

WSR 23-19-068

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 18, 2023, 1:38 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-149 WAC, Cottage foods.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture (WSDA) is proposing to align this rule with SHB 1500 (chapter 352, Laws of 2023) by increasing the cap on annual gross sales from \$25,000 to \$35,000 and requiring cottage food permits to be renewed every two years instead of annually.

WSDA is also proposing clarifying changes that do not change the effect of the rule, such as changing numbers from being spelled out to being written in digits and restructuring sentences so that they are easier to understand.

Reasons Supporting Proposal: Under the current cottage food program, a person may produce certain nonhazardous food products in a home kitchen for direct sale to a consumer. In order to operate a cottage food business, a person must obtain a cottage food permit from WSDA, and permits must be renewed annually with a \$75 public health review fee, a \$30 processing fee, and an inspection fee of \$125 for any initial or annual basic hygiene inspections conducted. Examples of products that may be produced under a cottage food permit are baked goods, jams, jellies, fruit butters, and preserves. Annual gross sales for a cottage food business are capped at \$25,000. If the gross sales of a cottage food business exceeds \$25,000, the business must either acquire a food processor's license, or cease operations.

In 2023, the legislature passed SHB 1500, which amended chapter 69.22 RCW by increasing the cap on annual gross sales for cottage food permits from \$25,000 to \$35,000 and requiring cottage food permits to expire every two years, instead of annually. The statute still requires annual inspections at \$125 per inspection.

To ensure consistency with the statute and reduce confusion for stakeholders, the department is proposing amendments for chapter 16-149 WAC that align with chapter 69.22 RCW.

Statutory Authority for Adoption: RCW 69.22.020, 69.22.030, 69.22.050.

Statute Being Implemented: Chapter 69.22 RCW; chapter 352, Laws of 2023.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Gloriann Robinson, 1111 Washington Street S.E., Olympia, WA, 360-902-1802; Implementation and Enforcement: Will Satak, 1111 Washington Street S.E., Olympia, WA, 360-951-5086.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated

regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendments in this rule making align the rule with the changes made to chapter 69.22 RCW by SHB 1500 by changing the cap on annual gross sales from \$25,000 to \$35,000 and changing the expiration date on cottage food permits from every year to every two years.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gloriann Robinson, Rules Coordinator, WSDA, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov, AND RECEIVED BY November 20, 2023.

September 11, 2023
Luisa F. Castro
Assistant Director

OTS-4927.1

AMENDATORY SECTION (Amending WSR 12-12-016, filed 5/24/12, effective 6/24/12)

WAC 16-149-010 Purpose of this chapter. The purpose of this chapter is to implement chapter 69.22 RCW by establishing rules relating to the:

(1) Issuance of permits regulating the production of cottage food products (~~in a calendar year~~) to be sold directly to the ultimate consumer.

(2) Conditions under which cottage food products identified in this chapter are prepared, stored and sold. These rules are generally patterned after those established by the state under chapters 16-165 and 16-167 WAC but are tailored specifically to home kitchens.

[Statutory Authority: RCW 69.22.020 and chapter 34.05 RCW. WSR 12-12-016, § 16-149-010, filed 5/24/12, effective 6/24/12.]

AMENDATORY SECTION (Amending WSR 16-06-014, filed 2/19/16, effective 3/21/16)

WAC 16-149-030 Prerequisites. (1) All cottage food operations must be permitted (~~annually~~) every two years by the department. The

permit will identify a specific listing of the food products allowed to be produced by the cottage food operation.

(2) Prior to permitting, the department will examine the recipes, labels, and the premises of the cottage food operation to determine it to be in substantial compliance with the requirements of chapter 69.22 RCW and this rule.

(3) All cottage food operations permitted under this section must include with their application for permit a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the regulatory authority the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspection including the collection of food samples.

(4) A cottage food operation must comply with all applicable county and municipal laws and zoning ordinances that apply to conducting a business from one's home residence prior to permitting as a cottage food operation, including obtaining a master business license.

(5) Any cottage food operation which has a private water supply must have the supply tested at least (~~sixty~~) 60 days prior to permitting and at least annually thereafter and demonstrate through a written record of testing that the water supply is potable.

(6) Prior to permitting, the cottage food operator shall successfully complete a food safety training program and hold a valid food worker card.

[Statutory Authority: RCW 69.22.020, 2015 c 196, 2015 c 203, and chapter 34.05 RCW. WSR 16-06-014, § 16-149-030, filed 2/19/16, effective 3/21/16. Statutory Authority: RCW 69.22.020 and chapter 34.05 RCW. WSR 12-12-016, § 16-149-030, filed 5/24/12, effective 6/24/12.]

AMENDATORY SECTION (Amending WSR 16-06-014, filed 2/19/16, effective 3/21/16)

WAC 16-149-040 Limitations. (1) If gross sales during a calendar year exceed the maximum annual gross sales allowance of (~~twenty-five thousand dollars~~) \$35,000, the cottage food (~~operation~~) operator must (~~either~~) cease operations for the remainder of that permit period or meet all the requirements and obtain a food processing plant license or cease operations for that calendar year. The department may request, in writing, documentation to verify the annual gross sales figure.

(2) Products produced by a cottage food operation must be sold by the cottage food operator directly to the consumer. Direct sales at venues such as farmers markets, craft fairs, and charitable organization functions are permitted. Cottage food operations are prohibited from shipping product, conducting mail order sales, selling products by consignment or wholesale, and selling product outside of the state. A cottage food operation may maintain an internet website displaying available products provided any sales arising from the website are completed as in-person transactions.

(3) A cottage food operation may only produce those specific food products listed on its permit. A copy of this permit shall be displayed at farmers markets, craft fairs, charitable organization functions and any other direct sale locations where cottage foods are sold.

(4) Each application is limited to no more than (~~fifty~~) 50 recipes. A "master or base recipe" can include variations and still be counted as one recipe. The application must include labels corresponding to each product and each variation.

[Statutory Authority: RCW 69.22.020, 2015 c 196, 2015 c 203, and chapter 34.05 RCW. WSR 16-06-014, § 16-149-040, filed 2/19/16, effective 3/21/16. Statutory Authority: RCW 69.22.020 and chapter 34.05 RCW. WSR 12-12-016, § 16-149-040, filed 5/24/12, effective 6/24/12.]

AMENDATORY SECTION (Amending WSR 16-06-014, filed 2/19/16, effective 3/21/16)

WAC 16-149-060 Application requirements. (1) Applications must be submitted on the form provided by the department, and must include:

- (a) A completed application form.
- (b) A diagram of the cottage food operation premises identifying what areas of the residence will be used for the cottage food activities.
 - (i) The diagram must clearly identify and show the location of all cottage food operation preparation equipment, contact work surfaces, equipment washing and sanitizing sinks or tubs, primary toilet room, handwashing areas, and storage areas.
 - (ii) Everything illustrated on the diagram must be clearly labeled.
- (c) A copy of all recipes and a description of the processing steps and packaging step.
- (d) Examples of all product labels.
- (e) The proposed cottage food operational dates of processing for the current year.
- (f) A description of the types of sales or a list of the proposed sale locations for the current year.
- (g) Documentation verifying that the water used at the cottage food operation site complies with the requirements of this chapter. For a well, spring or other private water supply, the water must have a passing bacterial test conducted within (~~sixty~~) 60 days of submitting an application to the department. A copy of the test results must be attached to the permit application.
- (h) A copy of the applicant's food worker card and that of any other persons who will be conducting cottage food operation food processing.
 - (i) If pets are present at the location, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours and exclusion from storage areas must be submitted.
 - (j) If infants or children under six years of age are present at the location, a child control plan that precludes child entry/access to all areas of the cottage food operation during operating hours must be submitted.

(2) The department must receive the completed cottage food operation application packet along with check or money order for the permit fee at least six weeks before processing. In accordance with RCW 69.22.030(1) and 69.22.040(3), the fees for the permit are (~~seventy-five dollars~~) \$75 for the public health review, (~~one hundred twenty-~~

~~five dollars~~) \$125 for each annual inspection and (~~thirty dollars~~) \$30 for processing the application and permit (~~for one year~~).

(3) Upon receiving a new or renewal application, the department will conduct a public health review of all recipes and proposed labels. If the public health review is satisfactory, the department will contact the applicant to schedule an on-site inspection.

(4) If the applicant fails the on-site permitting inspection, the applicant may withdraw the application or request a second inspection by submitting: (a) Documentation to the department explaining how the applicant corrected the failures and (b) (~~one hundred twenty five dollars~~) \$125 for the new inspection. If the applicant fails a second inspection, the application is denied.

(5) Once received, the cottage food operation permit must be prominently and conspicuously posted for customers at all points of sale (~~location where customers can see it~~).

(6) Applicants are prohibited from preparing and selling cottage food products regulated by this chapter until they receive their cottage food operation permit.

(7) Cottage food operation permits must be obtained (~~annually~~) every two years and expire (~~one~~) two years from the last date of the month of permit issuance.

(8) The department will not refund application fees after receipt of a cottage food operation application.

(9) To obtain an application for a cottage food operation permit, contact the department at:

Washington State Department of Agriculture
 Food Safety Consumer Services Division
 P.O. Box 42560
 Olympia, WA 98504-2560
 Email: cottagefoods@agr.wa.gov
 Website <http://agr.wa.gov>.

[Statutory Authority: RCW 69.22.020, 2015 c 196, 2015 c 203, and chapter 34.05 RCW. WSR 16-06-014, § 16-149-060, filed 2/19/16, effective 3/21/16. Statutory Authority: RCW 69.22.020 and chapter 34.05 RCW. WSR 12-12-016, § 16-149-060, filed 5/24/12, effective 6/24/12.]

AMENDATORY SECTION (Amending WSR 16-06-014, filed 2/19/16, effective 3/21/16)

WAC 16-149-070 Amendment requirements to permit. (1) Amendments to an existing cottage food permit after issuance (~~within a calendar year~~) require a new application and application fee. Operators must apply for an amendment if adding new products (provided the amendment does not exceed the limit on recipes), when changing recipes, or changing the premises areas.

(2) An application amendment will contain the same information as outlined in WAC 16-149-060 and on a form provided by the department.

(3) If there are no significant changes to the premises, the department will require the public health review of all new recipes submitted for review, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of (~~seventy five dollars~~) \$75 for the public

health review and (~~thirty dollars~~) \$30 for processing for the permit.

(4) If there are significant changes to the premises, the department will require the public health review of all new recipes submitted for review, reinspection of the premises, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of (~~seventy-five dollars~~) \$75 for the public health review, (~~one hundred twenty-five dollars~~) \$125 for an inspection and (~~thirty dollars~~) \$30 for processing for the permit.

(5) Significant change under this section means any change in the premises previously submitted to and inspected by the department under this chapter which is substantial enough in the department's judgment to require reinspection and approval. This includes, but is not limited to:

(a) Structural changes within the cottage food operation's premises such as a remodel or addition to the home that affects the cottage food operation areas previously inspected.

(b) Additional locations within the premises that are now intended to be used for portions of the cottage food operations that were not previously inspected. For example: A basement storage area is now planned to be utilized for storage of finished products. This basement area was not originally part of the permitted area and not previously inspected by the department.

[Statutory Authority: RCW 69.22.020, 2015 c 196, 2015 c 203, and chapter 34.05 RCW. WSR 16-06-014, § 16-149-070, filed 2/19/16, effective 3/21/16. Statutory Authority: RCW 69.22.020 and chapter 34.05 RCW. WSR 12-12-016, § 16-149-070, filed 5/24/12, effective 6/24/12.]