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SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY NRS 223B.0608

**LCB FILE No. R026-21
April 22, 2022**

- 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.**

Notice of the proposed regulations was mailed via the United States Postal Service to 246 entities currently holding licenses for the type of weighing and measuring equipment used in cannabis establishments (scale devices with a capacity of 500 pounds and under tested with a Class II, Echelon II weight kit). Seven notices were returned as undeliverable. In addition, notice of the proposed regulations was sent via email from the Nevada Department of Agriculture (NDA) to 7,026 potentially interested parties. NDA also requested assistance from the Nevada Cannabis Compliance Board (CCB) in providing notice of the regulations. The CCB provided the NDA's notice to approximately 450 points of contact for its licensees; some of these points of contact may have been duplicates of NDA's licensees. All the notices included the website address for an electronic survey and a request that the recipient participate in the survey to assist the NDA in determining the potential impacts of the proposed regulations on businesses in Nevada. An option was offered for recipients to request a hard copy of the survey and/or the text of the regulations be sent to them by mail or email, but the department did not receive any such requests. Notice of the proposed regulations and the survey link were posted to www.agri.nv.gov on March 3, 2022. The survey was open from March 3, 2022, through March 25, 2022.

A total of 56 survey responses were received, though not all respondents answered every survey question. Persons interested in obtaining the survey results and summary may do so by contacting the NDA's Division of Measurement Standards at 775-353-3783 or ce@agri.nv.gov.

Summary of survey responses (total percentages may not equal 100 due to rounding):

- 55 respondents answered the question asking if their business falls within the definition of a small business as defined by NRS 233B.0382. 47 respondents answered "Yes" and eight answered "No".
- There were 41 responses to the question as to whether the changes proposed in LCB R026-21 would impact their ability to business. 20% responded "Yes", 46% responded "No", and 34% responded "Maybe".
- There were 30 respondents to the question asking the level of impact of the proposed changes. 13% responded "No impact", 13% responded "Insignificant impact", 40% responded "Minor impact", 30% responded "Moderate impact", and 3% responded "Major impact." No respondents

indicated that the proposed changes would have a “Severe impact.” When asked to estimate the annual economic impact, 3% of respondents indicated an annual financial impact of more than \$10,000, 13% of respondents indicated an annual financial impact of greater than \$5,000, but less than \$10,000, 30% of respondents indicated an annual financial impact of greater than \$1,000, but less than \$5,000, 30% of respondents indicated an annual financial impact of greater than \$100, but less than \$1,000, 10% of respondents indicated an annual financial impact between \$1 and \$99, and 16% of respondents indicated that there would be no financial impact to their operations.

- LCB File No. R026-21 amends ten existing subsections of Nevada Administrative Code (NAC) Chapter 581. Thirteen survey participants answered question seven, which asked the respondent to identify the Section(s) of the proposed regulations that would have the highest financial impact on their business. Respondents were able to select more than one subsection. Section 1 was selected by 70% of respondents, section 2 was selected by 46% of respondents, section 3 was selected by 54% of respondents, section 4 was selected by 38% of respondents, section 5 was selected by 54% of respondents, section 6 was selected by 38% of respondents, section 7 was selected by 31% of respondents, section 8 was selected by 31% of respondents, section 9 was selected by 46% of respondents, and section ten was selected by 31% of respondents.
- The following are aggregated responses to the survey’s open-ended questions:
 - “How would changes to NAC 581 in LCB File No. R026-21P impact your ability to do business?” Respondents answered: “Increase fees.”, “Unsure.”, “Additional fees/charges add to the mounting cost of cannabis operations at a time when individual facility sales are decreased. This is compounded by the inclusion of count equipment in the proposed regulation. It has also been increasingly difficult to access/communicate with measuring/weighing inspectors as many were furloughed during the pandemic. The inability to consistently contact these professionals costs the facility valuable operating time.”, “- have a standard division for all scales to follow with in a tolerance level to be (.2g for flower, waste,) accuracy.”, “It's another entity that can charge for surprise audits, enforce additional penalties as well as slowing down operations. It may also enforce new regulations on the equipment that mandate us to buy new weighing instruments and incur that cost.”, “Don't know until the regs are implemented. Rest assured, it will have some negative impact on all cannabis businesses.”, “I do not interpret any direct impacts to our business. We already have to get our commerce scales certified by the NV Dept of Agriculture each year, so this seems to just reinforce that practice.”, “The proposed changes do not address the fact that annual permits which expire August 31 of each year are not being issued by the State. The ordinance should be amended to reflect actual operational practices, not just fees and the substitution of the term cannabis weighing devices.”, “Additional expenses. Margins are already very thin for cultivators/product manufacturers.”, “not sure at the moment.”, “Increase of fees will impact a small profit margin”, “More fees equal less profitability”, “it would cost money and take time”, and “It is so long and is so vague it could mean anything”.
 - “Would you need to make operational changes to your business as a result of the financial impact of the proposed changes in LCB File No. R026-21? If so, what would those changes be?” Respondents answered: “I’m not sure”, “unsure”, “Factoring in additional time and labor for the escorting of inspectors at the facilities. Potential loss of

operating/production time to maintain certification/compliance. Budgeting and potential decrease of spending in other areas of the business to accommodate the increased fees/costs.”, “i dont [sic] know.”, “No.”, “N/A.”, “It depends on the qualification of cannabis weighing equipment and any changes to weight regulations, as well as surprise audits.”, “We would not.”, “yes, We need to get our current "counters" certified.”, “Scale certification tracking and monitoring.”, “No.”, “The regulation should reflect the department's practices. Third parties inspect and affix seals certifying scale accuracy, which presently have no expiration dates.”, “Yes we would probably need to lower wages/avoid wage increases/reduce number of staff to offset the increase in costs.”, “No.”, “none.”, “yes the costs keep rising and there is no reason to nickle [sic] and dime each establishment.”, “Maybe as a result of other additional costs like increase in packaging costs, increase in FMV when actual market value is far less than FMV.”, “Unknown.”, “no.”, “none.”, “N/A.”, “Eliminate it and use existing weighing rules for all other products.”, and “No changes needed.”

- “How could the proposed section(s) in LCB File No. R026-21 be adjusted to mitigate their level of financial impact?” Respondents answered: “The cannabis industry does not need any additional fees.”, “Bring the price for scale testing down.”, “Reduce the fees.”, “Fees are fine. Regs should [sic] reflect practices to avoid compliance problems/ regulates [sic] exposure.”, “Reduce fees.”, “Reduce fees.”, “There should not be any fees associated with weighing machines.”, “Don't make the changes.”, “na.”, “N/A.”, and “Remove the section entirely.”
- “Please feel free to provide any feedback you would like us to consider in relation to the proposed changes in LCB File No. R026-21.” Respondents answered: “We already have to pay to have our scales tested by the NDA, I am not sure why we need this annual fee or amendments.”, “Lower fees. Businesses are struggling in the cannabis space and many do not make money.”, “We need less regulation not more.”, “cost to manage program.”, and “This is completely unnecessary and creates a new burden on a heavily burdened society. Existing regulation is sufficient.”

In addition to the survey respondents, one interested party contacted the NDA directly to ask clarifying questions about the proposed regulation and provide additional comments on the proposed regulation.

2. **The manner in which the analysis was conducted.**

A statistical analysis of the survey results was compiled and considered. In addition, the comments received in response to the open-ended survey questions and directly from one interested party were considered.

3. **The estimated indirect and direct economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation:**

(1) Both adverse and beneficial effects; and

(2) Both direct and indirect effects

Small businesses subject to the regulation are estimated to experience direct economic effects between \$50 and \$2,000 for the cost of license fees for weighing and measuring devices not

currently licensed as commercial weighing and measuring equipment and for the cost of staff time to facilitate the agency's inspection of these devices. Additionally, some small businesses subject to the regulation are estimated to experience direct economic effects between \$250 and \$5,000 to replace weighing and measuring equipment currently in use in their establishments that does not meet the requirements of the proposed regulations. These direct economic impacts would be adverse as they would increase the operational costs of the small business.

Some small businesses, which had previously elected to have the agency perform special testing of weighing and measuring devices used for a non-commercial purpose, are estimated to experience direct economic effects between \$25 and \$1,000 as they would no longer need to pay the special test fees charged for such tests. These direct economic impacts would be beneficial as they would decrease the operational costs of the small business.

The agency estimates that there will be no indirect economic effect to small businesses, either beneficial or adverse.

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.

The agency considered modifying the fee(s) set forth in the regulation so that a small business would be authorized to pay a lower amount, thereby reducing the impact of the proposed regulation. However, for the agency to have adequate resources to perform its mandated functions associated with administering the regulations, there would need to be an increased amount charged to non-small businesses to account for the reduced fees collected from small businesses. This would result in one set of cannabis weighing and measuring device owners subsidizing the cost of licensing for another set of cannabis weighing and measuring device owners. The agency found that such a subsidy would be inappropriate. Additionally, the agency's system for recording the licensing of weighing and measuring devices does not allow for a business to be distinguished by size and cannot be programmed to charge a different price for the annual registration of device types of the same classification. For these reasons, the agency did not use this method.

5. The estimated cost to the agency for enforcement of the proposed regulation.
\$7,500.

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.

The agency estimates that approximately 150 weighing and measuring devices are currently in use in cannabis establishments which meet the definition of "cannabis weighing and measuring equipment" established in Senate Bill 404 of the 81st Session of the Nevada Legislature. These devices are not currently licensed by the NDA because they do not meet the definition of commercial weighing and measuring equipment established in NRS 581.0025. The proposed regulation establishes a new fee for annual licensure of cannabis weighing and measuring equipment of \$50 per device. The NDA expects to collect approximately \$7,500 annually for the devices which are currently unlicensed. The NDA will use the money to cover the cost of inspecting and testing of the devices licensed pursuant

to the regulation.

- 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.**

The proposed regulations are not duplicative or more stringent than federal, state, or local standards.

- 8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

Based upon the survey responses received, the agency believes that no small business will experience a severe economic impact and less than seven small businesses will experience a major economic impact because of the proposed regulations. While all small businesses will likely experience a minor adverse economic impact as result of the adoption of the proposed regulation, the agency concludes that the regulations are reasonable and necessary for the agency to perform its statutorily mandated duties.

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

Jennifer Ott
Director
Nevada Department of Agriculture