



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

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Concise Explanatory Statement
for amendments to
Chapter 16-149 WAC
Cottage Food Operations

On February 11, 2016, the Washington State Department of Agriculture held a hearing in Olympia to accept testimony on its proposal to amend chapter 16-149 WAC by:

1. Increasing the annual gross sales maximum from \$15,000 to \$25,000;
2. Adding stovetop candies to the list of products approved for cottage food operations;
3. Expanding the allowable products to include most any non-potentially hazardous “baked” type of products, no matter the device used to cook them;
4. Changing the permit expiration to one year from the last date of the month of permit issuance instead of January 31st of the following year;
5. Limiting cottage food operations to no more than 50 recipes, however a “base recipe” can include variations and still be counted as one recipe;
6. Clarifying that the label must also list the subcomponent ingredients;
7. Requiring any cottage food website to also include product labeling;
8. Requiring permittees to cease operation if they do not submit a renewal application prior to the current permit expiration;
9. Adding language if the applicant fails two inspections, their application will be denied; and
10. Clarifying language.

Reasons for Adopting the Rule

On May 5, 2011, Governor Gregoire signed ESSB 5748, an act relating to cottage food operations. The act required the department to adopt rules regarding the requirements by which cottage food operations may be licensed and operate. The department adopted rules in 2012 implementing the new law.

Prior to adopting the law in 2011, residents were required to make their foods in a commercial kitchen and pay license fees in order to sell directly to the ultimate consumer. There was interest in Washington to create a program similar to one recently

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adopted in Michigan to allow cottage food operations to sell breads, baked goods, and other food. Under the new law, residents are able to sell non-potentially hazardous foods directly to the consumer by complying with all the requirements and obtaining a cottage food license.

During the 2015 legislative session, changes were made to the cottage food law increasing the annual gross sales maximum from \$15,000 to \$25,000 (Chapter 196, Laws of 2015). And, also adding candies to the list of products approved for cottage food operations (Chapter 203, Laws of 2015). As a result of this legislation, the department needed to amend its rule to reflect these changes. The department also took the opportunity to clarify some of the language, revise the annual permitting period, and revise the section on recipes and labels.

Summary of Comments and the Department's Response

The public comment period ran from January 6, 2016, until the close of business on February 11, 2016. During that time, two written comments were received regarding the proposed amendments.

The following summarizes the testimony:

Deborah Folkerts – Disagrees with the gross income decreasing to 15K from 25K. *Disagrees* with the dollar amount of permit/inspection fees and now proposed water testing fees. “I was hoping the state of Washington would adopt a similar cottage law as the state of Oregon.”

Response: The amendment actually increases the gross annual income from \$15,000 to \$25,000. The department is not proposing new water testing fees.

Wendy Kozuback, Sweet Crumbs – Disagrees that the product labeling needs to be on the website. “It is unfair to ask businesses who have a website to add this procedure while those who do not have a website are exempt from this extra step.” *Disagrees* that the recipes be limited to 50 even with a base recipe. “This restricts our ability to be competitive in the marketplace by limiting the number of products offered.” *Agrees* with all other proposed changes.

Response: The Department is not adopting the language requiring product labeling being available on the web site. The last sentence in WAC 16-149-040(2) now reads, “A cottage food operation may maintain an internet web site displaying available products provided any sales arising from the web site are completed as in-person transactions.”

Response: The cottage food program is a fee for service program and does not receive any general fund appropriation. Each application requires extensive review. So the more recipes an application contains, the more time this review takes. In order to speed up the review process, the program implemented the

“base recipe” idea which will allow variations of the same base recipe without counting each variation as a different recipe. If a cottage food operation is currently licensed by the department and has over 50 recipes, any recipes over 50 will be grandfathered in.

Differences Between the Proposed and Adopted Rule

WAC 16-149-040(2): The Department is not adopting the language requiring product labeling being available on the web site. The last sentence in this subsection now reads, “A cottage food operation may maintain an internet web site displaying available products provided any sales arising from the web site are completed as in-person transactions.”

WAC16-149-060(4): The Department is adding clarifying language explaining what the documentation needs to contain. The first sentence in this subsection now reads, “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 failure and (b) one hundred twenty-five dollars for the new inspection.”