

WSR 24-01-031

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 11, 2023, 6:48 a.m., effective January 11, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-149 WAC, Cottage foods, 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 in alignment with SHB 1500 (chapter 352, Laws of 2023).

Citation of Rules Affected by this Order: Amending WAC 16-149-010, 16-149-030, 16-149-040, 16-149-060, and 16-149-070.

Statutory Authority for Adoption: RCW 69.22.020, 69.22.030, 69.22.050, chapter 352, Laws of 2023.

Adopted under notice filed as WSR 23-19-068 on September 18, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 8, 2023.

Derek I. Sandison  
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.

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.

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.

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>.

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.