

**ADOPTED REGULATION OF THE
STATE DEPARTMENT OF AGRICULTURE**

LCB File No. R086-15

Effective March 10, 2016

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

AUTHORITY: §§1-16, Section 125 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3615; §§17-26, NRS 561.301 and 576.128, as amended by section 133 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3619.

A REGULATION relating to agriculture; establishing provisions for obtaining certification as a produce vendor; revising provisions relating to the issuance, amendment and renewal of a certified producer's certificate; revising certain fees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Department of Agriculture to adopt regulations pursuant to which a person may obtain certification that he or she is a produce vendor. (Section 125 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3615) **Sections 2-16** of this regulation establish provisions pursuant to which a person may apply for, and receive, certification as a produce vendor.

Existing law also requires the Department to adopt regulations pursuant to which a person who is an actual producer of farm products, other than any livestock, livestock product or poultry, must obtain certification as an actual producer of farm products. (NRS 576.128, as amended by section 133 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3619) **Sections 17-26** of this regulation revise various regulations governing the issuance, amendment and renewal of a certification as an actual producer of farm products.

Section 17 of this regulation includes eggs and honey within the definition of "agricultural product of the soil" so that producers of eggs and honey must obtain a certified producer's certificate for those products. **Sections 19, 21-23 and 26** of this regulation make conforming changes to reflect the requirement that producers of eggs and honey obtain a certified producer's certificate for those products.

Section 18 of this regulation exempts from certification as a producer a person who does not anticipate that he or she will offer for sale an agricultural product of the soil which he or she has grown or produced.

Existing regulations require the Department, or an authorized representative of the Department, to inspect the plot of land where an applicant for a certified producer's certificate intends to produce or store agricultural products of the soil. (NAC 576.340) **Section 20** of this regulation revises this provision to authorize the Department to waive the requirement for an inspection if the agricultural products of the soil are not intended for human consumption.

Section 25 of this regulation revises provisions governing the fees charged by the Department for certain activities related to the issuance, amendment and renewal of a certified producer's certificate. **Section 25** authorizes the Department to waive the fee for the issuance of a certified producer's certificate if the Department has waived the requirement for an inspection. **Section 25** further provides that: (1) the fee to reimburse the Department for miles traveled for an inspection is equal to the reimbursement rate established by the Internal Revenue Service for the purposes of federal income taxation rather than \$0.40 per mile; and (2) the Department may charge a fee not to exceed \$5.00 for processing an online application for a certified producer's certificate.

Section 24 of this regulation revises the address and telephone number from which a person may obtain the various applications for a certified producer's certificate.

Section 1. Chapter 576 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 16, inclusive, of this regulation, 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. *"Agricultural product of the soil" has the meaning ascribed to it in NAC 576.310.*

Sec. 4. *"Certified produce vendor's certificate" means a written document issued by the Department which indicates that the holder of the certificate has obtained certification that he or she is a vendor of each agricultural product of the soil which is listed on the certificate. A certified produce vendor's certificate must not include nursery stock or ornamentals.*

Sec. 5. *1. A person who holds a certified producer's certificate who sells or intends to sell only the agricultural products of the soil listed on that certificate is exempt from the provisions set forth in sections 2 to 16, inclusive, of this regulation.*

2. *As used in this section, “certified producer’s certificate” has the meaning ascribed to it in NAC 576.320.*

Sec. 6. 1. *To obtain a certified produce vendor’s certificate, a person must submit an application to the Department, on a form prescribed by the Department.*

2. *The application must include, without limitation:*

(a) *The name, mailing address and telephone number of the applicant; and*

(b) *A list of each agricultural product of the soil which the applicant anticipates that he or she will offer for sale during the 12 months for which the certificate is valid.*

3. *Except as otherwise provided in this subsection, an application must be submitted to the Department at least 30 days before the sale of any agricultural product of the soil. The Department may, in its discretion, waive the requirements set forth in this subsection.*

Sec. 7. 1. *Upon approval of an application, the Department will issue a certified produce vendor’s certificate to the applicant.*

2. *A certified produce vendor’s certificate must list each agricultural product of the soil that is to be offered for sale by the holder of the certificate.*

3. *A certified produce vendor’s certificate is valid for 12 months after the date on which the certificate is issued.*

4. *The holder of a certified produce vendor’s certificate may apply to the Department to:*

(a) *Amend his or her certificate pursuant to section 8 of this regulation; and*

(b) *Renew his or her certificate pursuant to section 9 of this regulation.*

Sec. 8. 1. *If the holder of a certified produce vendor’s certificate wishes to add an agricultural product of the soil to those listed on his or her certificate, he or she must submit*

to the Department, on a form prescribed by the Department, a separate application to amend the certificate for each additional agricultural product of the soil that will be sold.

2. Except as otherwise provided in this subsection, if a holder of a certified produce vendor's certificate wishes to amend the certificate pursuant to subsection 1, the holder must submit an application to amend the certificate at least 30 days before the sale of any additional agricultural product of the soil. The Department may, in its discretion, waive the requirements set forth in this subsection.

3. The application must include, without limitation:

(a) The information required pursuant to subsection 2 of section 6 of this regulation; and

(b) An identification of each additional agricultural product of the soil that will be sold.

4. If the Department approves an application to amend a certified produce vendor's certificate, the Department will issue an amended certificate which lists the additional agricultural products of the soil that will be sold. The amended certificate expires on the expiration date of the original certificate.

Sec. 9. *1. The holder of a certified produce vendor's certificate may renew his or her certificate every 12 months by submitting to the Department, on a form prescribed by the Department, an application to renew the certificate.*

2. Except as otherwise provided in this subsection, if a holder of a certified produce vendor's certificate wishes to renew the certificate, the holder must submit the application for renewal at least 30 days before the certified produce vendor's certificate expires. The Department may, in its discretion, waive the requirements set forth in this subsection.

3. The application for renewal must include the information required pursuant to subsection 2 of section 6 of this regulation.

4. Upon approval of the application for renewal, the Department will issue a renewed certified produce vendor's certificate to the applicant. A renewed certificate is valid for 12 months after the date on which the renewal certificate is issued.

Sec. 10. An application for a certified produce vendor's certificate, an application to amend a certified produce vendor's certificate and an application to renew a certified produce vendor's certificate may be obtained, free of charge, from the State Department of Agriculture at 405 South 21st Street, Sparks, Nevada 89431, or by telephone at (775) 353-3601.

Sec. 11. The Department will maintain a list of each person to whom the Department has issued a certified produce vendor's certificate.

Sec. 12. A person who holds a certified produce vendor's certificate must prominently display the certificate at all times while any agricultural products of the soil are displayed or otherwise offered for sale.

Sec. 13. A person shall not use a certified produce vendor's certificate to claim or imply that he or she is the producer of an agricultural product of the soil which he or she did not grow or produce.

Sec. 14. The Director may issue a written order to stop the sale of an agricultural product of the soil if the produce vendor does not hold a valid certified produce vendor's certificate issued by the Department that lists the product being displayed or offered for sale by the produce vendor.

Sec. 15. The Department may suspend, revoke or refuse to renew a certified produce vendor's certificate issued to a person pursuant to section 6 of this regulation if the Department determines that the person violated the provisions of sections 2 to 16, inclusive, of this regulation.

Sec. 16. *A person:*

- 1. Who is issued a written order to stop the sale of an agricultural product of the soil pursuant to section 14 of this regulation; or*
- 2. Whose certified produce vendor's certificate has been suspended or revoked or has not been renewed pursuant to section 15 of this regulation,*
↪ may request a hearing pursuant to subsection 2 of NRS 561.295.

Sec. 17. NAC 576.310 is hereby amended to read as follows:

576.310 "Agricultural product of the soil" means a crop grown *or produced* in soil or any other medium ~~+~~ *and includes, without limitation, eggs and honey.*

Sec. 18. NAC 576.325 is hereby amended to read as follows:

576.325 *The following persons are exempt from the requirements set forth in NAC 576.300 to 576.440, inclusive:*

- 1. A person who grows or produces only organic agricultural products of the soil ~~is exempt from the requirements set forth in NAC 576.300 to 576.440, inclusive.~~ ; and*
- 2. A person who does not anticipate that he or she will offer for sale an agricultural product of the soil which he or she has grown or produced.*

Sec. 19. NAC 576.330 is hereby amended to read as follows:

576.330 1. To obtain a certified producer's certificate, a person must submit to the Department, on a form prescribed by the Department, a separate application for each plot of land on which an agricultural product of the soil will be grown ~~+~~ *or produced*. For the purposes of this section, a separate application is required for each plot of land on which an agricultural product of the soil will be grown *or produced* if the plot of land is not contiguous to any other plot of land on which an agricultural product of the soil will be grown ~~+~~ *or produced*.

2. The application must include, without limitation:

(a) The name, mailing address and telephone number of the applicant;

(b) The physical address of the plot of land on which each agricultural product of the soil will be grown ~~or~~ *or produced*;

(c) A list of each agricultural product of the soil for which the applicant seeks certification and anticipates that he or she will grow *or produce* and offer for sale during the 12 months for which the certificate is valid;

(d) The estimated yield of each agricultural product of the soil listed on the application;

(e) The harvest season of each agricultural product of the soil listed on the application;

(f) If an agricultural product of the soil is to be stored, the length of time the product will be stored;

(g) If any agricultural product of the soil *grown or* produced by the applicant is in storage at the time of application, the physical address at which the product is being stored and the amount of the product that is being stored at that location at the time of application;

(h) The total area of the plot of land which is under cultivation for each agricultural product of the soil listed on the application, designated in terms of acres or square feet, as applicable;

(i) A detailed map that indicates the location of the plot of land on which any agricultural product of the soil listed pursuant to paragraph (c) will be grown ~~or~~ *or produced*; and

(j) The fee set forth in NAC 576.371 for the application and the inspection required pursuant to NAC 576.340.

3. Except as otherwise provided in this subsection, an application must be submitted to the Department at least 30 days before the harvest of an agricultural product of the soil that is listed

on the application. The Department may, in its discretion, waive the requirements set forth in this subsection.

Sec. 20. NAC 576.340 is hereby amended to read as follows:

576.340 *1.* Except as otherwise provided in *subsection 2 or* NAC 576.353 or 576.356, before approving an application for a certified producer's certificate, an amended certified producer's certificate or a renewed certified producer's certificate, the Department, or an authorized representative of the Department, will inspect the plot of land that is indicated on the application to verify the *growth or* production of each agricultural product of the soil that is listed on the application or the existence in storage of each agricultural product of the soil that is listed on the application which has been harvested ~~H~~ *or produced*, or both.

2. The Department may, in its discretion, waive the inspection required pursuant to subsection 1 for a certified producer of an agricultural product of the soil that is not meant for human consumption.

Sec. 21. NAC 576.350 is hereby amended to read as follows:

576.350 *1.* Upon approval of an application, the Department will issue a certified producer's certificate to the applicant.

2. A certified producer's certificate must list each agricultural product of the soil that is *grown or* produced by the holder of the certificate.

3. A certified producer's certificate is valid for 12 months after the date on which the certificate is issued.

4. The holder of a certified producer's certificate may apply to the Department to:

- (a) Amend the certificate pursuant to NAC 576.353; and
- (b) Renew the certificate pursuant to NAC 576.356.

Sec. 22. NAC 576.353 is hereby amended to read as follows:

576.353 1. If the holder of a certified producer's certificate wishes to add an agricultural product of the soil to those listed on the certificate, he or she must submit to the Department, on a form prescribed by the Department, a separate application to amend the certificate for each plot of land on which an additional agricultural product of the soil will be grown ~~or~~ *or produced*. For the purposes of this section, a separate application is required for each plot of land on which an additional agricultural product of the soil will be grown *or produced* if the plot of land is not contiguous to any other plot of land on which an agricultural product of the soil is grown *or produced* that is listed on the certified producer's certificate.

2. Except as otherwise provided in this subsection, if a holder of a certified producer's certificate wishes to amend the certificate pursuant to subsection 1, the holder must submit an application to amend the certificate at least 30 days before the harvest of any additional agricultural product of the soil. The Department may, in its discretion, waive the requirements set forth in this subsection.

3. The application must include, without limitation:

- (a) The information required pursuant to subsection 2 of NAC 576.330;
- (b) An identification of each additional agricultural product of the soil that will be grown ~~or~~ *or produced*; and
- (c) A detailed map that indicates the location of the plot of land on which any additional agricultural product of the soil will be grown ~~or~~ *or produced*.

4. The Department may waive the inspection of the plot of land that is indicated on the application to amend a certificate, which is required pursuant to NAC 576.340 to verify the production of each additional agricultural product of the soil, unless any agricultural product of

the soil included on the application is substantially different from the agricultural products of the soil listed on the original certificate.

5. If the Department approves an application to amend a certified producer's certificate, the Department will issue an amended certificate which lists the additional agricultural products of the soil that will be grown ~~H~~ *or produced*. The amended certificate expires on the expiration date of the original certificate.

Sec. 23. NAC 576.356 is hereby amended to read as follows:

576.356 1. The holder of a certified producer's certificate may renew the certificate every 12 months by submitting to the Department, on a form prescribed by the Department, an application to renew the certificate.

2. Except as otherwise provided in this subsection, if a holder of a certified producer's certificate wishes to renew the certificate, the holder must submit the application for renewal at least 30 days before the certified producer's certificate expires. The Department may, in its discretion, waive the requirements set forth in this subsection.

3. The Department may waive the inspection of the plot of land that is indicated on the application to renew a certificate, which is required pursuant to NAC 576.340 to verify the production of each agricultural product of the soil, unless:

(a) The designation of the plot of land on which an agricultural product is grown *or produced* that is listed on the renewal application is different from the plot of land designated on the original certificate; or

(b) Any agricultural products of the soil included on the renewal application are substantially different from the agricultural products of the soil listed on the original certificate.

4. The application for renewal must include:

- (a) The information required pursuant to subsection 2 of NAC 576.330; and
- (b) The fee for renewal set forth in NAC 576.371.

5. Upon approval of the application for renewal, the Department will issue a renewed certified producer's certificate to the applicant. A renewed certificate is valid for 12 months after the date on which the renewal certificate is issued.

Sec. 24. NAC 576.361 is hereby amended to read as follows:

576.361 An application for a certified producer's certificate, an application to amend a certified producer's certificate and an application to renew a certified producer's certificate may be obtained, free of charge, from the State Department of Agriculture ~~by mail at 350 Capitol Hill Avenue, Reno, Nevada 89502, or by telephone at (775) 688-1180.~~ *at 405 South 21st Street, Sparks, Nevada 89431, or by telephone at (775) 353-3601.*

Sec. 25. NAC 576.371 is hereby amended to read as follows:

576.371 ~~{The}~~

1. Except as otherwise provided in subsection 2, the Department will charge and collect the following nonrefundable fees:

~~{1.}~~ *(a)* For an application for an initial certified producer's certificate ~~{and the inspection required pursuant to NAC 576.340}.~~\$50.00

~~{2.}~~ *(b)* For the renewal of a certified producer's certificate ~~{without an inspection}.~~\$30.00

~~{3.}~~ *(c)* For the inspection of any plot of land concerning an agricultural product of the soil for which a person seeks a certified producer's certificate which is conducted after the initial inspection has been completed and for any other additional inspections:

~~{(a)}~~ *(1)* For each hour of inspection, calculated from the assigned office of the inspector, per hour\$30.00

~~1(b)~~ (2) For mileage, per mile ~~[\$0.40]~~, *an amount that is equal to the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax.*

2. The Department may, in its discretion:

(a) Waive the fee for an application for which it does not require an inspection.

(b) Charge a fee not to exceed \$5 for each application for a certified producer's certificate that is processed through the Internet website maintained by the Department.

Sec. 26. NAC 576.400 is hereby amended to read as follows:

576.400 A person shall not use a certified producer's certificate to claim or imply that the person is the producer of an agricultural product of the soil which he or she did not *grow or* produce.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NAC 576.300-576.440
Informational Statement
LCB File No. R-086-15

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

The new federal requirements under the Food Safety Modernization Act mandate the ability to trace food sources in the event of a food borne illness event. We have no way to do that without registering producers of products destined for human consumption.

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.

Public Comment was solicited in the following manner: Posting were done on August 24, 2015, Notice of workshop and October 22, 2015, Notice of hearing date. Notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail or email to persons who were known to have an interest in changes to NAC 576, 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 21 st Street Sparks, NV 89431-5566	Nevada Department of Agriculture 2150 Frazer Avenue Sparks, NV 89431
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Nevada Department of Agriculture 2300 McLeod Street Las Vegas, NV 89104-4314	Nevada Department of Agriculture 4780 E. Idaho Street Elko, NV 89801-4672
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Interested persons may obtain a copy of the summary by contacting:
Nevada Department of Agriculture
Attn: Ruth Tietjen
405 S. 21st Street
Sparks NV 89431

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

Workshop: September 10, 2015
Number in attendance: 3 (NDA Staff)
Number testifying: 1
Written statements submitted: 0

Hearing: November 23, 2015
Number in attendance: 1 (NDA Staff)
Number testifying: 0
Written statements submitted: 0

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.**

None.

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.**

Public Comment was solicited in the following manner: Posting were done on August 24, 2015, Notice of workshop and October 22, 2015, Notice of hearing date. Notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail or email to persons who were known to have an interest in changes to NAC 576, 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

Nevada Department of Agriculture
Attn: Bart O'Toole, Consumer Equitability Division
2450 Frazer Ave.
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.**

No changes were requested or required.

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

The estimated economic effect on the business these registrations is minimal.

There is no estimated or calculated economic effect on the public for this fee increase.

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

There is no additional cost to the agency for the enforcement of this regulation.

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.

There are no other state or government agency regulations that the proposed amendments duplicate

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 federal regulations.

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 fee for added registrants for Producers Certificates was waived. The \$50.00 fee that applies to our Producers Certificate holders now applies to Produce Vendors who market products in Nevada. We expect fewer than 50 registrants annually. Revenue generated will be used to offset the cost of registration enforcement.