

Chapter 16-149 WAC

COTTAGE FOODS

NEW SECTION

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.

NEW SECTION

WAC 16-149-020 Definitions. (1) In addition to the definitions contained in this section and chapter 69.22 RCW, the definitions found in chapters 69.04, 69.06, and 69.07 RCW, chapters 16-165, 16-167, and 246-215 WAC, and Title 21 CFR may apply.

(2) For the purposes of this chapter, the following definitions apply:

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"Approved source" means a food source that is routinely and regularly inspected by a regulatory authority.

"Authorized person" means a person or persons who work with the cottage food operator in the preparation of cottage food products under this chapter.

"Baked goods" means foods that are cooked in an oven.

"CFR" means the Code of Federal Regulations.

"Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

"Cottage food operation permit" means a permit to produce and sell cottage food products under chapter 69.22 RCW.

"Cottage food products" means nonpotentially hazardous baked goods, jams, jellies, preserves, and fruit butters as defined in 21 CFR 150 as it existed on July 22, 2011; and other nonpotentially hazardous foods identified in WAC 16-149-120.

"Department" means the department of agriculture.

"Director" means the director of the department of agriculture.

"Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. A domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

"Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

"Potable water" means water that is in compliance with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

"Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

NEW SECTION

WAC 16-149-030 Prerequisites. (1) All cottage food operations must be permitted annually 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 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 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.

NEW SECTION

WAC 16-149-040 Limitations. (1) If gross sales exceed the maximum annual gross sales allowance of fifteen thousand dollars, the cottage food operation must either 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 directly by the cottage food operator to the consumer. Direct sales such as farmers markets, craft fairs, and charitable organization functions are permitted. Sales by internet or mail, consignment, at wholesale, or retail sale outside of the state are prohibited.

(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.

NEW SECTION

WAC 16-149-050 Applications. (1) To qualify for a new cottage food operator permit issued under chapter 69.22 RCW, the Washington Cottage Food Operator Act, a cottage food operator must first make application to the department.

(2) By applying for a cottage food operation permit, the applicant acknowledges the jurisdiction of the department and state of Washington in all matters related to the cottage food operation.

(3) By applying for a cottage food operation permit, the

applicant recognizes the authority of the department under RCW 69.22.060 and expressly grants the department or other inspection agent approved by the department the right to enter the applicant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the cottage food operation products, ingredients, or packaging materials are stored, produced, packaged, or labeled;

(b) Inspect records related to the sales, storage, production, packaging, or labeling of the cottage food operation products, ingredients, or packaging materials; and

(c) Obtain samples of cottage food operation products, ingredients, or packaging materials.

(4) Inspections may be conducted as a condition of ongoing permitting, after receiving an initial or a renewal application, upon notification of a change to an application, upon receipt of a complaint, or as required to enforce or administer chapter 69.22 RCW and this chapter. Inspections may be announced or unannounced.

(5) The department shall deny applications for permit where the applicant refuses to allow the inspection of the premises or records, fails to provide samples as provided in this section, or fails to provide the department with the consent described in subsection (3) of this section, or fails to provide the department with all required application information.

NEW SECTION

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 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 for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing the application and permit for one year.

(3) Once the department receives the cottage food operation application, a public health review of all recipes and proposed labels will occur. Then the applicant will be contacted for an on-site inspection before a cottage food operation permit can be further processed or issued.

(4) If the result of the on-site permitting inspection is unsatisfactory, the applicant will need to submit documentation to the department as to how they corrected the issue(s) and submit one hundred twenty-five dollars for the additional inspection before the department will return to again inspect for permit approval.

(5) Once received, the cottage food operation permit must be prominently and conspicuously posted 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 and expire on January 31st following issuance. Cottage food operation permits obtained during 2012 will not expire until January 31, 2014.

(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
Phone: 360-902-1876
Fax: 360-902-2087

NEW SECTION

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. Amendments requiring a new application include the addition of new products, when recipes changes occur, or when the premises areas change.

(2) At a minimum, the department must conduct the public health review of all new food products, process a new permit and conduct an inspection of the cottage food premises before any new additional cottage food products can be allowed.

(3) If a cottage food operator wishes to add new products to his or her permit, an application amendment must be submitted to the department.

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

(5) 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 for the public health review and thirty dollars for processing for the permit.

(6) If there are 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 for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing for the permit.

(7) 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.

NEW SECTION

WAC 16-149-080 Production requirements. (1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit.

(b) Provide for food contact surfaces that are smooth and easily cleanable.

(c) Maintain acceptable sanitary standards and practices.

(i) Carpeting and rugs are not approved flooring material in the cottage food operation home kitchen preparation area. Cleanable impermeable floor mats are allowed in the cottage food operation home kitchen area.

(ii) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(iii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iv) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(v) Pump hand soap and disposable paper towels must be available and used in the identified primary toilet room and home kitchen area by all persons working in the home kitchen.

(vi) When food must be left out uncovered on kitchen counters or table due to processing steps such as cooling, active controls must be in place to prevent inadvertent contamination by children or pets. Active controls can include presence of the permittee or an employee or use of child/pet barriers, etc.

(vii) If the cottage food operator owns pets, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours must be in place.

(viii) No infants or children under six years of age can be present in the cottage food operation home kitchen during processing. A child barrier may be used to prevent access to the cottage food processing area during operating hours.

(d) Provide separate storage from domestic storage, including separate refrigerated storage.

(e) Provide for annual bacterial test of water supplies if not connected to a public water system.

(2) A cottage food production operation is not required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven; or

(c) Have a separate kitchen.

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food.

(b) Allowing pets (including dogs, cats, birds, reptiles, etc.) in the kitchen production and packaging areas.

(c) Washing out or cleaning pet cages, pans and similar items in the kitchen, even when the kitchen is not in use for cottage

food production.

(d) Pet litter boxes cannot be stored or used in any area of the cottage food operation. This includes food storage areas.

(e) Allowing entry of any person other than persons processing, preparing, packaging, or handling cottage food under the direct supervision of the permittee into the home kitchen area while producing food.

(4) A cottage food product must be prepared by following the recipe that was submitted for department approval. The recipe must be available on the premises for review by the department.

NEW SECTION

WAC 16-149-090 Inspections. (1) In addition to inspections required for permit applications or amendments, the department may inspect the permitted area of a cottage food operation whenever the department has reason to believe the cottage food operation is in violation of the requirements of chapter 69.22 RCW or this chapter. Inspections will be made at reasonable times and, when possible, during regular business hours.

(2) The department may also inspect the permitted area of a cottage food operation in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.

(3) When conducting an inspection, the department shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that only those specific foods identified on the permit for the cottage food operation may be produced;

(b) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparation, packaging, or handling of any cottage food products or be in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(c) That no cottage food processing, preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(d) That no infants or children under the age of six are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(e) That no pets are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(f) That only typical residential style of kitchen equipment and utensils are used to produce cottage foods;

(g) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage

food products are washed, rinsed, and sanitized before each use:

(i) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(ii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iii) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(h) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(i) That all persons involved in the preparation and packaging of cottage food products:

(i) Have a valid food handler worker card;

(ii) Do not work in the home kitchen area when ill;

(iii) Wash their hands before any food preparation and food packaging activities;

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils; and

(v) Are under the direct supervision of the permittee.

NEW SECTION

WAC 16-149-100 Recordkeeping requirements. (1) At a minimum, the following records must be kept at the cottage food operation:

(a) Copies of all food handler worker cards;

(b) Copy of the master business license;

(c) All cottage food product recipes that are allowed by the department and listed on the current cottage food operation permit;

(d) The water testing records if required by this chapter;

(e) Documentation that ingredients were obtained from approved sources; and

(f) Documentation of gross sales and any off-site sale locations.

(2) All records required under subsection (1) of this section must be:

(a) Maintained so that the information they intend to convey is clear and understandable;

(b) Available at the operation and available to the department inspectors upon request; and

(c) Retained at the operation for six months after the expiration of the permit.

NEW SECTION

WAC 16-149-110 Labeling. (1) A cottage food operation may only sell cottage food products which are prepackaged (except for certain products as outlined in subsection (2) of this section) with a label affixed that contains the following information (printed in English):

(a) The name and address of the business of the cottage food operation;

(b) The name of the cottage food product;

(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product, metric weight is not required;

(e) Allergen information as specified by federal labeling requirements;

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and

(g) The following statement printed in at least the equivalent 11-point type in a color that provides a clear contrast to the background label: "Made in a Home Kitchen that has not been subject to standard inspection criteria." A label sample is shown below.

MADE IN A HOME KITCHEN THAT HAS NOT BEEN SUBJECT TO STANDARD INSPECTION CRITERIA

Chocolate Chip Cookies

Ashley Bryant
2550 Kingston Lane
Seattle, WA 98102

Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin as an emulsifier), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda. **Contains: Wheat, eggs, milk, soy, walnuts.**

(2) The department may allow large cakes or a container of bulk products to be handled and labeled in the following manner:

(a) Be protected from contamination during transportation to the consumer.

(b) Have a product label sheet with all the required information as listed in subsection (1) of this section provided to the consumer.

NEW SECTION

WAC 16-149-120 Allowable cottage food products. A cottage food operation is allowed to produce food items that are nonpotentially hazardous. Subsection (1) of this section lists acceptable cottage food products. Although this list is not all inclusive, it provides for most types of approved cottage food products. Only those products approved by the department and listed in the permit may be produced:

(1) Baked good products that are cooked in an oven including:

- (a) Loaf breads, rolls, biscuits, quick breads, and muffins;
- (b) Cakes including celebration cakes such as birthday, anniversary, and wedding cakes;
- (c) Pastries and scones;
- (d) Cookies and bars;
- (e) Crackers;
- (f) Cereals, trail mixes and granola;
- (g) Candies and confections that are cooked in an oven;
- (h) Pies, except that custard style pies, pies with fresh fruit that is unbaked or pies that require refrigeration after baking are not approved;

(i) Nuts and nut mixes; and

(j) Snack mixes.

(2) Standardized jams, jellies, preserves and fruit butters as identified under 21 CFR 150.

(a) Fresh picked or harvested fruits from noncommercial sources are allowed to be used.

(b) Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation.

(c) All recipes must have a cook step included such as a hot fill or hot water bath. No freezer or refrigerator style products are allowed.

(d) All jams, jellies, preserves and fruit butters must be sealed in containers that are sterilized prior to filling.

(e) Wax paraffin is not allowed to be used for sealing.

(3) Recombining and packaging of dry herbs, seasoning and mixtures that are obtained from approved sources (e.g., dry bean soup mixes, dry teas and coffees, spice seasonings, etc.).

(4) Vinegar and flavored vinegars.

(5) The recipe for each product must be submitted with the application, kept on file at the cottage food operation location and recipes are subject to public disclosure.

(6) Fresh picked or harvested fruits from noncommercial sources are allowed to be used. Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation as long as there is a cook step in the recipe.

(7) All frostings or glazes must have a cook step or be made with ingredients (such as a large amount of sugar) that when combined are stable at room temperature.

NEW SECTION

WAC 16-149-130 Prohibited products. This section lists unacceptable cottage food products. Although not inclusive, it lists most types of unapproved cottage food products:

- Fresh or dried meat or meat products including jerky;
- Fresh or dried poultry or poultry products;
- Canned fruits, vegetables, vegetable butters, salsas, etc.;
- Fish or shellfish products;
- Canned pickled products such as corn relish, pickles, sauerkraut;
- Raw seed sprouts;
- Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream or cream cheese fillings, fresh fruit fillings or garnishes, glazes or frostings with low sugar content, cream, or uncooked eggs;
- Tempered or molded chocolate or chocolate type products;
- Milk and dairy products including hard, soft and cottage cheeses and yogurt;
- Cut fresh fruits or vegetables;
- Food products made from cut fresh fruits or vegetables;
- Food products made with cooked vegetable products;
- Garlic in oil mixtures;
- Juices made from fresh fruits or vegetables;
- Ice or ice products;
- Barbeque sauces, ketchups, or mustards;
- Focaccia-style breads with vegetables or cheeses.

NEW SECTION

WAC 16-149-140 Suspension, revocation, and denial of registrations. (1) A cottage food operation permit and applications for cottage food operation permits are governed by chapter 34.05 RCW.

(2) After conducting a hearing, the director may deny, suspend, or revoke a cottage food operation application or permit if it is determined that an applicant or permittee has committed any of the following acts:

(a) Failed to meet the permitting requirements established under chapter 69.22 RCW or this chapter;

(b) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(c) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(d) Consistent with RCW 69.22.060, refused the director access to the permitted area of a domestic residence housing a cottage

food operation for the purpose of carrying out the provisions of this chapter;

(e) Consistent with RCW 69.22.060, refused the department access to any records required to be kept under the provisions of this chapter; or

(f) Exceeded the annual income limits provided in WAC 16-149-040.

(3) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.