

**PROPOSED REGULATION OF THE
DIRECTOR OF THE
STATE DEPARTMENT OF AGRICULTURE**

LCB File No. R156-16

September 11, 2017

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

AUTHORITY: §§1-8, NRS 555.380 and 555.400.

A REGULATION relating to pesticide; requiring the State Department of Agriculture to designate certain areas as nonfood or nonfeed sites or as food or feed sites; authorizing the Department to require an owner of a crop grown for seed production to provide certain information to assist the Department in granting or denying a designation as a nonfood or nonfeed site for certain crops; requiring a pesticide to meet certain conditions for the purposes of registering, labeling, distributing and using the pesticide on a nonfood or nonfeed site; prohibiting certain acts; providing exceptions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Director of the State Department of Agriculture to adopt regulations governing the custom application of pesticides for the control of insects, pests and noxious weeds. (NRS 555.400) Existing law further authorizes the Director to adopt regulations prescribing the materials or methods to be used and prohibiting the use of materials or methods in the custom application of pesticides in order to protect health or to prevent injury. (NRS 555.380) Existing regulations require that each person engaged in the application of pesticides for hire must comply with certain requirements, including requirements for: (1) the application of pesticides; and (2) the methods and equipment to use when applying pesticides. (NAC 555.400)

Section 2 of this regulation requires the Department, for the purposes of registering, labeling, distributing and using a pesticide, to designate an area as a nonfood or nonfeed site if certain crops grown for seed production are grown in that area. **Section 2** further sets forth that if the requirements of **section 5** of this regulation are met, the Department will not require a pesticide residue tolerance to register a pesticide: (1) which has no established pesticide residue tolerance; and (2) which is applied to a nonfood or nonfeed site.

Section 3 of this regulation requires the Department to designate an area as a food or feed site that is not eligible for designation as a nonfood or nonfeed site if certain crops are grown in that area. As a result, a pesticide for which there is no established pesticide residue tolerance must not be applied to such crops.

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizes state and federal agencies to permit the unregistered use of a pesticide in a specific geographic area for a limited time if an emergency pest condition exists. (7 U.S.C. § 136p) Section 24(c) of that Act authorizes state-specific registration, under which a state may register a new pesticide for any use, or a federally registered pesticide for an additional use, as long as there is a: (1) demonstrated special local need; and (2) tolerance, exemption from a tolerance or other clearance under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.). (7 U.S.C. § 136v) **Section 4** of this regulation authorizes the Department to require an owner of a crop grown for seed production that is not listed in **section 2** to provide to the Department, in addition to the information required by **section 5**, any information required by the Federal Insecticide, Fungicide, and Rodenticide Act if: (1) the Department receives an application for a registration pursuant to section 24(c) or an authorization pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act; and (2) the owner intends to use the pesticide on a crop grown for seed production that is not listed in **section 2**. **Section 4** further requires the Department to, after reviewing and evaluating this information, grant or deny the designation as a nonfood or nonfeed site for a crop grown for seed production that is not listed in **section 2**.

Section 5 requires a pesticide to meet certain conditions for the purposes of registering, labeling, distributing and using the pesticide on a nonfood or nonfeed site. **Section 5** sets forth that these conditions include: (1) the owner of any nonfood or nonfeed site must provide all the seed screening from the nonfood and nonfeed site and certain information to a seed conditioner; (2) the seed conditioner must keep records of the disposal of such seed screening for not less than 3 years after the date of disposal; (3) the seed conditioner must keep a record of each pesticide which has no established pesticide residue tolerance and which is applied to any seeds produced in this State; (4) the owner or producer of any seed produced in this State that uses a pesticide which has no established pesticide residue tolerance must not distribute such seed as food for human consumption or as feed for animals; (5) the owner or producer of any seed produced in this State that uses a pesticide which has no established pesticide residue tolerance must distribute the seed in containers or in bulk that bear labels which meet certain labeling requirements; (6) any person who possesses any seed bearing labels that meet certain labeling requirements must prepare and maintain certain records; and (6) the owner, producer or any other person must not distribute as food for human consumption or feed for animals any crop grown for seed production at a nonfood or nonfeed site that is treated with a pesticide which has no established pesticide residue tolerance and any byproduct of such a crop.

Section 6 of this regulation prohibits a person from: (1) refusing or failing to prepare and maintain any record required by **section 5**; or (2) making false, misleading or fraudulent records required by **section 5**.

Section 7 of this regulation sets forth certain exceptions to the labeling requirements in **section 5**.

Section 1. Chapter 555 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *For the purposes of registering, labeling, distributing and using a pesticide pursuant to NRS 555.5605 to 555.470, inclusive, and chapter 586 of NRS or any other applicable law or regulation, the Department will designate an area as a nonfood or nonfeed site if the following crops grown for seed production are grown in that area:*

- (a) Alfalfa. (Medicago sativa)*
- (b) Allium. (Allium)*
- (c) Arugula. (Eruca sativa)*
- (d) Beetroot. (Beta vulgaris var. conditiva)*
- (e) Birdsfoot trefoil. (Lotus corniculatus)*
- (f) Broccoli. (Brassica oleracea var. italica)*
- (g) Brussels sprout. (Brassica oleracea var. gemmifera)*
- (h) Burdock. (Arctium)*
- (i) Cabbage. (Brassica oleracea var. capitata)*
- (j) Carrot. (Daucus carota subsp. sativus)*
- (k) Cauliflower. (Brassica oleracea var. botrytis)*
- (l) Celery. (Apium graveolens)*
- (m) Chicory. (Cichorium intybus)*
- (n) Clover. (Trifolium)*
- (o) Collard greens. (Brassica oleracea var. acephala)*
- (p) Coriander. (Coriandrum sativum)*
- (q) Cucumber. (Cucumis sativus)*
- (r) Dill. (Anethum graveolens)*
- (s) Drug or medicinal crop.*

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| (t) <i>Endive.</i> | <u>(<i>Cichorium endivia</i>)</u> |
| (u) <i>Herb used for culinary purposes.</i> | |
| (v) <i>Herb used as a dietary supplement.</i> | |
| (w) <i>Kale.</i> | <u>(<i>Brassica oleracea</i> var. <i>acephala</i>)</u> |
| (x) <i>Kohlrabi.</i> | <u>(<i>Brassica oleracea</i> var. <i>gongylodes</i>)</u> |
| (y) <i>Lettuce.</i> | <u>(<i>Lactuca sativa</i>)</u> |
| (z) <i>Meadowfoam.</i> | <u>(<i>Limnanthes alba</i>)</u> |
| (aa) <i>Mizuna.</i> | <u>(<i>Brassica juncea</i> var. <i>japonica</i>)</u> |
| (bb) <i>Mustard.</i> | <u>(<i>Brassica</i> and <i>Sinapis</i>)</u> |
| (cc) <i>Parsley.</i> | <u>(<i>Petroselinum crispum</i>)</u> |
| (dd) <i>Parsnip.</i> | <u>(<i>Pastinaca sativa</i>)</u> |
| (ee) <i>Radish, not including daikon.</i> | <u>(<i>Raphanus raphanistrum</i> subsp. <i>sativus</i>)</u> |
| (ff) <i>Rapeseed.</i> | <u>(<i>Brassica napus</i>)</u> |
| (gg) <i>Rutabaga.</i> | <u>(<i>Brassica napus</i> var. <i>napobrassica</i>)</u> |
| (hh) <i>Spinach.</i> | <u>(<i>Spinacia oleracea</i>)</u> |
| (ii) <i>Sugar Beet.</i> | <u>(<i>Beta vulgaris</i> var. <i>altissima</i>)</u> |
| (jj) <i>Summer Squash.</i> | <u>(<i>Cucurbita pepo</i>)</u> |
| (kk) <i>Swiss Chard.</i> | <u>(<i>Beta vulgaris</i> subsp. <i>vulgaris</i>)</u> |
| (ll) <i>Turnip.</i> | <u>(<i>Brassica rapa</i> var. <i>rapa</i>)</u> |
| (mm) <i>Vetch.</i> | <u>(<i>Vicia sativa</i>)</u> |
| (nn) <i>Winter Squash, not including pumpkins.</i> | <u>(<i>Cucurbita argyrosperma</i>, <i>Cucurbita maxima</i>, <i>Cucurbita moschata</i> and <i>Cucurbita pepo</i>)</u> |

2. *Notwithstanding the provisions of 40 C.F.R. Part 180 and section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 346a, if the requirements of section 5 of this regulation are satisfied, the Department will not require a pesticide residue tolerance to register a pesticide which has no established pesticide residue tolerance and which is applied to a nonfood or nonfeed site.*

Sec. 3. *The Department will designate an area as a food or feed site that is not eligible for designation as a nonfood or nonfeed site if the following crops, which may be crops grown for seed production, are grown in that area:*

1. *Cereal grains, including, without limitation:*

- (a) *Barley.* (*Hordeum vulgare*)
- (b) *Buckwheat.* (*Fagopyrum esculentum*)
- (c) *Corn.* (*Zea mays*)
- (d) *Millet.* (*Eleusine coracana*, *Panicum miliaceum*,
Pennisetum glaucum and *Setaria italica*)
- (e) *Oat.* (*Avena sativa*)
- (f) *Rye.* (*Secale cereale*)
- (g) *Sorghum.* (*Sorghum bicolor*)
- (h) *Triticale.* (*Triticosecale*)
- (i) *Wheat.* (*Triticum*)

2. *Garlic.* (*Allium sativum*)

3. *Legume vegetables, including, without limitation, succulent and dried:*

- (a) *Beans.* (*Phaseolus*)
- (b) *Chickpeas.* (*Cicer arietinum*)

- (c) *Lentils.* (*Lens culinaris*)
- (d) *Peas.* (*Pisum sativum*)
- 4. *Potatoes.* (*Solanum tuberosum*)
- 5. *Pumpkins.* (*Cucurbita argyrosperma*, *Cucurbita maxima*, *Cucurbita moschata* and *Cucurbita pepo*)
- 6. *Sunflower.* (*Helianthus*)

Sec. 4. 1. *To assist the Department in determining whether to grant or deny the designation as a nonfood or nonfeed site for a crop grown for seed production that is not listed in section 2 of this regulation, the Department may require the owner of a crop grown for seed production that is not listed in section 2 of this regulation to provide to the Department, in addition to the information required pursuant to section 5 of this regulation, any information required by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 135 et seq., if:*

(a) The Department receives an application for:

(1) A registration pursuant to section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136v; or

(2) An authorization pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136p; and

(b) The owner intends to use the pesticide on a crop grown for seed production that is not listed in section 2 of this regulation.

2. The Department will grant or deny the designation as a nonfood or nonfeed site for a crop grown for seed production that is not listed in section 2 of this regulation after reviewing and evaluating the information provided pursuant to subsection 1.

Sec. 5. 1. Except as otherwise provided in this section, for the purposes of registering, labeling, distributing and using a pesticide pursuant to NRS 555.5605 to 555.470, inclusive, and chapter 586 of NRS or any other applicable law or regulation on a nonfood or nonfeed site, the pesticide must meet the following conditions:

(a) The owner of any nonfood or nonfeed site must:

(1) Provide all the seed screening from the nonfood or nonfeed site to a seed conditioner for disposal in a manner that ensures the seed screening cannot be distributed as food for human consumption or as feed for animals; and

(2) Inform the seed conditioner of each pesticide applied to the nonfood or nonfeed site.

(b) The seed conditioner must keep records of the disposal of seed screening for not less than 3 years after the date of the disposal. The seed conditioner must provide copies of such records to the Department upon request. Such a record must contain the following information:

(1) A verification of any shipment of the seed screening to a site where disposal occurred, including, without limitation, the:

(I) Date of the shipment to the disposal site; and

(II) Source of the shipment;

(2) The name, if any, and location of the site where disposal occurred;

(3) The method of disposal, including, without limitation, burial, composting or incineration; and

(4) The amount and type of material disposed.

(c) Except as otherwise provided in section 7 of this regulation, the seed conditioner must keep a record of each pesticide which has no established pesticide residue tolerance and which is applied to any seeds produced in this State. Such a record must include, without limitation, the:

(1) Date of each application of the pesticide to the seeds produced; and

(2) Type of pesticide applied to the seeds produced.

(d) If any seed produced in this State uses or is from a field that is treated with a pesticide which has no established pesticide residue tolerance, the owner or producer of such seed must:

(1) Not distribute such seed as food for human consumption or as feed for animals; and

(2) Except as otherwise provided in section 7 of this regulation, distribute such seed in a container bearing specific and conspicuous labeling or, if shipped in bulk, bearing specific and conspicuous labeling on the shipment invoice or bill of lading that contains the following statement:

This seed was produced using one or more products for which the United States Environmental Protection Agency has not established pesticide residue tolerance. This seed, in whole, as sprouts or in any form, may not be used as food for human consumption or as feed for animals. Failure to comply with this condition may violate requirements of the United States Food and Drug Administration, the Nevada State Department of Agriculture and other regulatory agencies.

(e) Any person who possesses any seed labeled pursuant to subparagraph (2) of paragraph (d), including, without limitation, a broker or dealer, must prepare and maintain a record that

includes, without limitation, a copy of the labeling placed on the container, shipment invoice or bill of lading.

(f) The owner, producer or any other person must not distribute as food for human consumption or feed for animals any crop grown for seed production at a nonfood or nonfeed site that is treated with a pesticide which has no established pesticide residue tolerance, and any byproduct of such a crop, including, without limitation, green chop, hay, pellets, meal, whole seed, cracked seed, straw, roots, bulbs, foliage or seed screening, and any grazing of the field, stubble or regrowth of such a crop.

2. The provisions of subsection 1 do not apply to any crop or byproduct of a crop grown in this State, including, without limitation, a crop grown for seed production at a nonfood or nonfeed site, to which:

(a) No pesticide has been applied; or

(b) Only pesticides registered and labeled for application to the crop have been applied, if the pesticide residue tolerance has been established for the specific crop and its byproducts.

3. The provisions of subparagraph (2) of paragraph (d) of subsection 1 and paragraph (e) of subsection 1 do not apply to any seed that is:

(a) Sold or distributed in consumer packets weighing less than 5.0 ounces; and

(b) Intended for retail sale or noncommercial use.

4. The Department may modify the provisions of paragraph (f) of subsection 1 if:

(a) The owner, producer or any other person provides data concerning the pesticide residue; and

(b) The Department and the United States Environmental Protection Agency authorize such data and modification.

Sec. 6. *A person shall not:*

1. Refuse or fail to prepare and maintain any record required pursuant to section 5 of this regulation; or

2. Make false, misleading or fraudulent records required pursuant to section 5 of this regulation.

Sec. 7. 1. *If an owner of a nonfood or nonfeed site has not informed a seed conditioner pursuant to subparagraph (2) of paragraph (a) of subsection 1 of section 5 of this regulation of the pesticides applied to the nonfood or nonfeed site, the seed conditioner:*

(a) Shall deem such a crop to have been treated with a pesticide for which there is no established pesticide residue tolerance; and

(b) Is exempt from the requirements of paragraph (c) of subsection 1 of section 5 of this regulation.

2. The Department shall exempt from the labeling requirements of subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation any seed grown in this State but conditioned in another state or territory of the United States, or the District of Columbia, if such other state or territory, or the District of Columbia, has labeling requirements for seeds which, as determined by the Department, are substantially similar to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation. The grower, broker or other responsible party shall label any seed grown in this State pursuant to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation when exporting the seed for conditioning in another state or territory of the United States, or the District of Columbia.

3. The Department will exempt from the labeling requirements in subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation any seed that is treated. The

owner or purchaser shall label the seed pursuant to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation before such seed is treated. As used in this subsection, the term “treated” has the meaning ascribed to it in NRS 587.061.

Sec. 8. NAC 555.005 is hereby amended to read as follows:

555.005 As used in this chapter, unless the context otherwise requires:

1. *“Crop grown for seed production” means any crop that is grown:*

(a) To produce seed that is not intended for human consumption or as feed for animals;

and

(b) With the sole intent of the seed being:

(1) Planted; or

(2) Processed to produce industrial or cosmetic oil that is not edible.

2. “Department” means the State Department of Agriculture.

~~2.~~ 3. “Director” means the Director of the Department.

4. *“Drug or medicinal crop” means any plant that produces or from which is derived a drug or chemical substance that is used for pharmaceutical or medicinal purposes. The term does not include medical marijuana, as defined in NAC 372A.120.*

5. *“Pesticide residue tolerance” means the allowable amount of the residue of a pesticide that is prescribed by the United States Environmental Protection Agency.*

6. *“Seed conditioner” means a person who disposes of seed screening in compliance with state and federal laws and regulations.*

7. *“Seed screening” means all matter separated from seeds through the use of screens.*