping food product is to protect consumers from foodborne illness caused by food being left in unsafe temperatures. However, the requirements for any product prepared in a cottage food operation is that the item must be non-potentially hazardous, not needing temperature control. Shipping would not in any way affect the safety of our products.”

Sen. Kissel, asking questions about the revenue cap, asked whether the state receives any revenue from the cottage food operations. Aaron Perrott noted that the state would see a revenue increase, as he collects sales taxes on his sales.

A copy of the full legislative history, including both transcripts and submitted testimony, is available from the Legislative Library.

Sales Thresholds and Allowable Sales Venues and Delivery Methods

Nationally, some state laws place a limit on the revenue a cottage food operation can annually earn before typical food establishment permitting requirements apply. Additionally, most states delineate the venues where cottage food can be sold and some states specifically require foods to be sold directly to consumers. Most states do not permit cottage food operators to sell to restaurants, grocery stores, or other retail food establishments.

The table below provides information on the New England states’ and New York’s (1) sales or revenue caps applicable to cottage food operators and (2) restrictions on cottage food sales venues or methods. State laws vary on the level of detail provided concerning sales venues and delivery methods; the table below summarizes the information available in state laws and state agency websites.

Table 1: Cottage Food Sales Restrictions in Select Northeast States

State	Annual Gross Sales Threshold	Limitations on Means of Delivery
Connecticut	\$50,000	Direct sales to customer at point of production, farmers markets, local fairs and festivals, and charitable organization functions are permissible Internet, mail, and phone advertising and sales are permissible, if operator or their designee delivers to customer No consignment or wholesale sales. No sales from grocery stores, restaurants, long-term care facilities, group homes, day care facilities, or schools
Maine	none	Direct sales to the customer or through other distribution methods are permissible
Massachusetts (table addresses the direct-to-consumer “retail residential kitchen” credential)	none	Direct sales to customer, including sales by internet or mail, are permissible

Table 1 (continued)

State	Annual Gross Sales Threshold	Limitations on Means of Delivery
New Hampshire (table summarizes the amended law taking effect August 13, 2024)	none	Direct sales from homestead residence, at the owner's own farm stand, or at farmers markets are permissible Operations that want to sell to restaurants or other retail food establishments, over the Internet, by mail order, or to wholesalers, brokers, or other food distributors who will resell the homestead product need a state license
New York	none	Sales may be wholesale or retail, including restaurants, cafes, grocery stores, agricultural venues (like farms, farm stands, and farmers markets), green markets, craft fairs and flea markets, or via home delivery or the internet
Rhode Island	\$50,000	Direct sales to customers via pick up or delivery are permissible Internet, mail, and phone advertising and sales are permissible, if operator or their designee delivers to customer No consignment or wholesale sales. No sales from grocery stores, restaurants, long-term care facilities, group homes, day care facilities, or schools. To sell at a farmers market or at a temporary event like a festival, an additional license (retail food peddler) is required
Vermont (table concerns the home baking credential, as it is most similar to Connecticut's)	none, but licensing requirement applies only to home bakeries with revenues of at least \$6,500 annually	Direct sales from home only No sales to restaurants

Sources include: state cottage food credential websites, [Cottage Foods and Home Cooking: Fifty-State Survey of Laws](#), Harvard Law School's Food Law and Policy Clinic (Dec. 2021)

JSB:kl