

TEMPORARY REGULATION OF THE STATE

DEPARTMENT OF AGRICULTURE NEVADA

ADMINISTRATIVE CODE CHAPTER 557

LCB T001-21

December 8, 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, handlers 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.

Narrative of Temporary Regulation Changes:

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 and handling 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, handler 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, handler 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. § 990.6) **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 negligent 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.

Sections 16 and 19 of this regulation establish certain fees relating to the growing and handling 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 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. § 1639(o-s) or less.*

Sec. 4. *“Key participant” means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.*

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. Or as defined in federal regulations adopted pursuant to 7 U.S.C. § 1639(o-s).*

Sec. 6. *“Registrant” means a person whose application for registration as a grower, handler 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 or NAC 587.450 to 587.491, inclusive, an application submitted to the Department for registration as a grower, handler or producer must:

(a) Contain contact information to include applicant name, physical and mailing address, telephone number, and email address. If the applicant is a business entity, contain the EIN number of the business entity, full name and title, and contact information of each key participant;

(b) Be accompanied by a criminal history report of the applicant or, if applicable, each key participant; Criminal history report means the Federal Bureau of Investigation's Identity History Summary. This report must be completed within 120 days of application submission with no changes to the history summary upon the date of submission.

(c) Contain a description of the approvals that the applicant will be required to obtain to demonstrate adherence to other federal and state laws; and

(d) Include all other information deemed appropriate by the Department to include but not limited to:

- i. a map of the production and storage locations**
- ii. a legal description for land where hemp is grown, handled or produced to include a geospatial location in addition to a street address**
- iii. Production acreage**
- iv. Description of production**

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

(a) The applicant or, if applicable, each key participant is not ineligible pursuant to this section or section 8 or 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, handler or producer is not eligible for registration as a grower, handler 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, handler 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 and as applicable, 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 lot or indoor square footage of the greenhouse 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 United States Department of Agriculture 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 annual 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 or as set forth in 7 C.F.R. § 990.3, 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. If the practice meets the minimum federal requirements sampling procedures will include taking a random representative sample of flower material from throughout the plant .*

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. *The Measurement of uncertainty applied to the acceptable hemp THC level shall meet the Association of Official Analytical Chemists (AOAC) Standard Method Performance Standards (SMPS) and the requirements per federal regulations adopted pursuant to 7 U.S.C §1639(o-s).*
7. *Following sampling pursuant to subsection 3, a registrant shall harvest a crop within the timeframe established by federal regulations adopted pursuant to 7 U.S.C. § 1639(o-s)*
8. *Hemp cannot enter the stream of commerce until the department issues a report of analysis that demonstrates acceptable hemp THC levels*

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.*
- (c) If an initial crop sample does not meet the acceptable hemp THC limits, a resample can be taken that meets the requirements of section 11 subsection 3.*

~~2.—[A laboratory that conducts an analysis of a sample of a crop must report to the Department:~~

~~The delta-9-tetrahydrocannabinol content concentration level on a dry weight basis;]~~

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 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, handler or producer for 5 years after the date of the third violation or as specified in 7 C.F.R. § 990.6.*

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) *If the applicant holds a valid license issued pursuant to NRS 555.235 to 555.249, inclusive, and grows hemp solely for use as nursery stock, as defined in NRS 555.23562, a nonrefundable application fee of \$725 and an additional fee of:*

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

(2) *For each 1,000 square feet or portion thereof of an indoor site used for growing hemp, 33 cents; and*

(b) For any applicant other than an applicant described in paragraph (a), a nonrefundable application fee of \$900 and an additional fee of:

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

(2) 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 a revision 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 a revision to an issued registration, \$150; and

(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.

Sec. 21 . *Transfer of certification can be issued if :*

a) written notice is issued to the department describing the request for transfer,

b) both parties agree to the transfer in certification,

c) there is no physical location change to the crop,

d) landowner approval is provided, and

e) the transfer request is accompanied by the required application change fee

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.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
Temporary Regulation Adoption for Nevada Administrative Code Chapter 557

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.

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 temporary 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.

Three public workshops on the proposed regulations were properly noticed and held via Webex, online meeting platform, on 08/27/20, 10/14/20, and 11/04/20. 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 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. 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

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

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.**

Workshops and hearing were held virtually through 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
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	Shayda Sanjidey-NDA	Shayda Sanjidey-NDA	Leycha Ortiz-NDA
Allen Whitenack-NDA	Allen Whitenack-NDA	Allen Whitenack-NDA	Audrey Blondfield-NDA
James McCoy	Chris Rusby; chris@rusbylaw.com	Patty Herzos	Allen Whitenack-NDA
Erik G	Lauren McGue, UNR; lmcgue@unr.edu (written comment)	August Klein	Alex Tanchek
Robert Daniell; rdaniell@amerhem pco.com (written comment)	Robert Daniell	Robert Daniell	August Klein
Lynn Keller	775-8xxxx49	Peter Keegan (Deputy Attorney General)	Diane King
Teri Bath	Teri Bath	Teri Bath	Doug Busselman, Nevada Farm Bureau
Leycha Ortiz-NDA	Alex Tanchek	Alex Tanchek	Angela O'Callaghan, UNR
John O'Brien; jobriennevada@gm ail.com (written comment)	Harlan	Joe Frey	Bryce Lister
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

Call-in User_9	Maurice Robinson		Chris Rusby, chris@rusbylaw.com (written comment only)
Tyree Brown	Joe Frey		Joe Frey, joe@westernstateshemp.com (written comment only)
Call-in user_10	Cary Yamamoto		
Call-in user_3	Michael		
Chris Rusby; chris@rusbylaw.co m (written comment)	Jim		
Rodney Mehring; rodneym2003@ya hoo.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
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% on 01/19/21 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 on 01/19/21 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 NDA. 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 compliancy sampling.

Sampling method comments:

It was requested that 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 suggestion would not meet minimum federal requirements. 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 will also be detailed in 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 where 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 back-ground 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 back-ground check be provided for all "key-participants". NDA received support and opposition to this requirement. On 01/19/21 the final hemp rules were released which limited this requirement to one back-ground check per application. The temporary regulation draft allows for a back-ground submission from the applicant or if applicable, key participants. The department will only be requiring the back-ground check from applicants and this language will be refined upon full regulation adoption during the summer of 2021.

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 on 01/19/21. The temporary regulations for NAC 557 reference CFR and are still reflective of the published final rules. In moving forward with the temporary regulations, the department will be able to complete their state plan for review by USDA and to have primary regulatory oversight. Final regulations will be adopted through coordination with LCB following the conclusion of the 2021 legislative session.

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 three workshops. The proposed regulations are to meet minimum federal requirements. Once in effect, the department will be able to submit a revised state plan to USDA 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.

The new federal regulations for this voluntary program are more rigorous and reduced program participation may be experienced. The increase in fees is anticipated to cost program participants (at 2020 participation levels (115 growers)) an additional \$48,870 which will be used to cover personnel, lab equipment and supplies, in addition to education and outreach.

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

Hemp production is a voluntary program.

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.

N/A-only the department of agriculture 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.

N/A-the regulations are to meet minimum federal requirements. The back-ground check language for key participants was modified in the Final rules which occurred after the temporary regulation adoption hearing. However, the language in the temporary regulation allows back-ground checks to be provided for the applicant or key participants. The department will only be requiring back-ground checks for applicants and this language will be refined in the full regulation adoption upon the conclusion of the 2021 legislative session.

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.

Jennifer Ott

Digitally signed by Jennifer Ott
DN: cn=Jennifer Ott, o=Nevada
Department of Agriculture, ou=Director,
email=jott@agri.nv.gov, c=US
Date: 2021.01.21 15:02:44 -08'00'

Jennifer Ott

Director

Nevada Department of Agriculture

**Small Business Impact Statement as Required by NRS
233B.0608**
Changes to NAC Chapter 557



1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

NAC 557 revisions are being submitted in response to the Agriculture Improvement Act of 2018 and corresponding Interim Final Rules. In order for the Nevada Department of Agriculture (NDA) to be approved by USDA to have primary regulatory oversight, adherence to the interim final rules must be demonstrated. Requirements under the Interim Final Rules, in addition to the fee increases necessary for meeting federal requirements, are anticipated to have an economic impact to hemp program participants based on program participant feedback provided during 2019 and 2020 meetings, field inspections, and in response to a survey. Program participants have received updates from NDA on federal requirements and notices with the opportunity to issue comment on the Interim Final Rules.

NDA released a digital survey along with the proposed NAC changes to hemp growers and handlers to determine whether they would have an economic impact and prevent program participation due to: 1) the proposed increase in fees, and/or 2) the new federal regulations. The survey and regulations were emailed on 7/29/2020 and 8/5/2020. Copies of the survey were offered to be physically mailed to inquiring parties who were unable to complete the survey digitally. Of the 43 survey respondents:

- 30.23% indicated the proposed fee increases would prevent them from participating in Nevada's hemp program;
- 32.56% indicated the fee increases would not prevent them from participating in Nevada's hemp program;
- 37.21% indicated they were uncertain if the fee increases would prevent them from participating in Nevada's hemp program;
- 65.12% indicated the proposed regulation changes required by federal law would prevent them from participating in

- Nevada's hemp program due to a significant economic burden;
- o 34.88% indicated these changes would not.

Individuals interested in the outcomes of the survey can contact NDA at 775-353-3601.

Concern was expressed from program participants on federal requirements specific to the following:

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
3. Crop failures of >0.5% THC being classified as a negligent violation
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
6. Increasing program fees
7. Regulations not reflecting specific needs of fiber producers since they are not producing for CBD or ingestion purposes

2. The manner in which the analyses was conducted.

The department has been notifying hemp program participants of federal requirement changes since the 2018 growing season. Two informational meetings were held in January 2019, providing an update on requirements described in the Agricultural Improvement Act of 2018. This presentation was posted to the [NDA website](#) so participants were aware of program requirements. A presentation on the Interim Final Rules and corresponding requirements of states with hemp programs was provided during the Nevada Farm Bureau's annual meeting in November 2019. Additionally, program participants received updates via email throughout the 2019 and 2020 growing season, and a presentation on the department's state plan was posted on NDA's webpage and emailed to certificate holders for questions and comments in June 2020. Comments and suggestions have been received and evaluated by NDA hemp program staff and the Plant Industry Administrator via email, phone, and letter. 2019 and 2020 inspections were used to initiate conversations with growers regarding federal requirements and potential regulation changes to learn more about the possible effects on program participants. Furthermore, a small business impact survey was issued to all certificate holders in August 2020.

3. The estimated indirect and direct economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation:

65% of the 43 respondents that participated in the economic impact survey indicated that the NAC 557 changes mandated by federal law would impede their ability to participate in the program. However, the proposed regulation changes to NAC 557 are a direct response to USDA's Interim Final Rules. The Interim Final Rules clearly identifies requirements that must be met for States and Tribes to operate a hemp program. The proposed regulation changes are necessary for NDA to maintain primary regulatory authority.

Of the 43 industry members who participated in the survey, 30.23% indicated a fee increase would negatively impact their ability to participate in the program, 32.56% indicated the fee increase would not negatively impact their operation, and 37.21% indicated that they were uncertain if the fee increases would impact their operation. Fee increases will be necessary for NDA to demonstrate adequate staff and resources as required under the Interim Final Rules. The Department does not have the staff or equipment needed to adequately meet the needs of the Hemp industry and the requirements of the Agriculture Improvement Act of 2018 and Interim Final Rules (released October 2019).

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The proposed regulations are in direct response to minimum federal requirements and language has been included in the event that the Interim Final Rules are modified to more lenient requirements as described below.

1. The NDA submitted a state plan with more lenient sampling protocols (equal parts flower to stem/leaf), however, USDA denied this approach and stated that the sampling method must be exclusively flower material. In the event that USDA accepts more lenient sampling in the future, language was included that allows for the regulation to be updated to any other acceptable sampling methods that may be accepted by USDA.
2. The state plan submitted did not include enforcement action involving negligent violations due to indication from USDA that this requirement was

under close review for reconsideration. However, USDA clarified that in order to have the state plan approved, enforcement is needed involving negligent criteria and license revocation currently listed in the Interim Final Rules. As a result, NDA drafted this requirement into NAC 557 to include negligent criteria as defined in federal law. The drafted language will allow regulation to be adapted to any future changes within the Interim Final Rule that would be favorable to Nevada hemp growers.

3. NDA's initial state plan submission requested that growers have 15 days to harvest after receiving their certificate of analysis from the lab, but this was not accepted by USDA. USDA clarified that, although this requirement is under close review, growers must harvest within 15 days of sampling. In the event that USDA changes this requirement, language such as "or as approved by USDA" has been added to NAC 557.
4. Due to the increasing interest in hemp production, in addition to federal requirements, maintaining the current fee schedule would constrict the hemp industry. NDA's limited staff and resources hinder the ability to complete timely hemp inspections, application review, compliance, and enforcement action as required by the Interim Final Rules. Without increasing program fees, NDA would not have primary regulatory authority over hemp production due to a failure to meet federal requirements for adequate staff and resources to implement a state program.
5. Requests were received to adapt regulations to reflect needs of fiber producers who are producing product not intended for ingestion. However, per federal regulations, all hemp must be tested for THC.

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

The estimated cost to NDA is extensive, particularly as participation has continued to increase since its inception. As a result, an increase in fees for grower applications and hourly inspection rates have been included as this is where most time is required for staff.

6. If the proposed 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 proposed fee increase includes increasing the grower application fee from \$500 to \$900 and the hourly inspection rate from \$50 to \$60 per hour. Based on FY 19 program participation (216 growers) and inspection hours, this would increase annual revenue by \$91,287. Any increase in revenue for certificates will be utilized to fund NDA staff for hemp crop

sampling/inspection duties and application processing. As the hemp industry continues to grow, NDA anticipates an increase in applications, crop acreage, and hemp samples to process. Increasing the application fee will support the additional staff and time commitment for application processing, certificate issuing, and certificate revisions. Additional program outreach and education will be provided, as more staff will be available. Increasing the inspector hourly fee will also go towards supporting the increased program demand for inspectors, sampling supplies, and chemistry analysis resource needs.

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed revisions are to meet the minimum requirements listed in the Interim Final Rules for Nevada to be approved for primary regulatory oversight, as desired by industry and USDA.

8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

Industry was engaged through numerous meetings, routine inspections, email and phone correspondence, in addition to a small business impact survey. The response was consistent, in that, the federal regulations do place challenges involving hemp production. The proposed regulations are required by federal law for NDA to proceed with primary regulatory authority on hemp production in Nevada when the 2014 Farm Bill expires (October 31, 2020). Failure to meet requirements established by USDA would prevent Nevada from having a state-regulated program, which would impact the industry.

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

Jennifer Ott
Digitally signed by Jennifer Ott
DN: cn=Jennifer Ott, o=Nevada
Department of Agriculture, ou,
email=jott@agri.nv.gov, c=US
Date: 2020.08.11 08:58:26 -07'00'

Jennifer Ott
Director
Nevada Department of Agriculture