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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

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**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

INFORMATIONAL STATEMENT

**Permanent Adoption of Regulation for
Nevada Administrative Code 587 LCB File No. R099-20P**

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

The proposed fee increases for inspections and certifications would allow the Nevada Department of Agriculture (NDA) to meet the increase in service requests, correct ongoing federal agreement audit findings, protect the food supply from harmful pests, and protect consumers from product misrepresentation. The NDA's shipping point program has seen an increase in service demands, but current fees are insufficient to support the staffing and resources needed to protect Nevada from harmful pests and ensure buyers are receiving high quality products. Adequate staff and resources are also a requirement of federal cooperative agreements to safeguard the integrity of programs and required inspection protocols. The fee increase would correct these issues and allow staff to respond to inspection and certification requests in a timely manner. The proposed retail and wholesale seed analysis fee would facilitate informed purchasing decisions for Nevada seed retailers and wholesalers and protect their consumers by enabling the NDA to enforce action on false labeling claims, while also protecting Nevada lands by preventing the introduction of invasive species.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Industry feedback was solicited through the issuance of digital surveys, a public workshop and adoption hearing. The survey was distributed via email to a list of licensed nurseries, livestock commercial scale operations, certified producers (hemp, seed, produce, weed-free), public meeting notice request contacts, the Nevada Farm Bureau, the Nevada Cattlemen's Association, the Nevada Cattlewomen's Association, and the Nevada Agriculture Economic Outlook Group. Participants issued the surveys were also notified of the opportunity to receive a hard copy of the survey by contacting the NDA. The first survey was issued to assess the economic impact of all proposed changes, except for the seed retailer and wholesaler testing fee additions. Out of 1,400 recipients, 29 responded to the survey.

A subsequent survey was sent via email on June 24, 2021 to 4,108 nurseries and businesses potentially buying or selling seed in Nevada relating to the proposed changes to seed retailer and wholesaler testing fees. The survey closed on July 13, 2021.

In addition to being sent out via email on June 24, 2021, the survey was posted to the NDA's website at www.agri.nv.gov/survey. The survey was promoted on the NDA's social media platforms on July 6, 2021, July 8, 2021, and July 11, 2021. In addition to these promotions, the Nevada Farm Bureau sent it out in their weekly member newsletter on July 2, 2021 and July 9, 2021.

On July 6, 2021 the survey was sent out to the NDA's all agriculture email list consisting of 7,195 recipients comprised of various businesses and entities interested in Nevada agriculture. In total, this survey received 44 responses with a 59% survey completion rate. 20 responses were received through the original email. 24 responses were received through social media, email, website postings, and other survey promotions. Persons interested in obtaining the survey results and summary may do so by contacting the Division of Plant Health and Compliance at ajeppson@agri.nv.gov. A summary of the survey results can be viewed in Question 5.

Public comment was further solicited through a public workshop and adoption hearing. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in NAC 587, as well as any persons who had specifically requested such notice.

A workshop was held on October 26, 2021, and the meeting minutes are available at https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Division_of_Plant_Health_and_Compliance_Workshops_and_Hearings/. On February 7, 2022, a Notice of Intent to Act Upon a Regulation, which incorporated industry and Legislative Council Bureau feedback was posted. The hearing was held on March 10, 2022, and meeting minutes are available at https://www.agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Division_of_Plant_Health_and_Compliance_Workshops_and_Hearings/.

A copy of the summary of public responses to the proposed regulation may be obtained from the NDA by contacting Ashley Jeppson at (775) 276-8774 or ajeppson@agri.nv.gov.

3. The number persons who (a) Attended each hearing, (b) Testified at each hearing, (c) Submitted to the agency written comments.

- Workshop held on October 26, 2021
 - Number in attendance: 9
 - Number testifying: 1
 - Written statements submitted: 0

- Hearing held on March 10, 2022
 - Number in attendance: 5
 - Number testifying: 0
 - Written statements submitted: 0

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency.

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Name	Entity/Organization	Address	Phone	Email
Ashley Jeppson	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3729	ajeppson@agri.nv.gov
Allen Whitenack	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3601	awhitenack@agri.nv.gov
Alexa Johnson	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3601	a.johnson@agri.nv.gov
Ciara Ressel	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3601	cressel@agri.nv.gov
Meghan Brown	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3601	m.brown@agri.nv.gov
Russell Willhelm	NDA	405 South 21 st Street Sparks, NV 89431	775-353-3601	rwillhelm@agri.nv.gov
Sheryl Hunnewell	NDA	405 South 21 st Street, Sparks, NV 89431	775-353-3601	shunnewell@agri.nv.gov
Jessica Gardner	Not provided	Not provided	Not Provided	Not provided
Bobbie Jo	Not provided	Not provided	Not Provided	Not provided

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

A survey was conducted of businesses that would potentially be affected by the regulation as detailed in question number 2. Potentially affected businesses were also invited to attend the workshop and hearing. A summary of responses is available at www.agri.nv.gov or can be made available by contacting ajeppson@agri.nv.gov.

Industry feedback was solicited through the issuance of digital surveys, a public workshop and adoption hearing. The survey was distributed via email to a list of licensed nurseries, livestock commercial scale operations, certified producers (hemp, seed, produce, weed-free), public meeting notice request contacts, the Nevada Farm Bureau, the Nevada Cattlemen’s Association, the Nevada Cattlewomen’s Association, and the Nevada Agriculture Economic Outlook Group. Participants issued the surveys were also notified of the opportunity to receive a hard copy of the survey by contacting the NDA. The first survey was issued to assess the economic impact of all proposed changes, except for the seed retailer and wholesaler testing fee additions. Out of 1,400 recipients, 29 responded to the survey.

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A subsequent survey was sent via email on June 24, 2021 to 4,108 nurseries and businesses potentially buying or selling seed in Nevada relating to the proposed changes to seed retailer and wholesaler testing fees and closed on July 13th, 2021.

In addition to being sent out via email on June 24, 2021, the survey was posted to the NDA's website at www.agri.nv.gov/survey. The survey was promoted on the NDA's social media pages on July 6, 2021, July 8, 2021, and July 11, 2021. In addition to this promotion, the Nevada Farm Bureau sent it out in their weekly member newsletter on July 2, 2021 and on July 9, 2021.

On July 6, 2021 the survey was sent out to the NDA's all agriculture email list consisting of 7,195 recipients comprised of various businesses and entities interested in Nevada agriculture. In total, this survey received 44 responses with a 59% survey completion rate. 20 responses were received through the original email. 24 responses were received through social media, email, website postings, and other survey promotions.

Public comment was further solicited through a public workshop and adoption hearing, which were properly noticed and shared through the agency's social media platforms and emailed to the agency's contact lists. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in the subject of NAC 587 as well as any persons who had specifically requested such notice.

A workshop was held on October 26, 2021, and meeting minutes are available at <https://www.agri.nv.gov/Plant/Workshop and Hearing Meetings/Division of Plant Health and Compliance Workshops and Hearings/>. On February 7, 2022, a Notice of Intent to Act Upon a Regulation, which incorporated industry and Legislative Council Bureau feedback was posted. The hearing was held on March 10, 2022, and meeting minutes are available at <https://www.agri.nv.gov/Plant/Workshop and Hearing Meetings/Division of Plant Health and Compliance Workshops and Hearings/>.

A summary of survey responses is included below. These responses were taken into consideration during the public workshops and hearing.

- First survey
 - Out of 24 of the 29 respondents, 82.76% reported being small businesses.
 - 21.74% of those surveyed indicated that there would be a significant impact on their business, with 30.43% responding that there would be no impact and 47.83% responding they were unsure of the impact. Among those surveyed that identified as small businesses, 25% said they would be impacted, 30% said they would not, and 45% were unsure.
 - The level of negative financial impact reported from the survey included the following: no impact 10%; insignificant impact 20%; minor impact 30%; moderate impact 25%; major impact 10%; and severe impact 5%.
 - For those identifying as small businesses, the survey results included the following: no impact 11.11%; insignificant impact 16.67%; minor impact 27.78%; moderate impact 27.78%; major impact 11.11%; and severe impact 5.56%.
- Second survey, including seed dealer registration

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- Out of the 44 respondents, 79.55% reported being a small business.
- Of those that identified as a small business, 27.3% stated that this proposed change would affect their ability to do business, while 42.4% said it would not, and 30.3% said it might affect their ability to do business.
- For those identified as small business, 42.3% reported no impact, 15.4% reported insignificant impact, 11.5% reported minor impact, 11.5% reported moderate impact, 3.9% reported major impact, and 15.4% reported severe impact.

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 permanent regulation was adopted on March 10, 2022 and included changes requested in response to the business impact survey.

A nursery industry representative expressed the need to ensure that nurseries would receive a valuable service from the proposed retail and wholesale seed analysis fee. NDA staff discussed strategies for performing comprehensive retail seed inspections and sampling to allow analysis reports to be issued that enable nurseries to make informed purchasing decisions. No public or written comment was provided during the workshop or hearing.

The NDA received requests for increased staff availability for inspections due to increased demand for agricultural commodities to be certified for grade, exports, noxious weeds, and seeds. The proposed fees would cover program administration costs and allow the NDA to meet the needs of industry while also protecting consumers. The increased fee would allow the NDA to resolve federal cooperative agreement audit findings and have the adequate infrastructure for adhering to state and federal program requirements.

Based on the survey responses, there would be some economic impact on small businesses. As a result, the NDA has assessed the costs in performing services and evaluated other state structures to establish fees that would allow for programs to proceed without significantly impacting industry.

If program costs are not covered, the NDA would be unable to provide these services because the NDA does not have the staff and resources available to meet state and federal program requirements. This would result in out-of-state providers filling the demand, resulting in producers incurring higher fees in addition to travel costs, which would then limit product markets and economic opportunities for businesses.

To ensure the NDA was considering reasonable fee increases, the costs of compliant program implementation was evaluated along with other federal and state fee structures for equivalent programs. The following was determined during this assessment:

- In neighboring states (CA, UT, ID, OR, WA, MT, CO, AZ, WY, NM), fees averaged \$60 per hour, aligning with the NDA’s proposed hourly fee increase.
- The USDA fee for shipping-point inspections is \$93.00. Many states have additional fees for shipping point inspections, including additional per hundredweight (CWT) and certificate fees. These are significantly higher than the NDA’s proposed \$60 hourly fee. The NDA hopes to reduce expenses in the

future by digitizing shipping point certificates to reduce the amount of time required to complete paperwork. This must be approved by USDA and the NDA is currently working to develop a process for USDA consideration.

- Phytosanitary inspection fees varied from flat fees of \$50-\$100 or an average hourly rate of \$68.55. Certificate fees averaged \$30 and included additional fees for CWT. The NDA's proposed fee of \$60 per hour during inspections and \$40 per certificate issued would be less than what is being charged in neighboring states.
- Additional fees charged by USDA and other states were based on minimum commercial and noncommercial values.
- Certificate of origins fees of ten neighboring states averaged \$60, which is higher than the NDA's proposed fee increase to \$40.
- Certificate of free sale fees averaged \$52.50, higher than the NDA's proposed fee of \$40.
- Weed-free forage inspections had an average hourly fee of \$43.38. However, most states had additional fees for twine and labels (averaging \$0.14), in addition to per acre fees (averaging \$3).
- Certified seed fees for field inspections averaged \$11.55 per acre, with some states adding application, membership, minimum, tag, and/or cwt fees depending on the crop. The NDA's proposed increase is \$10 per acre.

Seven neighboring states' fees relating to seed dealer fees (AZ, CA, CO, ID, OR, UT, and WA) range from \$40 to \$125 for a dealer's license and \$100 to \$750 for a seed wholesaler license. This aligns with the NDA's proposed registration costs and will allow program staff to analyze retail seed in the interest of consumer protection and ensure invasive and noxious weed species are not being introduced through this market channel. A 2019 seed study from South Dakota found that out of 200 seed samples inspected, 11.5% were noncompliant and posed a significant invasive species introduction risk. The noncompliance findings of the study included noxious weed contamination, purity of seed issues, and sub-standard germination rates. There is significant concern from neighboring states that Nevada is the only state without commercial seed registration requirements and that makes the Nevada market a target to receive poor quality or invasive species commercial seeds. It is critical that entry points for invasive and noxious weeds species be addressed because there can be significant impact to land values, wildlife habitat, natural resources, and increased fire fuels.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Estimated adverse and beneficial economic effects on regulated business

- Adverse economic effects
 - Per the small business impact survey, an increase in fee costs would be experienced by regulated businesses. As a result, the NDA has assessed the costs in performing services and evaluated other state structures to establish fees that would allow for programs to proceed without limiting the industry.
 - Adverse economic effect on the public

- Feedback received on potential adverse economic effects are detailed in the small business impact statement. No public comment was received during the workshop or hearing. The fee increase for regulated industry may be felt through increased product pricing.
- Beneficial economic effects
 - The NDA has received requests for additional staff to be available for inspections due to the growth of agricultural commodities needing to be certified for grade, exports, noxious weeds, and seeds. The proposed fees would cover the program administration costs and assist the NDA with meeting the growing needs of the industry and consumer protection. The proposed fees would also allow the NDA to resolve federal cooperative agreement audit findings and have the adequate infrastructure to ensure adherence to state and federal program requirements.
 - Beneficial economic effect on the public
 - Exported products will potentially be able to move more quickly through the supply chain in response to additional inspectors. In addition, the NDA will be able to proceed with services that protect the industry, Nevada lands, and the food supply. Consumer protection will be better served through retail and wholesale seed testing to ensure the product is viable. Nevada lands will be further protected by verifying that retail and wholesale seed is not a source for introducing and spreading noxious weeds.

(b) Immediate and long-term economic effects of regulated businesses

- Immediate economic effects
 - Regulated businesses would experience an immediate increase in service fees. A summary of the reported economic effect is detailed below. No public comment was received at the workshop or hearing. The fee increase for regulated industry may be felt through increased product pricing.
 - From the first survey requesting feedback on proposed fee increases involving inspections and certifications regulated under NAC 587
 - 21.74% of those surveyed indicated that there would be a significant impact on their business, with 30.43% responding that there would be no impact and 47.83% responding they were unsure of the impact.
 - The level of negative financial impact reported from the survey included the following: no impact 10%; insignificant impact 20%; minor impact 30%; moderate impact 25%; major impact 10%; and severe impact 5%.
 - From the second survey, including seed retailer and wholesaler testing
 - Out of the 44 respondents, 79.55% reported being a small business.
 - Of those that identified as a small business, 27.3% stated that this proposed change would affect their ability to do business, while 42.4% said it would not, and 30.3% said it might affect their ability to do business.
 - For those identified as small business, 42.3% reported no impact, 15.4% reported insignificant impact, 11.5% reported minor impact, 11.5% reported

moderate impact, 3.4% reported major impact, and 15.4% reported severe impact.

- Immediate economic effect on the public
 - No public comment was received at the workshop or hearing. The fee increase for regulated industry may be felt through increased product pricing.
- Long-term economic effects
 - The annual fees would be consistent per the proposed regulation from year to year and operations would be able to account for annual fees. The fee increase for export inspections is to meet the increase in demand for inspectors. The fees will also allow operations to meet their customer demands.
 - Long-term economic effects on the public
 - No public comment was received at the workshop or hearing. The fee increase for regulated industry may be felt through increased product pricing.

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

Fee increases for inspection and certification services would address federal cooperative agreement and program deficit issues. The proposed fee for retail and wholesale seed analysis would support the verification of seed label compliance and allow the NDA to enforce regulations to protect the public and industry. Fees would support one Agriculturist II position to complete the seed analysis and enforcement activities in the amount of \$68,703. Upon initial adoption of the program, an existing Agriculturist II, currently supporting the seed program, will be used to help build the program.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

Not applicable.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

Not applicable.

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.

Based on FY20 program participation levels and the proposed fee changes, the following increases in revenue are expected and will be used to cover staff, supplies, travel and overhead costs to comply with state and federal requirements.

- Weed-free certification revenues were approximately \$6,596 and are estimated to increase to \$7,915.
- Seed certification inspection revenues were approximately \$19,292.00 and are estimated to increase to \$27,560.
- Shipping point inspection (grading) revenues were \$59,957 and are estimated to increase to \$71,948.

- Phytosanitary inspection revenues were \$18,375 and are estimated to increase to \$29,859.
- Certificate of free sale fees were \$7,225 and are estimated to increase to \$11,740.
- The fee for retail and wholesale seed analysis is estimated to generate \$79,500 in revenue. This is based on an average of 1,000 nurseries in the state covering the \$75 retailer analysis fee, totaling \$75,000, and \$4,500 for wholesalers with a \$750 fee.

I certify that to the best of my knowledge or belief a concerted effort was made to determine the impact of this proposed regulation on small businesses and that the information contained in this statement is accurate.

Jennifer Ott
Director
Nevada Department of Agriculture