

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

LCB File No. R145-20

August 26, 2020

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

AUTHORITY: §§1-6, 8-10, 13-15 and 18, NRS 557.260; §7, NRS 557.200 and 557.260; §§11 and 12, NRS 557.260 and 557.270; §16, NRS 557.200; §17, NRS 557.260 and 557.280; §19, NRS 557.200 and 587.077; §20, NRS 557.200, 557.260, 557.270 and 557.280.

A REGULATION relating to hemp; establishing provisions relating to the registration of growers and producers; setting forth certain reporting requirements for registrants; establishing provisions relating to the sampling and testing of hemp; setting forth certain requirements for the disposal of noncompliant crops; establishing provisions relating to persons who commit certain violations relating to the regulation of hemp; establishing fees for registration as a grower, handler or producer; imposing civil penalties; repealing certain obsolete provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the growth 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 tribal government if the state or tribal government submits a plan to the United States Secretary of Agriculture that satisfies certain requirements. (7 U.S.C. § 1639p) Existing federal regulations set forth requirements for such a plan. (7 C.F.R. Part 990) This regulation establishes certain provisions relating to the growth of hemp and production of agricultural hemp seed in this State in order to comply with the requirements set forth in federal law and regulations.

Existing federal regulations require a state plan for the production of hemp to include provisions prohibiting, with certain exceptions, certain persons who have been convicted of a felony related to a controlled substance from producing hemp for a 10-year period. (7 C.F.R. § 990.6) **Section 7** of this regulation sets forth certain requirements for registration as a grower or producer. Among these requirements is that the application be accompanied by a background check of the applicant or, if the applicant is a business entity, each key participant as defined in **section 4** of this regulation. **Sections 7 and 8** of this regulation prohibit, with certain exceptions, a person from obtaining a registration as a grower or producer if the person has been convicted of a felony related to a controlled substance within the previous 10 years.

Existing federal regulations require a state plan to provide for the reporting of certain information relating to the production of hemp to the United States Department of Agriculture. (7 C.F.R. § 990.3) Existing federal regulations further require a state with an approved plan to report certain violations to certain governmental entities. (7 C.F.R. § 990.6) **Section 9** of this regulation requires each registrant to submit reports containing certain information to the State Department of Agriculture and the Farm Service Agency of the United States Department of Agriculture. **Section 15** of this regulation authorizes the Department to share certain information with any governmental entity as necessary to comply with federal regulations.

Existing federal regulations require a state plan to include certain procedures for: (1) the conducting of inspections; (2) the accurate and effective sampling of all hemp produced; and (3) testing that is able to accurately identify whether a sample of hemp contains a THC level that exceeds the acceptable hemp THC level, as defined by federal law. Existing federal regulations also set forth specific procedures for the sampling and testing of hemp. (7 C.F.R. § 990.3) **Section 10** of this regulation authorizes the Department to inspect, sample and analyze all plants of a registrant and all land, buildings and other structures used for growing, cultivating or storing hemp. **Section 11** of this regulation requires the Department to perform preharvest sampling and testing of all crop varieties. **Sections 11 and 12** of this regulation set forth requirements for sampling and testing, including, among other requirements, that such sampling and testing be performed using procedures that comply with federal regulations.

Existing federal regulations require a state plan to include certain procedures for the disposal of plants that exceed the acceptable THC level for hemp. (7 C.F.R. § 990.3) Under existing law, if an analysis of a growing crop in the field reveals that the crop contains a THC level that exceeds the maximum THC concentration level for hemp, the grower is required to submit a plan for the effective disposal of the crop to the Department for its approval. (NRS 557.240) **Section 13** of this regulation requires the state plan to comply with federal regulations. **Section 13** further authorizes the Department to order the destruction of any plants of a registrant if the Department determines that a sample of hemp, whether growing or harvested, exceeds the acceptable hemp THC level.

Existing federal regulations require a state plan to establish certain provisions relating to negligent violations committed by a producer of hemp. (7 C.F.R. § 990.3) **Section 14** of this regulation requires the Department to establish a corrective action plan for any registrant who commits a violation that would constitute a negligent violation under federal regulations. **Section 14** also provides for the revocation of the registration of a registrant who commits three violations within a 5-year period. Under **section 14**, such a registrant is ineligible for registration for a period of 5 years after the date of the third violation. **Section 17** of this regulation establishes civil penalties for certain violations of the provisions governing hemp.

Section 16 and 19 of this regulation establish certain fees relating to the growing of hemp and the production of agricultural hemp seed. **Section 20** of this regulation repeals certain regulations relating to a program for the growth and cultivation of industrial hemp for research purposes, which was repealed by Senate Bill No. 347 of the 80th Session of the Nevada Legislature. (Section 22 of Senate Bill No. 347, chapter 414, Statutes of Nevada 2019, at page 2593)

Section 1. Chapter 557 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 557.110 to 557.180, inclusive, and sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Acceptable hemp THC level” means the delta-9 tetrahydrocannabinol 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 the maximum delta-9 tetrahydrocannabinol concentration level on a dry weight basis for hemp established by 7 U.S.C. § 1639o or less.*

Sec. 4. *“Key participant” means a person who has a direct or indirect financial interest in a business entity that produces hemp. The term includes, without limitation:*

- 1. A sole proprietor;*
- 2. A partner in a partnership; and*
- 3. A person with executive managerial control in a corporation, including, without limitation, a chief executive officer, chief operating officer and chief financial officer.*

Sec. 5. *“Measurement of uncertainty” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.*

Sec. 6. *“Registrant” means a person whose application for registration as a grower or producer has been approved by the Department pursuant to section 7 of this regulation.*

Sec. 7. *1. In addition to any other requirements set forth in chapter 557 of NRS, an application submitted to the Department for registration as a grower or producer must:*

(a) If the applicant is a business entity, contain the name and contact information of each key participant;

(b) Be accompanied by a current background check of the applicant or, if applicable, each key participant that was performed by a law enforcement agency and includes a check performed by the Federal Bureau of Investigation;

(c) Contain a description of the approvals that the applicant will be required to obtain; and

(d) Include all other information deemed appropriate by the Department.

2. The Department will approve an application for registration as a grower or producer only if:

(a) The applicant or, if applicable, each key participant is not ineligible pursuant to this section, section 8 of this regulation or section 14 of this regulation;

(b) The Department determines that the application adequately describes the approvals the applicant will be required to obtain;

(c) The application includes all information that the Department determines is appropriate; and

(d) The application is accompanied by all fees determined by the Department to be required at the time the application is submitted.

3. A person who materially falsifies any information contained in an application for registration as a grower or producer is not eligible for registration as a grower or producer.

Sec. 8. 1. *Except as otherwise provided in subsection 2, a person who has been convicted of a state or federal felony relating to a controlled substance is not eligible for registration as a grower or producer for a period of 10 years after the date of conviction.*

2. The period of ineligibility set forth in subsection 1 does not apply to:

(a) A person who was lawfully growing hemp under Section 7606 of the Agricultural Act of 2014, 7 U.S.C. § 5940, before December 20, 2018 and whose conviction occurred before that date; or

(b) A person who was growing hemp lawfully with a license, registration or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014, 7 U.S.C. § 5940, before October 31, 2019.

Sec. 9. 1. *Each registrant shall, on or before the date specified by the Department in the registration of the registrant, submit to the Department a report that includes, without limitation, the following information:*

- (a) Hemp crop acreage;*
- (b) Total acreage of hemp planted, harvested and disposed;*
- (c) License or authorization number of the registrant;*
- (d) Street address of each lot or greenhouse where hemp will be produced;*
- (e) Geospatial location of each lot or greenhouse where hemp will be produced; and*
- (f) Acreage of the greenhouse or indoor square footage dedicated to the production of hemp.*

2. *Each registrant shall annually submit a report to the Farm Service Agency of the United States Department of Agriculture containing any information regarding the production of hemp that the Department deems appropriate.*

Sec. 10. 1. *The Department may inspect, sample and analyze, during normal business hours and in such manner as the Department deems necessary, all plants of a registrant, whether growing or harvested, and all land, buildings and other structures used by a registrant for growing, cultivating or storing hemp.*

2. A registrant shall ensure that the Department is provided with complete and unrestricted access during normal business hours to carry out the purposes set forth in subsection 1.

Sec. 11. *1. The Department will perform preharvest sampling and testing of all crop varieties in accordance with the provisions of this section.*

2. A registrant shall notify the Department before any harvest or any other form of disposition of a crop.

3. Before any harvest of a crop, the Department will collect a representative sample of the crop using the sampling procedures and methods set forth in 7 C.F.R. § 990.3.

4. The Department will conduct an analysis of the THC concentration on a dry weight basis of the sample of the crop collected pursuant to subsection 3 in a timely manner using the testing procedures set forth in section 12 of this regulation.

5. When the analysis conducted pursuant to subsection 4 is complete, the Department will issue to the registrant a report of analysis which includes the acceptable hemp THC level.

6. A registrant shall harvest a crop in a timely manner after the receipt of the report of analysis issued by the Department, but not later than 15 days after the date upon which the Department collected the representative sample of the crop pursuant to subsection 3.

Sec. 12. *1. An analysis of a sample of a crop conducted pursuant to section 11 of this regulation 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. *A laboratory that conducts an analysis of a sample of a crop must report to the Department:*

(a) The delta-9 tetrahydrocannabinol content concentration level on a dry weight basis; and

(b) The measurement of uncertainty.

Sec. 13. 1. *A plan submitted to the Department by a grower for the effective disposal of a crop pursuant to subsection 2 of NRS 557.240 must comply with the requirements for disposal set forth in 7 C.F.R. § 990.27.*

2. *If, after testing a sample of hemp, whether growing or harvested, the Department determines that the sample exceeds the acceptable hemp THC level, the Department may order the destruction of any plants grown by the registrant at the expense of the registrant. The destruction of such plants must be performed in accordance with a plan for the effective disposal of the plants that complies with the requirements of 7 C.F.R. § 990.27 and is approved by the Department.*

Sec. 14. 1. *If a registrant commits a violation that would constitute a negligent violation pursuant to 7 C.F.R. § 990.6, the Department will establish a corrective action plan for the registrant to correct the negligent violation. The registrant shall comply with the corrective action plan. Each corrective action plan established by the Department must meet the requirements of 7 C.F.R. § 990.6.*

2. *The Department will revoke the registration of a registrant who:*

(a) Violates the provisions of this chapter or chapter 557 of NRS three times within a 5 year period; or

(b) Commits three violations that would constitute negligent violations under 7 C.F.R. § 990.6 within a 5-year period.

3. A person whose registration has been revoked pursuant to subsection 2 is not eligible for registration as a grower or producer for 5 years after the date of the third violation.

Sec. 15. Any information obtained by the Department in carrying out the provisions of this chapter and chapter 557 of NRS may be reported to any governmental entity without notice to the registrant as necessary to comply with the provisions of 7 C.F.R. Part 990.

Sec. 16. The Department will collect the following fees:

1. For an application for registration or renewal of registration as a grower, a nonrefundable application fee of \$900 and an additional fee of:

(a) For each acre or portion thereof of an outdoor site used for growing hemp, \$5; and

(b) For each 1,000 square feet or portion thereof of an indoor site used for growing hemp, 33 cents.

2. For an application for registration or renewal of registration as a handler, a nonrefundable application fee of \$1,000.

3. For inspecting a site used for growing hemp:

(a) A fee of not more than \$60 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(b) The mileage reimbursement rate established by the State Board of Examiners for state officers and employees pursuant to subsection 3 of NRS 281.160 for the inspector's travel to and from the site.

4. For sampling and analyzing hemp pursuant to this chapter, a fee in the amount of the actual costs of the Department for the sampling and analysis, as approximated by the Department.

5. For making revisions to an issued registration, \$150.

Sec. 17. *1. The Department will impose the following civil penalties for violations of the provisions of this chapter or chapter 557 of NRS:*

(a) For a first violation, \$250.

(b) For a second violation, \$500.

(c) For a third or subsequent violation, \$1,000 per violation.

2. Any money collected from the imposition of a civil penalty pursuant to subsection 1 must be accounted for separately and:

(a) Fifty percent of the money must be used to fund a program selected by the Director of the Department that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger; and

(b) The remaining 50 percent of the money must be deposited in the Account for the Control of Weeds created by NRS 555.035.

Sec. 18. NAC 587.463 is hereby amended to read as follows:

587.463 “THC” has the meaning ascribed to it in NRS ~~453A.155.~~ **453.139.**

Sec. 19. NAC 587.491 is hereby amended to read as follows:

587.491 1. In addition to any other fee charged and collected pursuant to this chapter, ~~for~~ *the Department will collect the following fees:*

(a) For an application for registration or renewal of registration as a producer, a nonrefundable application fee of \$100 and an additional fee of:

(1) For each acre or portion thereof on an outdoor site used for producing agricultural hemp seed, \$5; and

(2) For each 1,000 square feet or portion thereof of an indoor site used for producing agricultural hemp seed, 33 cents;

(b) For inspecting a site used for producing agricultural hemp seed:

(1) A fee of not more than \$60 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(2) The mileage reimbursement rate established by the State Board of Examiners for state officers and employees pursuant to subsection 3 of NRS 281.160 for the inspector's travel to and from the site;

(c) For making revisions to an issued registration, \$150;

(d) For each planting of an agricultural hemp seed crop ~~the Department will charge and collect a~~:

(1) A certification fee of \$15 per acre ~~in addition to a~~; and

(2) A minimum fee of \$50 for each application for certification.

2. Checks must be payable to the Nevada State Department of Agriculture.

3. Each applicant must pay the fee for certifying an agricultural hemp seed crop:

(a) On or before June 1 of the year in which the agricultural hemp seed stock is planted; or

(b) If the agricultural hemp seed stock is planted after June 1 of that year, not later than 5 days after the date on which the agricultural hemp seed stock is planted.

4. The Department will refund any fee paid by an applicant for certifying an agricultural hemp seed crop for any planting that is withdrawn from certification if the applicant submits a

written request for a refund of the fee before the Department conducts the first inspection of the field in which the agricultural hemp seed crop is planted.

Sec. 20. NAC 557.010, 557.020, 557.030, 557.100, 557.110, 557.120, 557.130, 557.140 and 557.200 and section 1 of LCB File No. R065-17 are hereby repealed.

TEXT OF REPEALED SECTIONS

557.010 Definitions. (NRS 557.080) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 557.020 and 557.030 have the meanings ascribed to them in those sections.

557.020 “Applicant” defined. (NRS 557.080) “Applicant” means a person who submits an application to the Department for certification and registration of a site used for growing or cultivating industrial hemp in conjunction with an agricultural pilot program or other agricultural or academic research.

557.030 “Registrant” defined. (NRS 557.080) “Registrant” means a person whose application for certification and registration of a site used for growing or cultivating industrial hemp has been approved by the Department.

557.100 Application for certification and registration. (NRS 557.080) A person who represents the Department or an institution of higher education, directly or pursuant to a contract to conduct an agricultural pilot program or other agricultural or academic research on behalf of the Department or institution of higher education, may submit an application to the Department

for certification and registration of a site to be used for growing or cultivating industrial hemp in conjunction with the program or research. The application must be accompanied by a current background check performed by a law enforcement agency that includes a check performed by the Federal Bureau of Investigation. The application must be on a form prescribed by the Department and include all information deemed appropriate by the Department. The Department shall certify and register such a site if:

(a) The Department determines that the application adequately describes the purpose of the agricultural pilot program or other agricultural or academic research which requires the growth or cultivation of industrial hemp;

(b) The applicant has not been convicted of any felony related to the possession, production, sale or distribution of a controlled substance in any form within the 5 years immediately preceding the date of the application;

(c) The application includes all other information that the Department determines is appropriate; and

(d) The application is accompanied by all fees determined by the Department to be required at the time the application is submitted.

2. An applicant may submit a request to amend an application to the Department if the request is accompanied by all fees determined by the Department to be required at the time the request is submitted. Upon approval of such a request, the Department shall use the amended information to adjust the calculation of all fees required to accompany the application.

557.110 Required reports; inspection; notification to Department of harvest; analysis of THC concentration; disclosure of information. (NRS 557.080)

1. A registrant shall submit all reports required by the Department on or before the date specified by the Department in the certification.
2. The Department may inspect, sample and analyze, in such manner and at such times as the Department deems necessary, all plants, whether growing or harvested, and all land, buildings and other structures used for growing, cultivating or storing industrial hemp and all documents and other records relating to the agricultural pilot program or other agricultural or academic research certified by and registered with the Department. The registrant shall ensure such unrestricted access.
3. A registrant shall notify the Department before any harvest or any other form of disposition of a growing crop of industrial hemp.
4. The Department shall conduct an analysis of the THC concentration of a sample of the growing crop described in subsection 3 in a timely manner using appropriate sampling and analysis protocols.
5. Any information obtained by the Department in carrying out the provisions of this chapter and chapter 557 of NRS may be provided to any law enforcement agency without notice to the applicant or registrant.

557.120 Certified seed and propagating material: Required use; request by registrant for Department to obtain. (NRS 557.080, 561.153)

1. A registrant shall ensure that only certified seed and propagating material approved by the Department are used when growing or cultivating industrial hemp for the certified and registered agricultural pilot program or other agricultural or academic research.
2. A registrant may request that the Department obtain certified seed or propagating material, or both, for the registrant's use.

3. If the Department obtains certified seed or propagating material, or both, for a registrant, the registrant shall:

(a) Release the Department from any liability for the quality and fitness of the certified seed and propagating material for any use or purpose;

(b) Pay to the Department in advance:

(1) All of the costs incurred by the Department in obtaining the certified seed and propagating material;

(2) A fee of \$1 per pound of seed obtained for the registrant; and

(3) A fee of \$30 per acre for propagating material obtained for the registrant; and

(c) Relinquish any portion of the certified seed and propagating material which is not used for the certified and registered agricultural pilot program or other agricultural or academic research to the Department. Any certified seed and propagating material relinquished to the Department pursuant to this paragraph becomes the property of the Department.

4. As used in this section:

(a) “Certified seed” has the meaning ascribed to it in NRS 587.021.

(b) “Propagating material” means plants and parts thereof that are intended for plant cultivation.

557.130 Fees. (NRS 557.080, 561.153) The Department shall assess the following fees:

1. For the submission of an application pursuant to NAC 557.100, a nonrefundable application fee of \$500.

2. For the submission of a request to amend an application pursuant to NAC 557.100, a nonrefundable fee of \$500.

3. For a certified and registered site used for growing and cultivating industrial hemp outdoors, a fee of \$5 per acre or portion thereof.

4. For a certified and registered site used for growing or cultivating industrial hemp indoors, a fee of 33 cents per 1,000 square feet, or portion thereof.

5. For inspecting a site used for growing or cultivating industrial hemp:

(a) A fee of not more than \$50 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(b) The mileage allowance established by the State Board of Examiners for state officers and employees pursuant to subsection 3 of NRS 281.160 for the inspector's travel to and from the site.

6. For sampling and analyzing industrial hemp pursuant to this chapter, a fee in the amount of the actual costs of the Department for the sampling and analysis, as approximated by the Department.

557.140 Revocation of registration and certification or destruction of plants if sample contains THC concentration exceeding limit. (NRS 557.080) If, after testing a sample of industrial hemp, whether growing or not, the Department determines that the sample contains a THC concentration of more than 0.3 percent on a dry weight basis, the Department may:

1. Revoke the certification and registration of the registrant; and
2. Order the destruction of the plants grown or cultivated by the registrant at the registrant's expense.

557.200 Civil penalties; use of money collected. (NRS 557.080, 561.153)

1. Violations of the provisions of this chapter or chapter 557 of NRS are subject to the following civil penalties:

- (a) For a first violation, the Department shall impose a civil penalty of \$250.
- (b) For a second violation, the Department shall impose a civil penalty of \$500.
- (c) For a third or subsequent violation, the Department shall impose a civil penalty of \$1,000 per violation.

2. Any money collected from the imposition of a civil penalty pursuant to subsection 1 must be accounted for separately and:

(a) Fifty percent of the money must be used to fund a program selected by the Director of the Department that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger; and

(b) The remaining 50 percent of the money must be deposited in the Account for the Control of Weeds established by NRS 555.035.

Section 1 of LCB File No. R065-17

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

1. The Department will create and publish a list of pesticides that are allowed for use on industrial hemp as part of an agricultural pilot program. Upon submission of a request for an evaluation of a pesticide pursuant to subsection 2, the Department will evaluate each active ingredient used in the pesticide to determine whether to include the pesticide on the list. If the Department includes a pesticide on the list, any person who uses the pesticide on any industrial hemp shall, before using the pesticide, ensure that the pesticide:

- (a) Is registered for use in this State; and
- (b) Is appropriately labeled by the United States Environmental Protection Agency.

2. A request for an evaluation of a pesticide pursuant to subsection 1 may be submitted to the Department by:

- (a) An employee of the Department;
- (b) Any committee or other entity specified by the Department;
- (c) Any manufacturer of a pesticide; or
- (d) A grower, handler or producer.

3. The Department will determine whether a pesticide may be included on the list created and published pursuant to subsection 1 based upon:

- (a) The provisions of NRS 586.010 to 586.4065, inclusive, and any other applicable law or regulation; and
- (b) The label approved for the pesticide by the United States Environmental Protection Agency.

4. The Department will charge and collect the following fees:

- (a) For evaluating a pesticide pursuant to subsection 1.....\$75 per hour
- (b) For verifying that a pesticide is appropriately labeled for use in a cultivation facility that is registered pursuant to chapter 453A of NRS..... \$75 per hour
- (c) For submission to the Department of an application to register an additional use of a pesticide to meet a special local need pursuant to 7 U.S.C. § 136.....\$300

5. As used in this section:

- (a) “Active ingredient” has the meaning ascribed to it in NRS 586.030.
- (b) “Cultivation facility” has the meaning ascribed to it in NRS 453A.056, as amended by section 8 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3679.
- (c) “Industrial hemp” has the meaning ascribed to it in NRS 557.040.

(d) “Pesticide” has the meaning ascribed to it in NRS 586.195.