

**PROPOSED REGULATION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R034-20

June 1, 2020

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

AUTHORITY: §§1-7, NRS 439.532.

A REGULATION relating to hemp; requiring certain testing and labeling of a commodity or product containing hemp or cannabidiol that is intended for human consumption in this State; specifying when such a commodity or product is deemed to be adulterated; providing for the submission and investigation of complaints concerning such products; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits the sale or offer for sale of a commodities or products containing hemp which are intended for human consumption or certain other commodities and products that purport to contain cannabidiol unless the commodities or products have been: (1) tested by an independent testing laboratory; and (2) labeled. Existing law requires the Department of Health and Human Services to adopt regulations requiring the testing and labeling of such commodities and products. (NRS 439.532) **Section 4** of this regulation defines the term “hemp or CBD product” to refer to such commodities and products. **Section 5** of this regulation prohibits the sale or offer for sale of a hemp or CBD product that: (1) has not been tested by an independent testing laboratory; or (2) is not manufactured or labeled in accordance with state and federal law and regulations. **Section 6** of this regulation requires certain testing of hemp or CBD products.

Existing law prohibits: (1) the manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated; and (2) the adulteration of any food, drug, device or cosmetic. (NRS 585.520) **Section 5** specifies when a hemp or CBD product is deemed to be adulterated.

Section 7 of this regulation authorizes a consumer or public agency to submit to the Division of Public and Behavioral Health of the Department a complaint concerning a hemp or CBD product that is manufactured, sold or offered for sale in this State. **Section 7** also: (1) provides for the investigation of the complaint; and (2) requires the Division to take certain actions if the complaint is substantiated.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 7, 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. *“CBD” has the meaning ascribed to it in NRS 453.033.*

Sec. 4. *“Hemp or CBD product” means a commodity or product, other than marijuana, containing hemp or CBD which is intended for human consumption.*

Sec. 5. 1. *Unless federal law or regulation otherwise requires, a person shall not sell or offer to sell a hemp or CBD product in this State or sell or offer for sale a hemp or CBD product that is manufactured in this State unless the hemp or CBD product:*

(a) Has been tested by an independent testing laboratory in accordance with section 6 of this regulation;

(b) Is manufactured in accordance with all applicable federal and state law and regulations, including, without limitation, any applicable provisions of Title 21 of the Code of Federal Regulations; and

(c) Is labeled in accordance with all applicable federal and state law and regulations, including, without limitation, any applicable provisions of Title 21 of the Code of Federal Regulations and chapters 446 and 585 of NRS.

2. *A hemp or CBD product shall be deemed to be adulterated for the purposes of chapter 585 of NRS if:*

(a) The THC concentration of the hemp or CBD product exceeds the maximum THC concentration established by federal law for hemp;

(b) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 and is approved for use by the United States Environmental Protection Agency is present in the hemp or CBD product at a level which exceeds the level specified by the State Department of Agriculture;

(c) A pesticide which does not occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 or is not approved for use by the United States Environmental Protection Agency is present in the hemp or CBD product; or

(d) The hemp or CBD product meets any other condition for adulteration prescribed by federal or state law or regulations.

Sec. 6. 1. *A hemp or CBD product that is manufactured, sold or offered for sale in this State must be tested by an independent testing laboratory certified by the Department of Taxation pursuant to NRS 453A.368 or the Cannabis Compliance Board pursuant to NRS 678B.290 in the same manner as an equivalent marijuana product is required by the regulations adopted pursuant to NRS 453A.368 or 678B.290 to be tested. In addition to any other test required by those sections, the testing must include, without limitation, an analysis of:*

(a) The THC content of the hemp or CBD product on a dry weight basis; and

(b) The content of any other cannabinoid or terpenoid that is listed in the ingredients of the product or on the product labeling.

2. *Except as otherwise provided in this section, the homogeneity of the THC content of a hemp or CBD product must be verified by testing multiple samples from a single production run. If the THC content of a production run of a hemp or CBD product has been verified by an independent testing laboratory pursuant to this section and the recipe of the product has*

not been changed, the homogeneity of the THC content of an additional production run of the product may be verified by testing a single unit or serving from the production run.

3. The manufacturer of a hemp or CBD product shall:

(a) Retain the final certificate of analysis containing the results of the testing of the product required by this section for at least 2 years after the date on which the product is sold; and

(b) Provide the certificate of analysis to the Division upon request.

4. As used in this section:

(a) “Cannabinoid” means THC, tetrahydrocannabinolic acid, CBD or cannabidiolic acid.

(b) “Terpenoid” means alpha-bisabolol, alpha-humulene, alpha-pinene, alpha-terpinolene, beta-caryophyllene, beta-myrcene, caryophyllene oxide, limonene or linalool.

Sec. 7. 1. A consumer or a public agency may submit to the Division a complaint alleging that a hemp or CBD product that is manufactured, sold or offered for sale in this State does not meet a requirement prescribed by section 5 of this regulation or is adulterated as described in that section. The Division shall investigate the complaint to the extent it deems appropriate.

2. An investigation pursuant to this section may include, without limitation, requiring the testing of the product in accordance with recognized laboratory standards for testing of the applicable type of hemp or CBD product approved by the Division. The manufacturer of the product is responsible for the cost of the testing and may perform the testing itself or cause the testing to be performed by a third party. The manufacturer or third party, whichever performs the test, shall notify the Division of the results of the testing not later than 24 hours after the completion of the testing.

3. If a complaint is substantiated, the Division may:

(a) Require the manufacturer of the hemp or CBD product that is the subject of the complaint to pay the cost of the investigation; and

(b) Take any action authorized under the applicable provisions of chapter 446 or 585 of NRS.

4. If the product is determined to be adulterated, as described in section 5 of this regulation, the Division shall notify the local board of health in any jurisdiction in which the hemp or CBD product is manufactured, sold or offered for sale within 24 hours.