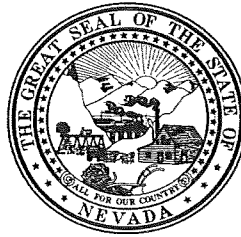


BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director

Las Vegas Office:
2300 McLeod Street
Las Vegas NV 89104-4314
(702) 668-4590
Fax (702) 668-456



Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

MEMORANDUM

TO: Nevada Department of Agriculture Offices
State Capitol Building
State Library and Archives
Dennis Belcourt – AG's Office

FROM: Donnell Barton Division Administrator – 775-353-3625
dbarton@agri.nv.gov Fax Number 775-353-3749

SUBJECT: Posting of Agenda for Hearing on Notice of Intent to Act Upon a Regulation Scheduled for November 18, 2015, at 10:30am

DATE: October 14, 2015

I have attached a copy of the agenda for the Nevada Department of Agriculture Hearing for Notice of Intent to Act Upon a Regulation that will be held on Wednesday, November 18, 2015 at 10:30am

Please post the agenda before 9:00am on October 13, 2015, per *open meeting law* and return this memo to my attention, signed with the date of posting, as I need this for our files.

We appreciate your assistance in this posting.

Thank you.

Distribution: State Capitol Building
State Library and Archives
Dennis Belcourt – AG's Office
Sparks Office – Nevada Department of Agriculture
Las Vegas Office – Nevada Department of Agriculture
Elko Office – Nevada Department of Agriculture
Consumer Equitability – Department of Agriculture

OFFICE: _____

SIGNATURE: _____

DATE & TIME OF POST: _____

MEETING NOTICE AND AGENDA

Public Hearing

Notice of Intent to Act Upon a Regulation

LOCATION: Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
Phone: 775-353-3601

Video-conference to: Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104
Phone 702-668-4590

DATE AND TIME: Wednesday, November 18, 2015, 10:30am

Public comment will be taken on the intent to adopt a regulation. The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 583; *a regulation relating to the regulations to license Craft Food operations; and providing other matters properly relating thereto.*

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify The Dept. of Agriculture in writing at 405 S. 21st Street, Sparks, NV 89431 or contact Jerri Conrad at 775-353-3619.

Copies of both the State of Nevada Board of Agriculture Agenda with supporting documentation and Open Meeting Minutes are available, at no charge, for inspection at the Dept. of Agriculture 405 S. 21st Street, Sparks, NV, 89431 or Dept. of Agriculture website at www.agri.state.nv.us. For additional information contact Jerri Conrad at 775-353-3619.

Notice of this meeting was posted on or before 9:00 a.m. on the third working day before the meeting at the following locations: Nevada Department of Agriculture, 405 S. 21st Street, Sparks, NV 89431, Nevada Department of Agriculture, 2150 Frazer Ave., Sparks, NV 89431, Nevada Department of Agriculture, 4780 E. Idaho Street, Elko, NV 89801, Nevada Department of Agriculture, 2300 McLeod Street, Las Vegas, NV 89104, State of Nevada Capital Building, Carson City NV, State Library and Archives, Carson City.

PROPOSED REGULATION OF THE NEVADA DEPARTMENT OF AGRICULTURE

LCB File No. R088-15

DIVISION OF FOOD AND NUTRITION

NOTICE OF INTENT TO ACT UPON A REGULATION And NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS

The Nevada Department of Agriculture will hold a public hearing on November 18, 2015 at 10:30 am, at Agriculture Headquarters, 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 583 of the Nevada Administrative Code. The proposal has been designated as File No. R088-15 by the Nevada Legislative Counsel Bureau.

The following information is provided pursuant to the requirements of NRS 233B.0603:

The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 583; *a regulation relating to the regulations necessary to license Craft Food operations; and providing other matters properly relating thereto.*

1. These regulations create a Craft Food Industry that does not presently exist. Participation is voluntary and should generate a profit for those who choose to participate.
2. The proposed regulations specify the training, testing, licensing, recipes and other pertinent information required to establish a craft food industry packaging acidified foods.
3. These regulations should have a positive economic impact. While there is a fee to train, test and register, becoming a registered Craft Food Producer allows the registrant to sell acidified foods for a profit.
4. The estimated cost to the agency for enforcement of the proposed regulation. It is estimated that it will cost the Department \$110.00 per registrant. We anticipate fewer than 100 registrants.
5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency. Does not apply.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law. Does not apply
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. Does not apply
8. The proposed regulation establishes a new fee. SB 441 creates a 3 year registration. We anticipate the revenue to be approximately \$3500.00 per year based on about 100 registrants. The money will be used to offset the Department's cost to train, test and register applicants and to approve recipes.

A concerted effort was made to determine the impact of the proposed regulation on small businesses. Division staff determined that this regulation will not have an effect on small businesses.

The LCB approved revision can be found on the Nevada Department of Agriculture website at www.agri.nv.gov.

Persons wishing to comment upon the proposed action of the Nevada Department of Agriculture may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the address below.

Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
ATTN: Donnell Barton
(775) 353-3625
dbarton@agri.nv.gov

Written submissions must be received by the Nevada Department of Agriculture on or before November 13, 2015. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Agriculture may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at:

Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431

Nevada Department of Agriculture
2300 McLeod
Las Vegas, NV 89104

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89445

and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

NRS 233B.064(2) provides: Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

The Nevada State Library in Carson City, and all Nevada county libraries. The Department of Agriculture offices in Sparks, Las Vegas or Elko during the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday.

Clark County Library, 833 Las Vegas Boulevard North, Las Vegas, NV 89101
Douglas County Library, 1625 Library Lane, Minden, NV 89423
Elko County Library, 720 Court Street, Elko, NV 89801
Esmeralda County Library, Corner of Crook & 4th Streets, Goldfield, NV 89013
Eureka Branch Library, 10190 Monroe Street, P.O. Box 293, Eureka, NV 89316
Humboldt County Library, 85 East 5th Street, Winnemucca, NV 89445
Lander County Library, 625 South Broad Street, Battle Mountain, NV 89820
Lincoln County Library, 63 Main Street, Pioche, NV 89043
Lyon County Library, 20 Nevin Way, Yerington, NV 89447
Mineral County Public Library, 110 1st Street, Hawthorne, NV 89415
Pershing County Library, 1125 Central Avenue, Lovelock, NV 89419
Storey County Public Library, 95 South R Street, Virginia City, NV 89440
Tonopah Public Library, 167 Central Street, Tonopah, NV 89049
Washoe County Library, 301 South Center Street, Reno, NV 89501
White Pine County Library, 950 Campton Street, Ely, NV 89301
Nevada State Legislature Website: www.leg.state.nv.us

SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY

NRS 233B.0608

R088-15

1. **A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

- The provisions of SB 441 (2015) and these proposed regulations create a Craft Food Industry that does not presently exist. This is a voluntary business enterprise with minimal costs to provide safety training. Information was available on the website of the Department of Agriculture, www.agri.nv.gov and posted at the following locations:

Department of Agriculture

405 S. 21st Street

Sparks, NV 89431

Department of Agriculture

2300 McLeod Street

Las Vegas, NV 89104

Department of Agriculture

4780 E. Idaho Street

Elko, NV 89801

2. **The manner in which the analyses was conducted.**
 - No analyses was conducted because these regulations do not apply to any existing small businesses.
3. **The estimated economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation:**
 - These regulations should have a positive economic impact. While there is a fee to train, test and register, becoming a registered Craft Food Producer allows the registrant to sell acidified foods for a profit.
4. **A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**
 - Does not apply.

- 5. The estimated cost to the agency for enforcement of the proposed regulation.**
 - It is estimated that it will cost the Department \$110.00 per registrant. We anticipate fewer than 100 registrants.
- 6. If the proposed 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 \$45.00 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.
- 7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**
 - Does not apply.
- 8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**
 - These regulations create a Craft Food Industry that does not presently exist. Participation is voluntary and should generate a profit for those who choose to participate.

I certify that to the best of my knowledge or belief a concerted effort was made to determine the impact of this proposed regulation on small businesses and that the information contained in this statement is accurate.

James R. Barbee

Director

Nevada Department of Agriculture

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
MICHAEL ROBERSON, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
PAUL ANDERSON, *Assemblyman, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

October 12, 2015

Lynn Hettrick, Deputy Director
State Department of Agriculture
405 South 21st Street
Sparks, NV 89431

Re: LCB File No. R088-15

Dear Mr. Hettrick:

The above proposed regulation of the State Department of Agriculture has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Darcy L. Johnson".

Darcy L. Johnson
Senior Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

DLJ/dlc

Enclosure



**PROPOSED REGULATION OF THE
STATE DEPARTMENT OF AGRICULTURE**

LCB File No. R088-15

October 12, 2015

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; §§2 and 4, section 11 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259, and section 12 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1259.

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; providing 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) 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) **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, 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 affixed to a food item pursuant to section 10 of Senate Bill No. 441, chapter 259, Statutes of Nevada 2015, at page 1258, 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, 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;

(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; and

(c) A letter approving the recipe or modification from a processing authority who 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 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, \$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.*