



STATE OF WASHINGTON
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Small Business Economic Impact Statement for proposed rules – Chapter 16-149 WAC

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Overview:

The Division of Food Safety and Consumer Services within Washington State Department of Agriculture is proposing a new rule under the authorization of chapter 69.22 of the Revised Code of Washington (RCW). This proposal will provide regulatory clarity for the implementation of the Cottage Food Act passed by the 2011 legislature. RCW 69.22.020 authorizes the Director of Agriculture to adopt by rule, requirements for cottage food operations. These requirements include:

- Application and renewal of permits
- Procedures for inspections
- Sanitary procedures
- Facility and equipment requirements
- Labeling requirements
- Requirements for clean water sources
- Requirements for washing and other hygienic practices

The provisions of this proposed rule would apply to all cottage food operations defined under chapter 69.22 RCW. The rule provides clear guidelines for inspections, sanitary procedures, water sources labeling and hygienic practices to be implemented by cottage food operations.

The following Small Business Economic Impact Statement was prepared in compliance with the Regulatory Fairness Act, RCW 19.85.040, and provides an analysis of the proposed rule impact on small businesses. Fees associated with cottage food operations are defined in chapter 69.22 RCW. The intent of the proposed rule is to only provide clarity from a regulatory perspective.

Citizens affected by this proposal:

Legislation passed in 2011 provided a new category for food processing to be defined as cottage food operations. These would be operated out of home kitchens located in domestic residences. Products produced in these home kitchens would be non-potentially hazardous food products as defined in

chapter 69.22 RCW, including jellies and jams as defined in 21 C.F.R. 150 and by rule. Operators of cottage kitchens could produce up to \$15,000 in gross sales annually (or as adjusted per the statutory procedure). Citizens permitted under this proposed rule are small businesses (employing 50 or fewer employees) operating in their home residences. Due to the restriction in gross sales and limiting cottage food operations to domestic residences this proposal would not affect large businesses (over 50 employees).

Cost survey examination:

As it is unknown just how many citizens will be interested in being permitted as cottage food operations, the agency utilized information from other states to estimate the number of potential permittees. Using the state of Oregon, which has similar legislation in place, it is estimated up to 1,000 citizens may be interested in becoming permitted as a cottage food operations. As the rule proposal was being drafted the agency held three stakeholder meetings between September and December 2011 to gather information and input in development of the proposed rule. Participants in these stakeholder meetings included citizens interested in becoming cottage food operations, local health officials, state health officials and agency staff. From these meetings the final proposed rule was developed. Costs, concerns and impacts to these new small businesses as related to implementation of this proposal were discussed during the stakeholder meetings. With it being unknown at this time just which citizens would become permitted, the assumptions on impacts to these potential small businesses are based on discussions during the three stakeholder meetings.

Costs of complying with this proposed rule:

Under this rule proposal cottage kitchen operations will be home based and in most situations will be able to utilize existing kitchen facilities and utensils within the domestic home residence. Costs other than licensing related fees established in chapter 69.22 RCW and associated with an application to become a permitted cottage food operations include:

- Complying with applicable county and municipal laws and regulations.
 - Costs if any will vary depending on the location of the operation
- Obtaining a Washington State Master Business License.
 - Basic cost is \$15.00 per year.
- If the operation is on a private water system a water test will be required annually.
 - Average basic cost for a water sample is \$60.00.
- Each operator and employee of the cottage food operation will be required to hold a valid food worker card.
 - Estimated cost per year is \$10.00 per worker card.
- Preventing small children and pet access to the cottage food processing area during operating hours.
- Labeling of products produced and sold from cottage food operations
- Recordkeeping

The requirements under this proposal should not require cottage food operations to need the assistance of professional services in order to comply with the proposal. Other than the fees designated in statute, it is anticipated costs associated with compliance of the proposed rules will be \$120.00 annually, depending on location and products produced. The proposed rule is designed to provide regulatory clarity and not create a reduction or loss of sales, and will not require the addition or loss of jobs in order to be in compliance. Currently, this class of citizens cannot produce food and the statute opens this business opportunity to them. The rule will result in the issuance of permits, thus creating sales income and jobs not previously allowed.

Considerations to reduce impact to small business:

The agency reviewed the following potential impacts to small businesses and identified where possible reductions in impacts could be found.

- Reducing, modifying, or eliminating regulatory requirements.
 - The proposed rule provides for very minimal requirements for the production of non-hazardous food products in a domestic home kitchen. Although these requirements are much less stringent than current regulatory requirements required of larger food processing operations currently licensed by the agency, they are needed for public protection and to ensure a safe food supply.
- Simplifying, reducing or eliminating recordkeeping and reporting requirements.
 - The proposed rule clearly defines a minimal amount of records to be retained by the cottage food operation.
 - Copies of food handler worker card. A food handler worker card is required by chapter 69.22 RCW.
 - Master Business license, as required by state regulations to be displayed at the business.
 - Water testing records. Annual water testing of domestic water sources is required under chapter 69.22 RCW.
 - Ingredients and recipes of the cottage food products being produced by the cottage food operation. One of the licensing requirements under statute is for the submission of recipes to be reviewed by the agency prior to issuance of a permit. This requirement is vital to ensuring only non-hazardous foods are being produced and products are labeled correctly for allergens. These labeling requirements are also specified by federal requirements.
 - Documentation of gross product sales. These would be documents kept by the business in the normal course of conducting business.
- Reducing the frequency of inspections.
 - Food produced by cottage kitchens will be considered non-hazardous foods with most operations being inspected annually unless the operation is in violation of regulations within chapter 69.22 RCW or chapter 16-149 WAC. Inspections will be conducted only during reasonable times and during normal business hours of the operation where possible.

- Delaying compliance timelines. The rule is necessary for cottage food operations to apply for a permit to open a business, thus delay of timelines is not applicable to this rule.
- Reducing or modifying fine schedules for compliance. There are no fines or penalties associated with implementation of chapter 69.22 RCW or related rules.

From stakeholder input the agency has provided in the proposed rule very minimal regulatory requirements for cottage food operations with the objective to limit costs to the business associated with regulatory compliance.

Conclusion:

The intent of legislation passed in 2011 was to create a process for people to produce and market within our state non-hazardous food products produced in their home kitchens. The legislation and this rule create business opportunities not previously available, and provide small businesses with an avenue to safely market non-hazardous food products from their home based kitchens. The proposed rule imposes modest but necessary requirements on small businesses wanting to produce cottage food that balances compliance requirements with the protection of public health. The proposed rule was drafted with input from stakeholders to provide regulatory clarity and guidelines for the implementation of chapter 69.22 RCW Cottage Food Operations.