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# PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILING CAPTION: Amendments to Oregon Cottage Food Exemption

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RULES:
603-025-0010, 603-025-0200, 603-025-0311, 603-025-0315, 603-025-0320, 603-025-0325, 603-025-0328, 603-025-0330, 603-025-0335

AMEND: 603-025-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Updates definitions for all food establishments.

RULE TEXT:
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or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the end user are withdrawn, but does not include fresh fruits, fresh vegetables, nuts in the shell, salad bar ingredients, or time/temperature controlled for safety foods.
(2) “Commercial food(s)” means food or food ingredient that has been processed by a licensed food establishment.
(3) "Corrosion-Resistant Materials" means those materials that maintain acceptable sanitary surface characteristics under prolonged contact with food, normal use of cleaning compounds, sanitizing solutions, and other normal conditions of usage.
(4) "Distressed Merchandise" means 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.
(5) “Domestic Kitchen” means the location in the operator’s residential dwelling where residential food preparation is conducted.
(6) "Easily Cleanable" means readily accessible and of such material, fabrication and finish that residues may be effectively removed by normal cleaning methods.
(7) "Employee" means any person working in a food establishment.
(8) “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.

(9) "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.
(10) “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.
(11) "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.
(12) "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.
(13) "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.
(14) "Food Retailing" or "Operating a Retail Food Store" means the preparing, packaging, storing, handling or displaying of food for sale at retail to the end 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).
(15) "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.
(16) "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 Department under other laws.
(17) "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.
(18) "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.
(19) "Kitchenware" means all multi-use utensils other than tableware.
(20) "Non-Salvageable Merchandise" means distressed merchandise which cannot be safely or practically reconditioned.
(21) "Operator" means any person having the direct and primary responsibility for the construction, maintenance, and operation of a food establishment.
(22) "Packaged" means bottled, canned, cartoned, bagged, or otherwise completely wrapped.
(23) “Pet” means a “domestic animal” as defined in ORS 167.310 which is not a service animal.
(24) "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.
(25) "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.
(26) "Potentially hazardous food" or “time/temperature controlled for safety food” means any food that consists whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, 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.

(27) "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.

(28) "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.

(29) “Residential dwelling” means a home or area within a rental unit, in which an operator makes their primary residence.

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

(31) "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.

(32) "Safe Temperatures" as applied to time/temperature controlled for safety food, means temperatures of 41°F or below and 135°F or above.

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

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

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

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

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

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

(39) “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.

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

(41) "Single-Service Articles" means items used by the retailer or end user 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.

(42) "Tableware" means multi-use eating and drinking utensils.

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 561, ORS 616, 619

STATUTES/OTHER IMPLEMENTED: ORS 616.230

AMEND: 603-025-0200

RULE TITLE: Establishments Utilizing Domestic Kitchen Facilities

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Updates domestic kitchen facility requirements.

RULE TEXT:

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

(2)(a) All doors 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 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) 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".

(d) No processing, preparing, packaging, or handling of commercial foods shall be carried on in a domestic kitchen while pets are present or while other domestic activities are being carried on in such domestic kitchen, including, but not limited to;

(A) Family meal preparation, serving, dishwashing, or eating;

(B) Clothes washing or ironing;

(C) Cleaning of floors, walls, cabinets or appliances; or

(D) Entertaining guests.

(e) The physical facilities of a licensed domestic kitchen must include:

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

(f) Medical supplies or equipment must not be in the domestic kitchen;

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

STATUTORY/OTHER AUTHORITY: ORS 561, 616

STATUTES/OTHER IMPLEMENTED: ORS 616.700, 616.723

ADOPT: 603-025-0311

RULE TITLE: Cottage Food Exemption Purpose

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Creates cottage food exemption purpose.

RULE TEXT:

(1) The Department recognizes cottage food establishments 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 in OAR 603-025-0320 as permissible without a license;

(b) Sell a quantity as described in OAR 603-025-0320 of products; 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

AMEND: 603-025-0315

RULE TITLE: Definitions for Cottage Food Exempt Activities

NOTICE FILED DATE: 01/31/2024

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

RULE TEXT:

In addition to the definitions set forth in ORS 616.695, ORS 616.723, and OAR 603-025-0010, the following shall apply to OAR 603-025-0310 to 603-025-0330:

(1) “Annual gross sales” means the annual retail sale value of food sold by the person or persons operating a Cottage Food establishment.

(2) “Baked goods” means bakery products, as defined in ORS 625.010(2), that are not time/temperature controlled for safety foods.

(3) “Confectionary items” mean candy or sweets, that are not time/temperature controlled for safety foods.

(4) “Cottage Food” means food prepared at a cottage food establishment for public distribution.

(5) “Cottage Food Establishment” means a food establishment that meets the requirements under OAR 603-025-0320(1).

(6) “Event” means a singular location where in-person sales occur.

(7) “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) “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.

(9) “Marijuana”, “Marijuana item”, “Cannabinoid product”, “Cannabinoid concentrate”, and “Cannabinoid extract” have the meaning given those terms in ORS 475C.009.

(10) “Package” means to place food into a container that directly contacts the food and that the end user receives.

(11) “Potentially hazardous food” or “time/temperature controlled for safety 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. These foods 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;

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

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

(f) Foods;

(A) That have been heat-treated to destroy vegetative cells and subsequently packaged with a pH level greater than 4.60; or

(B) With a water activity (Aw) greater than 0.850.

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

STATUTORY/OTHER AUTHORITY: ORS 561, 616, 625

STATUTES/OTHER IMPLEMENTED: ORS 561, 616

AMEND: 603-025-0320

RULE TITLE: Cottage Food Establishment Exemption

NOTICE FILED DATE: 01/31/2024

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

RULE TEXT:

(1) A Cottage Food Establishment must:

(a) Operate from a domestic kitchen;

(b) Prepare foods for public distribution that are not time/temperature controlled for safety, and do not contain marijuana or marijuana items;

(c) The foods prepared for public distribution are only:

(A) Baked goods;

(B) Confectionary items, including freeze dried confectionary items;

(C) Coffee beans;

(D) Dried tea, spice, or seasoning blends from commercial food;

(E) Popcorn;

(F) Jams and jellies made only with fruit that has a natural pH that is less than 4.60;

(G) Honey or honey products using commercial food;

(H) Syrups;

(I) Fruit butters made only with fruit that has a natural pH that is less than 4.60;

(J) Nut mixes;

(K) Repackaged freeze-dried foods from commercial food;

(L) Repackaged dried and dehydrated foods from commercial food; or

(M) Powdered drink mixes from commercial food;

(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 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);

(C) A separate storage area for household cleaning materials and other chemicals or toxic substances;

(D) Medical supplies or equipment shall not be stored or allowed in the domestic kitchen;

(E) No processing, preparing, packaging, or handling of cottage foods shall be carried on in a domestic kitchen while pets are present or while other domestic activities are being carried on in such domestic kitchen, including, but not limited to;

(i) Family meal preparation, serving, dishwashing, or eating;

(ii) Clothes washing or ironing;

(iii) Cleaning of floors, walls, cabinets, or appliances; or

(iv) Entertaining guests.

(e) The annual gross sales of cottage foods do not exceed $50,000; and

(f) Each employee of the cottage food establishment 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) 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 time/temperature controlled for safety food. If an assessment or test is ordered, the operator shall ensure:

(a) That the assessment is 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) Cottage foods may not be sold to an institution, including, but not limited to, a:
(a) Restaurant, which means any place licensed as a restaurant under ORS chapter 624 but does not include any place licensed under ORS chapter 616;
(b) Caterer;
(c) School;
(d) Day care center;
(e) Hospital;
(f) Nursing home; or
(g) Correctional facility.
(4) Cottage foods may be sold to a retailer only if:
(a) The food is packaged as defined in OAR 603-025-0315(10) and labeled as required by OAR 603-025-0325;
(b) The retailer agrees to;
(A) Store and display the cottage foods separately from other foods; and
(B) Use signage to clearly indicate in the display area that the cottage foods are homemade and not prepared in an inspected food establishment. This signage must be in addition to the statement on the cottage food label; and
(c) The cottage food establishment;
(A) Maintains a record of the agreement of the retailer to comply with this section; and
(B) Maintains records as described in OAR 603-025-0328.

STATUTORY/OTHER AUTHORITY: ORS 561

STATUTES/OTHER IMPLEMENTED: ORS 561

AMEND: 603-025-0325

RULE TITLE: Labeling

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Updates labeling requirements for food prepared in a licensed domestic kitchen and a cottage food establishment.

RULE TEXT:
(1) The label's principal display panel for cottage food must contain the following statement, "This product is homemade, is not prepared in an inspected food establishment, and must be stored and displayed separately if merchandised by a retailer."
(2) The label of food prepared in a licensed domestic kitchen, or a cottage food establishment must include:
(a) The name of the food;
(b) The ingredients (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);
(d) The business name for the food establishment;
(e) The address of the food establishment, including;
(A) The full street address, city, state, and zip code;
(B) The city, state, and zip code if the name and address of the 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 phone number for the cottage food establishment;
(g) The net weight or net volume of the product in both English and metric units;
(h) 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
(i) 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) Includes the species using the common or usual name of the pet. Examples include, but are not limited to: cat, dog, or rabbit; and
(3) All labeling must be done with a print or type size that is conspicuous and easy to read and;
(a) Such a font size must be a minimum height of 1/16" of a lower case "o"; and
(b) Must be prominently displayed and may not be obscured, hidden, or detracted by logos or artwork.

STATUTORY/OTHER AUTHORITY: ORS 561

STATUTES/OTHER IMPLEMENTED: ORS 561, ORS 616.723

ADOPT: 603-025-0328

RULE TITLE: Record Requirements

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Creates record requirements for cottage food establishments.

RULE TEXT:

(1) The cottage food establishment must maintain sales records -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 that demonstrate that the cottage food establishment complied 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 for review within five business days.

STATUTORY/OTHER AUTHORITY: ORS 616.723

STATUTES/OTHER IMPLEMENTED: ORS 561

AMEND: 603-025-0330

RULE TITLE: Revocation of Exemption

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Updates criteria for revocation of exemption.

RULE TEXT:

The Department may order a food establishment to 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 603-025-0311 to 603-025-0330;

(2) Fails to test food products that have a reasonable suspicion of being a time/temperature controlled for safety 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, 183, 616.028, 616.273

STATUTES/OTHER IMPLEMENTED: ORS 561

ADOPT: 603-025-0335

RULE TITLE: Unique Identification Number

NOTICE FILED DATE: 01/31/2024

RULE SUMMARY: Creates the establishment of Unique Identification Number.

RULE TEXT:

(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, except that registration issued before June 30th of 2024 shall be valid until June 30th of 2025.

(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.

STATUTORY/OTHER AUTHORITY: ORS 616.273, 616.250

STATUTES/OTHER IMPLEMENTED: ORS 561