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STATE OF NEVADA

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MEMORANDUM

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

FROM: Robert Little, Plant Industry Division Interim 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 Monday,
February 22, 2016 at 9:00 am.

DATE: January 20, 2016

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 Monday, February 22, 2016 at 9:00 am.

Please post the agenda before 9:00am on Wednesday, February 17, 2016 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 McLeod Street
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: Monday, February 22, 2016 at 9:00 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 557; *a regulation relating to Title 49 - Implement the Industrial Hemp Research regulations; 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.state.nv.us. 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 McLeod Street, Las Vegas, NV 89104, State of Nevada Capital Building, Carson City NV, State Library and Archives, Carson City.

PROPOSED REGULATION OF THE NEVADA DEPARTMENT OF AGRICULTURE

LCB File No. R085-15

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 Monday, February 22, 2016 at 9:00 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 557 of the Nevada Administrative Code. The proposal has been designated as File No. R085-15 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 557; a *regulation relating to Title 49 - Implement the Industrial Hemp Research regulations; and providing other matters properly relating thereto.*

1. The need for and the purpose of the proposed regulation or amendment
 - The provisions of SB 305 (2015) and these proposed regulations mirror federal law pertaining to Hemp research conducted by institutions of higher education or the Department of Agriculture. There are no existing small businesses that will be impacted by these 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.
 - These regulations mirror federal law and allow for research in industrial Hemp production. There are no small businesses impacted by these regulations. Participation is voluntary and may identify profit potential in Nevada based industrial Hemp production.
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:
 - These regulations should have a positive economic impact. It is hoped that potential research will demonstrate the profitability of growing and processing Hemp in Nevada.
4. The estimated cost to the agency for enforcement of the proposed regulation.
 - It is estimated that it will cost the Department between \$500.00 and \$1,000.00 per test plot plus the required laboratory testing. We could have as many as 15 test plots.
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.
 - Does not apply
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
 - The regulation is required pursuant to federal law and is referenced to the 2014 Farm Bill – Section 7606.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
 - Does not apply
8. Whether the proposed regulation establishes a new fee or increases an existing fee.
 - The proposed fees will generate \$600.00 to \$1,100.00 per test plot and the actual laboratory costs. Total annual revenue will depend on the number of test plots certified. The money will be used to offset personnel costs, mileage and laboratory costs.

A concerted effort was made to determine the impact of the proposed regulation on small businesses. Division administration determined that this regulation change will not have an 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: Russell Wilhelm
(775) 353-3711
Rwilhelm@agri.nv.gov

Written submissions must be received by the Nevada Department of Agriculture on or before 5:00 pm on Wednesday, February 17, 2016. 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 McLeod
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

**PROPOSED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R085-15

January 16, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-11, Section 14 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974, and NRS 561.153.

A REGULATION relating to industrial hemp; establishing provisions relating to the certification and registration of sites used for growing or cultivating industrial hemp; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Department of Agriculture and institutions of higher education to grow or cultivate industrial hemp for certain research purposes and requires each site used for growing or cultivating industrial hemp to be certified by and registered with the Department. (Section 13.5 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974) Existing law also authorizes the State Board of Agriculture to adopt regulations relating to the certification and registration of such sites. (Section 14 of Senate Bill No. 305, chapter 349, Statutes of Nevada 2015, at page 1974)

Section 5 of this regulation establishes the requirements for the certification and registration of a site intended to be used for growing or cultivating industrial hemp. **Section 6** of this regulation requires an applicant or registrant to provide reports required by the Department on or before the date specified by the Department and authorizes the Department to inspect, sample and analyze any site on which industrial hemp is grown. **Section 6** also requires a registrant to notify the Department before any harvest or other disposition of a growing crop of industrial hemp and requires the Department to analyze the THC content of a sample of the crop. In addition, **Section 6** allows for the disclosure of information obtained by the Department to law enforcement agencies. **Section 7** of this regulation requires a registrant to use certified seed when growing or cultivating industrial hemp and authorizes a registrant to request the Department to obtain certified seed for the registrant. **Section 8** of this regulation establishes certain fees relating to the growing and cultivation of industrial hemp. **Section 9** of this regulation authorizes the Department to order the destruction of the plants grown or cultivated at a site and revoke the

certification and registration of the registrant if testing of a sample from the site reveals that the plants grown or cultivated there contain a concentration of THC that is more than 0.3 percent on a dry weight basis. **Section 10** of this regulation establishes civil penalties for violations of this regulation or chapter 557 of NRS.

Section 1. Chapter 557 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“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.*

Sec. 4. *“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.*

Sec. 5. *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 such an institution, 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 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 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;*
- 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.*

Sec. 6. 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 chapter 557 of NRS and this chapter may be provided to any law enforcement agency without notice to the applicant or registrant.

Sec. 7. 1. A registrant shall ensure that only certified seed is 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 for the registrant's use.

3. If the Department obtains certified seed for a registrant, the registrant shall:

(a) Release the Department from any liability for the quality or fitness of the certified seed 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

(2) A fee of \$1 per pound of seed obtained for the registrant; and

(c) Relinquish any portion of the certified seed which is not used for the certified and registered agricultural pilot program or other agricultural or academic research to the Department. Any certified seed relinquished to the Department pursuant to this paragraph becomes the property of the Department.

4. As used in the section, "certified seed" has the meaning ascribed to it in NRS 587.021.

Sec. 8. *The Department shall assess the following fees:*

1. For the submission of an application pursuant to section 5 of this regulation, a non-refundable application fee of \$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 \$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.

Sec. 9. *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.

Sec. 10. 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.

SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY

NRS 233B.0608

(Revised LCB File # here if appropriate)

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 provisions of SB 305 (2015) and these proposed regulations mirror federal law pertaining to Hemp research conducted by institutions of higher education or the Department of Agriculture. There are no existing small businesses that will be impacted by these regulations. Information was 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 Mcleod Street
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 any existing small businesses.
3. The estimated economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation:
 - These regulations should have a positive economic impact. It is hoped that potential research will demonstrate the profitability of growing and processing Hemp in Nevada.
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.

5. The estimated cost to the agency for enforcement of the proposed regulation.
 - It is estimated that it will cost the Department between \$500.00 and \$1,000.00 per test plot plus the required laboratory testing. We could have as many as 15 test plots.
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 fees will generate \$600.00 to \$1,100.00 per test plot and the actual laboratory costs. Total annual revenue will depend on the number of test plots certified. The money will be used to offset personnel costs, mileage and laboratory costs.
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.
 - These regulations mirror federal law and allow for research in industrial Hemp production. There are no small businesses impacted by these regulations. Participation is voluntary and may identify profit potential in Nevada based industrial Hemp production.

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.

 For Director Barbee

James R. Barbee

Director

Nevada Department of Agriculture