

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608**

LCB File No. R056-18

1. Background

Under existing law food for human consumption is exempt from sales and use tax in this State. Existing law excludes from this exemption and imposes sales and use taxes on prepared food intended for immediate consumption. NRS 372.284 and 374.289 define prepared food to include food sold with eating utensils provided by the seller. This regulation clarifies what it means to be sold with eating utensils provided by the seller; whether the utensils have to be handed to the customer or whether the utensils have to be made available at a kiosk or common area. Section 1 describes the circumstances under which food is deemed to be sold with eating utensils provided by the seller and whether the seller is to directly give or hand a utensil to the purchaser or make utensils available to the purchaser at a kiosk or common area; a determination which is made based on the percentages of food sold by the seller that is prepared food. Section 1 also establishes the method for calculating the percentage of prepared food sold by the seller and requires a seller who sells or intends to sell prepared food from multiple establishments to calculate the percentage of prepared food for every such establishment and use the average of those calculations as the percentage of prepared food that the seller has sold or will sell. Section 2 excludes certain items containing four or more servings per container from the definition of “prepared food intended for immediate consumption”.

The Department of Taxation has drafted Proposed Regulation R056-18 to provide clarity as to determine whether food sold by a retailer is prepared food intended for immediate consumption for the purposes of the imposition of sales and use tax on the retail sale.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No R056-18. The proposed language and questionnaire was dispersed to the following:

- Emailed by the Department to 210 members of its interested parties list.
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

No response was received for LCB File No. R056-18.

3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small business.

The Department analyzed LCB Draft of Proposed Regulation R056-18 prior to mailing out the Small Business Impact Questionnaire and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

No response was received for the LCB Draft of Proposed Regulation R056-18. The proposed regulation provides clarification for the taxability of prepared food intended for immediate consumption.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses.

Direct and indirect beneficial effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect beneficial economic effect on small businesses.

5. 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 proposed permanent regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore no efforts were required to reduce the impact on small businesses.

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

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

7. If the proposed 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 proposed permanent regulation does not include new fees or increase an existing fee.

8. If the proposed regulation 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.

The proposed regulation does not overlap or duplicate any regulation of other federal,

state or local government entities.

9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The Department has determined that there will be no adverse impacts to small businesses based on its analysis.

I hereby 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 that this statement was properly prepared and the information contained herein is accurate.



Shellie Hughes, Chief Deputy Executive Director
February 5, 2020