

SB

22

MEMORANDUM

State of Alaska

Department of Environmental Conservation
Division of Environmental Health

TO: Senator Therriault
Heather Brakes
Dave Stancliff

DATE: January 29, 2007

RECEIVED
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FROM: Kristin Ryan, Director

PHONE NO: 907-269-7644

SUBJECT: Senate Bill 22 – request for
information

Below is the information you requested. The Alaska Food Code 18 AAC 31 has a long list of exempted activities. I have selected the portions that are most relevant to discussion of SB 22.

18 AAC 31.012 (3) exempts a bake sale which is the occasional sale to the public for fundraising of packaged jams, jellies, or confections or bakery-type items including fruit or berry pies and cobblers, cakes, cookies, pastries, and breads.

This exemption does not allow the sale of baked goods at events broader than one-time fund raising activities excluding farmers markets. We currently have an arrangement with two markets that allow the sale of baked goods but it requires training we provide free beforehand and oversight by the market organizers to ensure food safety rules are followed.

18 AAC 31.012 (8)&(9) homemade jam, jelly, syrup, herb vinegar, dried herbs, or dried tea leaves, (raw honey) if sold by the individual who prepared the food directly to the consumer at transient occupancy establishment, farmers' market, a roadside stand, or a seasonal event such as a fair or bazaar.

18 AAC 31.012 (11) exempts the sale of raw, whole vegetables and fruit at a farmers' market, roadside stand, or seasonal event.

18 AAC 31.012 (15) exempts the preparation and serving of food by and for members of the groups (meeting or event of private or charitable organization, association or club, party, picnic, potluck, potlatch etc.) When the event is advertised as open to the public with or without charging; it is not exempt.

18 AAC 31.012 (b) basically exempts a commercial food service that has a maximum capacity of 12 and serves 12 individuals or less a day.

Currently, the regulations do not allow for a permitted facility to exist in a home unless it is a bed and breakfast, residential child care facility or assisted living home.

As you can see, the exemption of specific food service activities is highly detailed in regulation. Because of the complexity of exempting activities, DEC would prefer to keep that level of detail in regulation rather than Statute. We have spent the last four years intensely revising the Alaska Food Code to make it more like the FDA model food code. At the time, we considered revising our permitting and exemption sections as well but found that to be too much to take on at once. Once we are adequately implementing the recent changes, I have tasked the program with revising these sections so that they are easier to understand.

We have reviewed a variety of other State programs as a comparison to our own on this topic. The State of Oregon has a permit for small home processors but restricts them to processing only jams, jellies, baked good, salsa, salad dressings and candies. The State of Minnesota has passed legislation to specifically allow the sale of homemade pickles but places significant restrictions on the activity. I have attached a fact sheet about that legislation. The State of Wisconsin discussed similar legislation but from what I understand, it did not pass. We have been unable to find any specific Wisconsin laws that reduce the liability of food processors.

Milk

Finally, you asked what DEC's objections are to the commercial sale of raw milk. As we discussed, the personal consumption of raw milk is perfectly legal and occurs frequently. 18 AAC 32 is Alaska's regulations that define how commercial milk can be processed. These regulations closely follow the U.S. Public Health Service/FDA Pasteurized Milk Ordinance (PMO) which allow the sale of Alaskan processed milk across State lines and to federal agencies such as the military. These regulations also ban the sale of raw milk.

A few of the pathogens known to exist in raw milk included Staphylococcus, Campylobacter, salmonella, E. coli, Listeria, tuberculosis, brucellosis, and Yersina. These pathogens exist naturally in a cow's environment and contaminate the udder and teats. Further, the intrinsic properties of milk, including its pH and nutrient content, make it an excellent media for the survival and growth of bacteria.

In 1987, FDA banned raw milk from interstate commerce. The federal register noted that "raw milk, no matter how carefully produced, may be unsafe." And "It has not been shown to be feasible to perform routine bacteriological tests on

raw milk itself to determine the presence or absence of all pathogens and thereby ensure that it is free from infectious organisms.”

FDA has determined that pasteurization was the only means to assure the destruction of pathogenic microorganisms that might be present. That finding is based on extensive research and epidemiological evidence from the Centers for Disease Control and Prevention (CDC).

Every year, there are multiple documented illnesses associated with the consumption of raw milk, including “certified raw milk.” Research shows no meaningful difference in the nutritional value of pasteurized and unpasteurized milk, leaving FDA to conclude the health risks associated with the consumption of raw milk far outweigh any benefits derived from its consumption.

In the court case *Public Citizen v. Heckler*, 653f. Supp. 1229 (D.D.C. 1986), the federal court concluded that “overwhelming evidence of the risks associated with the consumption of raw milk, both certified and otherwise”. The court stated that the evidence FDA has accumulated concerning raw milk “Conclusively shows that raw and certified milk are unsafe” and “there is no longer any question of fact as to whether raw milk is unsafe”.

Based on the overwhelming evidence raw milk may contain human pathogens, no mechanism to certify raw milk producers has proven to work and that pasteurization removes those pathogens without decreasing the benefits, DEC continues to recommend raw milk not be allowed to be sold in intrastate commerce.

Let us know if you need additional information.



MINNESOTA DEPARTMENT OF
AGRICULTURE

FROM THE FARM TO YOUR FAMILY

**FACT SHEET FOR CERTAIN HOME-PROCESSED AND HOME -CANNED
FOODS**

Dairy, Food & Meat Inspection Division
Minnesota Department of Agriculture
(651) 296-1592

This fact sheet addresses recent legislation (often referred to as the "Pickle Bill") relating to certain home-processed and home-canned foods (Chapter 28A.15 Subd.10). The following requirements relate to this new legislation:

- Products covered by this legislation are pickles, vegetables, or fruits having an equilibrium pH value of 4.6 or lower. See attachment A for information regarding pH and acidity.
- This legislation does **NOT** cover sales of home-canned, low-acid foods such as peas, green beans, beets, or carrots processed by either the use of a boiling water bath or by the use of a home pressure cooker.
- Sales of home-canned foods are limited to a maximum of \$5,000 per year.
- The individual who is selling home-processed or home-canned acid foods under this exemption should have available, upon request of the regulatory authority, documentation of the formulation (recipe) and the equilibrium pH results for the products being sold under this exemption.
- The food products can only be sold at community or social events or farmers' markets located in Minnesota. This includes:
 - county fairs and town celebrationsbut does **NOT** include:
 - craft shows or for profit events and sales to other businesses;
 - interstate or internet sales
 - sales from the home or business
- The seller must display a sign or placard at the point of sale which states:
 - "These canned goods are homemade and not subject to state inspection"
- Each food container must be labeled to include:
 - name and address of the person who processed and canned the goods;
 - date on which the food was processed and canned.
- Persons producing and selling these products are urged to:
 - successfully complete a better process school recognized by the Minnesota Commissioner of Agriculture.
 - have the recipe and manufacturing process reviewed by a person knowledgeable in the food canning industry and recognized by the Minnesota Commissioner of Agriculture as a process authority.

This legislation requires that the home-processed and home-canned foods consists of either an acid food or an acidified food and only applies to pickles, vegetables or fruits. It does NOT apply to adding acid (i.e. vinegar) to pickled eggs, fish or meat, even if the product's final pH is 4.6 or less.

EXAMPLES OF HOME-PROCESSED AND HOME-CANNED FOODS THAT MIGHT BE ALLOWED TO BE SOLD

- The final pH of the food must be 4.6 or less. *Acid foods*¹ are defined as foods that have a natural pH of 4.6 or less and *acidified foods* are defined as low-acid foods to which acid(s) or acid food(s) are added.
- The types of foods that might be allowed under this exemption include, but are not limited to, home-processed or home-canned sweet or dill pickles, tomatoes, salsa, apples, cherries, grapes, plums, peaches, flavored vinegars, and naturally fermented foods such as sauerkraut, pickles and KimChi (a Korean style of fermented vegetables) as long as the final pH is 4.6 or less.

EXAMPLES OF HOME-PROCESSED OR HOME-CANNED FOODS THAT WOULD NOT BE ALLOWED TO BE SOLD UNDER THIS LEGISLATION.

Foods that are home-processed or home-canned that are not pickles, vegetables or fruits

- e.g., home-canned fish, pickled eggs, and meat are not allowed.

Foods that have a pH of 4.6 or greater

- The following foods have a natural pH above 4.6: artichokes, asparagus, beans (lima, string, kidney, Boston style, soy, waxed) beets, broccoli, Brussels sprouts, cabbage, carrots, cauliflower, horseradish, sweet corn, egg plant, mushrooms, peas, most all peppers, potatoes, squash, spinach, and vegetable soups.
- Therefore, these foods are not allowed unless the pH of these foods is reduced to pH 4.6 or less.

Foods that require refrigeration

- Fresh-processed (not canned) foods that require refrigeration such as fresh salsa, pesto, etc. are not allowed

¹ Code of Federal Regulations Title 21 Part 114.3

WHAT ABOUT THE OTHER FARMERS MARKET OR COMMUNITY EVENT EXCLUSION THAT APPLIES TO NON-POTENTIALLY HAZARDOUS FOODS?

This exclusion (Subd. 9) allows individuals to sell home-processed, non-potentially hazardous food at a community event or farmer's market with gross receipts of \$5,000 or less in a calendar year from the prepared food items. It allows homemade foods such as cakes, fruit pies, breads, rolls, lefse and maple syrup made in a person's home as long as the other provisions in the exclusion are met.

INTERNET LINKS THAT PROVIDE ADDITIONAL INFORMATION OF HOME PROCESSING AND HOME CANNING OF FOODS

The following links provide information on home processing and home canning:

USDA Complete Guide to Home Canning

<http://extension.usu.edu/files/foodpubs/canguilb.pdf>

Home Food Preservation

<http://foodsafety.cas.psu.edu/Foodpreservation/resources.htm>

Colorado State Food & Nutrition Fact Sheets

<http://www.ext.colostate.edu/pubs/foodnut/pubfood.html>

Home Canning

<http://southernfood.about.com/od/canning/>

Numerous other links can be found just by typing in "home-canned foods" or "pickles" in a search engine such as Google Search (www.google.com)

Attachment A
FOR EXCLUSION 28A.15 Subd. 10

What is pH?

pH measures the amount of acidity or alkalinity using a numerical scale between 1 and 14. A pH value of 1 is most acidic, a pH value of 7 is neutral and values above 7 are referred to as basic or alkaline.

How is pH measured?

The pH meter is an electronic instrument used to measure pH by the use of an electrode. There are desktop units and pocket size units. The latter would be the unit of choice for most people that are testing their home-processed or home-canned foods because they are smaller and much less expensive (around \$100.00 or less).

Paper strips that measure pH are not that accurate and rely on a color change in the paper. Therefore, paper strips would not be applicable for testing acidified or acid foods.

What is equilibrium pH?

Equilibrium pH is the final pH of a food product after the acidulant (food acid) reaches equilibrium (same pH value) with the food itself. For example, the initial pH of fresh cucumbers in vinegar will not have the same pH as the vinegar until equilibrium has been obtained.

What are the procedures for testing pH?

The equilibrium pH for food products less than 2 months from the date of processing will require that the food sample be finely ground in a blender prior to testing the pH.

For foods with a process date greater than 2 months, the pH may be taken of the brine only since the contents should be in equilibrium.

Who can test for pH?

The pH result(s) could be obtained either by the person who processed the food, if that person is capable of performing an accurate pH analysis, or from a private laboratory that conducted the analysis.

If one pH analysis is being provided by the person under this exemption, that individual should follow the exact recipe and procedures for each batch of food made. This will help ensure a consistent pH similar to the initial one noted in the analysis.

A separate pH test is required for each different product offered for sale under this exemption.

Examples of pH for different foods

dill pickles (pH 2.6-3.8), tomatoes (pH 3.7-4.9), distilled water (pH 7), garlic (pH 5.3-6.3).

Where can one find pH values for common foods?

The pH values for many common foods can be found on the following website:

<http://www.cfsan.fda.gov/~comm/lacf-phs.html>

SB 22 Sale or Donation of Home Food Items

SB 22 hinders the State's ability to fulfill its constitutional responsibility to protect the public's health. Investigating reports of foodborne illness and stopping the sale of unsafe food would not be possible if the suspected product came from a private home or from a "farm."

SB 22 would allow food products, including items such as canned fish, shellfish or unpasteurized cheese, created in a home kitchen or grown on a farm, to be sold in any quantity to the public and distributed through retailers.

SB 22 creates a double standard; individuals selling food will not be regulated, while restaurants selling an identical food will be regulated.

Regulations should be based on protecting the public from health risks, not the identity of the person selling the product.

The Alaska Food Code currently allows low risk activities without a permit.

Under existing regulations, individuals can prepare and sell raw honey, homemade jams, jelly, syrup, herb vinegar, dried herbs, or dried tea leaves directly to consumers at a bed and breakfast, farmers' market, roadside stand, or seasonal event such as a fair or bazaar.

Current regulations also allow individuals to sell raw whole vegetables and fruit in their natural state or rinsed and trimmed.

In addition, existing law allows organizations to sell non-hazardous items baked by individuals at fundraising events or seasonal events such as fairs or bazaars.

CDC reports 25% of foodborne illness caused by food prepared in private home.

The U.S. Center for Disease Control (CDC) estimates that each year 76 million people fall ill, 5,000 die and over 325,000 are hospitalized because of foodborne illness.

In Alaska between 2000 and 2003, there were 43 known outbreaks in Alaska sickening 479 people. At least 27 of these outbreaks originated from home cooking. It is important to remember that underreporting is significant – for every 1 report, there are 25 unreported cases of foodborne illness.

Foodborne illness and the resultant chronic secondary illnesses result in \$6.9 billion dollars annually in medical costs, productivity losses, and the costs of premature death.

SB 22 Sale or Donation of Home Food Items

Food safety regulations require minimum standards that protect public health.

The current regulations, the Alaska Food Code, establish minimum standards developed by the FDA Model Food Code, which is based in science and collaboratively developed by FDA, CDC, industry, and academia, among others.

Under these existing regulations, DEC often permits kitchens that were constructed for under \$1,000. To receive this permit, the operator must simply demonstrate the food product can be prepared safely in the available facility.

As part of the permit process, operators demonstrate their familiarity with processing food safely and keeping their kitchens clean. If an operator does not have an adequate facility, for example the kitchen has wastewater that doesn't drain and may overflow or porous counter surfaces that cannot be disinfected, the operator will not be able to sell food to the public until such issues are resolved.

Food products that are improperly processed, canned, dried, fermented, salted, smoked or vacuum packaged provide an ideal environment for life-threatening bacteria such as botulism, *E. Coli*, *Salmonella*, *Listeria monocytogenes*, etc.

Selling food is a commercial enterprise.

Current Statutes and regulations encourage home food donations to food banks. However, selling food products to the public for profit requires some regulation and a consideration of the risks of the food product being sold.

Existing regulations allow for this process and help ensure only safe food is sold to the public.

Intentional harm with food is rare. A cook is not trying to sicken their customers. Why would

Almost double the number of people die of foodborne illnesses annually than from fire.

Alaskan consumers deserve safe food.

The Alaska Constitution mandates the State protect the health of its citizens.

The causes of foodborne illness and its prevention are well known.

Current law and regulation allow for low-risk food products to be sold from home kitchens.

A high-risk food product should not be sold without some degree of oversight. That the product came from a "home" kitchen does not reduce the risk of serious injury or death to the person who consumes it.