

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED

01/31/2024 8:55 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendments to Oregon Cottage Food Exemption

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Sunny Summers
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/16/2024

TIME: 9:30 AM - 10:30 AM

OFFICER: Sunny Summers

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 21340523036

SPECIAL INSTRUCTIONS:

Meeting ID: 213 405 230 36

Passcode: Gwc4Qh

Or call in (audio only)

+1 503-446-4951,634583008#

Phone Conference ID: 634 583 008#

NEED FOR THE RULE(S)

Rule amendments in response to passage of SB 643 in 2023 general legislative session. SB 643 directly amends ORS 616.723.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

SB 643 (2023), ORS 561, 616, 619 & 625, and OAR 603-025, all available through interaction with the Oregon.gov website.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules are not expected to have an affect on racial equity in the state other than to expand activities allowed under an exemption from food safety licensing.

FISCAL AND ECONOMIC IMPACT:

The economic impact is expected to be minimal. Fewer entities will be required to maintain a full food safety license.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s):

Oregon Department of Agriculture may see a decrease in licensed domestic kitchens. No cost impact to public or industry.

(2) Effect on small businesses: (a) estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

a) As of January 25, 2024, there are 317 ODA licensed domestic kitchen food processing firms and 235 ODA licensed domestic kitchen bakery firms. Rule expands activities allowed under an exemption from licensing. There is no data associated with the number of impacted entities.

b) The rule permits the exempt domestic kitchen establishment to request a unique identification number from the Oregon Department of Agriculture to be used on the label to replace the listing of the establishment's address and authorizes the Department to establish and collect a reasonable fee to cover the cost of administering the unique identification number list. The expected administrative activities include the creation of the unique identification number, ongoing maintenance of the list, anticipated record requests associated with the list, and the annual renewal of the list of assigned numbers.

The Department is establishing an annual fee of \$25 for an exempt domestic kitchen establishment to request the unique identification number.

c) The Department estimates that the cost of professional service, equipment, supplies, labor and increased administration to comply with the rule will be minimal.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were associated with the Rule Advisory Committee and the legislative process that triggered rule amendments. Proposed changes were discussed with the ODA Food Safety Advisory Committee that was acting in the dual role of a Rules Advisory Committee. The meeting was held on January 23, 2024.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

603-025-0010, 603-025-0200, 603-025-0311, 603-025-0315, 603-025-0320, 603-025-0325, 603-025-0328, 603-

AMEND: 603-025-0010

RULE SUMMARY: Updates definitions for all food establishments.

CHANGES TO RULE:

603-025-0010

Definitions ¶¶

In addition to the definitions set forth in ORS Chapter 616, the following shall apply in this Division 25:¶¶

(1) "Bulk Food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn, but does not include fresh fruits, fresh vegetables, nuts in the shell, salad bar ingredients, or potentially hazardous foods.¶¶

(2) "Commercial food(s)" means food that has been processed by a licensed food establishment.¶¶

(3) "Corrosion-Resistant Materials" means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of contact with the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other normal conditions of usage.¶¶

(34) "Display Area" means a location, including physical facilities and equipment, where bulk food is offered for customer self-service.¶¶

(45) "Distressed Merchandise" means ~~any~~ food which has had the label lost or destroyed, or which has been subjected to damage or possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been thereby rendered unsafe or unsuitable for human or animal consumption or use.¶¶

(56) "Domestic Kitchen" means the location in the operator's residential dwelling where residential food preparation is conducted.¶¶

(7) "Residential dwelling" means a home or area within a rental unit, in which an operator makes their primary residence.¶¶

(8) "Easily Cleanable" means readily accessible and of such material, fabrication and finish that residues may be effectively removed by normal cleaning methods.¶¶

(69) "Employee" means any person working in a food establishment.¶¶

(710) "End user" means a person, who is a member of the public, who takes possession of food, and is not functioning in the capacity of an operator of a food establishment and does not offer the food for resale.¶¶

(11) "Equipment" means all display cases, storage cases, tables, counters, shelving, refrigerators, sinks, food processing preparation and packaging equipment, and any other items used in the operation of a food establishment.¶¶

(812) "Farm mix-type facility" means an establishment that is a farm and that engages in both activities that are exempt from registration under section 415 of the Federal Food, Drug, and Cosmetic Act and activities that require the establishment to be registered.¶¶

(913) "Food Source" means food shall be in a sound condition and safe for human consumption and shall be produced in compliance with applicable laws relating to food safety.¶¶

(104) "Food-Contact Surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.¶¶

(145) "Food Processing" or "processing" means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the packaging, canning or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning, or water-rinsing of a food.¶¶

(126) "Food Retailing" or "Operating a Retail Food Store" means the preparing, packaging, storing, handling or displaying of food for sale at retail to the consumer or user, and may include produce trimming, processed meat slicing, cheese slicing, preparing gutted and filleted fish, and providing retail customer services to change the form of food such as juice squeezing or peanut grinding (if more than one of these customer services is made available, the activities shall then be considered food processing rather than food retailing).¶¶

(137) "Food Service Establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption is on or off the premises and whether or not there is a charge for the food, and includes a delicatessen that offer prepared foods in individual service portions, but does not include a private home where food is prepared or served for individual family consumption, a retail food store, a food vending machine location or a supply vehicle.¶¶

(148) "Food Storage Warehouse" means any building or place where food is stored as a commercial venture or

business, or stored in connection with or as a part of a commercial venture or business, but does not include a home, restaurant, rooming house, hotel or similar place where food is stored to be used or consumed by the owner or served to employees, customers, or guests, nor an establishment licensed by the ~~d~~Department under other laws.¶

(159) "Hazardous Substance" means a substance or mixture of substances which is toxic, corrosive, an irritant, flammable, which generates pressure through heat, decomposition or other means, which has been designated by the U.S. Food and Drug Administration as a strong sensitizer or a radioactive material, or which may cause substantial personal injury or substantial illness during or as a proximate result of any reasonable foreseeable handling or use, including reasonably foreseeable ingestion by children.¶

(1620) "Hermetically Sealed Container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.¶

(217) "Kitchenware" means all multi-use utensils other than tableware.¶

(1822) "Non-Salvageable Merchandise" means distressed merchandise which cannot be safely or practically reconditioned.¶

(1923) "Operator" means any person having the direct and primary responsibility for the construction, maintenance, and operation of a food establishment.¶

(204) "Packaged" means bottled, canned, cartoned, bagged, or otherwise completely wrapped.¶

(215) "Pet" means a "domestic animal" as defined in ORS 167.310 which is not a service animal.¶

(26) "Physical Facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.¶

(227) "Plant" means the building or buildings or parts thereof, used for or in connection with the manufacturing, packaging, storing, labeling, or holding of food for humans, dogs, or cats.¶

(238) "Potentially Hazardous Food" means any food that consists whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceae, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, but does not include food which has a pH level of 4.60 or below or a water activity (Aw) value of 0.850 or less.¶

(249) "Product Module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.¶

(2530) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all federal or state requirements so as to make it suitable for consumption or for use as human or animal feed.¶

(2631) "Retail Fruit and Vegetable Stand" means any place where fresh fruits or vegetables are offered for sale at retail to the user or consumer.¶

(327) "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food, if they are food additives or color additives (as defined in Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act), are used in conformity with the federal regulations adopted under Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act, and if they are not food additives or color additives, are used in conformity with other applicable regulations of the U.S. Food and Drug Administration.¶

(2833) "Safe Temperatures" as applied to potentially hazardous food, means air-temperatures of 41°F or below and 130.5°F or above.¶

(2934) "Salvage Dealer" or "Salvage Distributor" means any person who is engaged in selling or distributing salvaged merchandise.¶

(305) "Salvage Processing Facility" means an establishment engaged in the business of reconditioning distressed merchandise.¶

(316) "Salvage Processor" means any person who operates a salvage processing facility.¶

(327) "Salvaged Merchandise" means reconditioned distressed merchandise, and "salvageable merchandise" means distressed merchandise capable of being reconditioned.¶

(338) "Sanitize" or "Sanitization" means effective bactericidal treatment of physically clean surfaces of equipment and utensils by a process which has been approved by the ~~d~~Department as being effective in reducing microorganisms, including pathogens, to a safe level.¶

(349) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.¶

(3540) "Service animal" means an animal such as a guide dog, signal dog, or other animal trained to provide assistance to an individual with a disability.¶

(41) "Servicing Area" means a designated location equipped for cleaning, sanitizing, drying, refilling product modules, or preparing bulk food.¶

(3642) "Single-Service Articles" means items used by the retailer or consumer such as cups, containers, lids, packaging materials, bags, and similar articles, intended for contact with food and designed for one-time use, but

does not include single use articles, such as No. 10 cans, aluminum pie pans, bread wrappers and similar articles, into which food has been packaged by the manufacturer.¶

~~(437)~~ "Supplier" means any person who transfers distressed merchandise to a salvage processor.¶

~~(3844)~~ "Tableware" means multi-use eating and drinking utensils.¶

~~(3945)~~ "Transportation" means the movement of food, the delivery of food from one location to another location while under the control of an operator.¶

~~(406)~~ "Utensil" means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.¶

~~(417)~~ "Vehicle" means any truck, trailer, car, bus, railcar, aircraft, boat, ship, or barge by which food is transported from one location to another.¶

~~(428)~~ "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.¶

~~(439)~~ "Wholesome" means food found in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

Statutory/Other Authority: ORS 561, 616 & 619

Statutes/Other Implemented: ORS 616.230

AMEND: 603-025-0200

RULE SUMMARY: Updates domestic kitchen facility requirements.

CHANGES TO RULE:

603-025-0200

Establishments Utilizing Domestic Kitchen Facilities ¶

Establishments Utilizing Domestic Kitchen Facilities ¶

(1) In addition to the provisions of OAR 603-025-0020, a food establishment ~~in an area which~~that is part of a domestic kitchen shall comply with the provisions of section (2) of this rule.¶

(2)(a) ~~All domestic kitchen doors or openings~~ors or openings from the domestic kitchen to other rooms of the building or structure, if applicable, shall be kept closed during the processing, preparing, packaging, or handling of commercial foods;¶

(b) No person other than the ~~food establishment licensee, or one under the direct supervision of such licensee~~operator, or an employee, shall directly engage in the processing, preparing, packaging, or handling of commercial foods and no other person shall be allowed in the domestic kitchen during such periods of operation;¶

(c) ~~No infants or small children~~pets shall be allowed in the domestic kitchen dur;¶

(d) ~~If there are pets~~ ing the processing, preparing, packaging, or handling of commercial foods;¶

(d) ~~No pets shall be allowed in the structure or building in which the domestic kitchen is located;~~residential dwelling the food label must include a statement that:¶

(A) Pets were present in the residential dwelling;¶

(B) Is prominently displayed and not be obscured, hidden, or detracted by logos or artwork;¶

(C) Includes the species using the common or usual name of the pet. Examples include, but are not limited to: cat, dog, or rabbit; and¶

(D) Is a font size must be at least equal to the average size used on the label or a minimum height of 1/16" of a lower case "o".¶

(e) No processing, preparing, packaging, or handling of commercial foods shall be carried on in a domestic kitchen while other domestic activities are being carried on in such domestic kitchen, including, but not limited to, family meal preparation, serving, eating, dishwashing, clothes washing and ironing, cleaning of floors, walls, cabinets and appliances, or entertaining guests;¶

(f) ~~Each~~The physical facilities of a licensed domestic kitchen shall~~must~~ include ~~and be provided with the following:~~¶

(A) ~~A separate~~;¶

(A) Closed storage space for ingredients, finished product containers, and labels for commercial foods;¶

(B) ~~S separate~~ from those for domestic use;¶

(B) Refrigerated facilities for storage of perishable products or ingredients utilized in the processing, preparing, or handling of commercial foods;¶

(C) ~~A separate~~ from those for domestic use; and¶

(C) A storage area for household cleaning materials and other chemicals or toxic substances that is separate from foods.¶

(g) Medical supplies or equipment ~~shall~~must not be ~~stored or allowed~~ in the domestic kitchen;¶

(h) All domestic kitchens ~~shall~~must be available for inspection by the ~~d~~Department between the week-day hours of 8 a.m. to 5 p.m., and the ~~d~~Department ~~shall~~may, if it deems it advisable or necessary, inspect such premises on ~~Saturday~~weekends or holidays or other times commercial foods are being processed, prepared, packaged, or handled.

Statutory/Other Authority: ORS 561.190, 616.700

Statutes/Other Implemented: ORS 616.700

ADOPT: 603-025-0311

RULE SUMMARY: Creates cottage food exemption purpose.

CHANGES TO RULE:

603-025-0311

Cottage Food Exemption Purpose

(1) The Department recognizes the cottage food industry as a modern method of producing and selling food products. The legislative mandate in ORS 616.723 is accomplished by exempting from licensure and routine inspection of cottage food establishments that:

(a) Limit their food processing activities to only those identified as permissible without a license;

(b) Sell a limited amount of products produced; and

(c) Otherwise meet the regulatory requirements detailed in OAR 603-025-0310 to 603-025-0330.

(2) The Department retains the responsibility and authority to protect public health by the enforcement of regulations consistent with interstate food safety systems associated with the production, processing, and distribution of all food products or commodities of agricultural origin.

Statutory/Other Authority: ORS 561, 616.028

Statutes/Other Implemented: ORS 616.010, 616.723

RULE SUMMARY: Updates definitions for cottage food products exempt activities.

CHANGES TO RULE:

603-025-0315

Definitions for Cottage Food Exempt Activities ¶

In addition to the definitions set forth in ORS 616.695, ORS 616.723, and OAR 603-025-0010, the following shall apply:¶

~~(1) "Baked good to OAR 603-025-0310 to 603-025-0330:¶~~

~~(1) "Baked goods" or "baked products" include bread, rolls, cakes, pies, doughnuts, cookies, biscuits, crackers and all similar goods, to be used for human food.¶~~

~~(2) "Confectionary items" mean candy or sweets, including, but not limited to: salted caramel, fudge, marshmallow bars, chocolate covered marshmallows, and hard candy.¶~~

~~(3) "Department" as defined in ORS 625.010(2).¶~~

~~(2) "Cottage Food" means food prepared at a food establishment that meanets the Oregon Department of Agriculture.¶~~

~~(4) "End user" means a person, who is a member of the public, who takes possession of food, and is not functioning in the capacity of an operator of a food establishment, and does not offer the food for resale.¶~~

~~(5) "Food" means any article used, or intended to be used, for food, ice, drink, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption.¶~~

~~(6) "Food establishment" means:¶~~

~~(a) Any room, building, structure or place, used or intended for use, or operated for storing, preparing, compounding, manufacturing, processing, freezing, packaging, distributingquirements described in OAR 603-025-0310 to 603-025-0330.¶~~

~~(3) "Cottage Food Establishment" means a food establishment that meets the requirements under OAR 603-025-0310 to 603-025-0330.¶~~

~~(4) "Confectionary items" mean candy or sweets, that are not potentially hazardous foods, including, but not limited to: salted caramel, fudge, marshmallow bars, chocolate covered marshmallows, handling, salvaging or displaying food hard candy.¶~~

~~(b5) The ground upon which such place or business is operated or used and the adjacent ground that is also used in carrying on the business of the establishment. The department may prescribe additional areas or places that may not be contiguous or adjacent to the above area or establishment, but may be included therein.¶~~

~~(c) Vehicles, machinery, equipment, utensils, tools, fixtures, implements, and all other articles or items, used in operating or carrying on the business of a food establishment "Event" means a singular location where in-person sales occur, including, but not limited to a trade show, conference, farmer's market, or roadside booth.¶~~

~~(76) "Food handler training program" means a food handler training program offered by the Oregon Health Authority or designated agent of the Oregon Health Authority, or offered by a local public health authority or designated agent of the local public health authority that has been approved by the Oregon Health Authority.¶~~

~~(8)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae7) "Freeze dried food" means food that has gone through a process of having water removed by being frozen and placed under a vacuum, allowing the ice to change directly from solid to vapor without passing through a liquid phase.¶~~

~~(b8) "Marijuana" does not include industrial hemp, as defined, "Cannabinoid Products", "Cannabinoid Concentrates", and "Cannabinoid Extracts" have the meaning given those terms in ORS 571.3475C.009.¶~~

~~(9) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates, and cannabinoid extracts.¶~~

~~(10) "Person(s)ackage" means the individual(s) responsible for food preparation that are present during the commercial operation of an exempt residential kitcheno place food into a container that directly contacts the food and that the consumer receives.¶~~

~~(11) "Potentially hazardous food" means food requiring temperature control due to the capacity to support the rapid and progressive growth of infectious microorganisms or the growth of toxic microorganisms. Potentially hazardous foods, baked goods, and confectionary items foeds-include, but are not limited to:¶~~

~~(a) Food containing fresh, frozen or dried meat (including jerky);¶~~

~~(b) Food made with fish or shellfish products;¶~~

~~(c) Food that requires any type of refrigeration after production, such as, but not limited to: cream, custard, or meringues.¶~~

~~(d) Pies, cakes, or pastries with cream, custard, or cream cheese icings or fillings;¶~~

(e);¶

(d) Focaccia-style breads made with vegetables or cheese; and¶

(fe) Candied fresh fruit products including caramel and candy apples.¶

(12) "~~Residential dwelling~~" means a home or area wif) Foods with;¶

(A) pH level greater than 4.60; or¶

(B) Water activity (Aw) greater than a rental unit, in which a person or persons make their primary residence0.850.¶

(12) "Repackage" means transfer of a food from one container to another without any processing to alter the food's state or characteristics.¶

(13) "~~Total annual gross sales of food~~" means the total annual retail sale value of all food produced under this exemption and sold by the person or persons operating an exempt residential kitch Cottage Food establishment.

Statutory/Other Authority: ORS 561, ORS 616, 625

Statutes/Other Implemented: ORS 561, ORS 616

AMEND: 603-025-0320

RULE SUMMARY: Expands cottage food license and inspection exemption and updates the requirements.

CHANGES TO RULE:

603-025-0320

License and Inspection Cottage Food Establishment Exemption

(1) ORS 616.695 to 616.755 do not apply to a food establishment if:

- (a) ~~The food establishment is operated in a residential dwelling;~~
 - (b) ~~The food establishment sells food only to the end user of the product;~~
 - (c) ~~The foods prepared at the food establishment for public distribution are not potentially hazardous and do not contain marijuana or marijuana items out of a domestic kitchen;~~
 - (b) The foods prepared for public distribution are packaged, are not potentially hazardous, and do not contain marijuana or marijuana items;
 - (c) The foods prepared for public distribution are:
 - (A) Baked goods;
 - (B) Confectionary items, including freeze dried confectionary items;
 - (C) Coffee beans;
 - (D) Tea, spice, or seasoning blends from commercial food;
 - (E) Popcorn;
 - (F) Jams and jellies made with fruit with a natural pH that is less than 4.60;
 - (G) Honey;
 - (H) Syrups;
 - (I) Fruit butters made with fruit with a natural pH that is less than 4.60;
 - (J) Nut mixes;
 - ~~(d) The foods prepared at the food establishment for public distribution are sold only to the end user of the product, and are:~~
 - Repackaged freeze-dried foods from commercial food;
 - (L) Repackaged dried and dehydrated foods from commercial food; or
 - (M) Powdered drink mixes from commercial ingredients;
 - (d) The domestic kitchen is maintained in a clean, healthful, and sanitary condition, by maintaining or complying with all the following:
 - (A) Separate closed storage space for commercial ingredients, finished product containers, and labels used in the manufacture of cottage food(s);
 - (B) Separate refrigerated storage of perishable ingredients utilized in the processing, preparing, or handling of cottage food(s);
 - ~~(A) Baked goods; or~~A separate storage area for household cleaning materials and other chemicals or toxic substances;
 - ~~(B) Confectionary items~~Medical supplies or equipment shall not be stored or allowed in the domestic kitchen;
 - ~~(e) The food establishment complies with the provisions of OAR 603-025-0020 and 603-025-0150;~~
 - ~~(f) No processing, preparing, packaging, or handling of cottage foods shall be carried on in a domestic kitchen while other domestic activities are being carried on in such domestic kitchen, including, but not limited to, family meal preparation, serving, eating, dishwashing, clothes washing and ironing, cleaning of floors, walls, cabinets and appliances, or entertaining guests; and~~
 - (F) No pets shall be allowed in the domestic kitchen.
 - (e) The annual gross sales of foods prepared at the food establishment do not exceed \$250,000; and
 - ~~(g) Each person involved in the preparation of food at the employee of the cottage food establishment for public distribution has successfully completed a food handler training program and holds a certificate issued pursuant to ORS 624.570 and OAR chapter 333 division 175.~~
- (2) ~~A person may not sell foods prepared in an exempt residential kitchen~~The Department may require that an operator have a food item prepared in a cottage food establishment assessed or tested to ensure that it is not a potentially hazardous food. If an assessment or test is ordered, the operator shall ensure:
- ~~(a) On That the Internet; or~~
 - ~~(b) To a commercial entity or institution, including, but not limited to a:~~
 - ~~(A) Restaurant;~~
 - (B) Grocery storeassessment must be done by a recognized Process Authority and be supported with a written document provided by the operator to the Department upon request; or
 - (b) That testing is conducted at a certified food testing laboratory; and
 - (c) Test results for water activity and pH are required for each recipe with results demonstrating;

(A) pH level of 4.60 or less; or

(B) Water Activity (Aw) of 0.850 or less.

(3) Except as described in section (4) of this rule, a person may not sell foods prepared in a cottage food establishment to a commercial entity or institution, including a:

(a) Restaurant;

(b) Caterer;

(c) School;

(d) Day care center;

(e) Hospital;

(f) Nursing home; or

(g) Correctional facility.

(3) Records:

(a) A person operating an exempt residential kitchen must maintain accurate records of annual sales and the types of food produced by the cottage food establishment may be sold to, and sold by, a food establishment only if the food establishment:

(A) A person must maintain all records for at least three years; stores and displays the cottage foods separately from other foods; and

(B) A person must make all records available for inspection by the Department upon request.

(4) The Department may require that a bakery or confectionary item be assessed by the Department to ensure that it is not potentially hazardous. This signage must be in addition to the statement on the cottage food label.

(5) Any area or room of a residential dwelling may be used for food preparation, packaging, storage, or handling of permitted food products if it is constructed and maintained in a clean, healthful, and sanitary condition. The cottage food establishment agrees to:

(A) Maintain a record of the agreement of the retailer to comply with this section; and

(B) Maintain records as described in OAR 603-025-0328.

Statutory/Other Authority: ORS 561

Statutes/Other Implemented: ORS 561

AMEND: 603-025-0325

RULE SUMMARY: Updates cottage food labeling requirements

CHANGES TO RULE:

603-025-0325

Labeling ¶

(1) The principal display panel of food prepared in an exempt ~~residential~~domestic kitchen must contain the following statement, "This product is homemade ~~and~~, is not prepared in an inspected food establishment."~~¶~~

~~(2) The principal display label must also include:¶~~

~~(a) The business name, phone number, and address, and must be stored and displayed separately if merchandised by a retailer"¶~~

~~(a) The statement must be prominently displayed and may not be obscured, hidden, or detracted by logos for the food establishment; artwork;¶~~

~~(b) The font size must be at least equal to the average size used on the label or a minimum height of 1/16" of a lower case "o".¶~~

~~(2) The principal display label must also include:¶~~

~~(ba) The name of the product;¶~~

~~(b) The ingredients of the product in descending order by weight;¶~~

~~(d) The net weight or net volume of the product (and sub-ingredients) of the food in descending order by weight or volume;¶~~

~~(c) Any applicable allergen warnings as specified in The Food Allergen Labeling & Consumer Protection Act of 2004 (FALCPA); and¶~~

~~(f) If the label provides any nutrient content claim, health claim or other nutritional information, product nutritional information as described in Title 21, Part 101 of the Code of Federal Regulations (2015);¶~~

~~(d) The business name and phone number for the cottage food establishment;¶~~

~~(e) The address of the food establishment as described in this subsection;¶~~

~~(A) The full street address, city, state, and zip code;¶~~

~~(B) The city, state, and zip code if the name and address of the cottage food establishment are listed in a city directory; or¶~~

~~(C) The Unique Identification number provided by the Department as detailed in OAR 603-025-0335;¶~~

~~(f) The net weight or net volume of the product in both English and metric units;¶~~

~~(g) If the label provides any nutrient content claim, health claim or other nutritional information, product nutritional information as described in Title 21, Part 101 of the Code of Federal Regulations (2015); and¶~~

~~(h) If there are pets in the residential dwelling the food label must include a statement that:¶~~

~~(A) Pets were present in the residential dwelling;¶~~

~~(B) Is prominently displayed and not be obscured, hidden, or detracted by logos or artwork;¶~~

~~(C) Includes the species using the common or usual name of the pet. Examples include, but are not limited to: cat, dog, or rabbit; and¶~~

~~(D) Is a font size must be at least equal to the average size used on the label or a minimum height of 1/16" of a lower case "o."~~

Statutory/Other Authority: ORS 561

Statutes/Other Implemented: ORS 561, ORS 616.723

ADOPT: 603-025-0328

RULE SUMMARY: Creates record requirements for cottage food establishments.

CHANGES TO RULE:

603-025-0328

Record requirements

1) The cottage food establishment must maintain sales records of that include the following information:¶

(a) Location of sale:¶

(A) Grouped sales associated with an event may be a single address and must include event organizer contact details if applicable:¶

(B) Food establishment sales outlet address, including point of contact information; or¶

(C) Individual online sales address and contact information.¶

(b) Date sold or shipped:¶

(c) Food(s) sold:¶

(d) Price; and¶

(e) Quantity.¶

(2) A record of the cottage food establishments calculation of annual gross sales ensuring that sales meet the requirements of OAR 603-025-0320(e).¶

(3) Documents associated with determination of cottage food complying with the requirements of OAR 603-025-0320.¶

(4) Copies of all required records must be retained at a reasonably accessible location for a period of three years and must be made available to the Department upon 5 business days a request to review the records.

Statutory/Other Authority: ORS 616.723

Statutes/Other Implemented: ORS 561

AMEND: 603-025-0330

RULE SUMMARY: Updates criteria for revocation of exemption.

CHANGES TO RULE:

603-025-0330

Revocation of Exemption ¶

The Department may ~~require a order a cottage~~ food establishment that is ~~operating as an exempt residential kitchen to become licensed under ORS 616.695 to 616.755~~ if the food establishment refuses to comply with Department rule requiring that the food establishment be constructed and maintained in a clean, healthful, and sanitary manner or if the food establishment is producing potentially hazardous food ~~so become licensed under ORS 616.695 to 616.755 and OAR 603-025-0500 or OAR 603-021-0650 if it;~~ ¶

(1) Fails to comply with OAR 603-025-0310 to 603-025-0330; ¶

(2) Fails to test food products that have a reasonable suspicion of being potentially hazardous foods as required under OAR 603-025-0320(2); ¶

(3) Fails to maintain or refuses to provide records as required in OAR 603-025-0328; or ¶

(4) Fails to provide reasonable access to the food establishment or interferes with inspections necessary to protect public health. Reasonable access is between the weekday hours of 8 am to 5 pm, except that if the Department deems it necessary, inspection may occur on weekends or holidays or at any other times cottage foods are being processed, prepared, packaged, or handled.

Statutory/Other Authority: ORS 561, ORS 183, 616.028, 616.273

Statutes/Other Implemented: ORS 561

ADOPT: 603-025-0335

RULE SUMMARY: Creates the establishment of Unique Identification Number

CHANGES TO RULE:

603-025-0335

Unique Identification number

(1) A cottage food establishment or licensed domestic kitchen may request a unique identification number from the Department to use on a food label as an alternative to a business address by:

(a) Submitting the complete form designated by the Department, along with any requested information or documentation; and

(b) Payment of a \$25 fee.

(2) Each unique identification number shall expire on June 30 next following the date of issuance and may be renewed by payment of a fee of \$25 prior to the expiration of the number.

(3) The use of expired or unauthorized unique identification numbers constitutes misbranding.

(4) The unique identification number is personal to the applicant and may not be transferred. A new number is necessary if the business entity is changed, or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(5) A unique identification number may not be used in place of appropriate address information for products sold into interstate commerce.

Statutory/Other Authority: ORS 616.273, 616.250

Statutes/Other Implemented: ORS 561