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LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
Permanent adoption of Temporary Regulation for
Nevada Administrative Code Chapter 557 R011-21

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

In order to have primary regulatory oversight over hemp production in Nevada, the Nevada Department of Agriculture (NDA) must submit a state plan to the United States Department of Agriculture (USDA) that complies with the [Agriculture Improvement Act of 2018, 7 Code of Federal Regulations \(CFR\) Part 990](#). Hemp and marijuana are both cannabis plants and are only able to be differentiated through chemical analysis for THC (psychoactive cannabinoid). The definition of hemp is based on THC concentrations not exceeding limits as established by federal law (0.3%) and the program requirements are based on preventing psychoactive product from being sold as this would be considered “marijuana”.

USDA requires a state plan be approved that details program oversight processes and enforcement authority for a state hemp program. The Department submitted a state plan in June and September of 2020 and USDA indicated that some regulation revisions would be needed prior to accepting the state plan, particularly involving negligent criteria and enforcement action. Temporary regulations were adopted in January of 2021, which resulted in an approved Nevada State Plan on May 28, 2021. To maintain the approved plan, the NDA must adopt the temporary regulation as permanent.

As part of the state plan, adequate infrastructure for implementing a state program must be demonstrated. As a result, the proposed regulations include a fee increase to support program administration. Being that hemp production is still a relatively new state and federal program, the regulations primarily reference CFR. This will allow state regulations to adapt upon any changes to CFR. The proposed regulations include the following:

- 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;

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.

Four public workshops on the proposed regulations were properly noticed and held via the Webex online meeting platform on 08/27/20, 10/09/20, 11/04/20, and 6/23/21. An adoption hearing for temporary regulation was held 1/12/21 and for permanent regulation adoption on 9/16/21. To encourage engagement from current and previous hemp program participants and other agriculture stakeholder groups, the public meeting notice was also issued to the following: 2019, 2020, and 2021 program participants, the Nevada Cattleman’s Association, Nevada Farm Bureau, University of Nevada Reno, Nevada Cooperative Extension, the Cannabis Compliance Board, Nevada Resource and Conservation Services, in addition to individuals that have requested to be added to the Department’s public notice contact list. Written comment received and meeting minutes are available upon request to the department. In addition, meeting recordings and/or minutes have been made available on the department’s public meeting website at https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/. A general summary of comments received (though not all inclusive) are provided in question 5 as most comments were received by industry.

3. The number of persons who:

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: August 27, 2020
(a) Number in attendance: 24
(b) Number testifying: 4
(c) Written statements submitted: 4

Workshop date: October 9, 2020
(a) Number in attendance: 32
(b) Number testifying: 10
(c) Written statements submitted: 1

Workshop date: November 4, 2020
(a) Number in attendance: 20
(b) Number testifying: 4
(c) Written statements submitted: 0

Workshop date: June 23, 2021
(a) Number in attendance: 9
(b) Number testifying: 4
(c) Written statements submitted: 1

Hearing date: January 12, 2021
(a) Number in attendance: 20

- (b) Number testifying: 4
- (c) Written statements submitted: 2 via email, 3 during public chat in web-ex

Hearing date scheduled: September 16, 2021

- (d) Number in attendance: 8
- (e) Number testifying: 4
- (f) Written statements submitted: 1

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.**

The workshops and hearing were held virtually through the Web-ex online meeting platform. Participants provided the information below through this system. Multiple announcements were provided during the workshops and hearing inviting participants to submit written comments if connection issues were experienced during public comment.

Workshop August 27, 2020 NAC 557	Workshop 10.9.20NAC 557	Workshop 11.4.20 NAC 557	01.12.21 Temporary Reg Adoption Hearing NAC 557	6.23.21 Workshop for Permanent Adoption of Temporary Regulation	9.16.21 Permanent Regulation Adoption Hearing
Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (host)	Ashley Jeppson-NDA (host)	Ashley Jeppson-NDA (host)
Audrey Blondfield-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Marla McDade Williams; marlamw@strategies360.com
Alexa Johnson-NDA	Shayda Sanjidey-NDA	Shayda Sanjidey-NDA	Leycha Ortiz-NDA	Leycha Ortiz-NDA	Joe Frey
Allen Whitenack-NDA	Allen Whitenack-NDA	Allen Whitenack-NDA	Audrey Blondfield-NDA	Audrey Blondfield-NDA	Audrey Blondfield-NDA

James McCoy	Chris Rusby; chris@rusbylaw.com	Patty Herzos	Allen Whitenack-NDA	Allen Whitenack-NDA	Allen Whitenack-NDA
Erik G	Lauren McGue, UNR; lmcgue@unr.edu (written comment)	August Klein	Alex Tanchek	Alex Tanchek; alex@ssgr.us	Alex Tanchek; alex@ssgr.us
Robert Daniell; rdaniell@amerhempco.com (written comment)	Robert Daniell	Robert Daniell	August Klein	Chris Rusby; chris@rusbylaw.com	Katelyn Brinkerhoff
Lynn Keller	775-8xxxx49	Peter Keegan (Deputy Attorney General)	Diane King	Leana Carey-Progressiverancher@gmail.com	
Teri Bath	Teri Bath	Teri Bath	Doug Busselman, Nevada Farm Bureau		Misha Allen
Leycha Ortiz-NDA	Alex Tanchek	Alex Tanchek	Angela O'Callaghan, UNR		Sarah Scott
John O'Brien; jobriennevada@gmail.com (written comment)	Harlan	Joe Frey	Bryce Lister		Scheril Murray Powell, Esq
Tessa Rognier	Donna Bath	Donna Bath	Letty Elias		
Call-in User_4	Will Adler	Will Adler	Linda King		
Letty Elias	775-353-xxxx73	Rebecca Allured-NDA	Rebecca Allured-NDA		
Alfred Balloque	Hemp Sun	Hemp Sun	Bob Daniell		
Stacey Verboom	775-2xxxx00	User 4	ML Robinson, UNR		
Call-in User_6	Jeff Anderson	Derek Connor	Marysia Movaske, UNR written comment		
Call-in User_7	Mark	NDA	Shayda Sanjideh-NDA		
Call-in User_8	Jason Strull	Diane	Hemp Sun Farms		
Call-in User_5	702-9xxxx49	Leana Carey	Will Adler		

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Call-in User_9	Maurice Robinson		Chris Rusby, chris@rusbylaw.com (written comment only)		
Tyree Brown	Joe Frey		Joe Frey, joe@westernstatehemp.com (written comment only)		
Call-in user_10	Cary Yamamoto				
Call-in user_3	Michael				
Chris Rusby; chris@rusbylaw.com (written comment)	Jim				
Rodney Mehring; rodneym2003@yahoo.com (written comment only)	5056xxxx58				
	NDA				
	Marysia Movaske				
	Mareo Jimenez				
	Mark O'Farrell				
	NDA-Rebecca Allured				
	Leycha-Ortiz-NDA				

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.

To encourage engagement from current and previous hemp program participants and other agriculture stakeholder groups, the public meeting notice was issued to the following: 2019 and 2020 program participants, the Nevada Cattleman’s Association, Nevada Farm Bureau, University of Nevada Reno, Nevada Cooperative Extension, the Cannabis Compliance Board, Nevada Resource and Conservation Services, in addition to individuals that have requested to be added to the Department’s public notice contact list. 2019 and 2020 hemp program participants were also engaged through annual inspections, department presentations, federal regulation updates, and through a small business impact survey. USDA provided three public comment periods on the federal requirements detailed under the Interim Final Rules. NDA issued multiple notices to industry involving this opportunity and public comment received resulted in some

favorable changes to the Final rules. The department's intention is to meet minimum federal requirements through these temporary regulations. A summary of the small business impact statement, survey, and comments received throughout this process can be obtained by contacting:

Nevada Department of Agriculture
Attn: Allen Whitenack
(775)-353-3601

Department staff have been engaging with hemp certificate holders since 2018 involving changes to federal requirements. Concerns expressed by industry were summarized in the small business impact summary, were discussed during the public workshops, and are provided below.

Federal requirement industry concerns:

1. Testing method that includes the conversion of THC-A to THC using a post-decarboxylated or similarly reliable method
2. Sampling only flower material was the requirement of the Interim Rules, which was modified as of March 2021 to allow for sampling of flower material from the top 6-8 inches of the main stem allowing for some leaf and stem material to be included in the sample.
3. Crop failures of >0.5% THC being classified as a negligent violation which would result in revoked or denied certification and stifle crop research. This was increased in CFR to 1% in March of 2021, which is reflected in this regulation.
4. Revoking of certification for a minimum of 5 years upon 3 negligent violations within a 5-year period
5. Crops must be harvested within 15 days of sample collection. This was increased to 30 days in CFR in March of 2021, which is reflected in this regulation
6. Increasing program fees
7. Regulations not reflecting specific needs of fiber producers since they are not producing for CBD or ingestion purposes
8. Crop disposal requirements

During the regulation change workshops, public comment was received in opposition to the federal requirements (listed above). In addition, below is a summary of repeat comments received (not all inclusive) during workshops and the temporary regulation adoption hearing:

Fee increase:

During the workshops, approximately four comments were received expressing concerns on the grower registration fee increase (\$500 to \$900) and the hourly inspection rate (hourly rate increase from \$50 to \$60). Written comment was received involving concerns of nursery license costs in addition to the increased grower certification fee for those selling hemp plant starts. As a result, this fee was reduced since nursery inspectors can perform the hemp site inspection and nursery inspection simultaneously.

Third-party lab analysis THC reporting requirements:

Numerous comments were received on the existing NAC requirement for third-party labs to report hemp analysis results to the NDA. The NDA removed this requirement from NAC and agreed that this requirement could deter certificate holders from performing appropriate sampling that is critical to timing NDA compliance sampling.

Sampling method comments:

It was requested that the NDA specify their crop sampling method in regulation. Provisions were added for sampling flower material from throughout the plant as long as it met federal requirements. However, a reference to the minimum federal requirements was included to allow the Department to adapt should there be a change. Multiple comments were received suggesting that the Department adopt a crop sampling method that encompasses the bio-mass of the crop to allow for more favorable testing outcomes and a more representative use of the plant. This request was included as the CFR was modified in March of 2021 to allow for biomass to be sampled if the initial crop sample taken fails THC compliance. In addition, the Department has included the minimum federal requirements for sampling, which would allow taking samples of the top 6-8 inches of flowering material of the mainstem from throughout the plant. Comment was also provided that sampling should only occur on a scheduled basis with operation staff present. This is a requirement of USDA and will be implemented through NDA procedure, which is detailed in the NDA's state plan submission to USDA. One comment was received that the Department should opt to not sample all farms and to provide a pre-season notification involving who would be sampled on an annual basis.

Measurement of Uncertainty Comments:

Comment was received that the department has the leniency to adopt whatever they deem appropriate for a measurement of uncertainty which would widen the range of acceptable THC limits. The department provided clarification that the measurement of uncertainty established by the lab must be scientifically based and meet the standards as set forth by USDA. It was also requested that the department include their methods for establishing a measurement of uncertainty in regulation. The specific standards recognized by USDA were incorporated into the regulation.

Research exemption:

The University of Nevada Reno provided comment that the Department should adopt regulations that would allow for exemptions for hemp crop research. This request would conflict with federal requirements and was not included.

Requirements to secure local jurisdictional approval:

Comment was received that the Department should not deny or revoke certification if other state requirements were not met. This language addition was specific to issues expressed from the state water authority and local government agencies pertaining to land and water misuse occurring involving hemp. This language was not removed in order to work collaboratively with these agencies and to prevent the issuing of certification that would conflict with other state requirements.

Clarification and consideration of back-ground check requirements:

During the initial regulation change workshops, concern was expressed on the lengthy process that can be experienced with FBI background checks, which must accompany each application. The Department

included a modification that allows background checks to be valid if completed within 120 days of the application submission. The Interim Final Rules required that a background check be provided for all “key-participants”. The NDA received support and opposition to this requirement. On March of 2021, the hemp rules were revised which limited this requirement to one background check per application. The temporary regulation draft allows for a background submission from the applicant or a single key participant as applicable.

Application deadline frequency:

Comment was received that applications should be accepted for three-year terms. This would require a statute change.

Operate under the 2014 Farm Bill for 2021:

Comment was received advising the Department to continue operating under the 2014 Farm Bill for the 2021 production season in order to provide more time for the final federal rules to be published. [Final Rules](#) governing the Establishment of a Domestic Hemp Production Program were published and replaced the [Interim Final Rules](#) in March of 2021. The temporary regulations for NAC 557 reference CFR and are still reflective of the published final rules. In moving forward with the adoption of temporary regulations, the Department will be able to maintain primary regulatory oversight.

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 regulations underwent numerous changes throughout the workshops. The proposed regulations are to meet minimum federal requirements. Once in effect, the department will be able to maintain an approved state plan in order to comply with the 2018 Agriculture Improvement Act and to have primary regulatory oversight.

7. The estimated immediate and long-term economic effect of the regulation on the business which it is to regulate and on the public, whether beneficial or adverse.

(a) Estimated economic effect on the businesses which they are to regulate.

- Immediate
 - The proposed regulations would increase fees to cover program costs from \$500 to \$900 per grower and from \$50 to \$60 per hour in completing an inspection, which could have immediate economic effects on hemp growers. The regulations include changes to new federal requirements that allow for a crop to be remediated as opposed to disposed of, which is favorable to the grower and results in economic benefits.
- Long-term
 - The proposed regulations allow the NDA to meet the minimum federal requirements that require operations to harvest within 30 days of sampling, which could be more costly for growers with large acreages. However, the changes in federal law to allow crop remediation in lieu of disposal, should a crop fail the THC testing, is economically beneficial to those participating in the program.

Due to the new federal regulations for this voluntary program being more rigorous, reduced program participation may be experienced. The increase in fees is anticipated to cost program participants (at

2020 participation levels of 115 growers) an additional \$48,870, which will be used to cover personnel, lab equipment and supplies, education and outreach.

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

- Immediate and long-term
 - Hemp production is a voluntary program, and the rigorous federal requirements may result in adverse impacts such as reduced program participation. In addition, the increase in fees may result in increased hemp product pricing. The public will benefit from the proposed regulation because they will have access to Nevada-sourced hemp rather than purchasing out-of-state. By having the NDA serve as the primary regulatory authority in lieu of the USDA, in-state activities will be tracked more efficiently, discouraging marijuana from being falsely sold as hemp.

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

The Department has been enforcing the hemp program since 2016, however the new federal requirements have increased the reporting and sampling volume requirements. The estimated \$48,870 increase in fee revenue will be used to fill these requirements and to cover ongoing operational costs.

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.

Not applicable. Only the NDA regulates hemp.

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

Not applicable. The regulations are to meet minimum federal requirements.

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 increase in fees at 2020 participation levels (115 growers) would result in an additional \$48,870 in department revenue. This will be used to cover personnel, lab equipment and supplies, in addition to education and outreach.

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.

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Nevada Department of Agriculture

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