

**PROPOSED REGULATION OF THE
DEPARTMENT OF AGRICULTURE**

LCB FILE NO. R044-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 03/12/2018**

Adopted Regulation R146-16

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

LCB File No. R_____

Effective January 27, 2017

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

AUTHORITY: §§1-12, NRS 561.301 and 576.128.

A REGULATION relating to agricultural products; revising certain provisions relating to issuing certified producer's *and produce vendor* certificates for agricultural products; providing a fee relating to aquaculture products; and providing other matters properly relating thereto. *The purpose of the certified producer and produce vendor certificate is to trace products being grown and/or sold to the farm and/or vendor. This certification is used to verify products as an approved source by local health authorities inspecting products that will be sold to and consumed by the general public to ensure that in the case of a public health outbreak that ingredients could be traced to the producer or vendor. This also provides verification to consumers pursuing Nevada grown products, that the products were produced in Nevada.*

Legislative Counsel's Digest:

Existing law authorizes the State Department of Agriculture to adopt regulations requiring certain producers of farm products to obtain certification as an actual producer of a farm product. (NRS 576.128) The Department is also authorized under existing law to regulate aquatic agriculture to the same extent as other agriculture. (NRS 561.301) Under existing regulations, the Department will issue a certified producer certificate to certain producers of agricultural products. (NAC 576.300-576.440) This regulation includes aquaculture products, eggs and honey among the agricultural products for which a producer may obtain a certified producer's certificate. **Section 1** of this regulation revises the definition of "agricultural product" to include crops grown in the soil or any other medium, aquaculture products, eggs and honey. **Section 9** of this regulation adds fees that the Department will charge for certain actions related to a certified producer's certificate for an aquaculture product. **Sections 2-8 and 10-12** of this regulation make conforming changes.

Section 1. NAC 576.310 is hereby amended to read as follows:

576.310 “Agricultural product” *includes, without limitation:*

1. *A crop grown in soil or any other medium;*
2. *An aquaculture product produced by aquatic farming, including, without limitation, fish, plants, crustaceans, amphibians, turtles, microorganisms or any product derived from any such fish, plant, crustacean, amphibian, turtle or microorganism;*

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3. *Eggs; and*

4. *Honey.*

NAC 576.xxx Bee products include without limitation to honey, honeycomb, pollen, propolis, and beeswax.

NAC 576.xxx Bee products intended for sale must obtain a producer certificate when being sold in a raw unmodified form as defined in NAC 583.340. Once the products are modified from their raw form including but not limited to adding spices, flavorings, dairy products etc. then approval for selling products must be obtained from a local health authority.

Section/NAC 576.xxx TBD: is hereby added to include a Produce Vendor definition as follows:

NAC 576.xxx “A produce vender sells farm products that are not directly produced by the vendor. This excludes poultry, livestock or livestock products. Vendor sales may include but are not limited to farmers markets, street stands, and/or farm stands.

Sec. 2. NAC 576.320 is hereby amended to read as follows:

576.320 “Certified producer’s certificate” means a written document issued by the Department pursuant to NAC 576.330, 576.340 and 576.350 which indicates that the holder of the certificate has obtained certification that he or she is the actual producer of each agricultural product which is listed on the certificate.

Operations that maintain a farm inventory and are inspected for processed foods or a food establishment per NRS 446 are exempt from the producer and vendor certificate fee, however they still must complete the certified producer or vendor certificate application to meet farm registration requirements pursuant to the Federal Drug Administration’s Food Safety Modernization Act (FSMA), Produce Safety Rule (PSR) per Title 21 of the Code of Federal Regulations, Part 112-Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption.

Sec. 3. NAC 576.325 is hereby amended to read as follows:

576.325 A person who produces only organic agricultural products *is exempt from the fees set forth in* NRS 561.301, 576.128). *Certified organic growers are required to submit a completed registration with content assigned by the director for traceability purposes pursuant to the FSMA, PSR. If additional information is needed or no registration is submitted, a site inspection may be required which will be determined by the Director.* **Sec. 4. 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, an application for each site on which an agricultural product will be produced. For the purposes of this section, a separate application is required for each site on which an agricultural product will be produced, if the site is not contiguous to any other site on which an agricultural product will be produced.

2. The application contents *will be set forth at the discretion of the director.*

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

Sec. 5. NAC 576.340 is hereby amended to read as follows:

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576.340 Except as otherwise provided in 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 site that is indicated on the application to verify the production of each agricultural product that is listed on the application or the existence in storage of each agricultural product that is listed on the application which has been harvested, or both.

Sec. 6. 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 that is 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.

5. A producer's and vendor certificate must be prominently displayed at all points of sale.

Sec. 7. 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 to those listed on the certificate, he or she must submit to the Department, on a form prescribed by the Department, to amend the certificate for each

contiguous site on which an additional agricultural product will be

produced. For the purposes of this section, a separate application is required for each Adopted Regulation R146-16

site on which an additional agricultural product will be *produced* if

the *site* is not contiguous to any other *site* on which an agricultural product is 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. 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 that will be *produced*; and

(c) A detailed map that indicates the location of the *site* on which any

additional agricultural product will be *produced*.

4. The Department may waive the inspection of the *site* 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, unless any agricultural product included on the application is different from the agricultural products 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 that will be *produced*. The amended certificate expires on the expiration date of the original certificate.

Adopted Regulation R146-16Sec. 8. 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 *site* 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, unless:

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

(b) Any agricultural products included on the renewal application are different from the agricultural products 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. 9. NAC 576.371 is hereby amended to read as follows:

Section/NAC 576.xxx -Produce Vendor Certificates

- 1. The produce vendor application contents will be set forth at the discretion of the director.*
- 2. If the holder of a certified vendor's certificate wishes to add an agricultural product to those listed on the certificate, he or she must submit to the Department, on a form prescribed by the Department, to amend the certificate. Except as otherwise provided in this subsection.*
- 3. If a holder of a produce vendor's certificate wishes to renew the certificate, the holder must submit the application for renewal at least 30 days before the certificate expires. The Department may, in its discretion, waive the requirements set forth in this subsection.*
- 4. A produce vendor must apply for a certificate at a minimum of 30 days prior to initiating sales in the state.*
- 5. A produce vendor must maintain a record of farms supplying products for a minimum of 12 months.*
- 6. The produce vendor certificate must be prominently displayed at all points of sale.* Adopted Regulation R146-16

576.371 The Department will charge and collect the following nonrefundable fees:

1. For any agricultural product except an aquaculture product:
 - (a) For an application for an initial certified producer's certificate and the inspection required pursuant to NAC 576.340..... \$50.00
 - (b) For the renewal of a certified producer's certificate without an inspection..... \$30.00
 - (c) For the inspection of any site concerning an agricultural product *except an aquaculture product* 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:
 - (1) For each hour of inspection, calculated from the assigned office of the inspector, per hour..... \$30.00
 - (2) For mileage, per mile..... \$0.40
2. For an aquaculture product:

(a) For an application for an initial certified producer's certificate and the inspection required pursuant to NAC 576.340.....\$75.00

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

(c) For the inspection of any site concerning an aquaculture product 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:

(1) For each hour of inspection, calculated from the assigned office of the inspector, per hour.....\$50.00

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(2) For mileage, the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax calculated from the assigned office of the inspector.

Sec. 10. 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 which he or she did not produce.

Sec. 11. NAC 576.410 is hereby amended to read as follows:

576.410 The Director may issue a written order to stop the sale of an agricultural product if that product is advertised, sold, labeled or otherwise represented as certified in violation of NAC 576.300 to 576.440, inclusive. A person shall not sell an agricultural product for which the Director has issued a written order to stop the sale pursuant to this section until the Department determines that the advertising, selling, labeling or other representation of the product complies with NAC 576.300 to 576.440, inclusive.

Sec. 12. NAC 576.440 is hereby amended to read as follows:

576.440 A person:

1. Who is issued a written order to stop the sale of an agricultural product pursuant to NAC 576.410; or
2. Whose certified producer's certificate has been suspended or revoked or has not been renewed pursuant to NAC 576.420,

may request a hearing pursuant to subsection 2 of NRS 561.295.

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LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066

Informational Statement

LCB File No. R146-16

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

The regulation is needed to include the practice of aquaculture in the regulations regarding agriculture in Nevada.

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 aquaculture, 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 Nevada Department of Agriculture
405 South 21st Street 2150 Frazer Avenue
Sparks, NV 89431-5566 Sparks, NV 89431

Nevada Department of Agriculture Nevada Department of Agriculture
2300 E. St Louis Avenue 4780 E. Idaho Street
Las Vegas, NV 89104-4314 Elko, NV 89801-4672

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

Nevada Department of Agriculture

Attn: Ruth Tietjen

(775) 353-3670

405 South 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 date: May 16, 2016

Number in attendance: 1

Number testifying: 0

Written statements submitted: 0

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Hearing date: October 17, 2016

Number in attendance: 0

Number testifying: 0

Written statements submitted: 4

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.

1 Liz

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2 Jerry Bowlen, Executive Director

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(702) 693-7962

3 Justin & Lannah Smith

55 Elm Drive

Fallon, NV 89406

(775) 473-2829

lannahsmith@gmail.com

4 Jeannie

Jeannie_damonte@yahoo.com

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.

All interested parties that we were aware of were notified of the regulation and invited to submit comments or suggestions regarding the proposed regulation. The responses were general in nature regarding the need to include aquaculture and suggestions on applicable fees. Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture

Attn: Ruth Tietjen (775) 353-3670

405 South 21st Street

Sparks, NV 89431

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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 regulation was adopted without change. Aquaculture must be included in Nevada's agricultural system to satisfy the requirements of the Food Safety Modernization Act. The fee structure was adopted as proposed because the revenue anticipated will cover the cost of providing the service.

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.

Minimal fees equivalent to those paid by land based agriculture operations.

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

Insignificant economic impact to the public.

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

The cost to regulate aquaculture operations will be equivalent to the cost of regulating land based agriculture operations. The cost is minimal and covered by the fees.

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.

This regulation does not duplicate or overlap any other state or government 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.

There are no 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 agency anticipates in collecting \$300 which will be used to cover the cost of providing the service.