

STEVE SISOLAK  
Governor



JENNIFER OTT  
Director

Las Vegas Office:  
2300 East St. Louis Ave.  
Las Vegas, NV 89104  
Telephone (702) 668-4590  
Fax (702) 668-4567

Elko Office:  
4780 East Idaho St.  
Elko, NV 89801-4672  
Telephone (775) 738-8076  
Fax (775) 738-2693

STATE OF NEVADA  
**DEPARTMENT OF AGRICULTURE**  
405 South 21<sup>st</sup> St.  
Sparks, Nevada 89431-5557  
Telephone (775) 353-3601 Fax (775) 353-3661  
**agri.nv.gov**

**PROPOSED REGULATION OF THE  
NEVADA DEPARTMENT OF AGRICULTURE**

**LCB File No. R011-21**

DIVISION OF PLANT INDUSTRY

**NOTICE OF FINAL ADOPTION HEARING**

The Nevada Department of Agriculture will hold a public workshop on 9/16/2021 at 10:00am, at:

**Remote Meeting  
Information:**

**Nevada Department of Agriculture**

405 South 21<sup>st</sup> St.

Sparks, NV 89431

Location: Web-ex meeting:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m721c88d3d9649e09ec2a4100c3ade956>

Meeting Number: 182 893 5323

Meeting Password: fACjVWiF493 (32258943 from phones and video systems)

Join by Phone: 1-408-418-9388

Phone Access Code: 182 893 5323

Phone Access Password: 32258943

**Per 2021 AB 253**

ALL PERSONS WISHING TO ATTEND THE MEETING MUST ATTEND VIA WEBEX OR TELEPHONICALLY.

- Nevada Revised Statute Chapter 287 has been amended through [2021 AB 253](#) to allow public meetings to be completed by use of remote technology and without a physical location.

The purpose of this the hearing is to receive comments from all interested persons regarding the permanent adoption of temporary regulations LCB T001-21 that pertain to chapter 557, of the Nevada Administrative Code. The proposed permanent adoption of temporary regulations LCB T001-21 has been designated as File No. R011-21 by the Nevada Legislative Counsel Bureau.

1. A statement of the need for and purpose of the proposed regulation. If the regulation is a temporary one, either the text of the proposed rule or a description of the substance of the rule and the subjects and issues involved. If the regulation is a permanent one, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.
  - In order to have primary regulatory oversight over hemp production in Nevada, the Nevada Department of Agriculture (NDA) must submit a state plan to the United States Department of Agriculture (USDA) that complies with the Agriculture Improvement Act of 2018, 7 Code of Federal Regulations (CFR) Part 990. Hemp and marijuana are both cannabis plants and are only able to be differentiated through chemical analysis for THC (psychoactive cannabinoid). The definition of hemp is based on THC concentrations not exceeding limits as established by federal law (0.3%) and the program requirements are based on preventing psychoactive product from being sold as this would be considered “marijuana”.
  - USDA requires a state plan be approved that details program oversight processes and enforcement authority for a state hemp program. The Department submitted a state plan in June and September of 2020 and USDA indicated that some regulation revisions would be needed prior to accepting the state plan, particularly involving negligent criteria and enforcement action. Temporary regulations were adopted in January of 2021 which resulted in an approved Nevada State Plan on May 28, 2021. In order to maintain the approved plan, the NDA must adopt the temporary regulation as permanent.
  - As part of the state plan, adequate infrastructure for implementing a state program must be demonstrated. As a result, the proposed regulations include a fee increase to support program administration. Being that hemp production is still a relatively new state and federal program, the regulations primarily reference CFR. This will allow state regulations to adapt upon any changes to CFR. The proposed regulations include the following:
    - i. establishing provisions relating to the registration of growers and producers;
    - ii. setting forth certain reporting requirements for registrants;
    - iii. establishing provisions relating to the sampling and testing of hemp;
    - iv. setting forth certain requirements for the disposal of noncompliant crops;
    - v. establishing provisions relating to persons who commit certain violations relating to the regulation of hemp;
    - vi. establishing fees for registration as a grower, handler or producer;
    - vii. imposing civil penalties
    - viii. repealing certain obsolete provisions;
2. A statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.
  - All documents pertaining to the proposed regulations can be obtained by contacting Allen Whitenack with the Nevada Department of Agriculture at 775-353-3670 or [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov) In addition meeting recordings and/or minutes have been made available on the department’s public meeting website at: [https://agri.nv.gov/Plant/Workshop\\_and\\_Hearing\\_Meetings/Workshops\\_and\\_Hearings/](https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/).

3. A statement of 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 both adverse and beneficial effects and both immediate and long-term effects
  - The new federal regulations for this voluntary program are more rigorous and reduced program participation may be experienced. The increase in fees is anticipated to cost program participants (at 2020 participation levels (115 growers)) an additional \$48,870 which will be used to cover personnel, lab equipment and supplies, in addition to education and outreach.
4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.
  - A survey was issued, field assessments and industry engagement were utilized to assess the impact on small business.
5. The estimated cost to the agency for enforcement of the proposed regulation.
  - The department has been enforcing the hemp program since 2016, however the new federal requirements have increased the reporting and sampling volume requirements. The estimated \$48,870 increase in fee revenue will be used to fill these requirements and to cover ongoing operational costs.
6. A description of 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 regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.
  - N/A-only the department of agriculture regulates hemp.
7. If the regulation is required pursuant to federal law, a citation and description of the federal law.
  - [Agriculture Improvement Act of 2018, 7 Code of Federal Regulations \(CFR\) Part 990](#). Hemp and marijuana are both cannabis plants and are only able to be differentiated through chemical analysis for THC (psychoactive cannabinoid). The definition of hemp is based on THC concentrations not exceeding limits as established by federal law (0.3%) and the program requirements are based on preventing psychoactive product from being sold as this would be considered “marijuana”.
8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of those provisions.
  - N/A-the regulations are to meet minimum federal requirements.
9. The exact language of subsection 2 of NRS 233B.064
  - **NRS 233B.064 Permanent regulation: Prohibition against adoption until text approved or revised by Legislative Counsel; agency to provide written notification to Legislative Counsel of date of adoption; agency to issue statement of reasons for adoption upon request.**
    1. An agency shall not adopt, amend or repeal a permanent regulation until it has received from the Legislative Counsel the approved or revised text of the regulation in the form to be adopted. The agency shall immediately notify the Legislative Counsel in writing of the date of adoption of each regulation adopted.

2. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall 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.

10. All written comments must be submitted by September 14<sup>th</sup> at 5:00pm to be included during the hearing. Comments may be submitted to Allen Whitenack at [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov).

NAC 557 revisions are in response to the [Agriculture Improvement Act of 2018](#) and corresponding [Final Rules](#). In order for the Nevada Department of Agriculture (NDA) to be approved by USDA to have primary regulatory oversight, adherence to the [Final Rules](#) must be demonstrated. The revisions include a proposed fee increase needed to support program administration and meet federal requirements. This includes the following: establishing provisions relating to the registration of growers and producers; setting forth certain reporting requirements for registrants; establishing provisions relating to the sampling and testing of hemp; setting forth certain requirements for the disposal of noncompliant crops; establishing provisions relating to persons who commit certain violations relating to the regulation of hemp; establishing fees for registration as a grower, handler or producer; imposing civil penalties; repealing certain obsolete provisions; and providing other matters properly relating thereto.

The proposed amendment can be found on the Nevada Department of Agriculture website at [www.agri.nv.gov](http://www.agri.nv.gov) or by contacting [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov).

Persons wishing to comment upon the regulation draft of the Nevada Department of Agriculture may attend virtually to the workshop or may address their comments, in written form, to the address below.

**Nevada Department of Agriculture  
405 S. 21<sup>st</sup> Street  
Sparks, NV 89431  
ATTN: Allen Whitenack  
(775) 353-3670  
[awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov)**

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>.

A copy of all materials relating to the workshop may be obtained by contacting:

Allen Whitenack  
Plant Industry Division  
Nevada Department of Agriculture  
405 South 21<sup>st</sup> Street

Sparks, NV 89431  
775-353-3670  
[awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov)

A reasonable fee for copying may be charged.

Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Please call 775-353-3670.

Notice of this meeting was posted on or before 9:00 a.m. thirty days before the meeting at the following locations: the Nevada Department of Agriculture website at [agri.nv.gov](http://agri.nv.gov) or [www.notice.nv.gov](http://www.notice.nv.gov). Copies of the agenda, supporting documentation and meeting minutes are available, at no charge, at the Nevada Department of Agriculture website at [agri.nv.gov](http://agri.nv.gov) or [www.notice.nv.gov](http://www.notice.nv.gov) or by contacting Allen Whitenack at (775) 353-3670 or [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov).

## Notice of Hearing to Solicit Comments on Proposed Regulation

**R011-21**

### Agenda

**10:00am September 16, 2021**

#### **Remote Meeting Information:**

#### **Nevada Department of Agriculture**

405 South 21<sup>st</sup> St.

Sparks, NV 89431

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#### **COVID-19 Notice**

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**Note:** Items on the agenda may be taken out of the posted order, items may be combined for consideration, and items may be pulled or removed from the agenda

- I. Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- II. Overview of Chapter 557 regulation revisions**
- III. Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- IV. Adjourn**

A copy of materials relating to the meeting and proposed regulations are available online at: [http://agri.nv.gov/Plant/Workshop\\_and\\_Hearing\\_Meetings/Workshops\\_and\\_Hearings/](http://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/) or by contacting Allen Whitenack at [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov). Written comment can be sent to 405 south 21<sup>st</sup> Street, Sparks NV 89431 or emailed to [awhitenack@agri.nv.gov](mailto:awhitenack@agri.nv.gov).

## **NAC 557 R011-21 Meeting Minutes**

**September 16, 2021 10:00am**

### **Attendees:**

**Nevada Department of Agriculture (NDA) Staff:** Ashley Jeppson, Plant Division Administrator; Allen Whitenack, Administrative Assistant III; Audrey Blondfield, Agriculturist II; Ciara Ressel, Public Information Officer II

**Public Attendees:** Alex Tanchek, Katelyn Brinkerhoff, Marla McDade Williams, Misha Allen, Joe Frey, Sarah Scott, Scheril Murray Powell

Meeting was called to order at 10:01am

Ashley Jeppson, Nevada Department of Agriculture (NDA), Plant Health and Compliance Division Administrator: Provided an overview of the proposed regulation history. Three workshops were held on the initial proposed regulation which was Legislative Council Bureau (LCB) file R-145-20 which then became a temporary regulation (LCB) file T001-21 since it was unable to reach full adoption prior to the December 2020 Legislative Commission Hearing deadline. The Legislative Commission does not meet from January through June of a legislative year and the NDA had not received a final copy of the regulation draft from the LCB so was unable to meet the December deadline. In order for a state plan to be approved, the proposed regulations needed to be adopted which would allow the NDA to have primary regulatory authority over hemp production in the state. As a result, the NDA proceeded with a workshop and hearing for temporary regulations in December of 2020 and January of 2021 which were LCB file T001-21. These were filed with the Secretary of State's office in February of 2021. In order to fully adopt the temporary regulations (T001-21) R011-21 was drafted and assigned with the original file R-145-20 removed. The full adoption process needs to take place by November 1, 2021 which is when the temporary regulations expire. The NDA's USDA approved Nevada State Hemp Plan is contingent upon aligning regulations to CFR. Ms. Jeppson explained that she wanted to ensure everyone had history on how the regulation changes and drafts had evolved and thanked everyone for their participation throughout the process. She also indicated that no changes had been made to R011-21 since the June workshop.

1. **Public Comment:** No public comment
2. **Review of LCB R011-21**

Ashley Jeppson: discussed regulation changes regarding acceptable THC level, content needs to be reported, as well as lab's measurement of uncertainty. Defining key participants-section 5 and 6. Specific Definitions. 2021 senate bill for NAC 453 Cannabis Compliance Board-encompass other types of THC. Discussed requirements of applications, background checks, legal descriptions, additional needs to meet requirements to grow hemp.

Discussed reporting requirements to USDA, and FSA, discussed false information on applications, criminal history report-convicted of felony for controlled substance cannot grow for 10 years. USDA provided NDA clarification in writing that a state background check meets requirements. Background check information applies to the transfer of registrations as well. Discussed requirements for applications. Discussed reporting to FSA. Discussed crop testing and requirements of inspections of crops. Discussed sec 14 testing requirements regarding converting THCA to THC using post-decarboxylation for total potential THC, which is a USDA approved method. Discussed measurement of uncertainty standard method performance requirements (sec 15). Discussed disposal plans (sec 16) as well as remediation option updates. All must be overseen by NDA. Discussed Negligible violations (sec 17) and corrective action plans. Discussed fee for service changes. Discussed updated definition of THC (sec 21).

### **3.Public Comment:**

Joe Frey- Thanked the NDA for all of their work and expressed that it had been contentious at times, but felt we landed at a good place

Scheril Murray-Powell- Commended the NDA for their work on the regulation in trying to encompass all the USDA requirements.

Ms. Jeppson expressed intention to adopt regulations based on the outcomes of the hearing and will request to put on legislative hearing calendar as soon as possible. Thanked everyone for their input and participation throughout the process.

### **4.Adjourn:**

Meeting adjourned at 10:32am.