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**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608**

**LCB FILE NO. R099-20P
August 30, 2021**

PROPOSED AMENDMENTS TO NAC CHAPTER 587 PERTAINING TO LCB FILE NO. R099-20P

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.

Digital surveys were distributed via email, to a list of licensed nurseries, livestock commercial scale operations, certified producers (hemp, seed, produce, weed-free), public meeting notice request contacts, the Nevada Farm Bureau, the Nevada Cattlemen's Association, the Nevada Cattlewomen's Association, and the Nevada Agriculture Economic Outlook Group. Participants issued the surveys were also notified of the opportunity to receive a hard copy of the survey by contacting the Nevada Department of Agriculture (NDA). The first survey was issued to assess the economic impact of all proposed changes, with the exception of the seed dealer registration additions. The first survey was open from January 15, 2021 to February 1, 2021. Out of 1,400 recipients, 29 responded to the survey.

- Survey responses for fee-based services anticipated to be utilized were left blank by three respondents, but for those that responded, the results were as follows:
 - Inspection and certification at point of shipping, 75%
 - Certified weed-free inspection of forage, gravel, or other products, 25%
 - Phytosanitary inspections in the field per acre, 12.50%
 - Phytosanitary certificates for export, 0%
- Among those who identified as qualifying as small businesses, the results were as follows:
 - Inspection and certification at point of shipping, 83.33%
 - Certified weed-free inspection of forage, gravel, or other products, 16.67%
 - Phytosanitary inspections in the field per acre, 16.67%
 - Phytosanitary certificates for export, 0.00%

- Survey results from the question “Would the fee increase prevent you from utilizing the services?” were as follows: yes 20%, no 33.33%, unsure 46.67%. Among respondents that identified as small business the results were as follows: yes 23.08%, no 30.77%, unsure 46.15%.
- Request for other recommendations were skipped or left blank by four of the respondents. Of the 29 respondents, four answered no and one commented “stop creating any more fees.”

A subsequent survey was sent on June 24, 2021 relating to the proposed changes to seed dealer licenses and fees. The survey was closed on July 13th, 2021 and administered via email. Survey notices were sent to the Nevada agriculture industry, industry advocacy groups, and those who have requested to receive notices and communications from the NDA. Initially this list was emailed to 4,108 nurseries and businesses potentially buying or selling seed in Nevada. Out of the 4,108 emails sent, 1,307 were opened, 1,949 were unopened, 635 bounced, and 217 emails were declined as they were on the department opt-out list. A reminder email was sent on June 30, 2021 to 3,247 contacts who had initially started the survey or hadn’t opened the original email.

In addition to being sent out via email on June 24, 2021, the survey was posted to www.agri.nv.gov/survey. The survey was promoted on the NDA’s social media pages on July 6, 2021, July 8, 2021, and July 11, 2021. In addition to this promotion, the Nevada Farm Bureau sent it out in their weekly member newsletter on July 2, 2021 and on July 9, 2021.

On July 6, 2021 the survey was sent out to the NDA’s all agriculture email list consisting of 7,195 recipients comprised of various businesses and entities interested in agriculture in Nevada. Of these recipients 2,270, opened the email, 132 recipients clicked links in the email, 62 emails bounced, and 8 recipients unsubscribed.

In total this survey received 44 responses with a 59% survey completion rate. 20 responses were received through the original email. 24 responses were received through social media, email, website postings, and other survey promotions

Persons interested in obtaining the survey results and summary may do so by contacting the Plant Industry Division at awhitenack@agri.nv.gov.

2. The manner in which the analyses was conducted.

A statistical analysis of the survey results was compiled and considered along with comments from respondents. A public workshop will be held to allow for further input from the public regarding the proposed regulations and how they will impact small businesses. Comments received during the public workshop will be taken into consideration to reduce the economic impact on facilities.

First survey:

- Out of 24 of the 29 respondents, 82.76% reported being small businesses.
- 21.74% of those surveyed indicated that there would be a significant impact on their business, with 30.43% responding that there would be no impact and 47.83% responding they were unsure

of the impact. Among those surveyed that identified as small businesses, 25% said they would be impacted, 30% said they would not, and 45% were unsure.

- The level of negative financial impact reported from the survey included the following: no impact 10%; insignificant impact 20%; minor impact 30%; moderate impact 25%; major impact 10%; and severe impact 5%.
- For those identifying as small businesses, the survey results included the following: no impact 11.11%; insignificant impact 16.67%; minor impact 27.78%; moderate impact 27.78%; major impact 11.11%; and severe impact 5.56%.

Second survey, including seed dealer registration:

- Out of the 44 respondents, 79.55% reported being a small business.
- Of those that identified as a small business, 9 respondents (27.27%) stated that this proposed change would affect their ability to do business, while 14 respondents (42.42%) said it would not, and 10 (30.30%) said it might affect their ability to do business.
- For those identified as small business, 11 respondents (42.31%) reported no impact, 4 respondents (15.38%) reported insignificant impact, 3 respondents (11.54%) reported minor impact, 3 respondents (11.54%) reported moderate impact, 1 respondent (3.85%) reported major impact, and 4 respondents (15.38%) reported severe impact.

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

For the first survey, a summary of the survey responses pertaining to economic impact are provided below.

- According to the survey, 21.74% of the total respondents indicated the changes would have a significant impact on their business, 30.43% indicated there would be no impact and 47.83% were unsure of the impact.
- Among those who identified as small businesses, 25% said it would impact their business, 30% said it would not impact to their business, and 45% were unsure. The level of negative financial impact totals from the survey results were no impact 10.00%, insignificant impact 20.00%, minor impact 30.00%, moderate impact 25.00%, major impact 10.00%, and severe impact 5.00%.
- Among those identifying as small businesses, the survey results were no impact 11.11%, insignificant impact 16.67%, minor impact 27.78%, moderate impact 27.78%, major impact 11.11%, and severe impact 5.56%.

The second survey issued was specific to proposed changes involving seed dealer registration. The estimated total annual economic impact of the seed dealer proposed regulation are provided below.

- 13 respondents (52%) reported that there would be no cost due to this change in NAC 587. 12 respondents (48%) reported they would incur costs as a result of the proposed regulations, 4 of which reported the annual cost would be less than \$1,000. 4 respondents reported the cost would range from \$1,000-\$5,000 and 4 reported that the cost would be over \$5,000. 32% of respondents reported that they would incur costs greater than \$1,000. There are very few seed wholesalers

in Nevada, so most of the survey responses should have reflected that the cost would be less than \$100 per the survey question.

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

The proposed increase of fees for inspections and certifications are in direct response to programs running at a deficit or not having adequate resources for properly executing program services per state and federal requirements. This has been a particular issue in the NDA shipping point program, which has had an increase in service demands, but insufficient funds to support the needed staff and resources. This has not only impacted the NDA's ability to provide state services but has also impacted the NDA's compliance with USDA cooperative agreements, resulting in audit findings. In addition, the USDA requires the NDA to collect fees to cover the cost of shipping point and federal phytosanitary inspections and certifications.

To ensure the NDA was considering reasonable fee increases, the costs of compliant program implementation was evaluated, in addition to federal and state fee structures for equivalent programs. The following was determined during this assessment:

- In comparison to regional states (CA, UT, ID, OR, WA, MT, CO, AZ, WY, NM), fees averaged \$60 per hour, which aligns with the NDA's proposed hourly fee increase.
- The USDA fee for shipping-point inspections is \$93.00. Many states have additional fees for shipping point inspections, including additional per hundredweight (CWT) and certificate fees. These are significantly higher than the NDA's proposed \$60 hourly fee. One area where the NDA is hopeful to reduce expenses in the future is digitizing shipping point certificates to reduce the amount of time required to complete paperwork. This must be approved by USDA and the NDA is currently working to develop a process for further USDA consideration.
- Phytosanitary inspections fees varied from flat fees of \$50-\$100.00 or an average hourly rate of \$68.55. Certificate fees averaged \$30.00 and included additional fees for CWT. The NDA's proposed fee of \$60 per hour during inspections and \$40 per certificate issued would be less than the charge of surrounding states.
- Some "additional" fees charged by USDA and other states were based on minimum commercial and noncommercial values.
- Certificate of origins fees of the surrounding ten states averaged \$60.00, which is higher than the NDA's proposed fee increase to \$40.
- Certificate of free sale fees averaged \$52.50, higher than the NDA's proposed fee of \$40.
- Weed-free forage inspections had an average hourly fee of \$43.38. However, most states had additional fees for twine and labels (averaging \$0.14), in addition to per acre fees (averaging \$3.00).

- Certified seed fees for field inspections averaged \$11.55 per acre, with some states adding application, membership, minimum, tag, and/or cwt fees depending on the crop. The NDA's proposed increase is \$10 per acre.

Seven regional states fees were assessed relating to seed dealer fees (AZ, CA, CO, ID, OR, UT, and WA) with fees ranging from \$40 to \$125.00 for a dealer's license and \$100.00 to \$750.00 for a seed wholesaler license. This is line with the proposed registration costs and will allow program staff to analyze retail seed in the interest of consumer protection and to ensure invasive and noxious weed species are not being introduced through this market channel. A 2019 seed study from South Dakota found that out of 200 seed samples pulled 11.5% were out of compliance posing a significant invasive species introduction risk. The non-compliance findings of the study included noxious weed contamination, purity of seed issues, and sub-standard germination rates. There is significant concern that Nevada is the only bordering state without commercial seed registration requirements, posing a risk for the Nevada market to be a target for poor quality or invasive species commercial seeds. It is critical that entry points for invasive and noxious weeds species be addressed as the impacts influence land values, wildlife habitat, natural resources, and increase fire fuels.

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

When the first survey was released, the NDA had begun to implement these programs prior to the proposed regulation changes. Seed dealer inspections are and will continue to be performed with existing nursery inspectors with no added cost. The proposed fee would support the analysis of commercial seed to verify compliance and corresponding enforcement. Fees would support one Agriculturist II position to complete the seed analysis and enforcement activities in the amount of \$68,703. Upon initial adoption of the program, an existing Agriculturist II that currently supports the seed program, will be used to help build the program.

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 increase in existing fees will cover the costs of executing inspection and certification services, which has been an ongoing issue, particularly involving shipping point inspections. Programs have continued to expand but have not been financially sustainable at current fee rates. With implementation of seed dealer fees, the additional costs will be covered for the increased volume of work for seed analysis and enforcement.

The NDA operates under a USDA cooperative agreement in performing USDA shipping point and phytosanitary inspections. USDA audit fees have increased in the last year due to staff to completing additional required training to meet the increase in exports. This has added to the program continuing to operate at a deficit.

Based on FY20 program participation levels and the proposed fee changes the following increases in revenue are expected and will be used to cover staff, supplies, travel, and overhead costs to comply with state and federal requirements.

Weed-free certification revenues were approximately \$6,596 and are estimated to increase to \$7,915.

Seed certification inspection revenues were approximately \$19,292.00 and are estimated to increase to \$27,560.

Shipping point inspection (grading) revenues were \$59,957 and are estimated to increase to \$71,948

Phytosanitary inspection revenues were \$18,375 and are estimated to increase to \$29,859.

Free-sale certificate fees were \$7,225 and are anticipated to increase to \$11,740.

Seed dealer fees revenue projected for an average of 1000 nurseries in the state with the \$75 fee to be \$75,000 and for wholesalers with a \$750 fee of \$4,500. The average combined estimated revenue would be \$79,500.00.

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.

Not applicable.

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

The NDA has received requests for more staff to be trained and available for inspections due to the growth of agricultural commodities needing to be certified for grade, exports, noxious weeds, and seeds. The proposed fees would cover the program administration costs and assist the NDA with meeting the growing needs of industry and in protecting consumers. Furthermore, this would allow the NDA to resolve federal cooperative agreement audit findings and to have the adequate infrastructure for ensuring adherence to state and federal program requirements.

Overall, there would be some economic impact on small businesses based on the survey. As a result, the NDA has assessed the costs in performing services and evaluated other state structures in an effort to establish fees that would allow for programs to proceed while not limiting industry.

If program costs are not covered, the NDA will be unable to provide these services as it would be unable to cover the staff and resources required to meet state and federal program requirements. This would result in out of state providers filling the demand, causing producers to incur higher fees and travel costs.

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

Jennifer Ott

Digitally signed by Jennifer Ott
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