

LCB File No. R007-04

PROPOSED REGULATION OF THE HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES

Italicized type is new and will be added to the regulation. Type with a {parentheses} will be deleted from the regulation. Other type is existing in the regulation.

Annual permits for food establishments and Plan review fees for food establishments

NAC 446.830 Fees for annual permits and other services. (NRS 439.150, 439.170, 439.200, 446.940) The health division of the department of human resources shall charge and collect fees for annual permits and other services in accordance with the following schedule, except as otherwise provided in NRS 576.128 and except in areas where the laws and regulations governing food establishments are administered by local health authorities:

Table with 2 columns: Main Facilities, Fees. Rows include: For a restaurant, establishment for drinking, main kitchen, bar for beer, snack bar, concession, service bar, portable food unit or buffet. For the first 40 seats. Plus \$1.50 for each additional seat. For a restaurant which provides food to take out. For each window of a drive-in or service station. For a food establishment that has been exempted pursuant to NRS 446.870. For a caterer. For a Bed and Breakfast kitchen. For a kitchen at a school meeting the definition of a school in NAC 444.56812. For a kitchen in a jail, prison, or other county or state operated correctional facility. For a kitchen in a child care facility serving more than 10 individuals.

Supporting Facilities Fees

For a special kitchen, kitchen for the preparation of banquets, kitchen for a bakery, kitchen for the preparation of meat, pantry for a kitchen, garde-manger for cold meat or buffet having an area of:

500 square feet or less.....	\$115
More than 500 square feet.....	\$130
Portable bars, annual fee for each.....	\$ 85
<i>Barbeque.....</i>	<i>\$ 110</i>
<i>Kitchen operated by a religious, charitable or non-profit organization (pantry/kitchen only) &lt; 500 square feet.....</i>	<i>\$ 115</i>
<i>Kitchen operated by a religious, charitable or non-profit organization (pantry/kitchen only) &gt; 500 square feet.....</i>	<i>\$ 130</i>

Wholesale or Retail Services for Food Fees

For a market, a service providing candy, package liquor, health food, dry storage, meat, poultry, seafood, refrigerated storage, storage of produce or bakery sales, a food warehouse or a market for produce which has an area of:

Less than 1,000 square feet.....	\$ <del>115</del> 150
1,000 - 3,000 square feet.....	\$ <del>180</del> 210
3,001 - 5,000 square feet.....	\$ 230
More than 5,000 square feet.....	\$ <del>280</del> 300

Wholesale or Retail Processors of Food Fees

For a plant for bottling, processing plant for food, market for meat, processing plant for game, bakery, plant for ice, delicatessen or processing plant for candy which has an area of:

Less than 1,000 square feet.....	\$ <del>115</del> 150
1,000 - 3,000 square feet.....	\$ <del>180</del> 210
3,001 - 5,000 square feet.....	\$ 230
More than 5,000 square feet.....	\$ <del>280</del> 300
For a temporary food establishment, per unit.....	\$50
<i>For a temporary food establishment, per unit operated by a religious, charitable or non-profit organization not on its own premises.....</i>	<i>\$25</i>
<del>For a food processing establishment for each package submitted for a review of its label .....</del>	<del>\$ 25</del>
For a food processing establishment for each label reviewed.....	\$ <del>5</del> 70
For the testing of food products at a food processing establishment.....	Actual costs

**NAC 446.835 Fees for reviewing plans.** The health division shall charge and collect the following fees for reviewing plans for food establishments, except in areas where the laws and regulations governing food establishments are administered by local health authorities:

For a plan for a new establishment..... \$100  
 Plus an amount equal to the fee for an annual permit for the establishment  
 being reviewed.  
 For a plan for remodeling an establishment which has a permit.... 100  
 Plus an amount equal to one-half of the fee for an annual permit for the  
 establishment after remodeling.

**NAC 446.840 Fees for mobile units and servicing depots.** The health division of the department of human resources shall charge and collect fees for its services in accordance with the following schedule, except in areas where the laws and regulations governing the sanitation of mobile units and servicing depots are administered by local health authorities:

For an annual permit for each mobile unit for food and drink, self-service mobile unit, including a self-service mobile unit for ice cream and candy, or a servicing depot..... \$ ~~100~~ 125  
 For reviewing plans of a mobile unit, a self-service mobile unit, or a servicing depot.....\$ ~~100~~ 155  
 For reviewing plans for remodeling a mobile unit, a self-service mobile unit, or a servicing depot which has a permit.....\$ ~~60~~ 135

**BED AND BREAKFAST FACILITIES**

**NAC 446.850 Applicable requirements.**

1. A bed and breakfast facility which exceeds the capacity of 10 persons must comply with the provisions of NAC 446.845 to 446.860, inclusive, and all the requirements of NAC 446.050 to 446.625, inclusive *and NAC 446.830*, which are applicable to its operation.
2. If, in the opinion of the health authority, an imminent hazard to the public health will not result, a bed and breakfast facility which does not exceed the capacity of 10 persons and which does not fully comply with all the requirements of NAC 446.050 to 446.625, inclusive, may operate if the preparation and service of food are restricted and deviations from full compliance are covered by the provisions of NAC 446.845 to 446.860, inclusive.

*Certificate of free sale for food manufacturing/processing plants*

*446.XXX “Certificate of Free Sale” means a certificate issued by the health division to document compliance with NAC 446.010 to 446.960, inclusive.*

*446.XXX Fee for certificate of free sale.....\$20*

## SMALL BUSINESS IMPACT STATEMENT

### **Amendments to Fees by the Bureau of Health Protection Services Contained in Nevada Administrative Code (NAC) 446.**

PROPOSED AMENDMENTS TO EXISTING REGULATIONS provide for fee increases to allow the Bureau of Health Protection Services (BHPS), a bureau within the State Health Division to recover the new and increased costs associated with issuing annual permits and reviewing plans for food establishments.

This is the Small Business Impact Statement required under Nevada Revised Statutes (NRS) 233B.0608 and 233B.0609. A small business is defined in Nevada Revised Statutes (NRS) 233B.0382 as a "business conducted for profit which employs fewer than 150 full-time or part-time employees." **This statement only applies to businesses meeting the aforementioned definition.**

The State Board of Health's (SBOH) policy in addressing fees for business operators regulated under its authority is to minimize the impact by having fees decreased where possible and increased where necessary in a graduated schedule based upon actual cost of performing work.

The proposed amendments NAC 446 will change fees associated with permits and plan reviews for food establishments. Annual permit fees for food establishments will increase from \$115 to \$150 for the first 40 seats plus \$1.50 for each additional seat and for each window of a drive-in from \$30 to \$55. Annual permit fees for a caterer will increase from \$115 to \$125. New fees for a kitchen in a bed and breakfast, a school, and a jail, prison or other correctional facility is \$50; a new annual permit fee for a kitchen in a child care facility serving more than 10 individuals is \$25 for a kitchen in a school. A permit fee for a barbeque will be \$110, for a kitchen operated by a religious, charitable or non-profit organization of less than 500 square feet is \$115, and of greater than 500 square feet is \$130. Fees for wholesale or retail services for food increase from \$115 to \$150 for an area of less than 1,000 square feet, \$180 to 210 for 1,000 to 3,000 square feet, \$280 to \$300 for more than 5,000 square feet. A new fee for temporary food establishments operated by a religious, charitable or non-profit organization not on its own premises is \$25. A fee of \$70 per label will be charged for reviewing a label for a food processing establishments. Fees for mobile units will be increased as follows: for an annual permit from \$100 to \$125; for reviewing plans from \$100 to \$155; and for reviewing remodeling plans, from \$60 to \$135. A new fee for a "certificate of free sale" will be charged at \$20 per certificate.

### **Background**

The Health Division receives no funding from the federal government for the purposes of administering the regulations pertaining to food programs. Funding for this purpose is appropriated by the Nevada State Legislature. However, this State funding does not cover the actual costs by BHPS performing these statutory responsibilities. To meet this funding shortfall, the Nevada State Legislature has historically required that regulated entities pay an annual permit fee to the BHPS. In State Fiscal Year 04 (July 1, 2003 - June 30, 2004) and State Fiscal Year 05 (July 1, 2004 - June 30, 2005), the Legislature has budgeted a fee increase of approximately \$104,000 to merely cover the existing level functions performed by this section of BHPS.

The proposed amendments are necessary to provide additional supplemental funding for the BHPS. The impact to operators of food establishments will be an increase in their permit costs and better service due to environmental health specialists being better equipped and better trained.

**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.**

Letters were sent to all affected establishments as well as those known interested individuals and local health authorities advising them of the potential fee changes and providing notice of public workshops. Copies of the proposed amendments will be posted at the Health Division's web site. Public workshops will be held in October 2003; copies of proposed amendments will be provided to those individuals and businesses, which have requested direct service.

Interested persons may obtain a list of the recipients and a summary of written responses to the solicited comments by contacting Kinley Goodman, Supervisor EHS, BHPS, 1179 Fairview Dr., Ste 101, Carson City, NV 89701 or by calling (775) 687-6353, extension 261, after August 30, 2003.

**2. 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.**

**Direct Adverse and Beneficial Effects**

A possible direct adverse effect may be that some small businesses may experience increased costs for permits, and for plan reviews of proposed or remodeled. A beneficial direct effect is that establishments will be provided with better equipped and better trained environmental health specialists that conduct their plan reviews and inspections.

The estimated direct and indirect beneficial economic effects of the proposed fee changes on affected small businesses cannot be quantified. The direct beneficial effect cannot be determined. The overall indirect effect of the proposed fees will provide adequate funding for better protection of the health and safety of the public by providing better equipped and better trained inspectors, thereby decreasing the risk to public health and subsequently decreasing associated medical costs, pain and suffering, and a negative impact on local economies that could result.

**Direct and Indirect Costs**

The estimated direct adverse economic effect of the proposed fee increases on establishments is not expected to be large and will primarily occur in the plan review process and the annual permits for establishments. Indirect costs may be incurred by the customers of those establishments in that the costs might be passed through rates/fees for service or products. Costs would be determined on a case-by-case basis.

**3. A description of the methods that BHPS considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.**

**In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (1), the agency shall consider simplifying the proposed regulation.**

This fee proposal does not propose new regulations for compliance other than creation of some new fees as described above. The impact of these fee increases on small businesses has been minimized or eliminated to the extent possible. New fees are implemented, or existing ones increased in those areas where BHPS has experienced or expects increased activity and, therefore, increased costs.

**In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (2), the agency shall consider establishing different standards of compliance for a small business.**

This fee proposal does not propose new regulations for compliance.

**In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 (2)(b)(3), the agency shall consider modifying a fee or fine set forth in the regulation so that a small business is authorized to pay a lower fee or fine.**

The use of per seat fees is built into the fees of food establishments. Thereby the smaller establishments will pay a smaller fee than the larger establishments. The fee is based upon actual time and effort spent by staff conducting the oversight of the environmental health program.

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

The estimated cost to the agency for enforcement of the proposed regulation is minimal and will be handled through the existing administrative process.

**5. Total amount BHPS expects to collect from any fees and the manner in which the money will be used.**

The total amount of revenue expected to be collected from this fee proposal is estimated at \$686,245 (\$1,590), an increase of about \$178,835 (1,470) over existing revenue.

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

The proposed fee changes do not overlap or duplicate any federal, state or local regulations.