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INFORMATIONAL STATEMENT
LCB File No. R079-20

(a) A clear and concise explanation of the need for the adopted regulation.

Nevada Revised Statutes (NRS) 561.153 provides that the Director of the State Department of Agriculture may prescribe by regulation fees to cover costs of providing certain services, products or publications and may adopt such procedures as they deem appropriate for the billing and collection of such fees. NRS 581.030 establishes the Director of the State Department of Agriculture as ex officio State Sealer of Equitability. NRS 581.050 provides that the State Sealer of Equitability may adopt regulations necessary to carry out the provisions of NRS chapter 581. NRS 582.021 provides that the State Sealer of Consumer Equitability shall adopt reasonable regulations for the enforcement of NRS chapter 582. NRS 581.075 provides that the State Sealer of Equitability may establish a schedule of fees for any tests of weighing and measuring devices that the State Sealer of Consumer Equitability determines to be necessary; and that the State Sealer of Consumer Equitability may establish an annual license fee for all commercial weighing and measuring equipment. NRS 582.021 provides that the State Sealer of Consumer Equitability shall adopt reasonable regulations for the enforcement of NRS chapter 582. The need for and the purpose of the proposed regulations and amendments is as follows:

Sec. 2 and 3. This addition is necessary to allow the Division of Consumer Equitability (DCE) to maintain accurate records of holders of commercial weighing and measuring equipment in this state; and, to recover the costs to re-inspect devices when they have been moved to a new location.

Sec. 4 - 7. These sections are needed to update the address of the NDA office in Sparks, to add information for the internet website where a person may access National Institute of Standards of Technology (NIST) Handbooks 44, 105-series, 130 and 133 free of charge, to update the name and address of the entity from which hard copy versions of these NIST Handbooks may be purchased, and to update the purchase price for these NIST Handbooks to the current cost charged by the publisher.

Sec. 8. – The addition of certain tests, inspections and services identified in this section is necessary to allow DCE to recover the costs incurred to perform the tests, inspections and services directly from those businesses which are out of compliance with established standards; to allow for DCE to recover costs incurred to perform tests at a time other than that which would be most efficient for the agency; to reduce fees for certain retests or re-inspections which do not require a follow-up trip to be more reflective of the actual cost to the agency to perform the retest or reinspection; to establish a separate fee for DCE witness testing of devices as a separate fee from that which is charged when DCE is performing the test as a more equitable method by which to charge this fee because it does not include cost recovery for equipment or materials which are not being used; and, to establish a fee for time spent by DCE for

the re-inspection and/or retesting of packaged commodities, labels, advertised prices or commodity method of sale. The addition of this fee is necessary to allow DCE to recover the costs incurred to perform the re-tests and re-inspections directly from those businesses which are out of compliance with established standards.

Sec. 9. Adds certain systems, products and commodities to the list of tests, inspections and services for which certain additional fees for special tests or inspections may be charged. The addition of this fee is necessary to allow DCE to recover the costs incurred to perform the re-tests and re-inspections directly from those businesses which are out of compliance with established standards; revises the increments of time for which certain fees may be charged from hourly to fifteen-minute time periods or portions thereof and revises the fees charged for time from \$60 per hour to \$15 per fifteen-minute time period or portion thereof. The purpose of this change is to more accurately reflect and charge for time spent conducting re-tests and re-inspections. By reducing the time increment for which fees are charged, many businesses subjected to the fee will incur lower costs; eliminates the limitation on charging the fees established pursuant to this section on trips made within a minimal distance from the base of the inspector or within the same metropolitan area as the inspector. The purpose of this change is to eliminate an inequity between rural and urban business owners, whereby rural business owners are subject to fees which urban businesses are not. These fees are only charged to businesses found to be out of compliance with standards and regulations and the application of fees to only those businesses which are outside of inspector base locations unfairly exempts business owners in urban areas from paying the full amount necessary for the agency to recover the costs.

Sec. 10. - 11. Clarifies that DCE will reinstate a suspended license for commercial weighing and measuring equipment when the device passes reinspection or is otherwise approved for use by the State Sealer of Consumer Equitability. This clarification is necessary to allow for reinstatement of a license for a device which has been approved for use pursuant to the conditions added under Section 13 of this proposed regulation.

Sec. 12. Revises the fee schedule for annual licensing of commercial weighing and measuring equipment and specifies that license fees are non-refundable and shall not be prorated. The current fees do not provide for adequate recovery of the agency's costs to license and perform an inspection of the device as required by NAC 581.285 Subsection 2. (b). The purpose of the proposed fees is to recover a greater percentage of the costs incurred to license the devices and perform the inspections associate with such licensing, so that DCE has sufficient funding to sustain its operations.

Sec. 13. Authorizes a waiver of DCE inspection of a weighing or measuring device which has been repaired or adjusted following being tagged as in need of repairs or out of order, provided that sufficient evidence is submitted to DCE to give reasonable assurance that the device complies with the provisions of NIST Handbook 44 and allows the State Sealer of Consumer Equitability to approve and cause such devices to be marked as approved for use. This is necessary to eliminate a disincentive for device owners to have their equipment routinely maintained by a Registered Service Agent basis because they are currently required to have a re-inspection following any adjustment of the device, which would subjects the device owner to the fees established in NAC 581.210 and 581.220. This revision also addresses an issue which has been of particular concern to livestock and other large-capacity scale

owners due to the high cost of having a service agent perform adjustment or repairs to their scales following a DCE inspection which found the scale out of compliance and then have to pay a fee to DCE to re-test the device solely for the purpose of applying a state seal to the device.

Sec. 14. Establishes a period of validity for a public weighmaster license. The purpose of this addition is to clearly establish the date on which a public weighmaster license expires.

Sec. 15. Establishes a fee for late renewal of a public weighmaster license. The purpose of this addition is to serve as a deterrent to late renewals and to recover the administrative costs of processing late applications.

Sec. 16. Repeals NAC 582.020, eliminating the requirement that a public weighmaster file a faithful performance bond in the amount of \$1,000 with the State Sealer of Consumer Equitability. The purpose of this change is to remove the requirement for a bond which the agency has no record of ever having taken action to collect against from any public weighmaster and which may serve as a barrier to entry for small businesses who wish to perform public weighing. The agency has the authority to issue civil and criminal penalties to public weighmasters who act in violation of the provisions of NRS chapter 582 and believes these are sufficient mechanisms by which to hold public weighmasters accountable for such actions.

(b) Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in the subject of motor fuels and petroleum products, as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Agriculture (NDA) www.agri.nv.gov, at the website Nevada Public Notice Website www.notice.nv.gov and were provided to all county libraries in Nevada and posted at the following locations:

Nevada Department of Agriculture	Nevada Department of Agriculture
405 South 21 st Street	2150 Frazer Avenue
Sparks, NV 89431	Sparks, NV 89431

Nevada Department of Agriculture	Nevada Department of Agriculture
2300 E. St Louis Avenue	4780 E. Idaho Street
Las Vegas, NV 89104	Elko, NV 89801

A workshop was held on December 8, 2020 and the recording and minutes of that meeting contain the complete details of the workshop discussion. Persons attending the workshop sought clarification on applicability of the fees, expressed concern about the economic impact of the fees on their small business, and sought clarification on the provisions related to noticing to the agency of change of ownership and/or change of address for weighing and measuring devices for devices being removed from service.

A public hearing for the adoption of the regulations was held on January 19, 2021. Persons attending the workshop sought clarification on the provisions related to noticing to the agency of change of ownership of a weighing and measuring device in instances where more than one individual has ownership of the device.

Interested persons may obtain a copy of the recording and/or minutes of the December 8, 2020 workshop and the January 19, 2021 public hearing by contacting:

Nevada Department of Agriculture
 Division of Consumer Equitability
 Attn: Brett Fisher, Administrative Assistant III
 405 South 21st Street
 Phone: 775-353-3783
 Email: ce@agri.nv.gov

- (c) **The number of persons who:**
 - (1) **Attended each hearing:**
 - (2) **Testified at each hearing:**
 - (3) **Submitted written comments:**

Workshop date: December 8, 2020

Number in attendance: 18
 Number testifying: 2
 Written statements submitted: 0

Hearing date: January 19, 2021

Number in attendance: 15
 Number testifying: 1
 Written statements submitted: 0

- (d). **A list of names and contact information, including telephone number, business address, business telephone number, electronic email address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency is listed below.**

December 8, 2020 workshop attendees:

Name	Entity or Organization	Address	Business Telephone	Email Address
Cadence Matijevich	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3726	c.matijevich@agri.nv.gov
L. Kipp Blauer	Nevada Department of Agriculture	2300 East St. Louis Ave. Las Vegas, NV 89104	702-668-4540	kblauer@agri.nv.gov
Dustin Redus	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3784	dredus@agri.nv.gov

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James Kellames	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3788	jkellames@agri.nv.gov
Brandon Harmon	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3720	bharmon@agri.nv.gov
Brett Fisher	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3783	bafisher@agri.nv.gov
Rebecca Allured	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3603	ra llured@agri.nv.gov
Carrie Ridgel	The Office Boss	None Provided	None Provided	None Provided
Bob Roll	Nevada Cinderlite	None Provided	None Provided	None Provided
Mr. Gopal	India Market and Café	None Provided	None Provided	None Provided
Jared Kupcak	Nevada Cement	None Provided	None Provided	None Provided
Joshua Ahuna	Moen	None Provided	None Provided	None Provided
Mima Ruacho	C Markets	None Provided	None Provided	None Provided
Peter Krueger	Nevada Petroleum Marketers and Convenience Store Association	1575 Delucchi Lane, Suite 201 Reno, NV 89502	775-622-9665	peter@fuelingnevada.com
J. Seavcy	Caesar's	None Provided	None Provided	None Provided
Robby Singh	Singh Market	None Provided	None Provided	None Provided
Rebecca Stortell	Penyoer Fams, LLC	None Provided	None Provided	None Provided
Maggie Miller	Cardenas Markets	None Provided	None Provided	None Provided

January 19, 2021 hearing attendees:

Name	Entity or Organization	Address	Business Telephone	Email Address
Cadence Matijevich	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3726	c.matijevich@agri.nv.gov
Brett Fisher	Nevada Department of Agriculture	405 S. 21 st Street Sparks, NV 89431	775-353-3783	bafisher@agri.nv.gov
Brandy Fierros	Treasure Island	None Provided	None Provided	None Provided

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Jay Haines	Old Dominion Freight Line	None Provided	None Provided	None Provided
Jim Motsinger	Interstate Oil	None Provided	None Provided	None Provided
Kevin Cann	Kenna Metal	None Provided	None Provided	None Provided
Kristi Leddy	Las Vegas Paving	None Provided	None Provided	None Provided
Letty Elias	Euphoria Wellness	None Provided	None Provided	None Provided
Shawn Moe	Las Vegas Paving	None Provided	None Provided	None Provided
Gary Thurstin	Southwest Energy	None Provided	None Provided	None Provided
Chris Rast	Oak Harbor Freight	None Provided	None Provided	None Provided
Steve Turner	Old Dominion Freight Line	None Provided	None Provided	None Provided
Dennis Cigliaio	Ridley's Family Markets	None Provided	None Provided	None Provided
Brian Rockstool	Rockstool Farms	None Provided	None Provided	None Provided
Sandra Tiffany	GWGA, LLC	None Provided	702-596-8075	sandratiffany@aol.com

(e) A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

A survey was conducted of small businesses that would potentially be affected by the regulation. The survey was available for completion online or in hard copy form. Notice of the survey was mailed via the United States Postal Service to 2,303 commercial weighing and measuring device owners. The survey was open for response from October 16, 2020 through October 30, 2020. A total of 68 survey responses were received.

Interested persons may obtain a copy of the summary of the small business survey by contacting:
Nevada Department of Agriculture
Division of Consumer Equitability
Attn: Brett Fisher, Administrative Assistant III
405 South 21st Street
Phone: 775-353-3783
Email: ce@agri.nv.gov

(f) The regulation was adopted without changing any part of the proposed regulation. Comments provided from affected businesses did not contain any requested or recommended changes.

(g) The estimated economic effect of the regulation on the business which it is to regulate and on the public.

Estimated economic effect on the businesses which they are to regulate

1) Both adverse and beneficial effects

Adverse: Businesses using weighing and measuring devices as commercial weighing and measuring equipment will incur higher costs for the licensing and testing of such equipment. Businesses in violation of the provisions of NRS chapter 581 and NAC chapter 581 who were not previously subject to fees for re-inspection and re-testing when they were found to be out of compliance will incur new costs.

Beneficial: The additional fees collected by the Division of Consumer Equitability will be utilized to purchase new/replacement equipment that will allow it to respond to service requests from business more quickly and to perform inspections more efficiently and/or effectively. Such inspections may identify devices that are out of tolerance to the detriment of the business owner. Waiver of inspections under certain circumstances will reduce costs for certain weighing and measuring device owners and will remove a disincentive for device owners to routinely have their devices serviced and adjusted.

2) Both immediate and long-term effects

Immediate: The majority of proposed the regulation is intended to be effective upon adoption, so businesses would be immediately subject to any resulting effects.

Long-term: The revised fees in Section 11, which represent the most significant economic impact to businesses, are proposed to be effective as of July 1, 2022.

Estimated Economic effect on the public

1) Both adverse and beneficial effects

Adverse: If businesses subject to the new or increased fees included in the regulations choose to pass along the increased costs to their customers the public would pay more for the goods and services provided by such businesses.

Beneficial: The imposition of fees for re-inspection for violations of regulations concerning point-of-sale systems, labeling, packaged commodities, method of sale, and advertised prices and price representations may result in fewer violations of these regulations. Increased compliance will benefit the public as a consumer group.

2) Both immediate and long-term effects

Immediate: The proposed regulations are not anticipated to have an immediate effect on the public.

Long-term: Should the owners of commercial weighing and measuring equipment, point-of-sale systems, and packaged commodities choose to pass along to their customers any increased cost of conducting business resulting from the fee amounts included in the proposed regulations, the public will incur higher costs for certain goods and services.

Cost recovery by the agency will increase the level of support available to the public to confirm the proper operation of commercial weighing and measuring equipment, the receipt of proper quantities in packaged products, and that they are charged the accurate price for goods at the point of sale.

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

The agency does not anticipate that its ongoing costs to enforce the proposed revised provisions of NAC 581 and NAC 582 will increase as result of the proposed regulations. The agency anticipates one-time costs of approximately \$1,500 to print and mail a notice of the revised regulations to all commercial weighing and measuring device owners following adoption of the regulation.

- (i) A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**

The proposed regulations do not duplicate federal, state or local standards. The Packers and Stockyards Program (PSP) of the United States Department of Agriculture enforces the Packers and Stockyards Act, 1921, which requires that each stockyard owner, market, agency, dealer, packer or live poultry dealer who weighs livestock, live poultry, or feed for purchases of purchase, sale, acquisition, payment or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnished scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations in the act at least twice during each calendar year at intervals of approximately 6 months. An exception is granted if scales are used on a limited seasonal basis (during any continuous 8-month period) that the scales may be used during within an 8-month period following each test. The test performed by the DCE in association with the annual registration of a livestock scale serves to satisfy one test for those device owners subject to the PSP six-month inspection cycle and may, depending upon timing of the inspection within an 8-month period, entirely satisfy the PSP testing requirement for those scales which are used on a limited seasonal basis.

- (j) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

N/A

- (k) If the 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.**

Sections 8, 9 and 12 of the proposed regulations increase existing fees and establish new fees.

The agency estimates the amounts collected annually from the fees included in this regulation will total \$1,703,791 in Fiscal Year 2021, \$1,809,413 in Fiscal Year 2022 and \$2,264,260 in Fiscal Year 2023. The increase in total amounts collected in Fiscal Year 2023 is attributed to the increase in fees in Section 12 of the proposed regulation, which become effective July 1, 2022. The fees will be used to fund the operational costs of the Division of Consumer Equitability's weights and measures, registered service agent, and public weighmaster programs, including personnel, operations, equipment and vehicle expenses.