

**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.