

**ADOPTED REGULATION OF THE  
STATE DEPARTMENT OF AGRICULTURE**

**LCB File No. R088-15**

Effective December 21, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 3 and 5, section 12 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.696 and 587.699); §§2 and 4, sections 11 and 12 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.695 and 587.699).

A REGULATION relating to acidified foods; requiring the State Department of Agriculture to maintain certain information relating to acidified foods on the Internet website of the Department; providing procedures for seeking approval from the Department for certain recipes for acidified foods; providing requirements for modifications to certain recipes for acidified foods; establishing the fees that may be charged by the Department to a producer of acidified foods and a person seeking registration as a producer of acidified foods; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law allows a person to register with the State Department of Agriculture as a producer of acidified foods if the person meets certain requirements. The Department is authorized to charge fees for: (1) registration and renewal of registration; (2) a course of training in basic food safety and the preparation and canning of acidified foods; (3) an examination on the preparation of acidified foods; and (4) any investigation undertaken by the Department as a result of an inspection of the premises of a person registered to produce acidified foods under certain circumstances. (Section 12 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.696)) The Department is also authorized to adopt regulations regarding certain aspects of food preparation required of a craft food operation, including the approval of recipes and pH test meters. (Section 11 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.695)) **Section 2** of this regulation requires the Department to maintain and post on its Internet website a list of pH meters, publications containing recipes for acidified foods and recipes for acidified foods that have been approved by the Department. **Section 3** of this regulation requires the label on a food item produced by a craft food operation to contain the statement "Refrigerate after opening." **Section 4** of this regulation provides a procedure whereby a person may submit a recipe for an acidified food to the Department for approval, and provides that such a recipe is deemed proprietary information and is not to be disclosed except under certain limited circumstances. **Section 4** also provides a list of certain modifications that may be made to an approved recipe for an acidified food without seeking the approval of the

Department. **Section 5** of this regulation sets forth the fees that must be paid to the Department for: (1) registration and renewal of registration as a person registered to produce acidified food; (2) training and examination in the preparation of acidified foods; and (3) an inspection and investigation conducted by the Department of the premises of a person registered to produce acidified foods under certain circumstances.

**Section 1.** Chapter 583 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

**Sec. 2.** *The Department, pursuant to section 11 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.695), will maintain and make available on the Internet website of the Department:*

- 1. A list of pH test meters approved by the Department as suitable for use in the production of acidified foods;*
- 2. A list of publications approved by the Department containing recipes for acidified foods; and*
- 3. A list of recipes approved by the Department for acidified foods.*

**Sec. 3.** *A label which is affixed to a food item pursuant to section 10 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1258 (NRS 587.6945), must include the statement "Refrigerate after opening."*

**Sec. 4.** *1. To be approved by the Department for the purposes of section 11 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.695), a recipe for an acidified food must be:*

- (a) Included on a list of approved recipes or in an approved publication described in subsection 2 or 3 of section 2 of this regulation; or*
- (b) Approved by the Department pursuant to subsection 3.*

*2. Notwithstanding the provisions of subsection 1, in a recipe that calls for vinegar, the vinegar must have an acidity of 5 percent or more.*

*3. A person seeking approval of a recipe for an acidified food pursuant to paragraph (b) of subsection 1 or the modification of a recipe pursuant to subsection 4 must submit in writing to the Department:*

*(a) The recipe or modification, as applicable;*

*(b) Evidence satisfactory to the Department that the recipe or modification meets the requirements of this section and sections 6 to 11, inclusive, of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1258 (NRS 587.691 to 587.699, inclusive); and*

*(c) A letter approving the recipe or modification from a processing authority which is certified by or registered in any jurisdiction of the United States.*

*4. Except as otherwise provided in subsection 5, no modifications may be made to a recipe described in subsection 1 unless the Department approves of the modification, which must be submitted to the Department for approval in the manner provided in subsection 3.*

*5. The following modifications may be made to a recipe described in subsection 1 without seeking approval of the modification from the Department:*

*(a) The form of the primary ingredient or ingredients to be pickled may be altered only to make the ingredient smaller. For example, a whole cucumber can be sliced and used in a recipe for pickle spears, but a whole, unsliced cucumber cannot be prepared according to a recipe for pickle spears.*

*(b) The required water bath canning time may be adjusted for altitude but cannot be shortened.*

*(c) In a recipe that calls for vinegar, the vinegar to water ratio may be altered only by increasing the amount of vinegar.*

*(d) Except as otherwise provided in paragraph (e), not more than two ingredients may be added to a recipe for the purpose of flavoring the acidified food, including, without limitation, a clove of garlic or a pepper, provided that the added ingredient or ingredients will not:*

*(1) Alter the primary ingredient or ingredients significantly; or*

*(2) Change the pH of the recipe.*

*(e) In a recipe that calls for the addition of spice or spices to flavor the primary ingredient or ingredients, the amount of each such spice may be:*

*(1) Reduced or eliminated; or*

*(2) Increased by not more than 50 percent of the amount specified in the recipe.*

*6. A recipe or modification submitted to the Department for approval pursuant to subsection 2 or 3, as applicable, is deemed proprietary information, does not constitute public information and is confidential. The Department shall not disclose such information unless:*

*(a) The disclosure is made for the purpose of a civil, administrative or criminal investigation or hearing; and*

*(b) The person receiving the information represents in writing that protections exist under applicable law to preserve the integrity, confidentiality and security of the information.*

**Sec. 5.** *The Department may charge the following fees:*

- 1. For registration with the Department as a producer of acidified foods, \$50.*
- 2. For the renewal of registration as a producer of acidified foods, \$30.*
- 3. For a course of training provided by the Department in basic food safety and preparation and canning of acidified foods, \$50.*

*4. For an examination administered by the Department on the preparation of acidified foods, \$30.*

*5. For an inspection and investigation conducted pursuant to subsection 5 of section 12 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259 (NRS 587.696), \$60 per hour, plus a mileage fee for any travel required, which must be calculated at the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax that is in effect at the time of the travel.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066**  
**Informational Statement**  
**LCB File No. R-088-15**

**1. A clear and concise explanation of the need for the adopted regulation.**

Required by NRS 587.699 these proposed regulations create a Craft Food Industry that does not presently exist. This is a voluntary business enterprise that will allow individuals to prepare canned acidified food products in their homes and sell the food at farmer's markets and through individual sales.

**2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of Craft Foods, as well as any persons who had specifically requested such notice. There was no public response at the workshop or the hearing. These documents were also made available at the website of the Nevada Department of Agriculture (NDA) [www.agri.nv.gov](http://www.agri.nv.gov), mailed to all county libraries in Nevada and posted at the following locations:

Nevada Department of Agriculture  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431-5566

Nevada Department of Agriculture  
2150 Frazer Avenue  
Sparks, NV 89431

Nevada Department of Agriculture  
2300 McLeod  
Las Vegas, NV 89104-4314

Nevada Department of Agriculture  
4780 E. Idaho Street  
Elko, NV 89801-4672

Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture  
Attn: Anna Vickrey  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431

**3. The number of persons who:**

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: 9/10/2015  
Number in attendance: 1  
Number testifying: 0  
Written statements submitted: 0

Hearing date: 11/18/2015  
Number in attendance: 0  
Number testifying: 0  
Written statements submitted: 0

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

There were no comments submitted either in person or in writing.

**5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Since these regulations create a Craft Food Industry there are no small business currently effected. The adoption of the regulations will allow individuals to prepare canned acidified food products in their homes and sell the food at farmer's markets or through individual sales. Sales are limited in quantity and must be sold by the individual that prepared the food therefore no businesses will be effected. At the hearing and workshop there was no public response to the proposed regulations.

Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture  
Attn: Anna Vickrey, Operations Manager, Food & Nutrition Division  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431

**6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The proposed regulations were written with the assistance of several individuals interested in becoming Craft Food processors. Food safety specialists within the agency also participated to ensure that the methods used would provide for a safe product. No changes were made to the proposed regulations before the adoption.

**7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

**(a) Estimated economic effect on the businesses which they are to regulate.**

These regulations should have a beneficial economic impact. While there is an immediate adverse impact due to the initial fee to train, test and register, becoming a registered Craft Food Processor allows the registrant to sell acidified foods for a profit. The registration will cover a 3-year period allowing for greater profits in the second and third year, thus a long term beneficial effect.

**(b) Estimated economic effect on the public which they are to regulate.**

The public is not regulated by these changes. There is a benefit, both immediate and long term to the public that wishes to purchase locally sourced foods.

**8. The estimated cost to the agency for enforcement of the proposed regulation:**

The testing and permitting fees will cover the costs to the agency and we do not anticipate any additional costs.

**9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

Does not apply.

**10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

Does not apply.

**11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

SB 441 creates a 3-year registration. We anticipate the annual revenue to approximate \$80.00 per registrant for about 100 registrants. The money will be used to offset the Department's costs to train, test and register applicants and to approve recipes. The anticipated revenue will total \$8,000.00.