November 27, 2017

NDSU Extension
311 Morrill Hall
PO Box 6050
Fargo, ND 58108

Dear Julie:

During North Dakota’s 2017 legislative session, House Bill 1433 was passed regarding direct producer to consumer sales of cottage food products. This new chapter of North Dakota Century Code 23-09.5 is named "Cottage Food Production and Sales" (referred to as the ND Cottage Foods Act) and is effective August 1, 2017. The ND Cottage Foods Act allows for the purchase and consumption of locally grown agricultural commodities. This provides new opportunities for small, start-up businesses and home-based operations. While enriching a new market and new food products available in our state, it is important to instill practical, science-based food safety guidance to protect public health and maintain access to a safe food supply.

With this goal in mind, the North Dakota Department of Health (NDDOH) will propose administrative rules to provide further clarification and interpretation over specific types of food and drink products that meet the definition of a cottage food product allowed for sale in compliance with the ND Cottage Foods Act. In preparation of drafting proposed rules, the NDDOH has established a multi-disciplinary cottage foods workgroup to offer guidance during the rules making process and to identify training needs and resources for the home producer. Rules will be drafted and followed by a public and written comment period. After careful consideration of stakeholder, industry, and consumer comments, the rules will be considered for final approval by the Interim Administrative Rules Committee. The anticipated effective date of these new rules is summer of 2018. In addition to North Dakota State University (NDSU) Extension already taking an active role in the cottage foods workgroup, the University has offered guidance for safe handling of home-canned and home-processed foods and training opportunities for the home producer as well as pH testing of cottage foods products. NDSU Extension also is developing additional outreach materials for the home producer at the request of the of the cottage foods workgroup.

The NDDOH has published interim food safety guidance and recommendations related to certain home-processed, home-canned, and home-baked foods allowed for sale in North Dakota which are summarized below:
1. **Cottage Food Products Defined.** Low-risk food and drink products that are highly acidic in nature (pH < 4.6) and do not require time and temperature control for food safety are allowed for direct sale from the producer to the informed end consumer as approved cottage food products.

2. **Cottage Food Products - Limitations.** High-risk food and drink products that are low-acid in nature (pH > 4.6) and require special processing or time and temperature control for food safety (*see exceptions) are more likely to support the rapid growth of disease-causing microorganisms or toxin production of *Clostridium botulinum*. Without required processing controls and interventions in place, there is a greater risk to public health, and therefore, these items are not considered approved cottage food products by definition.
   *The exception to this rule is farm flock eggs, certain whole, frozen poultry products, and baked goods requiring refrigeration.*

3. **Baked goods that require refrigeration** are allowed as cottage food products provided controls are in place to prevent temperature abuse and ensure safe handling of these products. Only pasteurized dairy products may be added as an ingredient in baked goods. The use of raw (unpasteurized) milk or dairy products is prohibited. Baked goods that require refrigeration shall be labeled with safe handling instructions and include a product disclosure statement indicating the product was maintained frozen since its production date.

4. **Meat products** are not covered by this law. Meat may not be used as an ingredient in cottage food products. There are exemptions for certain, whole frozen poultry products.

5. **Direct sales of cottage food products** from the cottage food operator to the informed end consumer will be allowed from the operator’s home, farm, at a farmer’s market, roadside stand, or community event, or point of delivery. Cottage food products are intended for home consumption only. Sales to other businesses or venues, out-of-state sales, and internet sales are prohibited.

6. **The following consumer advisory is required** for all cottage food products, either on display, at the point of sale, or stated on the product label, in a legible font and in a conspicuous manner:
   "This product is made in a home kitchen that is not inspected by the state or local health department."

7. **A cottage food product produced pursuant to Section 23-09.5** is subject to food sampling and inspection by the ND DOH or a county, district, or regional health agency if a consumer complaint has been received or if the product is suspected in an injury or foodborne illness outbreak.

Throughout the administrative rules process, support of the ND Cottage Foods Act and interim guidance by organizations, associations, event coordinators, farmers markets, and cottage food operators interested in providing a venue or operating a cottage food business will help ensure a high standard of safe food products in our state. NDSU
Extension plays an important part in offering educational outreach and training for home producers. We appreciate the partnerships we have with NDSU and all other stakeholders to help ensure safe and healthy foods are provided to the citizens of North Dakota.

Sincerely,

[Signature]

Julie Wagendorf  
Director of Food and Lodging  
North Dakota Department of Health  
600 E Boulevard Ave  
Bismarck, ND 58505  
phone: 701.328.2523  
fax: 701.328.1890  
email: jwagendorf@nd.gov