

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

LCB File No. R188-24

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

AUTHORITY: §§ 1-3, NRS 557.260; § 4, NRS 557.260 and 557.270.

A REGULATION relating to hemp; defining total THC; revising provisions relating to the acceptable hemp THC level; revising provisions relating to the testing of hemp; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the regulation of the growth and handling of hemp and the production of agricultural hemp seed in this State by persons registered with the State Department of Agriculture. (Chapter 557 of NRS) Existing federal law authorizes the production of hemp under the primary jurisdiction of a state or Indian tribe if the state or Indian tribe submits to the United States Secretary of Agriculture a plan that satisfies certain requirements. (7 U.S.C. § 1639p)

Existing federal regulations designate the maximum THC level of hemp for the purpose of compliance with a state plan as the “acceptable hemp THC level.” (7 C.F.R. §§ 990.1, 990.3) Under existing federal regulations, the acceptable hemp THC level is defined as when the application of the measurement of uncertainty to the reported total delta-9-tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3 percent or less. (7 C.F.R. § 990.1) Existing state regulations similarly provide that the maximum THC concentration for hemp for the purposes of the provisions of existing state law governing hemp is the acceptable hemp THC level. (NRS 557.160; NAC 557.042) Existing state regulations define “acceptable hemp THC level” to mean a THC content concentration level on a dry weight basis that, when reported with the laboratory’s measurement of uncertainty, produces a distribution or range that includes a THC content concentration level on a dry weight basis that is equal to or less than the maximum delta-9-tetrahydrocannabinol concentration level on a dry weight basis for hemp established under the definition of hemp in federal law. (NAC 557.011)

Existing federal regulations define “total THC” to mean, in general, the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9-tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. (7 C.F.R. § 990.1)

Section 1 of this regulation defines “total THC” to have the meaning ascribed to it in existing federal regulations. **Sections 3 and 4** of this regulation replace references in existing state regulations governing hemp to the amount of THC contained in hemp to instead refer to the “total THC” contained in hemp, including for the purposes of compliance with the acceptable

hemp THC level. **Section 3** further revises the definition of the acceptable hemp THC level by replacing the reference to the federal law definition of hemp with a reference to the acceptable hemp THC level established under federal regulations, thereby aligning the acceptable hemp THC level under state regulations with the level established under federal regulations. **Section 2** of this regulation makes a conforming change to apply the definition of “total THC” set forth in **section 1** to existing regulations generally governing hemp.

Existing federal regulations require a state plan to include certain procedures and methods of testing a sample of hemp to identify whether the sample of hemp contains a total THC content concentration level that exceeds the acceptable hemp THC level. (7 C.F.R. § 990.3) Existing state regulations require that such testing include: (1) the conversion of THCA into THC using a post-decarboxylation or similarly reliable method; or (2) other methods that meet the requirements of existing federal regulations governing such testing. (7 C.F.R. § 990.3; NAC 557.136) **Section 4** defines the term “post-decarboxylation” for these purposes.

Section 1. Chapter 557 of NAC is hereby amended by adding thereto a new section to read as follows:

“Total THC” has the meaning ascribed to it in 7 C.F.R. § 990.1.

Sec. 2. NAC 557.005 is hereby amended to read as follows:

557.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 557.011 to 557.032, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 557.011 is hereby amended to read as follows:

557.011 “Acceptable hemp THC level” means a *total* THC content concentration level on a dry weight basis that, when reported with the laboratory’s measurement of uncertainty, produces a distribution or range that includes a *total* THC content concentration level on a dry weight basis that is equal to or less than the maximum *total* delta-9-tetrahydrocannabinol concentration level on a dry weight basis for hemp established ~~[by 7 U.S.C. § 1639e.]~~ *in the definition ascribed to “acceptable hemp THC level” in 7 C.F.R. § 990.1.*

Sec. 4. NAC 557.136 is hereby amended to read as follows:

557.136 1. The testing required pursuant to NRS 557.270 must be conducted using testing procedures that meet the requirements set forth in 7 C.F.R. § 990.3. Such testing procedures must include, without limitation:

(a) The conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC using a post-decarboxylation or similarly reliable method; or

(b) Other methods that meet the requirements set forth in 7 C.F.R. § 990.3.

2. In determining whether a crop has a *total* THC concentration that exceeds the acceptable hemp THC level, the Department will use a measurement of uncertainty that meets:

(a) The requirements set forth in the publication adopted by reference pursuant to NAC 557.131; and

(b) Any requirements set forth in 7 C.F.R. Part 990.

3. A registrant shall not allow a crop to enter the stream of commerce until the registrant has received a report issued by the Department pursuant to subsection 4 of NRS 557.270 indicating that the crop contains a *total* THC concentration that does not exceed the acceptable hemp THC level.

4. As used in this section, “post-decarboxylation” has the meaning ascribed to it in 7 C.F.R. § 990.1.