



NRS 237 BUSINESS IMPACT STATEMENT PROPOSED 2023 FOOD REGULATIONS

SECTION A - A DESCRIPTION OF THE MANNER IN WHICH COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION OF THE MANNER IN WHICH OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY

Comment was solicited in the following ways:

1. The Business Impact Survey notification was emailed to 12,269 Environmental Health food establishment permit contacts.
2. The Business Impact Survey notification was faxed and/or emailed to the following jurisdictions for posting at their offices: Henderson City Hall, Boulder City's City Hall, Mesquite City Hall, North Las Vegas City Hall, Las Vegas City Hall, Clark County Manager's Office, and Laughlin Community Resource Center.
3. The Business Impact Survey notification was mailed or emailed to the following associations: Korean American Chamber of Commerce LV, Las Vegas Asian Chamber of Commerce, Boulder City Chamber of Commerce, Henderson Chamber of Commerce, Las Vegas Metro Chamber of Commerce, Las Vegas Wedding Chamber of Commerce, Latin Chamber of Commerce, Laughlin Chamber of Commerce, Spring Valley Chamber of Commerce, Urban Chamber of Commerce, Women's Chamber of Commerce, Dairy Council of Nevada, Nevada Food Safety Task Force, Nevada Hotel and Lodging Association, Nevada Mobile Vendors Association, Nevada Restaurant Association, Nevada Resort Association, and the Retail Association of Nevada.
4. The Business Impact Survey notification was emailed to individuals that have previously expressed interest in Environmental Health notifications.
5. SNHD held three Listening Sessions, in-person and via WebEx, on September 9 and September 15, 2022, to gather data and comments from the public.

During the comment period ending on September 16, 2022, the Health District received 22 survey responses. Ten respondents said that the proposed 2023 Food Regulations would have no impact on their business.

See Exhibit A for a summary of business impact statement responses.

Questions	Yes Responses	No Responses
Will the proposed 2023 Food Regulations impose a direct and significant economic burden upon your business?	8	14
Do you anticipate any indirect economic effects to your business as a result of the 2023 Food Regulations?	8	14
Will the proposed 2023 Food Regulations have an estimated beneficial economic effect on your business?	2	20
Will the proposed 2023 Food Regulations directly restrict the formation, operation, or expansion of your business?	6	16

The Business Impact Statement and Summary is available at 280 South Decatur Boulevard, Las Vegas, Nevada, or a copy may be viewed online at: www.snhd.info/public-notice.

SECTION B - THE ESTIMATED ECONOMIC EFFECT OF THE PROPOSED RULE ON THE BUSINESSES WHICH IT IS TO REGULATE, INCLUDING, WITHOUT LIMITATION:

Adverse Effects:

- There is a size limitation proposed for food vendors of 100 square feet. Current regulation has no size limit. Food vendors larger than the allowable size will have the option to pull additional permits which will come with an additional cost.
- Current regulation allows time/temperature control for safety (TCS) food to be held at 45°F for up to 72 hours. The proposed regulation requires all TCS food to be held at 41°F or below. The economic impact will be in the form of discarded food and the cost of downgrade fees if food is found in the temperature danger zone. To be compliant, an operator may utilize Time as a Public Health Control which incurs a cost for labeling materials and labor.
- Each food establishment is required to have a person in charge (PIC) that is a Certified Food Protection Manager (CFPM) unless the health authority determines that the operation poses a minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation. This requirement was added to the Nevada Administrative Code (NAC) 446.052 in 2013. It could potentially impact food establishment operators who choose to cover the cost of testing and training, which is approximately \$180

- online.
- The assignment of "Priority" and "Priority Foundation" designations to specific violations in the regulations may lead to increased downgrades/closures.
 - Annual itinerant and farmer's market operators will be required to utilize hand sinks that meet the American National Standards Institute (ANSI) sanitation standard.

Beneficial Effects:

- Under the new regulations, a Change of Permit Holder (CPH) inspection may pass with 15 demerits or less whereas currently, they must pass with 10 demerits or less. This will result in a beneficial impact due to fewer failed inspection fees and less downtime for businesses. The closure fee is \$909.
- Fewer waivers related to ventilation hoods, restrooms, portable units, grease interceptors, and lift stations will be required under the revised regulations. Each waiver application is subject to a \$150 processing fee and may incur additional per hour charges depending on the complexity. Based on the average submission rate of 16 new plan review waivers per month over the last five years, the expected savings to businesses over the next five years is \$147,000.
- By expanding the type of foods allowed to be sold by open-air vendors, some permit holders will be able to convert their Annual Itinerant health permits to the less expensive permit type of Portable Unit saving between \$286-\$617 per permit depending on the menu.
- Satellite areas will no longer require installation of a three-compartment sink if one is located within 600 feet of the use area, subject to certain conditions. Three-compartment sinks cost approximately \$700, which does not include installation costs.

Direct Effects:

- The regulation does not impose new fees on businesses.
- The passing of the regulations may have additional direct effects; however, those effects cannot be quantified at this time.

Indirect Effects:

- If a food establishment has an identical repeat critical or major violation on consecutive unannounced inspections, they are automatically downgraded under the current regulation. Under the proposed regulation, a facility will be downgraded if there are repeat critical/priority violations on consecutive unannounced inspections. This will result in fewer low-demerit downgrades which can negatively impact business reputations.
- Certain individuals, such as registered environmental health specialists (REHSs), are no longer required to obtain Food Handler Safety Training

cards.

- The passing of the regulations may have additional indirect effects; however, those effects cannot be quantified at this time.

SECTION C - A DESCRIPTION OF THE METHODS THAT THE GOVERNING BODY OF THE LOCAL GOVERNMENT OR ITS DESIGNEE CONSIDERED TO REDUCE THE IMPACT OF THE PROPOSED RULE ON BUSINESSES AND A STATEMENT REGARDING WHETHER THE GOVERNING BODY OR ITS DESIGNEE ACTUALLY USED ANY OF THOSE METHODS

- Due to the impact on businesses based on the 100 square feet size limitation on temporary food establishment permits, SNHD has agreed to increase the limitation to 200 square feet for food vendors and 400 square feet for vendors who sell only beverages.
- Due to the impact on annual itinerant, farmer's market, seasonal, and portable units for the service of food (PUSF) operators based on the 100 square feet size limitation, the size limitation has been increased to 200 square feet.
- Industry expressed concerns regarding the requirement that TCS foods be held at 41°F or less per the FDA Model Food Code. Since the current regulation allows TCS food to be held at 45°F for up to 72 hours, SNHD has agreed to compromise and allow TCS food to be held at 45°F for up to 24 hours.
- Each food establishment is required to have a PIC that is a CFPM unless the health authority determines that the operation poses a minimal risk of causing or contributing to foodborne illness based on the nature of the operation and extent of food preparation. SNHD has agreed not to require a CFPM for low-risk food establishments or temporary food establishments.
- SNHD has agreed to remove the designation "Priority" and "Priority Foundation" for specific violations.

SECTION D - THE ESTIMATED COST TO THE LOCAL GOVERNMENT FOR ENFORCEMENT OF THE PROPOSED RULE

There will be no additional enforcement costs based on the proposed regulation.

SECTION E - IF THE PROPOSED RULE PROVIDES A NEW FEE OR INCREASES IN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE LOCAL GOVERNMENT EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED

There are no new fees or fee increases with the proposed regulation. The proposed regulation will have no effect on EH division revenue.

SECTION F - IF THE PROPOSED RULE 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

Not applicable.

SECTION G - THE REASONS FOR THE CONCLUSIONS REGARDING THE IMPACT OF THE PROPOSED RULE ON BUSINESSES

SNHD has concluded that approval of the proposed 2023 Food Regulations is not likely to impose a direct and significant economic burden upon businesses or directly restrict the formation, operation, or expansion of businesses because there are few substantive changes that would impose additional costs. Additionally, some changes will actually result in cost savings to businesses. Burdens on industry have been reduced with the mitigation measures SNHD has implemented that are described in Section C. The proposed regulations do not create new fees or increase existing fees for Environmental Health services.

Pursuant to NRS 237.090, the Board of Health (BOH) will hold a PUBLIC HEARING considering this Business Impact Statement in-person at 280 South Decatur Boulevard and/or virtually on Thursday, October 27, 2022, at 9:00 a.m. The BOH will review and consider approval of the proposed 2023 Food Regulations at a PUBLIC HEARING on Thursday, November 17, 2022, at 11:00 a.m. in-person at 280 South Decatur Boulevard and/or virtually.

I, Christopher Saxton, certify that, to the best of my knowledge or belief, the information contained in the statement was prepared properly and is accurate:

-S-
Christopher Saxton, MPH-EH, REHS
Director of Environmental Health

9/22/2022
Date

Exhibit A

Summary of Business Impact Statement Surveys/Comments Proposed 2023 Food Regulations

Comment Period: August 12, 2022, through September 16, 2022

Number of Surveys = 22

Will the proposed 2023 Food Regulations impose a direct and significant economic burden upon your business?

Yes = 8 Respondents

No = 14 Respondents

Estimated Monetary Impact = \$200 - \$1,000 Per Food Establishment

- One respondent estimated an impact of \$20,000 due to being unable to keep food at 41°F or lower and needing a ServSafe or equivalent person in charge onsite for each shift. This is a reasonable estimate based on 60 locations.
- One respondent estimated an impact of \$35,000 due to variables in regulation interpretation and changes in procedures to be compliant with the regulations. SNHD is unable to evaluate the response due to lack of details provided by the respondent.
- One respondent estimated an impact of \$20,000 without specific reasons. SNHD is unable to evaluate the response due to lack of details provided by the respondent.
- One respondent estimated an impact of \$150,000 due to upgrades required by new regulations. SNHD is unable to evaluate the response due to lack of details provided by the respondent.
- One respondent estimated an impact of \$10,000 due to Covid-19 and inflation. Covid-19 and inflation have no bearing on the proposed 2023 Food Regulations.

Will the proposed 2023 Food Regulations directly restrict the formation, operation, or expansion of your business?

Yes = 6 Respondents

No = 16 Respondents

Will the proposed 2023 Food Regulations have an estimated beneficial economic effect on your business?

Yes = 2 Respondents

No = 20 Respondents

Estimated Monetary Impact = \$150 - \$5,000

Do you anticipate any indirect economic effects to your business as a result of the proposed 2023 Food Regulations?

Yes = 8

No = 14

Estimated Monetary Impact = \$0 - \$3,000

- One respondent estimated an impact of \$12,000 due to replacing out of temperature food. If the food cannot be replaced due to supply issues, then the business may lose customers. Current regulations require replacement of out of temperature food and SNHD cannot evaluate supply chain issues.
- One respondent estimated an impact of \$35,000 due to an increase in water use and water rates. SNHD is not aware of any updates to the regulations that would require an increase in water usage.
- One respondent estimated an impact of \$150,000 due to upgrades required by the new regulations. SNHD is unable to evaluate the response due to lack of details provided by the respondent.
- One respondent estimated an impact of \$100,000 without specific reasons. SNHD is unable to evaluate the response due to lack of details provided by respondent.
- One respondent estimated an impact of \$20,000 due to Covid-19 and inflation. Covid-19 and inflation have no bearing on the proposed 2023 Food Regulations.

Summarized Main Comments:

- Several people said that industry has a good relationship with SNHD and is thankful for staff's work on this process.
- Several people want priority and priority foundation items removed.
- A few people want utensil storage in water allowed.
- A few people want an exemption from waivers and Hazard and Critical Control Point (HACCP) plans for sushi rice acidification.

- A few people want the process for HACCP plans revised to include a process in between no HACCP plan and full HACCP plan.
- Several people want cold holding to remain at 45°F or less.
- Several people want the size of temporary food establishments and portable unit permits increased to more than the proposed 100 square feet due to an increased cost in permitting.
- A few people want more details on par cooking.
- Several people asked for one year of education and training before implementing demerits on inspections.
- Several people were concerned about having a person in charge (PIC) who is a certified food protection manager (CFPM) during all hours of operation.
- A few people were concerned about enforcement of chemical sanitization and if industry would be required to check water temperature, pH, and water hardness.
- Several people want operators to be able to self-open after self-closing.
- A few people want clarification on when an Event Coordinator permit is required.
- Several people requested that the owner or a designee be allowed to sign paperwork.
- Several people want the plus or minus 2°F for thermometers to still apply.
- A few people want the section on temporary food establishment (TFE) permits to say, “may be denied with less than 24 hours notice.”
- A few people want more clarity on temporary food establishment exemptions.
- A few people want more clarity on approved sinks for temporary food establishments.
- It will take substantial time to review the regulations, regulations can be confusing, and more meetings would be helpful.
- Employee compliance with food handler cards is the responsibility of the employee. If removed from in-house training, this may lead to failures to comply.
- New regulations requiring upgrades put small businesses in jeopardy of closing. Several people were concerned that upgrades would be required retroactively.
- Customers don’t want to pay more, and it is too expensive to do anything with increases in materials, labor, food, etc.

- Facilities can't sustain any more financial burdens at this time due to Covid-19 and inflation.