

**PROPOSED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R044-00

March 28, 2000

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

AUTHORITY: §§1-33, NRS 561.105 and 587.830.

Section 1. Chapter 587 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Material” means a substance used in the production, processing or handling of agricultural products, soil, livestock or livestock products, including, without limitation, fertilizers, pesticides, adjuvants, equipment cleaners, plant growth regulators, sanitizers, processing additives and aids, medications and hormones.*

Sec. 3. *“Organic certifying agent” means an agent of the department who has been approved by the department pursuant to NAC 587.902.*

Sec. 4. 1. *The department may deny certification to an applicant for certification as a producer or handler who fails to demonstrate the ability to comply with the provisions of this chapter.*

2. The department may assign “certification pending” status to new applicants who do not currently meet all standards for certification. Certification pending status may be extended until such time as the applicant meets all program requirements.

Sec. 5. NAC 587.860 is hereby amended to read as follows:

587.860 As used in NAC 587.860 to 587.928, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 587.861 to 587.899, inclusive, *and sections 2 and 3 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 6. NAC 587.868 is hereby amended to read as follows:

587.868 “Drift” means the movement of one or more prohibited materials by air, water or soil from the intended target that results in residues of prohibited materials on organic ~~for transition to organic~~ food in excess of 5 percent of the tolerance level established by the United States Environmental Protection Agency.

Sec. 7. NAC 587.877 is hereby amended to read as follows:

587.877 “Handling plan” means a system designed to eliminate the potential of contamination of organic food and fiber from prohibited materials and the commingling of nonorganic ~~and transition to organic~~ and organic food or fiber.

Sec. 8. NAC 587.879 is hereby amended to read as follows:

587.879 “Labeling” includes all written, printed and ~~organic~~ *graphic* matter which is placed upon any product or any of the containers or wrappers of a product or which accompanies such a product or is used in the advertisement of such a product.

Sec. 9. NAC 587.883 is hereby amended to read as follows:

587.883 “New applicant” means any person or organization applying for organic ~~for transition to organic~~ certification for the first time or after the previous certification status has been expired for 1 year or more.

Sec. 10. NAC 587.892 is hereby amended to read as follows:

587.892 “Prohibited material” means a material that is ~~disallowed in organic food~~ **not permitted to be used in the** production or handling ~~of~~ **of organic agricultural products.**

Sec. 11. NAC 587.895 is hereby amended to read as follows:

587.895 “Renewal applicant” means a person who was granted organic ~~for transition to organic~~ certification in the previous *calendar* year.

Sec. 12. NAC 587.8995 is hereby amended to read as follows:

587.8995 1. A person shall not:

(a) Make a claim or imply in the advertising, selling or labeling of an organic agricultural product that the product is “organic,” “certified organic” ~~for “transition to organic,”~~, **“registered organic” or produced and handled according to organic methods** unless it conforms to the requirements of this chapter and the federal act.

~~[(b) Affix a label to, or otherwise provide market information concerning, an agricultural product if the label or market information implies, directly or indirectly, that the product is produced and handled using organic methods, except in accordance with this chapter.~~

~~—2.— A producer shall not sell to a vendor or handler a product with the representation that the product is an “organic” or “transition to organic” product unless before the sale the producer provides the vendor or handler with the approved organic or transition to organic certificate verifying that the producer has grown, raised or produced the product in conformance with this chapter. Producers, handlers and vendors shall, upon request, provide the department with all records pertaining to the sale or distribution of “organic,” “certified organic” and “transition to~~

~~organic” products which verify that the product or products have been produced and handled in accordance with this chapter.~~

~~—3.— Food, feed or fiber that is produced out of state and sold as organic in this state must be certified by the department or an organic certifying agent approved by the department.~~

~~—4.— A person shall not advertise or sell an agricultural product as “organic,” “certified organic” or “transition to organic” before an on-site inspection has been made by the department and organic producer certification has been granted for that crop year.]~~

(b) Sell an agricultural product that has been represented by the seller to be “organic,” “certified organic,” “registered organic” or produced and handled according to organic methods unless the product is certified by the department or an organic certifying agent.

2. Upon the request of the department, a person shall provide the department with all records pertaining to the sale of an agricultural product that was represented by the seller to be “organic,” “certified organic,” “registered organic” or produced and handled according to organic methods which verify that the product was certified by the department or an organic certifying agent.

Sec. 13. NAC 587.900 is hereby amended to read as follows:

587.900 1. The department shall certify producers and handlers of organic agricultural products in this state.

~~2. [A producer or handler shall not label, market, advertise or represent as “organic” or “transition to organic” any food or fiber that is sold, kept, offered or exposed for sale unless that producer or handler is:~~

~~—(a) Certified by the department pursuant to this chapter; or~~

~~—(b) An out of state producer or handler who has a current certification from an organic certifying agent recognized by the department.~~

~~—3. The department shall maintain and make available to the public a current listing of recognized organic certifying agents who meet all the requirements of this chapter.~~

~~—4.]~~ Producers and handlers must be certified on an annual basis as prescribed by the department.

~~[5.]~~ 3. To obtain *initial* certification, a producer or handler of organic agricultural products must submit a completed application ~~[on a form provided by the department]~~ and the required fees to the department on or before ~~[March 1 of the calendar year to which the application applies.~~

~~—6.]~~ *one of the following deadlines:*

(a) At least 90 days prior to the harvest of the agricultural product to be certified; or

(b) Before operating as a handler of organic products.

4. Each application must include such supporting documentation as the department determines necessary for ~~[each organic certifying agent applying for registration and]~~ each farm, field, handling facility and other location to be evaluated for certification.

~~[7.]~~ 5. Food, feed or fiber harvested within 90 days after receipt of an application for new certification by the department ~~[or an organic certifying agent for new certification]~~ must not be certified as ~~["organic" or "transition to organic."~~

~~—8.]~~ *"organic."*

6. Upon request of the department, the advisory council for organic agricultural products may review and make recommendations on any application ~~[or registration]~~ pursuant to this chapter.

7. The department shall issue a certification document and a producer or handler number to each producer or handler of organic agricultural products who is certified by the department. Except as otherwise provided in subsection 3 of NAC 587.8995, the producer shall include his producer number and the following statement on each receipt from a sale from the producer to the first handler:

“Nevada Department of Agriculture Certified Organic Producer #____.”

8. A producer who sells certified organic products directly to consumers at a farmers’ market or through a facility on a farm shall post the certification document and producer number in a conspicuous location in the sales area or distribution area of the market or facility.

Sec. 14. NAC 587.901 is hereby amended to read as follows:

587.901 1. The department shall require:

(a) An initial inspection of each applicant’s farm, facility or site at a time when normal production or sales activity can be observed; and

(b) At least one on-site inspection per year for annual renewal of certification for each farm, facility or other location for which certification has been granted.

2. The department may conduct:

(a) An additional on-site inspection of each certified producer ~~[before or during harvest of an annual crop that will be processed;~~

~~—(b) Unannounced inspections in cases of suspected violations of this chapter; and~~

~~—(c) or handler when normal production or sales activities can be observed; and~~

(b) Inspections regarding complaints.

3. An inspection may include a survey of required records, an examination of crops and fields, the taking of samples for analysis and any other actions deemed necessary by the department.

4. A person with cause to believe that a provision of this chapter has been violated may file a written complaint with the department setting forth the facts of the alleged violation.

5. The department shall:

(a) Investigate written complaints related to certified organic food or fiber; and

(b) Maintain records of all complaints, investigations and remedial actions for 10 years after the completion of the investigation.

Sec. 15. NAC 587.902 is hereby amended to read as follows:

587.902 ~~[1.—A person may apply to the department for registration as an organic certifying agent. The application must be submitted on a form provided by the department and include all certifying policies and procedures and an annual fee in the amount prescribed by the department.~~

~~—2.]~~ The department shall issue a certificate of registration as *may approve a person as* an organic certifying agent if the department determines that the:

(a) Certification standards of the ~~[applicant]~~ *person* are equivalent to the certification standards of the department; ~~[and]~~

(b) Policies and procedures of the ~~[applicant]~~ *person* are in compliance with the provisions of this chapter, chapter 587 of NRS, the federal act and any applicable orders of the department ~~[.~~

~~—3.— Each person for whom a certificate of registration as an organic certifying agent has been issued pursuant to this chapter shall provide a copy of all application, certification and inspection documents to the department within 30 days after application, certification or inspection of a certified producer or handler.];~~

(c) The person demonstrates sufficient expertise in organic farming and handling techniques to comply fully with and implement the terms and conditions of this chapter; and

(d) The person has at least 2 years of experience conducting inspections of organic producers and handlers.

2. Upon request by the department, a producer or handler of organic agricultural products who is certified by an organic certifying agent shall provide to the department documents provided by the agent which demonstrate that the agent is in compliance with this section and that the certification issued by the agent is current and valid. If a producer or handler of organic agricultural products fails to provide such documents, the department shall issue a notice of non-compliance to the producer or handler. If a producer or handler who has been issued a notice of non-compliance fails to comply fully with this subsection within the time required in the notice, the department shall deem the producer or handler to be not certified to produce or handle organic agricultural products until he fully complies.

Sec. 16. NAC 587.903 is hereby amended to read as follows:

587.903 The department shall use the following ~~[Hogos]~~ logo as a certification ~~[seals:~~

~~—1.— The State Department of Agriculture Organic Certification Seal] seal. The logo~~ must include the phrase “State Department of Agriculture Certified Organic” and must be in substantially the following form:

~~[2. The State Department of Agriculture Transitional Seal must include the phrase “State Department of Agriculture Transition to Organic” and must be in substantially the following form:~~

}

Sec. 17. NAC 587.904 is hereby amended to read as follows:

587.904 1. The Nevada State Department of Agriculture Organic Certification Seal ~~for the Nevada State Department of Agriculture Transitional Seal, as prescribed by the director,~~ may be placed on all:

(a) Containers of organic agricultural products that are certified by the department;

(b) Bulk displays which advertise organic agricultural products that are certified by the department for sale; and

(c) Processed organic foods which contain 95 percent or more by volume of organically grown ingredients that are certified by the department.

2. The authorization to imprint facsimile seals granted by subsection 1 is subject to review by the director on an annual basis, or more frequently, if determined necessary by the director.

3. A person shall not change the Nevada State Department of Agriculture Organic Certification Seal ~~for the Nevada State Department of Agriculture Transitional Seal~~ from the form prescribed in NAC 587.903 except for increases or decreases in size and changes in color.

Sec. 18. NAC 587.905 is hereby amended to read as follows:

587.905 1. The certification of a producer or handler of organic agricultural products issued by the department expires on March 31 of the year following the calendar year in which the certification was issued.

2. Except as otherwise provided in subsection 3, the department shall charge a nonrefundable fee as follows for each initial or renewal application submitted to the department pursuant to this chapter:

(a) Producers	\$100
(b) Handlers.....	100
[(c) Organic certifying agents	100
—(d) Transition to organic producer or handler	100}

3. A person who produces and handles only his own organic agricultural products must only be required to pay one certification fee of \$100.

4. In addition to the fees prescribed in subsections 2 and 3, each *new* applicant for ~~[new certification or registration]~~ *certification* shall pay an additional fee for new applicants of \$35.

5. Each certification fee includes the fee for an on-site inspection before certification and an on-site inspection during the production season.

6. An application for the renewal of a certification ~~[or registration]~~ that is received by the department after ~~[the expiration date of March 31]~~ *March 1* must be considered late ~~[-. A late application for renewal]~~ *and* must be accompanied by a late fee of \$50 in addition to the fee or fees otherwise prescribed by this section.

7. The department shall consider an application to renew a certification ~~[or registration]~~ that has been expired for more than 1 year as ~~[an]~~ *a new* application for ~~[new certification or registration]~~ *certification* for the purposes of this section.

Sec. 19. NAC 587.906 is hereby amended to read as follows:

587.906 1. Except as otherwise provided in subsection 2, in addition to all other fees prescribed by the department, the department shall charge the following additional fees for the ~~[addition of]~~ fields, sites or areas to be certified *after the initial inspection has been completed* and for any other additional inspections:

(a) For each hour of inspection, calculated from the inspector's assigned office,
per hour\$20.00

(b) For mileage, per mile..... .40

(c) For the per diem of the inspector, the amounts currently allowed by law for state employees, under the conditions set by the department.

2. The department shall prorate the fees prescribed by subsection 1 among the persons whose property is inspected in the same area ~~for~~ if all inspections ~~that~~ can be completed during the same trip of the inspector, as determined by the department.

3. The director may also charge a reasonable fee to cover the costs of the reproduction and mailing of application forms.

Sec. 20. NAC 587.907 is hereby amended to read as follows:

587.907 1. ~~All producers of organic agricultural products must be certified by the department before any product is sold as “organic” or “transition to organic.”~~

~~2.]~~ The department shall certify a producer of organic agricultural products if:

(a) Inspection of the producer by the department showed no use of prohibited practices as determined pursuant to this chapter and the federal act;

(b) The department finds that the recordkeeping practices of the producer meet the requirements of this chapter;

(c) All programs for soil building, programs for organic pest management and buffer zones required by this chapter were established on each site;

(d) The analysis of all samples taken by the department showed that no prohibited materials had been used and there was no drift of other contaminants; and

(e) The department determines that prohibited materials have not been used for ~~1:~~
~~(1) At] at~~ least 36 months before the harvest of organic agricultural products . ~~1: or~~
~~(2) At least 12 months before the harvest of transition to organic agricultural products.~~
~~3. An agricultural product from a field or site that meets all the criteria for certification except the requirement that the product be free of prohibited materials for 36 months before~~

~~harvest may be labeled and sold under the transition to organic seal if the product meets the following minimum standards:~~

~~—(a) In the case of perennial crops, no synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals or other synthetic materials have been applied to the field or site in which the product is grown for the 12 months immediately preceding the appearance of flower buds and throughout the remainder of the growing season.~~

~~—(b) In the case of annual and biennial crops, no synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals or other prohibited materials have been applied to the field or site in which the product is grown for the period from 12 months before seed planting or transplanting through the remainder of the growing and harvest season for the particular product.~~

~~—4.— Producers of organic agricultural products and transition to organic agricultural products who make application to the department for certification must be assigned a grower identification number by the department. Except as otherwise provided in subsection 5, all sales from the producer to the first handler, vendor or consumer must include the grower identification number on the invoice or other sales document.~~

~~—5.— A producer selling certified organic agricultural products directly to consumers at a farmer's market or through a facility on the farm, where no invoices are exchanged, shall conspicuously post in the sales or distribution area the certification document and grower identification number issued to the producer by the department.~~

~~—6.—~~ **2.** If a farm, site or field does not remain continuously certified, it must be recertified pursuant to the requirements for new certification before it is used to produce organic agricultural products.

~~[7.]~~ 3. An applicant for certification as a producer of organic agricultural products must ~~[complete an application on a form prescribed by the department that includes:]~~ *provide the following information to the department:*

- (a) A 3-year history of all crops or agricultural products produced;
- (b) A 3-year history of all materials added to or used in the production, including pesticides and fertilizers; and
- (c) Any additional supporting documentation required by the department.

~~[8.]~~ 4. An applicant for initial certification or renewal of certification as a producer of organic agricultural products must submit to the department a detailed farm plan including:

- (a) A 3-year rotation and cover cropping plan to stabilize nutrients in the soil for each field to be certified; and
- (b) A 1-year, field-by-field plan for crop production, soil and plant fertility plan, and pest management plan.

~~[9.]~~ 5. Each application for certification as a producer of organic agricultural products must include a notarized affidavit on a form provided by the department attesting to the truth of all information furnished to the department and an agreement to comply with the provisions of this chapter.

Sec. 21. NAC 587.908 is hereby amended to read as follows:

587.908 1. A producer of both organic agricultural products and other agricultural products on the same farm shall keep separate records for each of these two categories of products and make such records available at all times for inspection by the department. *The*

records for the nonorganic agricultural products must meet the requirements of subsection 1 of NAC 587.909.

2. A producer of the same crop or agricultural product grown both organically and nonorganically on the same farm must demonstrate ~~[to the satisfaction of the department]~~ *with clear and convincing evidence* that physical facilities and ~~[management procedures]~~ *organizational structure* are in place to prevent commingling. In the absence of such proof, no food or fiber of that type from that farm may be certified and the producer shall not sell the food or fiber as an organic product . ~~[or a transition to organic product.]~~ The department shall also apply these criteria to situations in which an uncertified crop is produced by the same producer on another farm unit or is purchased for resale.

3. A field may be certified as organic by the department if there has been no use of prohibited materials, including, without limitation, synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals or other synthetic materials during the year of production and for at least 36 months preceding harvest.

4. In cases of a farm, field or site, the area to be certified must have distinct, defined boundaries and buffer zones separating land being operated through the use of organic methods from land that is not being operated through the use of such methods.

5. Machinery and equipment must be in such condition as to avoid contamination of soil or crops from hydraulic fluid, fuel, oil or other contaminants.

6. The department shall not certify land that has no previous history as cultivated cropland, orchard or improved pasture if that land is being converted to organic for the sole purpose of

replacing land that has been abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices.

7. An applicant shall present the results of soil fertility tests for each field or each greenhouse unit with in-ground growing beds to be certified initially and every third year thereafter using testing methods as prescribed by the director.

Sec. 22. NAC 587.909 is hereby amended to read as follows:

587.909 1. Each producer who sells an agricultural product that is identified as organic ~~for transition-to-organic~~ shall keep accurate records of:

(a) The field or greenhouse number, as specified in farm maps, to which any material was applied;

(b) Any material applied to the plants, soil or water where the crop is being produced, including the:

- (1) Type of material applied;
- (2) Manufacturer of the material;
- (3) Date and rate of application; and
- (4) Method and type of equipment used; and

(c) Harvests and sales for all organic ~~and transition-to-organic~~ agricultural products produced and sold by the producer.

2. Each producer shall maintain auditable records for a minimum of 5 years after the date on which the record was created.

3. The department may deny or suspend the certification of a producer for intentionally falsifying or refusing to supply adequate records until the department is provided with adequate records.

Sec. 23. NAC 587.910 is hereby amended to read as follows:

587.910 1. Each organic producer shall use a variety of resources for information regarding organic production in addition to the following requirements:

(a) Fertility must be fostered primarily by managing organic content of the soil through the proper tillage, crop rotation and manuring.

(b) Soil management must conform to recognized organic practices and principles of soil conservation.

(c) Each producer shall rotate all crops according to a written rotation plan except:

(1) Perennial crops;

(2) Crops in permaculture systems;

(3) Crops grown in containers; and

(4) Crops grown on a nonrotating basis in accordance with accepted regional practices for maintaining balanced fertility management with other allowed practices.

2. A rotation plan may include alternation of sod or forage and row crops, nitrogen-fixing crops, green manure crops, cover and nurse crops, deep-rooting crops, alternation of heavy and light feeders, or plants with allelopathic or mineral-accumulating properties.

3. Raw manure may be applied to green manure crops, perennial crops or crops not grown for human consumption. Raw manure may be applied to crops for human consumption if the crop is harvested not less than ~~60~~ 120 days after the most recent application of manure. Raw

manure may not be applied to any crop in a way that significantly contributes to water contamination by nitrates or bacteria. Use of manure composted either by aerobic digestion (high heat) or controlled fermentation (low heat) is recommended. Liquid manure slurry may be used if the slurry is aerated from a source that adds carbon to the slurry.

4. In implementing an annual or overall 3-year farm plan, a producer shall utilize green manure crops, nitrogen-fixing or cover crops, composted materials, nitrogen-fixing microorganisms and other allowed materials for supplying plants with nitrates at low concentrations.

5. In implementing a temporary measure in an annual farm plan, a producer may utilize materials listed as “allowed with restrictions,” if that use is justified by an analysis of soil and plant nutrients. *A justification pursuant to this subsection must be supported by documentation relating to the analysis.*

Sec. 24. NAC 587.911 is hereby amended to read as follows:

587.911 1. ~~[An irrigation management plan must conform to recognized organic practices and water conservation principles.~~

~~—2.]~~ A weed-management plan may include:

(a) Timely mechanical or hand cultivation, crop rotations, smother crops, mulching with organic materials, intercropping plant species such as legumes or green manure crops, practices that prevent introduction of weed seeds into fields, such as mowing borders, cleaning equipment and use of weed-free materials, electrical, steam or flame weeding equipment, biodynamic preparations and mowing or grazing; and

(b) Approved herbicidal soaps and oils, ~~[if applied to nonfood plants,]~~ and synthetic or biodegradable plastic used for covering soil surfaces, row covers and solarization, if such materials are removed at the end of each growing or harvest season and not introduced into soil, compost or mulch, and mulches made of recycled newspapers.

~~[3.]~~ 2. A disease-management plan may include:

- (a) Production schedules, crop selection, location and sizing of plantings, and soil-management practices to prevent diseases;
- (b) Preventative management, such as planting resistant varieties and rootstocks, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations and avoidance of excessive fertilization;
- (c) For greenhouse management, the management of ventilation, humidity and temperature to reduce the incidence of disease;
- (d) Materials listed as “allowed with restrictions,” if justified for immediate disease control; and
- (e) The application of approved natural fruit waxes if the shipping containers indicate the type of natural fruit wax that was applied to the enclosed certified products.

~~[4.]~~ 3. An insect-management plan may include:

- (a) Planned production schedules, crop selection, location and sizing of plantings, and soil-management practices to prevent insect infestations;
- (b) Preventative management such as planting resistant varieties, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations and avoidance of excessive fertilization;

(c) Mechanical or electrical controls, sticky traps, repellent crops and apparatus, vacuuming, water jets, physical barriers and traps, and sound;

(d) Pheromones used in traps, including use in monitoring pest occurrence, emergence, life cycles and mating disruptives;

(e) Pheromone traps or bait sticks containing prohibited materials, if these materials do not contact certified crops and are not added to soil or water;

(f) Biological controls, release of natural predators and parasites and manipulation of the habitat, crops planted for insectories, supplemental food, and hosts of natural predators and parasites;

(g) Other biological controls, including entomopathic protozoa, nematodes, algae or other biological controls;

(h) Microbial diseases, including viral, bacterial and entomopathic fungal diseases such as *Bacillus thuringiensis* (Bt), *Bacillus spp.*, *Beuveria spp.*, *Nosema spp.* and Nuclear Polyhedrosis Virus (NPV) , ***except microbial diseases from a genetically engineered source***; and

(i) Materials listed as “allowed with restrictions,” if justified for immediate insect control measures.

5. A management plan for the control of rodents, gophers, deer and other varmints may include use for control or as a repellent:

(a) Live traps, physical barriers, sound, electrical devices, shooting or materials listed as “allowed” in the material list published by the department; and

(b) Materials listed as “allowed with restrictions” in the material list published by the department if justified for immediate reduction of crop loss because of the abnormal occurrence of these pests.

6. A management plan for the use of growth regulators, growth promoters, activators and inoculants may include:

(a) Natural enzymes, herbal preparations, biodynamic preparations, rhizobial inoculants, free-living nitrogen-fixing microbial cultures, blue-green algae, cellulolytic bacteria, natural rooting hormones, adjuvants or wetting agents for foliar applications and materials listed as “allowed” in the material list published by the department; and

(b) Materials listed as “allowed with restrictions” in the material list published by the department or the national list, if justified as a temporary measure in the production of food or fiber.

Sec. 25. NAC 587.912 is hereby amended to read as follows:

587.912 1. A producer shall only use propagation materials that are ~~certified as~~ organically produced ~~unless the producer provides verification that they were produced with accepted organic practices and materials allowed pursuant to this chapter.~~ *except that nonorganically produced seed may be used when equivalent organically produced seed is not commercially available.*

2. Seeds used for producing organic edible sprouts must be 100 percent certified organically produced. Sprouts produced from noncertified organic seeds must not be certified under this chapter.

3. A producer shall use untreated seeds for food, feed or fiber unless seeds treated with synthetic fungicide are the only seeds available for certain crop varieties. Seeds treated with prohibited fungicides may be used *on a temporary basis* if the producer can demonstrate through written documentation that untreated seeds are unavailable.

4. The use of prohibited materials on or in seed is prohibited unless the use of the prohibited material is required under local, state or federal quarantine requirements.

~~5. [A producer may use acid delinted seed for organically produced or transition to organic cotton.~~

~~—6.—~~ Annuals must be grown organically from seed through harvest. Annual transplants must be organically grown to meet the standards for organic crop production.

~~[7.]~~ 6. The department may consider nonorganically grown perennial transplants to be “organic” after they have been grown under organic practices for 1 year.

~~[8.—Crops produced from propagation materials, other than seeds treated with synthetic fungicide or acid delinted cotton seeds, that have been produced or treated with prohibited materials may not be sold as:~~

~~—(a) Transition to organic within the first 12 months after planting or transplanting.~~

~~—(b) Organic within the first 36 months after planting or transplanting.~~

~~—9.]~~ 7. A producer may *not* use commercial soil mixes that contain materials listed ~~[as~~ “allowed”] in the ~~[material]~~ *prohibited materials* list published by the department.

~~[10.]~~ 8. As used in this section, the term “seed” includes strawberry crowns , *seed garlic* and *seed* potatoes.

Sec. 26. NAC 587.914 is hereby amended to read as follows:

587.914 1. All animal products marketed and labeled as organic must be produced by producers certified by the department  *or an organic certifying agent*. A producer of organic animal products seeking certification as an organic food producer may apply for certification pursuant to this chapter.

2. Meat produced from bovine animals must meet the following requirements:

(a) Animals must be raised on 100 percent organically grown feed from birth to slaughter;

(b) Breeder livestock must be fed 100 percent organically grown feed during the time that the slaughter animal is nursing if the slaughter animal is nursing during the 12 months before slaughter;

(c) The producer shall not administer synthetic internal parasiticides, hormones or antibiotics from birth to slaughter;

(d) Animals must have fresh air, daylight, shade and when available, access to pasture or range that is certified pursuant to this chapter; and

(e) Animals may be kept in a feedlot for up to 12 months before slaughter if the animals have access to fresh air, shade and daylight and are fed 100 percent organically grown feed.

3. Meat produced from swine, lamb, sheep and goats must meet the following requirements:

(a) Animals must be raised on 100 percent organically grown feed from birth to slaughter;

(b) During the time that the slaughter animal is being nursed, the mother must be fed 100 percent organically grown feed;

(c) During the time that the slaughter animal is being nursed, the mother must not be administered hormones, antibiotics or synthetic internal parasiticides;

(d) Animals must not be administered synthetic internal parasiticides, hormones or antibiotics from birth to slaughter;

(e) Animals must have fresh air, shade, daylight and whenever possible, access to pasture or range that is certified pursuant to this chapter; and

(f) Animals may be kept in a feedlot for up to 90 days before slaughter if the animals have access to fresh air, shade and daylight and are fed 100 percent organic feed.

4. Organic poultry products must meet the following criteria:

(a) Birds must be raised on 100 percent organically grown feed from ~~hatching~~ *one-day old* to slaughter;

(b) Birds must be provided with shade and dusting wallows, and laying birds must also be provided with nest boxes and perches;

(c) Synthetic internal parasiticides, hormones and antibiotics must not be administered to the birds from ~~hatching~~ *one-day old* to slaughter; and

(d) Birds must be raised uncaged in either:

(1) A moveable-pen management system that is moved on a daily basis and provides access to organic pasture and range; or

(2) A living space that provides a minimum of 4 square feet of living space per bird, including both inside and outside areas, and access to the outside areas. Inside areas must provide a minimum of 1 1/2 square feet per bird and be sufficient to avoid stress such as cannibalism, nervousness and self-destructive behaviors such as feather picking, self-mutilation and limb harrowing. Outside areas must provide a minimum of 1 1/2 square feet per bird. These minimum living space requirements have been calculated for the size of an adult chicken with a

mature body weight of 5 pounds. Requirements for other poultry animals must be calculated proportionately according to the size of the species.

5. Organic animal products produced from dairy animals must meet the following requirements:

(a) Except as otherwise provided in subsection 8, dairy animals must be raised on 100 percent organic feed or pasture for at least 1 year before organic milk production begins;

(b) Synthetic internal parasiticides and hormones must not be administered to dairy animals for the year immediately preceding organic milk production; and

(c) Antibiotics must not be administered to dairy animals for the 90 days immediately preceding organic milk production.

6. Organic aquaculture stock and products must meet the following requirements:

(a) Eggs, fingerlings and hatchlings may be purchased from any source.

(b) Meat and eggs sold as organically produced must be maintained in accordance with designated 100 percent organic feed and health care standards as provided in this chapter from the time the stock is brought onto a farm or field unit certified as ~~transition to organic or~~ organic.

7. Fiber animal livestock may be purchased from any source. Fiber animal livestock must be raised pursuant to the provisions of this chapter from the time the livestock is brought onto a farm or field unit certified as ~~transition to organic or~~ organic. Fiber animal livestock must be fed 100 percent certified organically produced feeds and feed supplements for not less than the year immediately preceding the removal from the animal of fiber labeled as organically

produced. Fiber animal livestock must not be used as breeder or slaughter livestock unless it meets the requirements for breeder or slaughter livestock produced pursuant to this chapter.

8. In situations of an organic feed shortage that results from emergency conditions such as weather conditions, road closures or crop failures, the organic livestock producer may feed nonorganic feed to livestock for a limited period if the organic feed shortage is temporary and unforeseeable because of emergency conditions beyond the control of the producer and:

(a) The organic livestock producer makes every reasonable effort, and maintains a record of such efforts, to locate organically grown feed in the following order of preference:

- (1) Certified organic feed;
- (2) Noncertified organic feed;
- (3) Feed from farms under organic management for less than 3 years but more than 1 year;
- (4) Feed from farms under organic management for 1 year or less; and
- (5) Conventional feed;

(b) The organic livestock producer notifies the department and submits the organic feed supplier record to the department at least 24 hours before using the nonorganic feed;

(c) The department verifies the emergency conditions;

(d) The department reviews the situation to determine a maximum period during which second-year transition-to-organic feed, first-year transition-to-organic feed or nonorganic feed may be used;

(e) The livestock producer shall not represent egg and dairy products as organic animal products during the period those animals are fed nonorganic feed plus an extended time

following that period which is equal to the period that nonorganic feed was fed to those animals;
and

(f) The livestock producer shall not represent meat products as organic animal products if produced during the period the animal was fed nonorganic feed plus an extended time of 90 days following the period during which the animal was fed nonorganic feed. Meat products produced during any such period must not be commingled with organic meat products.

Sec. 27. NAC 587.919 is hereby amended to read as follows:

587.919 1. ~~Each handler of food or fiber produced in this state that is sold as organic or transition to organic~~ *Except as otherwise provided in subsection 5, a handler of organic agricultural products* must be certified by the department ~~or~~ *or an organic certifying agent*. A handler shall not ~~sell~~ *handle* any organic product until he has registered with the division and paid the appropriate fee.

2. A handler shall not use or add any prohibited material during the production, composition, processing, manufacturing, packaging, transporting or storage of an organic agricultural product.

3. Each handler shall conspicuously display his certificate issued by the department or an organic certifying agent to process or handle organic ~~or transition to organic~~ food or fiber.

4. A handler applying for certification or renewal of certification shall submit a completed application to the department with an organic processing or handling plan that includes:

(a) A description of physical facilities and management procedures to prevent commingling ~~among nonorganic, transition to organic~~ *between nonorganic* and organic food or fiber and to

prevent contamination from prohibited materials used in the processing or handling of organic ~~[or transition to organic]~~ food or fiber;

(b) A description of the processing or distribution operation, processing and handling procedures, and the types of organic food or fiber processed or distributed; and

(c) A schematic flowchart indicating critical control points and showing the movement of organic food or fiber during processing or handling and all equipment, machinery and storage areas used including:

(1) A description of the system of internal recordkeeping that documents the movement of each specified lot of organic food or fiber through each step of the processing or distribution operation;

(2) Sanitizers, boiler chemicals and prohibited materials used in handling;

(3) Transportation and storage; and

(4) Pest control, including a description of the pest problems encountered in the processing or handling operation, pest monitoring techniques used and a description of all pest control methods and materials used.

5. A person who operates as a common carrier:

(a) May handle organic agricultural products for purposes relating to his operation as a common carrier without being certified; and

(b) When handling organic agricultural products pursuant to paragraph (a) must handle such products in a manner such that there is no risk of contamination by prohibited materials or commingling with conventional product.

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As used in this subsection, “common carrier” means any person who holds himself out to the public as willing to transport agricultural products by vehicle from place to place, either upon a fixed route or an on-call operation.

Sec. 28. NAC 587.920 is hereby amended to read as follows:

587.920 1. A handler shall not:

(a) Represent as organic ~~[or transition to organic]~~ any food or fiber that is known to contain or has been in contact with prohibited materials or has been commingled during storage, handling, processing, packing and transportation;

(b) Use any packaging ~~[materials that contain or have]~~ *that contains or has* been in contact with prohibited materials;

(c) Add any sulfites, nitrates or nitrites to a product; or

(d) Use in or on certified products, water that does not meet all the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.

2. Each ingredient labeled as organic in a processed product must be from a certified organic source. A processed product sold as organic or with organic ingredients may include:

(a) Ingredients that are not agricultural products, such as salt, yeasts or other microbial cultures or fermentation systems which are approved under this chapter;

(b) Natural preservatives, coloring agents or other additives, such as natural ascorbic acid or citric acid; and

(c) Other ingredients or processing aids listed as “allowed” in the materials list published by the department.

3. The following percentage of ingredients is required:

(a) A processed product must not be labeled as “organic” on the principal display panel unless it contains at least 95 percent certified organically produced ingredients by weight, excluding water and salt from the calculation, and does not contain any prohibited ingredients or additives.

(b) A processed product that contains at least 50 percent certified organic ingredients by weight, excluding water and salt from the calculation, may include the applicable certification on the principal display panel, but only for the limited purpose of identifying the organically produced ingredients.

(c) A processed product that contains less than 50 percent certified organic ingredients by weight, excluding water and salt from the calculation, may state the applicable certification in the ingredient information panel . ~~[, including the percentage of each ingredient certified.]~~

4. Each handler shall maintain auditable records for not less than 5 years including:

(a) Records of all organic ~~[and transition to organic]~~ products and ingredients, including dates of purchases, sales, billings, receipts, invoices and volumes of products purchased and sold; and

(b) Proof of certification of all products or ingredients labeled as organic ~~[or transition to organic]~~ and a record of the applicable organic certifying agent.

5. The department may deny or suspend the certification of a handler for intentionally falsifying or refusing to supply adequate records until the department is provided with adequate records.

Sec. 29. NAC 587.921 is hereby amended to read as follows:

587.921 1. Processed food or fiber products which contain *at least 95 percent* organically produced ingredients that are certified by the department, processed pursuant to this chapter and contain no prohibited ingredients may include ~~[the term “organic” and]~~ the State Department of Agriculture Organic Certification Seal on the principal display panel.

2. Processed food or fiber products which contain organically produced ingredients that are certified by the department, but include additional ingredients, additives or processing aids, may use ~~[the term “organic” in the statement of ingredients to modify the name of the ingredient that is organically produced and may include]~~ the State Department of Agriculture Organic Certification Seal in an area on the packaging other than the principal display panel. Each certified organic ingredient and its total percentage by weight of the product must be listed in the information panel and be identified as “organic.”

3. ~~[Processed food or fiber products produced pursuant to this chapter as transition to organic, but which include additional ingredients, additives or processing aids, may use the term “transitional organic” in the statement of ingredients to modify the name of the ingredient that is organically produced and may include the State Department of Agriculture Transitional Seal in an area on the packaging other than the principal display panel. Each certified transition to organic ingredient and its total percentage by weight of the product must be listed in the information panel and be identified as “transition to organic.”~~

~~—4.]~~ Processed food or fiber products that meet the requirements of this chapter and are additionally certified by a private organic certifying agent pursuant to this chapter, may include on the principal display or information panel pursuant to this chapter and the federal act:

- (a) The State Department of Agriculture Organic Certification Seal;

- (b) The name of the applicable organic certifying agent;
- (c) A statement indicating that the product was “processed to Nevada Organic Standards”; or
- (d) Any combination of paragraphs (a), (b) and (c).

~~{5.}~~ **4.** The identity of the organic certifying agent must be listed by the manufacturer on the packaging or the label.

~~{6.}~~ **5.** The name and address of the producer or handler must be on the organic product label.

~~{7.}~~ **6.** The department, or an organic certifying agent, shall not certify drugs or drug ingredients under this chapter.

~~{8.}~~ **7.** A person shall not use a State Department of Agriculture Organic Certification Seal ~~{or Transitional Seal}~~ in connection with, or represent as certified by the department or an organic certifying agent, any product or any ingredient of a product which is regulated as a drug or which has been determined by a state or federal agency of competent jurisdiction to be subject to regulation as a drug.

~~{9.}~~ **8.** A person shall not use a seal of the department or represent any product or ingredient as certified by the department or an organic certifying agent in an advertisement that makes medicinal claims, including, without limitation, a printed or broadcast advertisement, flier, point-of-purchase ~~{material,}~~ *advertisement*, signage or other printed ~~{material,}~~ *advertisement*.

Sec. 30. NAC 587.922 is hereby amended to read as follows:

587.922 1. The director, in consultation with the advisory council for organic agricultural products, shall adopt a list of specific materials that are allowed, allowed with restrictions or prohibited for use in the production and handling of organic agricultural products in this state.

2. For the purposes of this chapter, materials for crop production, processing and handling are classified as follows:

(a) Allowed, including materials allowed for production, processing or handling. The permission to use these materials applies statewide.

(b) Allowed with restrictions, including materials that may be used upon a demonstrated need, if the use will be discontinued over time or upon a showing that no alternative materials are available. These materials may vary according to regional production practices, specific processing or handling needs.

(c) Prohibited, including materials that must not be used for production, processing or handling. This prohibition applies statewide.

3. The department shall publish a materials list that categorizes materials as “allowed,” “allowed with restrictions” or “prohibited.”

4. Unless properly registered, pesticides requiring registration with the responsible state and federal agencies, including the United States Environmental Protection Agency and the department, must not be used.

5. Manufacturers of materials, other than those listed by name in the materials list published by the department, for production, processing or handling of certified food or fiber may submit information on the ingredients, manufacturing processes and other supporting documents, as required by the department for categorization as “allowed,” “allowed with restrictions” or “prohibited.” If a manufacturer submits information for review, the information provided must include:

(a) Registration information or a letter of exemption from the applicable registration agent, such as the United States Environmental Protection Agency or the department, and a current approved label;

(b) A description of the purpose of the product;

(c) Directions for application;

(d) Each active ingredient contained in the material, its source and percentage by weight of the material;

(e) Each inert ingredient, its source, percentage by weight of the material and classification of tolerance by the United States Environmental Protection Agency pursuant to subpart D of section 180.1001 of the Code of Federal Regulations;

(f) A description of the manufacturing processes, both physical and chemical;

(g) A description of toxicity, hazards and classification, and material safety data sheets; and

(h) Any additional documentation required by the department.

6. Materials contained on the prohibited materials list published by the department:

(a) Must not be used for production and handling of organic ~~for transition to organic~~ food or fiber.

(b) Must be handled and stored separately from materials listed as “allowed” or “allowed with restrictions” for organic production or handling.

Sec. 31. NAC 587.923 is hereby amended to read as follows:

587.923 1. In cases where organic agricultural products that are being grown, raised or produced pursuant to the provisions of this chapter, including feed crops and pasturage for livestock, are exposed to the drift or misapplication of a ~~pesticide,~~ *prohibited material*, the

certified producer shall notify the department within 48 hours after the drift or misapplication occurred.

2. If the ~~{pesticide}~~ residue level *of the prohibited material* exceeds the residue level allowed under subsection 4, the agricultural product must not be sold as “organically ~~{produced}~~ or “~~transition to organic certification pending.~~” *produced.*”

3. Subsequent agricultural products grown in a field exposed to ~~{pesticide}~~ drift or misapplication, including feed crops and pasturage for livestock, may not be sold as “organically produced” ~~{or “transition to organic certification pending.”}~~ unless approved by the department after additional ~~{pesticide}~~ residue testing is conducted.

4. An agricultural product that is being grown, raised or produced pursuant to the provisions of this chapter and contains residues of material not on the allowed materials list published by the department in excess of 5 percent of the tolerance level established by the United States Environmental Protection Agency, or where there is no such tolerance level, 5 percent of the action level established by the United States Food and Drug Administration, may not be labeled, sold or represented as organic.

5. A producer shall comply with all emergency spray and pest-management programs required or authorized by the department. Whenever possible, the department shall specify pest-management practices allowed pursuant to this chapter. Any such application must be documented in the material-use reports of the producer.

6. A producer may take appropriate action against noxious weeds pursuant to the provisions of chapter 555 of NRS with spot applications of prohibited materials in noncrop areas and buffer zones. Any such application must be documented in the material-use report of the producer.

Sec. 32. NAC 587.924 is hereby amended to read as follows:

587.924 1. All laboratory tests and analysis procedures and methods used for verification purposes for the purposes of this chapter must be recognized and accepted or specified by the department. The cost of all tests required pursuant to subsections 2 to 6, inclusive, must be borne by the department.

2. Periodically, samples may be composited by the department for residue testing of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain specified pesticides ~~[or other nonorganic residue]~~, *other prohibited material* or natural toxins.

3. When determined necessary by the department, an initial pesticide residue test of soil, water and crop samples for each new applicant for certification and for each applicant for renewal of certification may be required.

4. The department may require testing of an organic agricultural product when a reasonable cause exists to suspect that it may have been contaminated with a prohibited material.

5. The department may require testing of farms, fields, production, processing or handling equipment which the department determines may be in contact with organic food or fiber that may be contaminated with a prohibited material.

6. The department may require testing of soil samples when it suspects that prohibited or restricted materials are present.

Sec. 33. NAC 587.926 is hereby amended to read as follows:

587.926 1. The department may deny, suspend or revoke the certification of a producer or handler ~~for the registration issued to an organic certifying agent~~ pursuant to this chapter if the department determines that the person:

(a) Submitted an application or verification documents that contain insufficient information upon which to make a determination;

(b) Provided verification documents that demonstrate noncompliance with any provision of this chapter;

(c) Made a false representation that was material to an initial or renewal application for certification;

(d) Violated or refused to comply with the provisions of this chapter, chapter 587 of NRS or an order issued by the department;

(e) Has previously had a certification or registration revoked under this chapter;

(f) Failed to provide records as required by this chapter; or

(g) Refused to allow an inspection or audit by the department.

2. The department may issue a written order to stop the sale of an item of food, feed or fiber by a person in control of the item if the organic agricultural product is:

(a) Being sold in violation of this chapter or the federal act; or

(b) Labeled, advertised or otherwise represented as organic in violation of this chapter or the federal act.

3. An item for which an order is written pursuant to subsection 2 must not be sold until the department determines that the sale, labeling or advertising of the item is in compliance with this chapter and the federal act.

4. A producer or handler who has received a stop order or notice that his certification may be suspended or revoked may apply for a hearing pursuant to subsection 2 of NRS 561.295.