



NOTICE OF INTENT TO ACT UPON A REGULATION
and
HEARING AGENDA

**Notice of Hearing for the Adoption of Regulations to amend Nevada Administrative Code
Chapter 581: Proposed Regulation of the Division of Consumer Equitability of the Nevada
Department of Agriculture, LCB File No. R172-18**

The Nevada Department of Agriculture will hold a public hearing on:

Thursday, October 18, 2018 at 9:30 AM
Nevada Department of Agriculture Headquarters
405 South 21st Street
Sparks, NV 89431
(775) 353-3601

Meeting via videoconference available at the following locations

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

Nevada Department of Agriculture - Elko
4780 E. Idaho Street
Elko, NV 89801

The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to Chapter 581 of the Nevada Administrative Code. The proposal has been designated as File No. R172-18 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 581, a regulation relating to devices; revising certain fees charged by the Division of Consumer Equitability of the State Department of Agriculture for testing and licensing certain weighing or measuring devices; imposing a late fee for certain payments due to the Division; revising the period during which a license to use a weighing or measuring device as commercial weighing and measuring equipment is valid; and providing other matters properly relating thereto.

1. The need for and the purpose of the proposed regulation or amendment.

Nevada Revised Statutes (NRS) 581.030 establishes the Director of the State Department of Agriculture as ex officio State Sealer of Equitability. NRS 581.050 provides that the State Sealer of Equitability may adopt regulations necessary to carry out the provisions of NAC Chapter 581. NRS 581.075 provides that the State Sealer of Equitability may establish a schedule of fees for any tests of weighing and measuring devices that the State Sealer of Consumer Equitability determines to be necessary; and that the State Sealer of Consumer Equitability may establish an annual license fee for all commercial weighing and measuring equipment. The need for and the purpose of the proposed regulations and amendments is as follows:

Sec. 1. This section amends NAC 581.005 to add new definitions for specific weight kits used by the Division of Consumer Equitability in testing the accuracy of certain weighing and measuring devices. The purpose of this change is to provide a definition for specific weight kits that are referenced in the amendments included in later sections of the proposed regulations.

Sec. 2. This section amends NAC 581.210 to clarify that the fees established in this section may only be charged for those tests conducted by the Division for the purpose(s) specifically identified in NAC 581.210. This change was included in response to public input indicating that the existing regulation language did not make it clear that these fees were only applicable to the tests specifically identified in NAC 581.210. Concerns were raised that the fees would be assessed for tests conducted for other purposes, such as in association with inspection and/or testing of a device in association with the annual licensing of a commercial weighing and measuring device as required by NAC 581.275.

This section increases the fees for tests conducted for the purposes specified in NAC 581.210. The current fees do not provide for adequate recovery of the Division of Consumer Equitability's costs to perform the tests. The purpose of the proposed fee is to recover a greater percentage of the costs incurred to perform the tests, so that the Division of Consumer Equitability has sufficient funding to sustain its operations.

This section adds a new classification and fee for scale devices with a capacity of 500 pounds and under that are tested with a Class II, Echelon II weight kit. The number of these devices being used for commercial purposes in Nevada has increased significantly following the establishment of the legal marijuana industry. Testing of these devices requires specialized equipment and procedures which increase the cost to the Division of Consumer Equitability to perform these tests as compared to the cost to test scale devices with a capacity of 500 pounds and under tested with a Class F, Echelon III weight kit. The purpose of the proposed fee is to recover a greater percentage of the costs incurred to perform the tests so that the Division of Consumer Equitability has sufficient funding to sustain its operations.

This section amends the date by which failure to pay a fee required pursuant to NAC 581.210 is a violation of the regulation from 30 days after receipt of the bill to the due date indicated on the bill, which must not be less than 30 days from issuance of the bill. The purpose of this amendment is to allow the Division of Consumer Equitability to establish a due date that is longer than 30 days from the issuance of the bill and to establish consistency with billing due date provisions in other sections of NAC Chapter 581.

This section establishes a late fee equal to 10 percent of the original fee amount for any fee required pursuant to NAC 581.210 which has not been paid by the due date indicated on the bill for such fee. The purpose of this fee is to recover costs associated with collection activities for late fees, and to establish consistency with late fee provisions in other sections of NAC Chapter 581.

Sec. 3. This section increases the fees charged for travel and time spent for testing of certain devices in accordance with NAC 581.210. The current fees do not provide for adequate recovery of the Division of Consumer Equitability's costs to travel and perform testing. The purpose of the proposed increase is to recover a greater percentage of the costs incurred to travel and perform testing, so that the Division of Consumer Equitability has sufficient funding to sustain its operations.

This section amends the date by which failure to pay a fee required pursuant to NAC 581.220 is a violation of the regulation from 30 days after receipt of the bill to the due date indicated on the bill, which must not be less than 30 days from issuance of the bill. The purpose of this amendment is to allow the Division of Consumer Equitability to establish a due date that is longer than 30 days from the issuance of the bill and to establish consistency with billing due date provisions in other sections of NAC Chapter 581.

This section establishes a late fee equal to 10 percent of the original fee amount for any fee required pursuant to NAC 581.220 which has not been paid by the due date indicated on the bill for such fee. The purpose of this fee is to recover costs associated with collection activities for late fees, and to establish consistency with late fee provisions in other sections of NAC Chapter 581.

Sec. 4. NAC 581.275 provides that a person shall not use any weighing or measuring device as commercial weighing and measuring equipment unless the Division of Consumer Equitability has issued a license for that device. This section amends the dates on which a license issued for a weighing or measuring device to be used as commercial weighing and measuring equipment is valid from October 1 – September 30 to September 1 – August 31 of each year. The purpose of this amendment is to more closely align the licensing period with the state's fiscal year, as opposed to the federal fiscal year, and to account for the amendment proposed to NAC 581.285, which changes the date by which notice of annual license renewals are sent from August 1 to July 10.

Sec. 5. NAC 581.275 provides that a person shall not use any weighing or measuring device as commercial weighing and measuring equipment unless the Division of Consumer Equitability has issued a license for that device. This section amends the date by which the Division of Consumer Equitability must annually send notice

of renewal of each licensed weighing or measuring device used as commercial weighing and measuring equipment and the date by which the fee for such renewal must be paid. The purpose of this amendment is to more closely align the license renewal period with the beginning of the state's fiscal year, rather than the federal fiscal year.

Sec. 6. NAC 581.275 provides that a person shall not use any weighing or measuring device as commercial weighing and measuring equipment unless the Division of Consumer Equitability has issued a license for that device. This section increases the fees for annual licensing of weighing and measuring devices used as commercial weighing and measuring equipment. The current fees do not provide for adequate recovery of the Division of Consumer Equitability's costs to license and perform an inspection of the device as required by NAC 581.285 Subsection 2. (b). The purpose of the proposed fee is to recover a greater percentage of the costs incurred to license the device and perform the inspection associated with such licensing, so that the Division of Consumer Equitability has sufficient funding to sustain its operations.

This section adds a new classification and fee for scale devices with a capacity of 500 pounds and under tested with a Class II, Echelon II weight kit. The number of these devices being used for commercial purposes in Nevada has increased significantly following the establishment of the legal marijuana industry. Testing of these devices requires specialized equipment and procedures which increase the cost to the Division of Consumer Equitability to perform these tests as compared to the cost to test scale devices with a capacity of 500 pounds and under tested with a Class F, Echelon III weight kit. The purpose of the proposed fee is to recover a greater percentage of the costs incurred to license the device and perform the test, so that the Division of Consumer Equitability has sufficient funding to sustain its operations.

This section amends the date by which failure to pay the license fee required pursuant to NAC 581.295 is a violation of the regulation from 30 days after receipt of the bill to the due date indicated on the bill, which must not be less than 30 days from issuance of the bill. The purpose of this amendment is to allow the Division of Consumer Equitability to establish a due date that is longer than 30 days from the issuance of the bill and to establish consistency with billing due date provisions in other sections of NAC Chapter 581. This amendment would also resolve a potential conflict between the existing language of NAC 581.295 Subsection 2., which provides that the license renewal fee be paid within 30 days of receipt of the invoice and NAC 581.825 Subsection 2., which provides that the renewal fee must be paid on or before September 30 each year.

This section amends the amount of the late fee from 50 percent of the original fee amount to 10 percent of the original fee amount for any license fee required pursuant to NAC 581.295 that has not been paid by the due date indicated on the bill for such fee. The purpose of this amendment is to reduce the late fee amount to account for the proposed increased license fee amounts, such that the late fees imposed will more closely align with the actual cost of collection of the late payment, and to establish consistency with late fee provisions in other sections of NAC Chapter 581.

Sec. 7. This section includes transitory language to provide for the validity of a license to use a weighing or measuring device as commercial weighing and measuring equipment during the period of implementation of the amended regulations.

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 full text of the LCB File of the proposed regulation to be adopted are attached to this notice and may be found on the Department of Agriculture website at www.agri.nv.gov.

LCB File Section	NAC	Leadline or Description
Sec. 1.	581.005	Definitions
Sec. 2.	581.210	Weighing and measuring devices: Tests and services for which fees will be charged; fees for tests; failure to pay fee.
Sec. 3.	581.220	Weighing and measuring devices: Additional fees for special tests; failure to pay fee.
Sec. 4.	581.280	Issuance of license: Prerequisites;

		inspection of devices; failure of inspection; period of validity of license.
Sec. 5.	581.285	Renewal of license: Notice; payment of fee; inspection of device; failure of inspection.
Sec. 6.	581.295	Licensing fees: Amount; late payment.
Sec. 7.	N/A	Transitory Language

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:

Economic effect on business

a) Both adverse and beneficial effects

Adverse: Businesses using weighing and measuring devices as commercial weighing and measuring equipment will incur higher costs for the licensing and testing of such equipment.

Beneficial: The additional fees collected by the Division of Consumer Equitability will be used to hire additional Weights and Measures inspectors and to purchase new/replacement equipment that will allow it to respond to service requests from business more quickly and to perform inspections more efficiently and/or effectively. The increased number of inspectors will allow for weighing and measuring equipment to be inspected more frequently. Such inspections may identify devices that are out of tolerance to the detriment of the business owner

b) Both immediate and long-term effects

Immediate: The proposed regulation is intended to be effective July 1, 2019. The increased fee amounts included in the proposed regulations would be billed at the higher amounts as of July 1, 2019, thereby immediately increasing the cost of conducting business.

Long-term: The hiring of additional Weights and Measures inspectors will increase the level of support available to businesses in confirming the proper operation of commercial weighing and measuring equipment.

Economic effect on the public

a) Both adverse and beneficial effects

Adverse: If businesses using weighing and measuring devices as commercial weighing and measuring equipment choose to pass along the increased costs for licensing and testing of such equipment to their customers the public would pay more for the goods and services provided by such businesses.

Beneficial: The additional fees collected by the Division of Consumer Equitability will be used to hire additional Weights and Measures inspectors and to purchase new/replacement equipment that will allow it to respond to consumer complaints more quickly. The increased number of inspectors will allow for weighing and measuring equipment to be inspected more frequently, to perform additional checking of packaged products, and to perform additional price verification activities throughout the state. These activities serve to protect consumers by ensuring that commercial weighing and measuring equipment is operating properly, that packaged products contain the amount stated on the package, and that prices charged at the point of sale are not higher than shelf and/or advertised prices.

b) Both immediate and long-term effects

Immediate: The proposed legislation is not anticipated to have an immediate effect on the public.

Long-term: Should the owners of commercial weighing and measuring equipment choose to pass along the increased cost of conducting business resulting from the increased fee amounts included in the proposed regulations, the public will incur higher costs for certain goods and services.

The hiring of additional Weights and Measures inspectors will increase the level of support available to the public to confirm the proper operation of commercial weighing and measuring equipment, the receipt of proper quantities in packaged products, and that they are charged the accurate price for goods at the point of sale.

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

The agency does not anticipate that its ongoing costs to enforce the proposed revised provisions of NAC 581 will increase as result of the proposed regulations. The agency anticipates one-time costs of approximately \$800 to print and mail a notice of the revised regulations to all commercial weighing and measuring device owners following adoption of the regulation.

5. 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.

The proposed regulations do not duplicate federal, state or local standards. The Packers and Stockyards Program (PSP) of the United States Department of Agriculture enforces the Packers and Stockyards Act, 1921, which requires that each stockyard owner, market, agency, dealer, packer or live poultry dealer who weighs livestock, live poultry, or feed for purchases of purchase, sale, acquisition, payment or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnished scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations in the act at least twice during each calendar year at intervals of approximately 6 months. An exception is granted if scales are used on a limited seasonal basis (during any continuous 8-month period) that the scales may be used during within an 8-month period following each test. The test performed by the Division of Consumer Equitability in association with the annual registration of a livestock scale serves to satisfy one test for those device owners subject to the PSP six-month inspection cycle and may, depending upon timing of the inspection within an 8-month period, entirely satisfy the PSP testing requirement for those scales used on a limited seasonal basis.

6. Whether the proposed regulation establishes a new fee or increases an existing fee.

Sections 2, 3 and 6 of the proposed regulations increase existing fees and establish new fees.

A concerted effort was made to determine the impact of the proposed regulation on small businesses, by surveying interested parties. The State Sealer of Consumer Equitability has estimated that the annual economic impact to small businesses as a result of the proposed regulation will total \$300,000. In response to a survey of the owners of commercial weighing and measuring equipment, the majority of small businesses indicated that they would change their business strategy as a result of the proposed regulation. A Small Business Impact Statement for the original version of the proposed regulations was prepared on July 13, 2018 and is available by contacting the Division of Consumer Equitability of the Nevada Department of Agriculture at the address provided below.

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: Cadence Matijevich, Administrator, Division of Consumer Equitability
(775) 353-3726
c.matijevich@agri.nv.gov

Written submissions must be received by the Nevada Department of Agriculture on or before October 15, 2018. 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 from 8:00 AM – 5:00 PM, Monday – Friday at the following locations:

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 89801

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 may be obtained by contacting the Division of Consumer Equitability at 775-353-3782 or CE@agri.nv.gov.

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.



ADOPTION HEARING AGENDA
Thursday, October 18, 2018
9:30 A.M.

Nevada Department of Agriculture Headquarters
405 South 21st Street
Sparks, NV 89431
(775) 353-3601

Meeting via videoconference available at the following locations

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

Nevada Department of Agriculture - Elko
4780 E. Idaho Street
Elko, NV 89801

1. Call to Order
2. Public Comment. Comments from the public are invited at this time on matters other than regulation amendments. The agency reserves the right to limit to 5 minutes the amount of time that will be allowed for each individual to speak. The agency is precluded from action on items raised during Public Comments that are not on the agenda.
3. **For possible action:** Discussion and Adoption of Proposed Regulations
 - a. LCB File No. R172-18. Regarding the Amendment of regulations that pertain to Chapter 581 of the Nevada Administrative Code.
4. Public Comment. Comments from the public are invited at this time. The agency reserves the right to limit to 5 minutes the amount of time that will be allowed for each individual to speak. The agency is precluded from action on items raised during Public Comment that are not on the agenda.
5. Adjournment

A copy of all materials relating to the proposed regulations may be obtained at the hearing or by contacting the Nevada Department of Agriculture, 405 S. 21st Street, Sparks, NV 89431; (775) 353-3782. In your request, please state that you are requesting materials for the adoption hearing on Thursday, October 18, 2018.

NOTE: We are pleased to make accommodations for members of the public who are disabled and wish to attend the meeting. Please notify Jamie Thompson in writing prior to the meeting should you need such accommodation:

Jamie Thompson
Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
Via email: jthompson@agri.nv.gov

Action may not be taken on matters considered during public comment until specifically included on a future agenda as an action item.

Notice of this meeting was posted at the following locations in Nevada:

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 Ave, Las Vegas, NV 89104
State of Nevada Capitol Building, 101 N. Carson Street, Carson City, NV 89701
Nevada State Library and Archives, 100 Stewart Street, Carson City, NV 89701

Notice of this meeting was posted on the following websites:

www.leg.state.nv.us

www.notice.nv.gov

www.agri.nv.gov

Copies of may also be obtained from any of the public libraries listed below:

- Churchill County Library, 553 South Main Street, Fallon, Nevada
- Douglas County Library, 1625 Library Lane, Minden, Nevada
- Elko County Library, 720 Court Street, Elko, Nevada
- Esmeralda County Library, Corner of Crook and Fourth Street, Goldfield, Nevada
- Humboldt County Library, 85 East Fifth Street, Winnemucca, Nevada
- Lander County Library, 625 South Broad Street, Battle Mountain, Nevada
- Lincoln County Library, 63 Main Street, Pioche, Nevada
- Lyon County Library, 20 Nevin Way, Yerington, Nevada
- Mineral County Public Library, 110 First Street, Hawthorne, Nevada
- Pershing County Library, 1125 Central Avenue, Lovelock, Nevada
- Tonopah Public Library, 167 Central Street, Tonopah, Nevada
- Washoe County Library, 301 South Central Street, Reno, Nevada
- White Pine County Library, 950 Campton Street, Ely, Nevada