

AUG 23 2019

August 23, 2019

**Hand Delivered**

Ms. Vonette Richter, Legal Division Director  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard Ave  
Bismarck, ND 58505-0360

RE: Proposed Adoption of North Dakota Administrative Code Chapter 33-33-10 – Preparation of Cottage Food Products for Sale.

Attached for filing in the office of the Legislative Council are the following:

1. Notice of Intent to Adopt Changes to Administrative Rules concerning the above rules as required by NDCC Chapter 28-32.
2. Regulatory analysis, small entity regulatory analysis and small entity impact statement as required by NDCC Chapter 28-32.
3. Copy of the proposed rules.

If you have questions or concerns, please contact Julie Wagendorf at 328-1291. Thank you.

Sincerely,



Mylynn K. Tufte, MBA, MSIM, RN  
State Health Officer

Enc.

cc: Julie Wagendorf

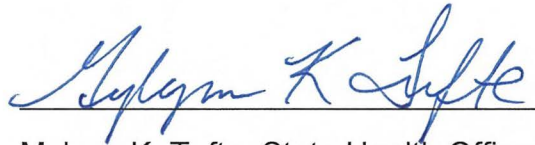
## NOTICE OF INTENT TO ADOPT ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Department of Health will hold a public hearing to address proposed new rules to N.D. Administrative Code 33-33-10 at 1:00 p.m. on October 2, 2019, at State Capitol, North Dakota Department of Health, Judicial Wing, Conference Room 212 at 600 E Blvd Ave, Bismarck, ND. The purpose of the proposed rules relate to the preparation of cottage food products for sale. The proposed rules are not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the Division of Food & Lodging, 600 East Boulevard Avenue, Bismarck, ND 58505-0200. A copy of the proposed rules may be requested by writing the above address or emailing [foodandlodging@nd.gov](mailto:foodandlodging@nd.gov) or calling 701-328-1291. Written or oral comments on the proposed rules sent to the above address or telephone number and received by October 12, 2019 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Department of Health at the above telephone number or address at least seven days prior to the public hearing.

Dated this 23<sup>rd</sup> day of August 2019.

A handwritten signature in blue ink that reads "Mylynn K. Tufte". The signature is written in a cursive style and is positioned above a horizontal line.

Mylynn K. Tufte, State Health Officer  
North Dakota Department of Health

NORTH DAKOTA ADMINISTRATIVE CODE  
CHAPTER 33-33-10 (PREPARATION OF COTTAGE FOOD PRODUCTS FOR SALE):  
REGULATORY ANALYSIS

Fiscal Note (NDCC 28-32-08.2): A fiscal note is not required as these rules have no fiscal effect.

Regulatory Analysis (NDCC 28-32-08(2)):

1. **Describe the classes of people likely to be affected by the proposed rule, including the classes bearing the cost of the proposed rule and classes benefiting from the proposed rule:** The owners of various home-based, cottage food businesses will be affected by and will benefit from the proposed rule. The proposed rule implements legislation enacted in 2017 during the 65<sup>th</sup> Legislative Assembly. Prior to 2017, cottage food products were allowed for direct sale by the producer to the end consumer at farmer's markets and similar venues for baked goods and certain home-canned products such as jams, jellies, and pickles if time and temperature control for safety was not required to prevent the growth of disease-causing micro-organisms in food. The proposed rules expand the types of cottage food products that require time and temperature control for safety such as baked goods, poultry, eggs, and fresh cut, frozen fruits and vegetables.
2. **Describe the probable impact, including the economic impact, of the proposed rule:** The probable impact of the proposed rule is the benefit this can serve for small, start-up food businesses uniformly throughout the state without having to incur the cost of an annual license fee, meet sanitation standards or employee health standards, undergo a health and sanitation inspection, or meet any product ingredient or allergen labeling requirements.
3. **Describe the estimated cost to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenue:** There is no estimated additional costs to the agency for implementation of the proposed rules.
4. **Describe any alternative methods of achieving the purpose of the proposed rule that were considered by the agency and the reasons why the methods were rejected in favor of the proposed rule:** The Department has attempted to address concerns and uncertainty about North Dakota Century Code 23-09.5 cottage food law through education. These efforts have not been effective as people are still requesting clarification of the law while others are misinterpreting the law and operating food service establishments without an approved food license in accordance with Century Code 23-09.

Takings Assessment (NDCC 38-32-09): A takings assessment is not required as the rule did not result in a taking in the context of NDCC 28-32-09.

Small Entity Regulatory Analysis:

- 1. Was establishment of less stringent compliance and reporting requirements for small entities considered? To what result?** Even though the proposed rule does not include a cap on annual gross sales, the spirit of the law is intended for small, start-up food businesses therefore all would be considered small entities. There is no regulatory oversight of cottage food products and no reporting requirements for cottage food operators other than what is required in statute.
- 2. Was establishment of less stringent schedules or deadline for compliance or reporting requirements considered for small entities? To what result?** There is no regulatory oversight or reporting requirements for small entities or cottage food operators.
- 3. Was consideration or simplification of compliance or reporting requirements for small entities considered? To what result?** There is no regulatory oversight or reporting requirements for small entities or cottage food operators.
- 4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?** There are no performance standards or operational standards required for small entities or cottage food operators.
- 5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?** There are no regulatory requirements for small entities or cottage food operators therefore no exemptions were considered.

Small Entity Impact Statement:

- 1. Which small entities are subject to the proposed rules?** The owners of various home-based, cottage food businesses are subject to the proposed rules.
- 2. What are the administrative and other costs required for compliance with the proposed rule?** For cottage food operators who are home canning high acid and acidified fruits and vegetables, the cost of a pH meter or pH testing may be incurred if using a custom recipe that is not already tested. NDSU Extension offers pH testing at \$25 per test. The cost of testing would be incurred for each custom recipe. The cottage food operator can perform the pH test at home by purchasing and using a calibrated pH meter– cost ranging from \$50 to \$150. The cottage food operator using an approved and tested canning recipe from a reputable source would incur zero costs. Safe handling instructions and signage or labeling to meet the statutory requirements may include printing costs.

3. **What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?** Private persons and consumers may benefit by having access to healthy food options. Consumers may save on cost of travel to retail food stores in neighboring cities. Consumers may pay higher costs for cottage food products compared to retail food sales.
4. **What is the probable effect of the proposed rule on state revenues?** Overall, no increase or decrease in state revenue will occur based on proposed rule.
5. **Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?** No less intrusive or less costly alternative method of achieving the purpose of the proposed rules was identified.