

**ADOPTED REGULATION OF THE  
STATE BOARD OF HEALTH**

**LCB File No. R007-04**

Effective April 7, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-4, NRS 439.150 and 439.200; §§5-7, NRS 439.150, 439.170 and 439.200.

A REGULATION relating to food establishments; authorizing the Health Division of the Department of Human Resources to issue a certificate of free sale to a manufacturer, producer or seller of food to verify compliance with the provisions of chapter 446 of NAC and chapter 446 of NRS; revising and establishing fees required, under certain circumstances, to be charged and collected by the Health Division for certain services provided to food establishments, annual permits to operate certain food establishments, mobile units and servicing depots and reviewing certain plans of mobile units and servicing depots; and providing other matters properly relating thereto.

**Section 1.** Chapter 446 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2.** *“Food establishment” has the meaning ascribed to it in NRS 446.020.*

**Sec. 3. 1.** *A holder of a permit issued pursuant to this chapter or chapter 446 of NRS may apply to the Health Division for a certificate of free sale. The application must be submitted on a form approved by the Health Division and include:*

*(a) The full name and post office address of the applicant;*

*(b) A statement concerning whether the applicant is a natural person, firm or corporation and, if a partnership, the names of the partners, together with their addresses; and*

*(c) The signature of the applicant or applicants.*

*2. Upon receipt of an application for a certificate of free sale and the fee required pursuant to subsection 4, the Health Division shall determine whether the applicant is in compliance with the provisions of this chapter and chapter 446 of NRS. If the Health Division determines that the applicant is in compliance with the provisions of this chapter and chapter 446 of NRS, the Health Division may issue a certificate of free sale to the applicant.*

*3. A certificate of free sale issued pursuant to this section is not transferable from person to person or from place to place.*

*4. The Health Division shall charge and collect \$20 for each certificate of free sale.*

*5. As used in this section, "certificate of free sale" means a certificate issued by the Health Division which verifies compliance with the provisions of this chapter and chapter 446 of NRS.*

**Sec. 4.** NAC 446.010 is hereby amended to read as follows:

446.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 446.0105 to 446.038, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 5.** NAC 446.830 is hereby amended to read as follows:

446.830 *1.* 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:

Main Facilities	Fees
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 .....	<del>[\$115]</del> \$155
Plus \$1.50 for each additional seat.	
For a restaurant which provides food to take out.	
For the first 40 seats .....	<del>[115]</del> 155
Plus \$1.50 for each additional seat.	
For each window of a drive-in or service station .....	<del>[30]</del> 55
For a food establishment that has been exempted pursuant to NRS 446.870 .....	50
For a caterer.....	<del>[115]</del> 125
<b><i>For a food establishment within:</i></b>	
<i>A bed and breakfast facility.....</i>	<i>50</i>
<i>A charter school, private school or public school .....</i>	<i>50</i>
<i>A correctional facility .....</i>	<i>50</i>
<i>A child care facility.....</i>	<i>25</i>

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>Barbecue</i> .....	<i>110</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> <b>\$150</b>
1,000 - 3,000 square feet .....	<del>[180]</del> <b>210</b>
3,001 - 5,000 square feet .....	230
More than 5,000 square feet .....	<del>[280]</del> <b>300</b>

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> <b>\$150</b>
1,000 - 3,000 square feet .....	<del>[\$180]</del> <b>210</b>
3,001 - 5,000 square feet .....	230
More than 5,000 square feet .....	<del>[\$280]</del> <b>300</b>
For a temporary food establishment, per unit .....	50
For a <del>food processing establishment for each package submitted for a review of its label</del> <i>temporary food establishment which is operated by a religious, charitable or other nonprofit organization if the sale of food from the establishment occurs off the premises of the organization, per unit</i> .....	<del>25</del> <b>25</b>
For a food processing establishment , for each label reviewed.....	<del>[\$5]</del> <b>70</b>
For the testing of food products at a food processing establishment .....	Actual costs

**2. As used in this section:**

*(a) “Bed and breakfast facility” has the meaning ascribed to it in NAC 446.845.*

*(b) “Charter school” has the meaning ascribed to it in NRS 385.007.*

*(c) “Child care facility” means an establishment licensed pursuant to chapter 432A of NRS to provide care for 10 or more children.*

*(d) “Correctional facility” means any local detention facility, county jail, state prison, reformatory or other correctional center, including, without limitation, any facility for the detention of juvenile offenders, operated by or under the supervision of the State or a subdivision of the State for the custody, care or training of offenders.*

*(e) “Private school” has the meaning ascribed to it in NRS 394.103.*

*(f) “Public school” has the meaning ascribed to it in NRS 385.007.*

*(g) “Religious, charitable or other nonprofit organization” means a corporation for public benefit as defined in NRS 82.021.*

**Sec. 6.** NAC 446.840 is hereby amended to read as follows:

446.840 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.....	<del>[\$100]</del> \$125
For reviewing plans of a mobile unit, a self-service mobile unit, or a servicing depot .....	<del>[100]</del> 155
For reviewing plans for remodeling a mobile unit, a self-service mobile unit, or a servicing depot which has a permit .....	<del>[60]</del> 135

**Sec. 7.** NAC 446.850 is hereby amended to read as follows:

446.850 1. A bed and breakfast facility which exceeds the capacity of 10 persons must ~~comply~~ :

(a) *Comply* with the provisions of NAC 446.845 to 446.860, inclusive, and all the requirements of NAC 446.050 to 446.625, inclusive, which are applicable to its operation ~~and~~ ;  
*and*

(b) *Pay the applicable fees pursuant to NAC 446.830.*

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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R007-04**

The State Board of Health adopted regulations assigned LCB File No. R007-04 which pertain to chapter 446 of the Nevada Administrative Code on February 27, 2004.

**Notice date:** On or before 1/27/2004  
**Hearing date:** 2/27/2004

**Date of adoption by agency:** 2/27/2004  
**Filing date:** 4/7/2004

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested parties may obtain a copy of the summary.**

Letters were sent to all food establishments, food processing plants, bottling plants, wholesalers and retailers of food, and to mobile units for food and drink, who are currently permitted by the state. Copies of the proposed amendments were posted at the Health Division's web site. Notices were published in 8 newspapers throughout the state and posted at public libraries and Bureau of Health Protection (BHPS) offices. Public workshops were held in September 2003 and another was held on in Carson City and Las Vegas on October 28, 2003. Copies of proposed amendments will be provided to those individuals and businesses, which had requested direct service.

To date, only one specific response was received on this proposed fee increase from a commenter in Carson City, who indicated that he thought the local health department could take care of these types of responses.

Interested persons may obtain a list of the recipients and a summary of written responses to the solicited comments by contacting Cardy Hanson, Administrative Assistant, Environmental Health Division, BHPS, 1179 Fairview Dr., Ste 101, Carson City, NV 89701 or by calling (775) 687-4750, extension 261

- 2. The number of persons who:**
- (a) Attended the hearing;**
  - (b) Testified at each hearing; and**
  - (c) Submitted to the agency written comments.**

On December 12, 2003, the State Board of Health meeting was held in Las Vegas and via videoconference to Carson City.

- a. No one from the public attended the hearing regarding this proposed amendment.
- b. No one from the public testified at the hearing.
- c. No one submitted to the agency any written comments.



- 3. 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.**

Comments were solicited from businesses and the general public as indicated in the response to Question 1, so the response to this requirement is the same.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted without change. There were not proposals for changing the proposed fees, so there are no reasons for changing the proposed fees.

- 5. The estimated economic effect of the regulation on the business, which it is to regulate, and on the public. These must be stated separately, and in each case must include:**
  - (a) Both adverse and beneficial effects; and**
  - (b) Both immediate and long-term effects.**

#### **Adverse and Beneficial Effects**

Direct adverse effects are not known, other than these proposed fees are for services performed by the Health Division involving food. The beneficial effect of this fee is to ensure that the annual inspections of these establishments are performed as required through statute, and that adequate numbers of trained staff are available to perform these functions. This also provides for the support of one additional full time employee to allow for section activities to be performed timely as scheduled and to follow-up on nuisance complaints as swiftly as possible.

The direct and indirect beneficial economic effects of the proposed fee changes on affected small businesses cannot be quantified. The estimated direct adverse economic effect of the proposed fee increases on small businesses, although unknown, is not significant.

#### **Immediate and long-term effects**

The immediate effect of the proposed fees will be that adequate funding for better protection of the health and safety of Nevada residents and tourists by providing adequate oversight to food establishments and to ensure that they are inspected regularly and efficiently and the public health is protected. The long-term effect is to improve the public's perception of Bureau responsiveness to complaints and to provide increased safety with respect to these types of establishments.

- 6. The estimated cost to the agency for the 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.

- 7. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the**

**duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, name the regulating federal agency.**

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

- 8. The regulation includes provisions, which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.**

This section does not apply. These fees are relevant only to a statutory and budget requirements proscribed by the Nevada State Legislature.

- 9. 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.**

The total amount of new fee revenue expected to be collected from this fee proposal is estimated at \$132,208. The fee will be used to recover costs of one additional full time Environmental Health Specialist as approved by the Nevada Legislature's Interim Committee, January 26, 2004. A portion of these new fees (\$42,650) will not be realized until after the biennial budget process as these agencies are a part of the executive branch of government, therefore they will be implemented July 1, 2005.