

PROPOSED REGULATION OF THE NEVADA DEPARTMENT OF AGRICULTURE

LCB File No. [REDACTED]

DIVISION OF PLANT INDUSTRY NOTICE OF INTENT TO ACT UPON A REGULATION And NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS

The Nevada Department of Agriculture will hold a public hearing on March 1, 2017 at 8:30 am, at Agriculture Headquarters, 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 587, of the Nevada Administrative Code. The proposal has been designated as File No. [REDACTED] by the Nevada Legislative Counsel Bureau.

The following information is provided pursuant to the requirements of NRS 233B.0603:

The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 587; a *regulation relating to certification of industrial hemp seed; and providing other matters properly relating thereto.*

1. The need for and the purpose of the proposed regulation or amendment.
Pursuant to section 7606 of the 2014 Federal Farm Bill, industrial hemp research trials can be conducted by The Department of Agriculture. The research trials may include marketing of hemp products. This regulation would allow for the growth of certified hemp seed, in order to determine its values and marketability.
2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.
The substance of the regulation is to establish the requirements to produce state certified hemp seed.
3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:
 - a) Both adverse and beneficial effects; and
Beneficial effect is to create a source of certified hemp seed within the state of Nevada which would enhance seed availability and improve profitability. There is no adverse effect.
 - b) Both immediate and long-term effects
The immediate effect is that growers can begin developing certified hemp seed and the long term effect is enhanced seed availability and improved profitability.
4. The estimated cost to the agency for enforcement of the proposed regulation.
The certified hemp seed program is voluntary and minimal fees will cover any cost to the agency.
5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.
This regulation does not duplicate or overlap any other regulations.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
This regulation is not required under federal law and is a state program to enhance seed availability and profitability.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
This is a new regulation.
8. Whether the proposed regulation establishes a new fee or increases an existing fee.
The new regulation establishes a voluntary minimal fees to provide state certification of hemp seed.

A concerted effort was made to determine the impact of the proposed regulation on small businesses. [Division administration determined that this regulation change will have a positive impact on small businesses.](#)

The LCB approved revision can be found on the Nevada Department of Agriculture website at www.agri.nv.gov.

Persons wishing to comment upon the proposed action of the Nevada Department of Agriculture may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the address below.

Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
ATTN: RUTH TIETJEN
(775) 353-3670
rtietjen@agri.nv.gov

Written submissions must be received by the Nevada Department of Agriculture on or before February 22, 2017. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Agriculture may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at:

Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431

Nevada Department of Agriculture
2300 E. St Louis Avenue
Las Vegas, NV 89104

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89445

And in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

NRS 233B.064(2) provides: Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

The Nevada State Library in Carson City, and all Nevada county libraries. The Department of Agriculture offices in Sparks, Las Vegas or Elko during the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday.

- Clark County Library, 833 Las Vegas Boulevard North, Las Vegas, NV 89101
- Douglas County Library, 1625 Library Lane, Minden, NV 89423
- Elko County Library, 720 Court Street, Elko, NV 89801
- Esmeralda County Library, Corner of Crook & 4th Streets, Goldfield, NV 89013
- Eureka Branch Library, 10190 Monroe Street, P.O. Box 293, Eureka, NV 89316
- Humboldt County Library, 85 East 5th Street, Winnemucca, NV 89445
- Lander County Library, 625 South Broad Street, Battle Mountain, NV 89820
- Lincoln County Library, 63 Main Street, Pioche, NV 89043
- Lyon County Library, 20 Nevin Way, Yerington, NV 89447

Mineral County Public Library, 110 1st Street, Hawthorne, NV 89415
Pershing County Library, 1125 Central Avenue, Lovelock, NV 89419
Storey County Public Library, 95 South R Street, Virginia City, NV 89440
Tonopah Public Library, 167 Central Street, Tonopah, NV 89049
Washoe County Library, 301 South Center Street, Reno, NV 89501
White Pine County Library, 950 Campton Street, Ely, NV 89301
Nevada State Legislature Website: www.leg.state.nv.us

BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director

Las Vegas Office:
2300 E. St Louis Avenue
Las Vegas NV 89104-4314
(702) 668-4590
Fax (702) 668-456



Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

MEMORANDUM

TO: Nevada Department of Agriculture Offices
State Capitol Building
State Library and Archives
Dennis Belcourt – AG's Office

FROM: Robert Little, Division Administrator – 775-353-3729
rlittle@agri.nv.gov Fax Number 775-353-3661

SUBJECT: Posting of Agenda for Hearing on Notice of Intent to Act Upon a Regulation Scheduled for March 1, 2017
at 8:30 am

DATE: January 30, 2017

I have attached a copy of the agenda for the Nevada Department of Agriculture Hearing for Notice of Intent to Act Upon a Regulation that will be held on March 1, 2017 at 8:30 am .

Please post the agenda for NAC 587, before 9:00am on January 31, 2017, per *open meeting law* and return this memo to my attention, signed with the date of posting, as I need this for our files.

We appreciate your assistance in this posting.

Thank you.

Distribution: State Capitol Building
State Library and Archives
Dennis Belcourt – AG's Office
Sparks Office – Nevada Department of Agriculture
Las Vegas Office – Nevada Department of Agriculture
Elko Office – Nevada Department of Agriculture
Consumer Equitability – Department of Agriculture

OFFICE: _____

SIGNATURE: _____

DATE & TIME OF POST: _____

MEETING NOTICE AND AGENDA

Public Hearing

Notice of Intent to Act Upon a Regulation

LOCATION: Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
Phone: 775-353-3601

Video-conference to: Nevada Department of Agriculture
2300 E. St Louis Avenue
Las Vegas, NV 89104
Phone: 702-668-4590

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89801
Phone: 775-738-8076

DATE AND TIME: March 1, 2017 at 8:30 am

Public comment will be taken on the intent to adopt a regulation. The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 587; *a regulation relating to certification of industrial hemp seed and providing other matters properly relating thereto.*

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify The Dept. of Agriculture in writing at 405 S. 21st Street, Sparks, NV 89431 or contact Jerri Conrad at 775-353-3619.

Copies of both the State of Nevada Board of Agriculture Agenda with supporting documentation and Open Meeting Minutes are available, at no charge, for inspection at the Dept. of Agriculture 405 S. 21st Street, Sparks, NV, 89431 or Dept. of Agriculture website at www.agri.nv.gov. For additional information contact Jerri Conrad at 775-353-3619.

Notice of this meeting was posted on or before 9:00 a.m. on the third working day before the meeting at the following locations: Nevada Department of Agriculture, 405 S. 21st Street, Sparks, NV 89431, Nevada Department of Agriculture, 2150 Frazer Ave., Sparks, NV 89431, Nevada Department of Agriculture, 4780 E. Idaho Street, Elko, NV 89801, Nevada Department of Agriculture, 2300 E. St Louis Avenue, Las Vegas, NV 89104, State of Nevada Capital Building, Carson City NV, State Library and Archives, Carson City.

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Las Vegas Office:
2300 E. St. Louis Ave.
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Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

Hearing for Proposed Regulation Amendments to Nevada Administrative Code Chapter 587– Certification of Industrial Hemp Seed.

Date: March 1, 2017

Time: 8:30 am (PST)

Location: Video conference between the Nevada Department of Agriculture's Sparks, Las Vegas and Elko offices (addresses listed above)

This workshop has been properly noticed as required by the Nevada Open Meeting Law. The workshop is being recorded and all attendees are required to sign in and those who wish to speak are asked to identify themselves for the record. All participants are encouraged to engage in discussion; therefor there is no formal public comment period.

Agenda:

- I. Welcome & Introductions
- II. Overview of Specific Amendments
- III. Open Discussion Pertaining to Proposed Amendment(s)
- IV. Adjourn

NAC 587: Standards For Certification Of Industrial Hemp Seed Proposed Amendments

Black Text = Current Regulation

Red Text = Proposed Removed Language

Blue Text = Proposed New Language

Revised 1/30/2017

587. *Applicability.* (NRS 587.077, 587.083) *The general standards for certification of seed as adopted by the Department and NAC 587.931 to 587.937, inclusive, govern the standards for the certification of industrial hemp seed.*

587. *Requirements for land.* (NRS 587.077, 587.083)

1. An industrial hemp seed crop that is grown for certification must not be planted on land on which the previous crop grown was of the same kind, unless the previous crop grown was of the same variety and met all of the certification requirements for the same or higher class.

2. The application for certification must indicate the crops grown the previous 3 years on the land.

3. At least 2 years must elapse between the destruction of varieties of dissimilar adaptation and establishment of a new stand for the production of seed for certification.

4. An industrial hemp crop that is grown for breeder seed designation can be accepted at the approval of the Department.

(a) A breeder class industrial hemp field must not be planted on land on which the previous 10 crops were industrial hemp of any kind.

587. *Requirements for Isolation.* (NRS 587.077, 587.083)

1. Isolation areas must be kept free of Industrial Hemp plants. Under optimum conditions, not more than 3 plants per 11 square feet of harmful contaminants (species that can cross pollinate with the inspected crop) are permitted within the required isolation distance(s) adjacent to the inspected crop. The conditions of each crop are assessed by the seed certifying agency which may alter this standard, usually by reducing the number of contaminant plants permitted per square yard, according to the contamination risks involved.

2. The required isolation as outlined in Table 1 must be in place prior to the time of flowering and crop inspection.

3. If dioecious male plants start flowering before removal from field, all plants around them should be destroyed for a radius of 10 feet for Foundation and 6 feet for registered seed crops.

4. Except as otherwise provided in subsection 2, the minimum distance a field of industrial hemp must be from a different variety or a field of the same variety of industrial hemp that does not meet the requirements for the same class designation is:

Table 1:

<i>Inspected crop</i>	<i>Other Crop</i>	<i>Isolation Distance Required (Feet)</i>
<i>Dioecious type – Registered and Foundation</i>	<i>1) Different varieties of industrial hemp</i>	<i>16,150</i>
	<i>2) Non-certified crop of same kind</i>	<i>16,150</i>
	<i>3) Lower certified class seed crop of same variety</i>	<i>6,640</i>
	<i>4) Same class of certified seed of same variety</i>	<i>3</i>
<i>Dioecious type – Certified</i>	<i>1) Different varieties of industrial hemp</i>	<i>3,320</i>
	<i>2) Non-certified crop of same kind</i>	<i>3,320</i>
	<i>3) Lower certified class seed crop of same variety</i>	<i>646</i>
	<i>4) Same class of certified seed of same variety</i>	<i>3</i>
<i>Monoecious type and Hybrids – Registered and Foundation</i>	<i>1) Dioecious variety of industrial hemp</i>	<i>16,150</i>
	<i>2) Non-certified crop of same kind</i>	<i>16,150</i>
	<i>3) Different varieties of the same type of industrial hemp (monoecious or female hybrid)</i>	<i>6,460</i>
	<i>4) Lower certified class seed crop of same variety</i>	<i>3,230</i>
	<i>5) Same class of certified class of same variety</i>	<i>3</i>
<i>Monoecious type and hybrids - Certified</i>	<i>-Dioecious variety of industrial hemp</i>	<i>3,230</i>
	<i>-Non-certified crop of same kind</i>	<i>3,230</i>
	<i>-Different varieties of the same type of industrial hemp (monoecious or female hybrid)</i>	<i>646</i>
	<i>-Lower certified class seed crop of same variety</i>	<i>646</i>
	<i>-Same class of certified class of same variety</i>	<i>3</i>

5. Industrial hemp seed crops entered for certification are required to be at least 5 miles from a medical marijuana and/or a recreational marijuana cultivation area. The Department will consider implementing a variance relating to isolation distances concerning indoor versus outdoor cultivation of Cannabis.

587. Inspection of Seed Crops; Control of Contamination (NRS 587.077, 587.083)

1. The Department will make an inspection of a seed crop of industrial hemp after female flowers are produced.

2. Producers will notify the Department when the ideal inspection time is for each crop at least 2 weeks in advance.

3. A field of industrial hemp entered for certification must show evidence of control of:

(a) Contaminating crops and varieties; and

(b) Objectionable and noxious weeds.

4. Industrial hemp varieties of the monoecious gender must show evidence of control of:

(a) Contaminating genders that exceed the varietal designation amount

(b) Deviation from the varietal characteristic regarding monoecious/dioecious genders cannot exceed more than 10% from varietal definition.

5. The Department will collect one sample of a seed crop per year when the flower is at the most mature state to analyze for total tetrahydrocannabinol (THC).

(a) The sample will be taken using the following method:

1. Of each plant sampled, the top 6 inches of the female flower will be harvested.
2. A total of 10 plants per field, per variety will be sampled following a manner that is proportionate with the designated field.
3. Each field sample will be contained in a single, sealable plastic bag.
4. Latex or nitrile gloves must be worn when sampling and will be sterilized or exchanged upon entering different fields.
5. Samples will be labeled according to date, producer, species, variety and sample number.

587. Fields of Industrial Hemp: Maximum Tolerances (NRS 587.077, 587.083)

1. Except as otherwise provided in subsections 2 and 3, a field of industrial hemp must meet the following tolerances to be eligible for certification:

<i>Factor</i>	<i>Maximum Permitted in Each Class</i>			
	<i>Breeder</i>	<i>Foundation</i>	<i>Registered</i>	<i>Certified</i>
<i>Other Varieties</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>1:5,000</i>
<i>Other Crops</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>1:2,000</i>

2. Total tetrahydrocannabinol (THC) concentrations exceeding 0.3% on a dry weight basis will result in immediate disqualification for seed certification and the crop will be destroyed.

3. Any *Cannabis sativa L.* other than industrial hemp varieties are prohibited from being present within an industrial hemp field.

(a) In the event that any variety of *Cannabis sativa L.* other than industrial hemp is suspected, the crop will be ordered to be destroyed.

587. Maximum Impurity Standards (NRS 587.077, 587.083)

1. Impurity Standards

(a) Impurities should be removed prior to crop inspection.

(b) Any combination of impurities may be reason for declining certified status.

(c) An Industrial Hemp crop for certified status, unless otherwise specified by the Breeder, must not exceed the limits, as outlined in Table 2., of harmful contaminants (species that can cross pollinate

with the inspected crop), plants of other varieties or distinct types foreign to the variety being inspected, weeds or other crops with seeds that are difficult to separate from Industrial Hemp seed (e.g. Hemp Nettle)

(d) Table 2 indicates the maximum number of impurities permitted by AOSCA in approximately 10,000 plants of the inspected crop. The inspector makes at least 6 counts (10,000 plants each) or the equivalent to determine the number of impurities. The resulting average of these counts must not exceed the maximum impurity standards in Table 2.

Table 2:

<i>Inspected Crop</i>	<i>Maximum Impurity Standards per 10,000 Plants in Registered and Certified Industrial Hemp Seed Crops</i>		
	<i>Maximum Number of "Too Male" monoecious plants</i>	<i>Maximum Number of Dioecious Male Plants Shedding Pollen</i>	<i>Maximum number of other Impurities</i>
<i>Dioecious Type – Foundation</i>	-	-	3
<i>Dioecious Type – Registered & Certified</i>	-	-	10
<i>Monoecious Type – Foundation</i>	500	1	3
<i>Monoecious Type – Registered</i>	1000	2	10
<i>Monoecious Type – Certified</i>	-	100	10

587. Minimum standards for classes of industrial hemp seed (NRS 587.077, 587.083)

1. Each lot of seed entered for certification must be sampled and meet the minimum standards for the class of seed produced. Samples will be drawn by a representative of the Department pursuant to NAC 587.180 and 587.190, and must meet the following standards:

<i>Factor</i>	<i>Standards for Each Class</i>			
	<i>Breeder</i>	<i>Foundation</i>	<i>Registered</i>	<i>Certified</i>
<i>Pure seed (minimum)</i>	99.0%	98.0%	98.0%	98.0%
<i>Other crop (maximum)</i>	0.01%	0.01%	0.03%	0.08%
<i>Weed seed (maximum)</i>	0.1%	0.1%	0.2%	0.25%
<i>Noxious weed seed (maximum)</i>	None	None	None	None
<i>Objectionable weed seed (maximum)</i>	None	None	None	None
<i>Inert matter (maximum)</i>	1.0%	2.0%	2.0%	2.0%
<i>Other Varieties (maximum)</i>	0.005%	0.005%	0.01%	0.07%
<i>Other Kinds (maximum)</i>	0.01%	0.01%	0.03%	0.07%
<i>Germination and hard seed (minimum)</i>	90.0%	80.0%	80.0%	80.0%

587. Application for certification; contents and submission requirements. (NRS 587.077, 587.083)

1. For each planting, an applicant must submit to the Department an application for certification.
2. Each application must:
 - (a) Be on a form obtained from the Department;
 - (b) List all sources of the seed stock planted;
 - (c) Include documentation that verifies the eligibility of the seed stock planted;
 - (d) Include a map that shows the location of the farm and the planting;
 - (e) Include any other information requested by the Department;
 - (f) Be received by the Department on or before June 1 of the year the seed stock is planted; if not received by this date a \$100.00 fee will be added; and
 - (g) Be accompanied by the certification fees.

587. Fee for certification; refund. (NRS 587.077, 587.083)

1. For each planting, the Department will, in addition to fees pursuant to NAC 557, charge and collect a certification fee of \$15.00 per acre with a minimum charge of \$50.00 per application.
2. Checks must be payable to the "Nevada State Department of Agriculture."
3. An applicant must pay the certification fee set forth in subsection 1:
 - (a) On or before June 1 of the year in which the seed stock is planted; or
 - (b) If the seed stock is planted after June 1, not later than 5 days after the date on which the seed stock is planted.
4. The Department will refund the certification fees paid for any planting that is withdrawn from certification if the request for a refund is submitted in writing to the Department before the first field inspection.

SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY

NRS 233B.0608

Revised LCB File# R???

NAC 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.

- The NDA contacted every industrial hemp grower involved in a research trial that may be impacted by this clarification and everyone who has expressed interest in the program. The regulations are available on the website of the Department of Agriculture, www.agri.nv.gov and posted at the following locations:

Department of Agriculture
405 S. 21st Street
Sparks, NV 89431

Department of Agriculture
2300 St Louis Avenue
Las Vegas, NV 89104

Department of Agriculture
4780 E Idaho Street
Elko, NV 89801

2. The manner in which the analyses was conducted.

- No analyses was conducted because these regulations do not apply to small businesses and the introduction of an amendment fee is merely a clarification of the application process if a grower wishes to amend the original research project.

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

- Does not apply directly to the development of a pesticide list, but will have an impact if the original application to cultivate is modified, at the grower's request. By state law, the use of any pesticide not included on the list would result in the destruction of the entire crop. The creation of a list minimizes that possibility.

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.

- Does not apply. Inclusion on the list is determined by federal labeling criteria. Additionally, the impact is insignificant and the amendment fee is to cover the agencies cost to issue a permit.

5. **The estimated cost to the agency for enforcement of the proposed regulation.**
 - This proposed regulation will have a resultant minimal impact, it is a service to the industry.
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.**
 - This regulation will impose a new fee that has been calculated to cover the costs of administering the service. We estimate to collect \$300.00 per year for the inclusion of a pesticide list. The proposed application amendment fee will generate \$0-\$2,500 with the possibility that fees may be returned to the individual grower.
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.**
 - Does not apply.
8. **The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**
 - No impact on small businesses. These proposed regulation simply specify the criteria used to determine the pesticides that are not legally prohibited from use on industrial hemp. Application amendment regulations simply clarify the application process and will only apply at the request of the grower.

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 was prepared properly and is accurate.


James R. Barbee

Deputy Director

Director

Nevada Department of Agriculture