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**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
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Lisa Sherych
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Chief Medical Officer

SMALL BUSINESS IMPACT STATEMENT 2023

PROPOSED AMENDMENTS TO NAC 439 THROUGH LCB FILE NO. R035-22P

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to Nevada Administrative Code (NAC) Chapter 439, relating to hemp, should have no adverse effect upon a small business or impact the formation, operation or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes NRS 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

This small business impact statement is made pursuant to NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

Background

The Nevada Department of Health and Human Services is putting forth proposed changes (LCB File No. R035-22) to Nevada Administrative Code (NAC) Chapter 439. The change is a result of Senate Bill 114 (2021) and SB204 (2019) passed by the Nevada Legislature. Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from Retail Food Establishments.

SB209 and SB114 revise provisions related to food production in Nevada. The provision allows approved hemp products to be added ingredients in food products. Further, it defines "approved hemp component" to mean any component of hemp that the United States Food and Drug Administration has determined to be safe for human consumption.

The bill revises various provisions of existing law concerning hemp and the operation of food establishments at which food is not prepared or served for immediate consumption for the purpose of authorizing food that contains an approved hemp component to be produced or sold at such a food establishment under certain circumstances. The bill require that the product derived from hemp meet the following conditions.

- (1) Is approved and determined by the United States Food and Drug Administration to be safe or generally recognized as safe for use as an ingredient in food intended for human consumption;
- (2) Has been tested by an independent testing laboratory certified by the Department of Taxation under the provisions NRS 453A.368 and NAC 453A.650 through NAC 453A.678, inclusive;
- (3) Is manufactured in accordance with state and federal law and regulation, and the regulations adopted by reference in Section 19; and,
- (4) Is labeled in a manner that is not false or misleading and is in accordance with the applicable provisions of Chapters 446 & 585 of NRS and federal law.

The rule further ensures that a commodity or product containing hemp will be adulterated if it contains:

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- (1) THC in excess of the limit allowed by federal law;
- (2) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 or is approved for use by the United States Environmental Protection Agency is present in the product at a level which exceeds the level specified by the State Department of Agriculture or Environmental Protection Agency; or
- (3) any other ingredient or additive or has been produced or handled in a manner which renders it adulterated per the state and federal laws and regulations applicable to that commodity type, including but not limited to the provisions set forth in NRS Chapter 585.

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.

Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health (DPBH) requested input from all Nevada-licensed food establishments.

A Small Business Impact Questionnaire, along with a copy of the proposed regulation changes, was sent by email to 1,503 state of Nevada licensed food establishments on August 9, 2022. DPBH also requested the information be sent out by all local Health Authorities: Carson City Health and Human Services (96 firms), Washoe County District Health Department (2,471 firms), and Southern Nevada Health District (12,558 firms).

The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect on your business?
- 3) Will the regulation(s) have any beneficial effect on your business?
- 4) Do you anticipate any indirect adverse effects on your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

The survey was posted on August 4, 2022, as online survey to the website of the [Environmental Health Section Trending Health Topics](#).

Individuals had the option to complete the survey online or mail, fax or email the completed form on or prior to Tuesday, September 22, 2022, to:

Teresa Hayes, Environmental Health Program Manager
Regulatory and Planning Section
500 Damonte Ranch Parkway #657A
Reno, NV 89521
Phone Number: (775) 546-5530
Email Address: thayes@health.nv.gov

Summary of Response

Out of the small-business impact questionnaires sent out when the questionnaire was distributed, two (2) responses were received.

Summary Of Comments Received

Two (2) responses were received out of 16,628 small business impact questionnaires distributed.

Will a specific regulation have an adverse economic effect upon your business?	Will the regulation (s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes: 0	Yes: 1	Yes: 0	Yes: 0
No: 2	No: 1	No: 2	No: 2
No Response: 0	No Response: 0	No Response: 0	No Response: 0

2) Describe the manner in which the analysis was conducted.

An online small business impact survey was distributed via email and posted publicly on the DPBH website, as described above. All questionnaire responses were conducted via the web, and none were received via email, fax, or mail. The proposed regulations, as well as existing regulations, were reviewed. The EHS analyzed the information from the questionnaire to determine if the proposed regulation had an impact on small businesses or if it was existing regulations that had an impact on small businesses. This statement was prepared by the EHS Manager

A Public Workshop will be held on Wednesday March 1, 2023 to continue to obtain feedback on the proposed regulations.

3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

None of the respondents believe the regulations will have an adverse economic impact on their business.

4) Provide 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 Division of Public and Behavioral Health has held several opportunities for the public to provide input and comments regarding the proposed regulations, including the economic impact the proposed regulations may have on the public. Modifications to the proposed regulations have been made as a result of this input. A Workshop will be held on Wednesday March 1, 2023, allowing for further input by retail regarding the proposed regulations and how they will impact the firms. **These comments will be taken into consideration for possible further revisions to the regulations to reduce the economic impact on facilities.**

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

There is no direct cost to the agency for enforcement of the proposed regulations.

6) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount DPBH expects to collect and the manner in which the money will be used.

The proposed regulations do not provide for a new fee or increase any existing fee.

7) An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

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

8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.


In summary, the proposed regulations (LCB File No. R035.22) to Nevada Administrative Code (NAC) Chapter 439. The change is a result of Senate Bill 114 (2021) and SB 204 (2019) sessions of the Nevada Legislature, and will not cause an adverse financial impact on the program or on small businesses. The regulations clarify how hemp can be used in a food product.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Teresa Hayes at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
500 Damonte Ranch Parkway, Suite 657
Reno, NV 89521
Teresa Hayes
Phone: (775) 546-5530
Email: thayes@health.nv.gov

Certification by Person Responsible for the Agency

I, Lisa Sherych, Administrator of the Division of Public and Behavioral Health, certify to the best of my knowledge or belief a concerted effort was made to determine the impact of the proposed regulation on small businesses, and the information contained in this statement was prepared properly and is accurate.

Signature  Date: 02/07/2023