

## **Proposed Amendment NAC Chapter 557**

Plant Division



### **Background**

During the 2019 legislative process Senate Bill (SB) 347 revised NRS 557 in response to the 2018 Farm Bill to reflect new federal regulations. NRS 557.260 was incorporated which allows the department to adopt regulations to comply with any requirements imposed by the United States Department of Agriculture (USDA). The farm bill removed language limiting the program to research and development and expanded hemp production to commercial purposes. New federal regulations require that states adopt a testing procedure that includes Delta-9 THC analysis using post-decarboxylation or an equivalent method. The Interim Final Rule for hemp production requires that program ineligibility be applied to anyone that has been convicted of a state or federal felony related to a controlled substance for the 10 years prior to the date of when the report was completed. Federal regulations require that registrants report production information annually to the Farm Service Agency. Key participants of an applicant's business entity must be identified in the application along with a criminal history report to ensure that they are also confirmed as not having any controlled substance related to state or felony charges within 10 years of the report submission. Key participant is defined per the interim final rules. Crop sampling guidance provided in the interim final rules is also in the following regulation. Acceptable THC level is required to be defined per federal law and the Nevada state plan is contingent upon adopting this definition within regulation. The definition provided is out of the federal register with 0.3% being replaced with THC concentration as established by federal law in this regulation draft. This would allow for regulation to be updated if any federal regulation changes are made. Federal requirements include having a definition for *acceptable THC limits*, to include a margin of error or measurement of uncertainty as determined by the compliance lab. NRS revisions created opportunity for changes in certification which are limited to transfer in ownership. Additional certification changes are experienced in adding or revising production information which requires extensive staff time. A fee is being included to address the costs of certification changes by department staff. An increased fee for grower certification and inspection time is being included to cover the costs of implementing a program that is compliant with federal law. Significant staff time and resources are needed in administering this program in order to meet federal requirements which includes application reviews, crop sampling, chemical analysis, and enforcement. The current fee structure does not adequately cover these costs and as a result an increase in the grower application and hourly inspection fee has been included in the regulation change. The proposed increase is reflective of other state hemp fees and is anticipated to cover the staff and resources needed to meet federal hemp program requirements. NAC 557.120 is being stricken since per the 2018 Farm Bill, hemp is no longer considered a controlled substance and seed can be sourced directly by applicants. Varietals no longer need to be pre-approved as the compliance provisions for THC are defined in the regulation and certificate holders must ensure they select varietals and produce them in accordance with these requirements. Failure to do so will result in a crop disposal plan. USDA requires states to include a procedure for sampling and testing hemp in their state plan which is also reflected in NRS 557.270. Crops must be harvested in a timely manner following receipt of reports of analysis as the THC concentrations continue to vary as crop matures which can

impact compliance. The interim final rule currently requires that sampling be performed within 15 days of the crop harvest. The interim final rule also requires that negligent criteria be established for 1) non-compliant crops, 2) failure to register, and 3) failure to provide legal description of location. In addition, non-compliant crops >0.5% fall under the negligent criteria. Per federal law, 3 negligent violations in a five year period is to result in license revocation.

Additions are marked in **blue** and verbiage removal is marked in **red** with a line indicating the stricken language.

## CHAPTER 557 - INDUSTRIAL HEMP

### GENERAL PROVISIONS

#### Include

- 557.010      Definitions.
- 557.020      “Applicant” defined.
- 557.030      “Registrant” defined.

### CERTIFICATION AND REGISTRATION OF SITE USED FOR GROWING OR CULTIVATING INDUSTRIAL HEMP

- 557.100      Application for certification and registration.
- 557.110      Required reports; inspection; notification to Department of harvest; analysis of THC concentration; disclosure of information.
- 557.120      Certified seed and propagating material: Required use; request by registrant for Department to obtain.
- 557.130      Fees.
- 557.140      Revocation of registration and certification or destruction of plants if sample contains THC concentration exceeding limit.
- 557.200      Civil penalties; use of money collected.

### GENERAL PROVISIONS

**NAC 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.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

**NAC 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.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

*“Key participants” defined. Key participant means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer.*

*“Acceptable hemp THC level” defined. When a laboratory tests a sample pursuant to NAC 557.140, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of Nevada law is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes the delta-9 THC concentration as established by federal law, or less.*

*“Measurement of uncertainty defined” 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.*

**NAC 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.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

#### **CERTIFICATION AND REGISTRATION OF SITE USED FOR GROWING OR CULTIVATING INDUSTRIAL HEMP**

**NAC 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:

1. The Department determines that the application adequately describes ~~the intended production and jurisdictional approvals—purpose of the agricultural pilot program or other agricultural or academic research which requires the growth or cultivation of industrial hemp;~~
2. The applicant has not been convicted of any ~~state or federal~~ felony related to ~~the possession, production, sale or distribution of~~ a controlled substance in any form within the ~~10~~ years immediately preceding the date of the application; *Key participants must also be identified on the application and meet these requirements.*
3. The application includes all other information that the Department determines is appropriate; and
4. The application is accompanied by all fees determined by the Department to be required at the time the application is submitted.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

*Sampling: Pre-harvest sampling must be performed by Department representatives for all crop varietals. The Department will collect a representative sample of flower material or other acceptable sampling methods described in federal regulations.*

**NAC 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. *A registrant must report production information deemed appropriate by the department annually to the Farm Service Agency*

*This is to include but is not limited to:*

- *Hemp crop acreage*
- *Reporting total acreage of hemp planted, harvested, and disposed*
- *License or authorization number*
- *Street address*
- *Geospatial location(s) of each lot or greenhouse where*
- *hemp will be produced*
- *Acreage of greenhouse or indoor square footage dedicated*
- *to the production of hemp.*

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 on a *dry weight basis* of a sample of the growing crop described in subsection 3 in a timely manner using appropriate sampling and analysis protocols *that meet federal requirements. Department analysis reports will include the acceptable hemp THC levels.*

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.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

*Harvest must occur within 15 days of sampling, or within the time frame established by federal law.*

**~~NAC 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.~~
- ~~(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)~~

**NAC 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 ~~\$900~~\$500.
2. For a certified and registered site used for growing and cultivating industrial hemp outdoors, a fee of \$5 per acre or portion thereof.
3. 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.
4. For inspecting a site used for growing or cultivating industrial hemp:
  - (a) A fee of not more than ~~\$60~~\$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.
5. 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.

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

*A fee in the amount of \$150 may be charged for making revisions to issued certificates.*

**NAC 557.140 Revocation of registration and certification or destruction of plants if sample contains THC concentration exceeding limit.** ([NRS 557.080](#)) *Testing procedures must include the conversion of delta-9 tetrahydrocannabinolic acid (THCA) into THC using a post-decarboxylation or similarly reliable method or other methods that meet federal requirements.* If, after testing a sample of ~~industrial~~ hemp, whether growing or not, the Department determines that the sample *exceeds the acceptable hemp THC levels, 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 *per an NDA approved crop disposal plan that complies with federal law.*
3. *If a crop is produced that exceeds the acceptable hemp THC levels in a manner determined by the Department to be negligent under federal law, or violates any of the other provisions of NRS chapter 557 or this chapter 3 times within a 5-year period, certification may be revoked and denied for a period of 5 years from the date of the 3<sup>rd</sup> violation.*

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)

**NAC 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](#).

(Added to NAC by Bd. of Agriculture by R085-15, eff. 3-10-2016)