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

LCB FILE No. R070-22
July 3, 2023

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 and text of the proposed regulations were mailed via the United States Postal Service to 2230 individual business that may be affected by the regulation changes. Twelve notices were returned as undeliverable. In addition, a notice and a link to the text of the proposed regulations were sent via email to 7,441 interested parties (of which 575 were opened, 157 clicked on a link in the email, 28 email addresses could not be delivered, and 1 person unsubscribed). The notice included the website address for an electronic survey and a request that the recipient participate in the survey to assist the Nevada Department of Agriculture (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 be sent to them by mail or email, though the department did not receive any such requests. Notice of the proposed regulations and the survey link were posted to www.agri.nv.gov. The survey was open from November 10, 2022, through December 16, 2022.

A total of 23 responses were received, though not all respondents answered every survey question. 20 of those respondents answered 'Yes' to Question 1, which asked if the respondents business fell under the definition of a small business as defined by NRS 233B.0382 (a business with fewer than 150 employees). 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:

- There were 18 respondents to question 2, which asked whether the changes proposed in LCB R070-22 would impact their ability to do business, and responses were split, with 28% responding "Yes", 44% responding "No", and 28% responding "Maybe."
- There were 12 respondents to question 4, which asked for an estimate of the annual financial impact question (percentage does not total to 100 due to rounding). 8% of respondents indicated that there would be an annual financial impact of between \$10,001 and \$15,000, 8% of respondents indicated an annual financial impact of between \$5,001 and \$10,000, 8% of respondents indicated an annual financial impact of between \$1,001 and \$5,000, 25% of respondents indicated an annual financial impact of between \$100 and \$1,000, 8% of respondents indicated an annual financial impact of between \$1 and \$99, and 42% of respondents indicated that there would be no financial impact to their operations.

- There were 13 respondents to question 5, which asked the level of negative impact. 0% of the survey respondents stated the proposed changes will have a severe or major impact on their business, 46% stated that there would be a moderate impact, 8% stated that there would be a minor impact, 8% stated that there would be an insignificant impact, and 38% stated that there would be no impact.
- There were four respondents to question 7, which asked the respondent to identify the section of LCB R070-22 which would have the most financial impact on their business. Two respondents each cited Section 1 (which adopts by reference National Conference on Weights and Measures (NCWM) Publication 14) and Section 9 (which sets the effective dates if this file is approved by the Legislative Commission and filed with the Secretary of State). One respondent cited Section 2 (which revises where certain standards that have been adopted by reference can be obtained and how they may be purchased) and one respondent cited Section 4 (which increases the fees for various inspections and tests of certain scale devices, linear devices and meter devices).
- Survey questions 3, 6, 8, and 9 asked open-ended questions:
 - There were 10 respondents to question 3, which asked, “How would changes to NAC 581 in LCB R070-22P impact your ability to do business?” The responses included, “Referencing Proposed Nevada Legislative Counsel Bureau File # R070-22, Section 2, the copies should be available at no charge to RSAs and bonafide, licensed Nevada businesses at no additional charge or benefit to the National Conference on Weights and Measures. Nevada should follow other States’ lead in re-writing the publications to meet Nevada’s requirements. Section 4, clause 2 inspection fees, where increased, are acceptable and reasonable. I object to the new references to the National Conference on Weights and Measures, Publication 14, as NCWM is a for-profit organization that does not need or deserve to receive income from being referenced for mandatory use by a Nevada State Bureau and State RSAs and businesses. Publication 14 should be available for copy at no charge to RSAs and businesses with brick and mortar presence inside the State of Nevada,” “We have to do business daily,” “increases cost of doing business which affects my bottom line,” “We have so many annual fee’s (sic) and required testing, the cost is hard on a small business,” “Costly fees, the potential of costly future equipment upgrades to be in compliance, additional time and focus will be needed when inspections are conducted, time and effort preparing for inspections, potential out of compliance fines, etc.,” “no impact,” “Creates further limitations and concerns to our clients located in Nevada who may not hire our company to complete the calibration due to cost increases. It’s as though our organization is no longer acknowledged as a licensed servicer,” “It will not effect (sic) it,” “Eliminates communication for people to help certify scales, potentially (sic) would require a new traceable scale,” and “No perceived impact.”
 - There were 8 respondents to question 6, which asked, “Would you need to make operational changes to your business as a result of the financial impact of LCB R070-22? If so, what would those changes be?” The responses included, “Yes. Purchase a copy of NCWM Publication 14, review it for requirements and compliance, write SOPs to add, change, or write completely new procedures. Purchase new standards to comply with changes to NIST handbook 105, rewrite SOPs to comply with the new versions of NIST Handbook 105,” “Not sure of any changes at this point,” “any and all expenses affect my

ability to pay overhead,” “minor financial impact no changes needed,” “Expansion of our California service area and limit Nevada customers,” “no”, “Unsure at this time,” and “No.”

- There were 3 respondents to question 8, which asked, “How could the proposed section(s) in LCB R070-22 be adjusted to mitigate their level of negative financial impact?” The responses included, “See previous comments,” “the state of nevada (sic) should not be in the certify scales business. Leave that to the private sector. Sell all associated equipment and let go employes (sic),” and “I don't have any suggestions for this.”
- There were 3 respondents to question 9, which asked, “Please feel free to provide any feedback you would like us to consider in relation to the proposed changes to NAC 581.” The responses included, “See previous comments mostly relating to NCWM Publication 14 being incorporated as part of the revisions to NAC 581. If Nevada desires to use this verbiage, then hire a technical or legal writer to incorporate those concepts and ideas into a Nevada State authored document, and not from an organization that have (sic) been proven to constantly revise their publications annually during junkets to exotic locations, only to be financed by private industry forced to accept their frivolous additions and changes to their rules and publications,” “again leave it to the private sector,” and “One thing that has been annoying to us is that scale inspection stickers no longer include a date. Cattle buyers have complained about this.”

2. The manner in which the analysis was conducted.

A statistical analysis of the survey results was compiled and considered. Survey respondents were asked whether the proposed changes in R070-22 would impact their ability to do business, and how they would be impacted; the estimated amount of annual economic impact on their business and the level of impact, ranging from “no impact” to “severe impact,” that these changes would cause; and if these changes would require the business to make operational changes. Finally, participants were invited to offer suggestions on how negative financial impacts might be mitigated.

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.

The following is a summary of the proposed regulatory changes and amendments in LCB File R070-22:

Section 1 adopts by reference NCWM Publication 14. Sections 2 and 3 revise where certain standards that have been adopted by reference can be obtained and how they may be purchased. Section 3 also eliminates the adoption by reference of the Uniform Open Dating Regulation, as set forth in National Institute of Standards and Technology (NIST) Handbook 130.

Section 4 increases the fees for various inspections and tests of certain scale devices, linear devices and meter devices. Existing regulations authorize the State Sealer of Measurement Standards to enter

an agreement with the owner or operator of a standard or device to determine the fee charged for testing devices or standards not listed on the schedule of fees, testing standards from out of State or testing which requires special arrangements. Section 5 of this regulation removes this authorization.

Section 6 requires weighing or measuring devices and certain accessories to be traceable to an active certificate of conformance. It also authorizes the use of types that are not traceable to an active certificate of compliance if the type was in use before January 2, 1995, and subsequently passes certain tests, or the type does not have the evaluation procedures published in NCWM Publication 14 or the type is a one-of-a-kind device without a National Type Evaluation Program (NTEP) pending inspection and performance. Section 6 defines “type” to mean a model of a particular system of measurement that positively identifies the design, defines a “participating laboratory” as a laboratory authorized to conduct certain type evaluations, and defines “one-of-a-kind device” as a device designed to meet unique demands which is not commercially available.

Section 7 of this regulation revises the standards that must be certified and the schedule for certification.

Section 8 of this regulation eliminates the requirement that notification of repair or adjustment to a measuring device be made within 24 hours but maintains the requirement that a person who installs or makes repairs or adjustments to a weighing or measuring device submit written notification to the State Sealer of Measurement Standards within 5 days if the device is used for commercial purposes.

Section 9 of this regulation revises the standards that must be certified and the schedule for certification.

Small businesses subject to the amendments and additions proposed in this regulation are estimated to experience direct economic effects 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. However, as regulations have not yet been promulgated for these devices (specifically, Electric vehicle supply equipment (EVSE)), it is very difficult at the present time to estimate the monetary amount of those effects. Many small businesses will see little to no economic effect, especially if they are not affected by the condition described in Section 6. Some small businesses subject to the regulation are estimated to experience direct economic effects up to \$500 and a few may experience direct economic effects up to \$1,000 because of fee increases for inspections and tests of certain devices. These direct economic impacts would be adverse as they would increase the operational costs of the small business.

Some small businesses may experience indirect beneficial economic effects. Currently, if that business uses a process that is not under the authority in NAC Chapter 581, a separate, additional step to determine product weight may be necessary before a product may be sold. New authority gained by amending NAC 581 may serve to eliminate the additional step, improving efficiency and providing

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economic benefit to the business. The agency estimates that there will be no indirect adverse economic effect to small businesses.

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.

Because of the nature of the proposed regulations, there was little that could be done to reduce any impact on small businesses. Many of the proposed regulation changes allow for the NDA to inspect and certify devices that are currently not traceable to an active certificate of conformance. Most significantly, this includes devices that are considered ‘one-of-a-kind’ and as such do not have an NTEP pending inspection and performance evaluation. Currently, NDA does not have authority to inspect and certify these types of devices. An important example are EVSEs (also known as Electric Vehicle (EV) charging stations), which are rapidly increasing in number in Nevada. There is no single type of charger, and there is not yet an NTEP certification for EVSE. At the same time, it is important to guarantee that EVSE’s are held to the same standards in the marketplace as liquid fuels dispensers.

Adopting these regulation changes will have significant benefit to the consumer and may result in benefits and increased efficiencies for the regulated businesses. For example, if a manufacturer is producing a weighable product in a process that is not currently covered by the authority in NAC Chapter 581 the product must be weighed in a separate, additional step before being sold. These regulations could serve to eliminate the additional step, providing benefit to the business. Guaranteeing that an EVSE user is receiving the full charge that they are paying for is a second example.

As the NDA continues through the regulatory adoption process required under the Nevada Administrative Procedure Act, it will consider any other methods to reduce the impact on small businesses.

5. The estimated cost to the agency for enforcement of the proposed regulation.

The NDA anticipates limited increased costs to enforce the amended provisions of NAC 581. An EVSE test measure, used to certify an EV charging station, requires annual certification at a cost of approximately \$2,000. That cost would be multiplied if more test measures are purchased as the number of charging stations statewide continues to increase. There may be additional costs to the agency in the form employee time used for additional testing, fuel costs for travel to new devices for testing, and possible retesting, and the cost to purchase additional testing equipment as that becomes necessary. This cost is difficult to estimate at this point in the rulemaking process.

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 proposed regulation does not directly provide for a new fee, but it will both increase the number of devices under the authority of the NDA and it also will make increases to several existing fees collected by the agency.

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Regarding the additional devices to be certified, it is difficult to estimate how many more devices would now be included in annual inspections. As previously mentioned in this document, a prime reason for this regulatory action is the increasing number of EV charging stations in Nevada. The NDA has not adopted regulations for the testing of EV charging stations yet but has purchased an EVSE test measure and begun a study to assess the details of testing a charging station. This information will be used in the future, along with input from industry stakeholders, to produce fair and reasonable regulations and fees for these devices.

Regarding increases in existing fees, these are proposed to bring the NDA Metrology Laboratory fee structure and recertification schedule more in line with other state laboratories in the region. Based on the number of standards handled by the lab in FY2020 and FY2021 that will be affected by the fee increase, the additional amount collected is expected to be approximately \$7,500. This additional money will be used as part of the Division of Measurement Standards budget.

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.

The NDA concludes that the additional authority and updates will have a relatively minor impact, both financially and to the operation of small businesses that are already regulated under NAC Chapter 581. While a few respondents anticipated more significant impacts, 75% of respondents anticipated annual costs of no more than \$1,000 annually. However, the proposed regulations will bring additional businesses under the authority of NAC Chapter 581. The NDA expects that the effect on these newly regulated businesses to be relatively minor as well.

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.

J. J. Goicoechea, DVM
Director
Nevada Department of Agriculture