

**ADOPTED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R085-15

Effective March 10, 2016

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

AUTHORITY: §§1-10, Section 14 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974, and NRS 561.153.

A REGULATION relating to industrial hemp; establishing provisions relating to the certification and registration of sites used for growing or cultivating industrial hemp; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the State Department of Agriculture and institutions of higher education to grow or cultivate industrial hemp for certain research purposes and requires each site used for growing or cultivating industrial hemp to be certified by and registered with the Department. (Section 13.5 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974) Existing law also authorizes the State Board of Agriculture to adopt regulations relating to the certification and registration of such sites. (Section 14 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974)

Section 5 of this regulation establishes the requirements for the certification and registration of a site intended to be used for growing or cultivating industrial hemp. **Section 6** of this regulation requires an applicant or registrant to provide reports required by the Department on or before the date specified by the Department and authorizes the Department to inspect, sample and analyze any site on which industrial hemp is grown. **Section 6** also requires a registrant to notify the Department before any harvest or other disposition of a growing crop of industrial hemp and requires the Department to analyze the THC content of a sample of the crop. In addition, **Section 6** allows for the disclosure of information obtained by the Department to law enforcement agencies. **Section 7** of this regulation requires a registrant to use certified seed and propagating material when growing or cultivating industrial hemp and authorizes a registrant to request the Department to obtain certified seed and propagating material for the registrant. **Section 8** of this regulation establishes certain fees relating to the growing and cultivation of industrial hemp. **Section 9** of this regulation authorizes the Department to order the destruction of the plants grown or cultivated at a site and revoke the certification and registration of the registrant if testing of a sample from the site reveals that the plants grown or cultivated there contain a concentration of THC that is more than 0.3 percent on a dry weight basis. **Section 10** of

this regulation establishes civil penalties for violations of **sections 2-10** of this regulation or chapter 557 of NRS.

Section 1. Chapter 557 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who submits an application to the Department for certification and registration of a site used for growing or cultivating industrial hemp in conjunction with an agricultural pilot program or other agricultural or academic research.*

Sec. 4. *“Registrant” means a person whose application for certification and registration of a site used for growing or cultivating industrial hemp has been approved by the Department.*

Sec. 5. *A person who represents the Department or an institution of higher education, directly or pursuant to a contract to conduct an agricultural pilot program or other agricultural or academic research on behalf of the Department or institution of higher education, may submit an application to the Department for certification and registration of a site to be used for growing or cultivating industrial hemp in conjunction with the program or research. The application must be accompanied by a current background check performed by a law enforcement agency that includes a check performed by the Federal Bureau of Investigation. The application must be on a form prescribed by the Department and include all information deemed appropriate by the Department. The Department shall certify and register such a site if:*

1. The Department determines that the application adequately describes the purpose of the agricultural pilot program or other agricultural or academic research which requires the growth or cultivation of industrial hemp;

2. The applicant has not been convicted of any felony related to the possession, production, sale or distribution of a controlled substance in any form within the 5 years immediately preceding the date of the application;

3. The application includes all other information that the Department determines is appropriate; and

4. The application is accompanied by all fees determined by the Department to be required at the time the application is submitted.

Sec. 6. *1. A registrant shall submit all reports required by the Department on or before the date specified by the Department in the certification.*

2. The Department may inspect, sample and analyze, in such manner and at such times as the Department deems necessary, all plants, whether growing or harvested, and all land, buildings and other structures used for growing, cultivating or storing industrial hemp and all documents and other records relating to the agricultural pilot program or other agricultural or academic research certified by and registered with the Department. The registrant shall ensure such unrestricted access.

3. A registrant shall notify the Department before any harvest or any other form of disposition of a growing crop of industrial hemp.

4. The Department shall conduct an analysis of the THC concentration of a sample of the growing crop described in subsection 3 in a timely manner using appropriate sampling and analysis protocols.

5. Any information obtained by the Department in carrying out the provisions of this chapter and chapter 557 of NRS may be provided to any law enforcement agency without notice to the applicant or registrant.

Sec. 7. 1. A registrant shall ensure that only certified seed and propagating material approved by the Department are used when growing or cultivating industrial hemp for the certified and registered agricultural pilot program or other agricultural or academic research.

2. A registrant may request that the Department obtain certified seed or propagating material, or both, for the registrant's use.

3. If the Department obtains certified seed or propagating material, or both, for a registrant, the registrant shall:

(a) Release the Department from any liability for the quality and fitness of the certified seed and propagating material for any use or purpose;

(b) Pay to the Department in advance:

(1) All of the costs incurred by the Department in obtaining the certified seed and propagating material;

(2) A fee of \$1 per pound of seed obtained for the registrant; and

(3) A fee of \$30 per acre for propagating material obtained for the registrant; and

(c) Relinquish any portion of the certified seed and propagating material which is not used for the certified and registered agricultural pilot program or other agricultural or academic research to the Department. Any certified seed and propagating material relinquished to the Department pursuant to this paragraph becomes the property of the Department.

4. As used in the section:

(a) "Certified seed" has the meaning ascribed to it in NRS 587.021.

(b) “Propagating material” means plants and parts thereof that are intended for plant cultivation.

Sec. 8. *The Department shall assess the following fees:*

1. For the submission of an application pursuant to section 5 of this regulation, a non-refundable application fee of \$500.

2. For a certified and registered site used for growing and cultivating industrial hemp outdoors, a fee of \$5 per acre or portion thereof.

3. For a certified and registered site used for growing or cultivating industrial hemp indoors, a fee of 33 cents per 1,000 square feet, or portion thereof.

4. For inspecting a site used for growing or cultivating industrial hemp:

(a) A fee of not more than \$50 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(b) The mileage allowance established by the State Board of Examiners for state officers and employees pursuant to subsection 3 of NRS 281.160 for the inspector’s travel to and from the site.

5. For sampling and analyzing industrial hemp pursuant to this chapter, a fee in the amount of the actual costs of the Department for the sampling and analysis, as approximated by the Department.

Sec. 9. *If, after testing a sample of industrial hemp, whether growing or not, the Department determines that the sample contains a THC concentration of more than 0.3 percent on a dry weight basis, the Department may:*

1. Revoke the certification and registration of the registrant; and

2. Order the destruction of the plants grown or cultivated by the registrant at the registrant's expense.

Sec. 10. *1. Violations of the provisions of this chapter or chapter 557 of NRS are subject to the following civil penalties:*

(a) For a first violation, the Department shall impose a civil penalty of \$250.

(b) For a second violation, the Department shall impose a civil penalty of \$500.

(c) For a third or subsequent violation, the Department shall impose a civil penalty of \$1,000 per violation.

2. Any money collected from the imposition of a civil penalty pursuant to subsection 1 must be accounted for separately and:

(a) Fifty percent of the money must be used to fund a program selected by the Director of the Department that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger; and

(b) The remaining 50 percent of the money must be deposited in the Account for the Control of Weeds established by NRS 555.035.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R-085-15

1. A clear and concise explanation of the need for the adopted regulation.

The proposed regulations support SB 305 which allows for Industrial Hemp research trials to be conducted in Nevada pursuant to the provisions of the 2014 Farm Bill.

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

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

Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431-5566

Nevada Department of Agriculture
2150 Frazer Avenue
Sparks, NV 89431

Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104-4314

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89801-4672

Public response consisted of reiteration regarding the allowance and the need to utilize cultivars that are specific to similar regions to Nevada. The requirement to mandate the use of certified seed was a major topic of discussion. Interested parties are concerned that certified seed, which will be sourced outside of the country, will not have the necessary adaptations to grow as efficiently upon the Nevadan landscape. Other topics of concern consisted of elaboration on the usage of propagating materials as the source stock for cultivation/ Public response indicated that clones have a higher guarantee of growth compared to that of seed and would diminish the large amount of risk that's associated with this program. Other than the listed subject all of the content within the regulations were considered to be comprehensive and sufficient for producer's needs. NDA officials took all responses into consideration and altered the regulations to accommodate producer interests as much as possible.

Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture
Attn: Russell Wilhelm
405 South 21st Street
Sparks, NV 89431

- 3. The number of persons who:**
(a) Attended each hearing: 37
(b) Testified at each hearing: 10
(c) Submitted written comments: 1

Workshop date: September 9, 2015
Number in attendance: 10
Number testifying: 0
Written statements submitted: 0

Hearing date: February 22, 2016
Number in attendance: 27
Number testifying: 10
Written statements submitted: 1

- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
(a) Name;
(b) Telephone number;
(c) Business address;
(d) Business telephone number;
(e) Electronic mail address; and
(f) Name of entity or organization represented.

(a): Scott Baez
(b): (775) 722-1641
(c): 250 Bell St. Reno, NV 89503
(d): (775) 815-4813
(e): info@pistilandstigma.com
(f): Pistil and Stigma

(a): Rosalie Bingham
(d): (775) 250-2217
(e): rosaliebingham@yahoo.com
(f): Malachi Inc.

(a): Hector Abrica
(f): CBD Pharma

(a): Duff Taylor
(d): (702) 809-5858
(e): pgmz@yahoo.com
(f): Freespirit.org

(a): Ron Almadova
(d): (702) 493-7972
(e): Ron.Tff@gmail.com
(f): Agri Tech Farms

(a): Jim Larson
(d): (510) 390-4550
(e): planet@kknvtek.com
(f): Panic Farms

(a): Steve McNeal
(d): (317) 850-0004
(e): 42055@live.com
(f): NV Hemp Association

(a): Sean Kiernan
(d): (702) 724-5656
(e): Kiernan@wfwproject.org
(f): WFWP, Inc.

(a): Timothy Eli Adobo
(d): (702) 401-8423
(e): Spartibis@gmail.com
(f): Cannabinas Wellness

(a): Bruce Perlowin
(d): (323) 420-6800
(e): bruce@bruceperlowin.com
(f): Hemp, Inc.

5. 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.

Until the passage of the 2014 Farm Bill, growing Hemp in the U.S. was illegal. There are no businesses which are being affected. We have heard from several individuals and businesses that are interested in conducting a research trial. Their responses have been very positive.

Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture
Attn: Robert Little, Plant Industry Division
405 South 21st Street
Sparks, NV 89431

- 6. 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 proposed regulations were modified several times and the regulations were adopted with several changes to accommodate the comments and questions we received.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
(a) Estimated economic effect on the businesses which they are to regulate.

Participation in an Industrial Hemp Research trial is voluntary. The regulations adopt fees to support the rules established in the Farm Bill. There was no funding mechanism in SB 305. Those who choose to initiate a research trial anticipate the opportunity to generate a profit based upon the research they conduct.

- (b) Estimated economic effect on the public which they are to regulate.**

The public is not regulated by these changes. Industrial Hemp research is likely to benefit the public by lowering the cost of hundreds of consumer items that utilize the various products of Industrial Hemp production.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

The Department of Agriculture will be able to implement the adopted regulations without additional personnel. The fees adopted in the regulations will cover the costs associated with the program. The cost is wholly dependent on the number of applicants who wish to conduct a research trial.

- 9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

These regulations do not overlap or duplicate the regulations of other governmental agencies.

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

These regulations are not more stringent than any federal regulations pertaining Industrial Hemp.

11. **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 annual revenue is wholly dependent on the number of applicants who desire to conduct a research trial. The basic fees are intended to cover our costs associated with administering the program. The agency will collect fees from the registrants to purchase and import seed, ETC. Those seed fees are a pass through as the agency will hold the DEA importation permit.