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

DIVISION OF PLANT INDUSTRY

**NOTICE OF INTENT TO ACT UPON A REGULATION
And
NOTICE OF HEARING FOR THE ADOPTION OF TEMPORARY REGULATIONS NAC
557**

The Nevada Department of Agriculture will hold a public hearing on 1/12/2021, at: 9:30am

**Remote Meeting
Information:**

Nevada Department of Agriculture

405 South 21st St.

Sparks, NV 89431

Location: Web-ex meeting:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m32eadb0b4e10c74f6938dc3b6cc89fde>

Meeting number (access code): 126 404 0269

Meeting Password: 3GmmDXUxF64 (34663989 from phones and video systems)

Join by Phone: 1-408-418-9388

Phone Access Code: 126 404 0269

Phone Access Password: 34663989

COVID-19 Notice

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

- The open meeting law (Nevada Revised Statutes Chapter 241) requires public bodies to conduct their meetings with at least one physical location.
- Under an emergency directive issued March 22, 2020, the physical location requirement has been suspended.

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 following information is provided pursuant to the requirements of NRS 233B.0603:

1. The purpose of the workshop is to solicit comments from interested persons on the following proposed temporary regulation NAC Chapter 557; a temporary regulation relating to the Nevada Hemp Program; and providing other matters properly relating thereto.
2. Either the terms or the substance of the temporary regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

NAC 557 revisions are in response to the [Agriculture Improvement Act of 2018](#) and corresponding [Interim Final Rules](#). In order for the Nevada Department of Agriculture (NDA) to be approved by USDA to have primary regulatory oversight, adherence to the [Interim Final Rules](#) must be demonstrated. The revisions also 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.

Existing law provides for the growth of hemp and the production of agricultural hemp seed in this State by persons registered with the State Department of Agriculture. (Chapter 557 of NRS) Existing federal law authorizes the production of hemp under the primary jurisdiction of a state or tribal government if the state or tribal government submits a plan to the United States Secretary of Agriculture that satisfies certain requirements. This regulation establishes certain provisions relating to the growth of hemp and production of agricultural hemp seed in this State in order to comply with the requirements set forth in federal law and regulations.

Existing federal regulations require a state plan for the production of hemp to include provisions prohibiting, with certain exceptions, certain persons who have been convicted of a felony related to a controlled substance from producing hemp for a 10-year period.

Existing federal regulations require a state plan to provide for the reporting of certain information relating to the production of hemp and violations to the United States Department of Agriculture. (7 C.F.R. § 990.6) **Section 9** of this regulation requires each registrant to submit reports containing certain information to the State Department of Agriculture and the Farm Service Agency of the United States Department of Agriculture. **Section 15** of this regulation authorizes the Department to share certain information with any governmental entity as necessary to comply with federal regulations.

Existing federal regulations require a state plan to include certain procedures for: (1) the conducting of inspections; (2) the accurate and effective sampling of all hemp produced; and (3)

testing that is able to accurately identify whether a sample of hemp contains a THC level that exceeds the acceptable hemp THC level, as defined by federal law. Existing federal regulations also set forth specific procedures for the sampling and testing of hemp. (7 C.F.R. § 990.3) **Section 10** of this regulation authorizes the Department to inspect, sample and analyze all plants of a registrant and all land, buildings and other structures used for growing, cultivating or storing hemp. **Section 11** of this regulation requires the Department to perform preharvest sampling and testing of all crop varieties. **Sections 11 and 12** of this regulation set forth requirements for sampling and testing, including, among other requirements, that such sampling and testing be performed using procedures that comply with federal regulations.

Existing federal regulations require a state plan to include procedures for the disposal of plants that exceed the acceptable THC level for hemp. (7 C.F.R. § 990.3) Under existing law, if an analysis of a growing crop in the field reveals that the crop contains a THC level that exceeds the maximum THC concentration level for hemp, the grower is required to submit a plan for the effective disposal of the crop to the Department for its approval. (NRS 557.240) **Section 13** of this regulation requires the state plan to comply with federal regulations. **Section 13** further authorizes the Department to order the destruction of any plants of a registrant if the Department determines that a sample of hemp, whether growing or harvested, exceeds the acceptable hemp THC level.

Existing federal regulations require a state plan to establish certain provisions relating to negligent violations committed by a producer of hemp. (7 C.F.R. § 990.3) **Section 14** of this regulation requires the Department to establish a corrective action plan for any registrant who commits a violation that would constitute a negligent violation under federal regulations. **Section 14** also provides for the revocation of the registration of a registrant who commits three violations within a 5-year period. Under **section 14**, such a registrant is ineligible for registration for a period of 5 years after the date of the third violation. **Section 17** of this regulation establishes civil penalties for certain violations of the provisions governing hemp.

Section 16 and 19 of this regulation establish certain fees relating to the growing of hemp and the production of agricultural hemp seed. **Section 20** of this regulation repeals certain regulations relating to a program for the growth and cultivation of industrial hemp for research purposes, which was repealed by Senate Bill No. 347 of the 80th Session of the Nevada Legislature. (Section 22 of Senate Bill No. 347, chapter 414, Statutes of Nevada 2019, at page 2593)

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:

a) Both adverse and beneficial effects;

These regulations will allow the department to have primary regulatory oversight on hemp production within the state of Nevada, as requested by Nevada hemp producers. Federal requirements are aimed at creating separation between marijuana (psychoactive) and hemp (non-psychoactive) in the interest of public health and safety. The federal requirements present various challenges to the industry as this distinction requires the chemical analysis of the crop for potential THC which is the cannabinoid used for psychoactive affects, with non-compliant crops (>0.3% THC with a measurement of uncertainty range) resulting in crop disposal. There are significant economic impacts associated with the hemp program in in that if a crop exceeds the acceptable

THC limits, the crop must be disposed of as it is then considered marijuana. Concern on the federal regulations has been expressed through public comment in response to the IFR, through various meetings between NDA and the industry, during routine inspections, via email and telephone, and through a survey issued to hemp grower, producer, and handler certificate holders. The goal of these regulations is to meet minimum federal requirements which is why much of the regulation draft references the Code of Federal Regulations in the event that more lenient requirements are established.

65% of the 43 respondents that participated in the economic impact survey issued by the department indicated that the NAC 557 changes mandated by federal law would impede their ability to participate in the program. However, the proposed regulation changes to NAC 557 are a direct response to USDA's Interim Final Rules. The Interim Final Rules clearly identifies requirements that must be met for States and Tribes to operate a hemp program. The proposed regulation changes are necessary for NDA to maintain primary regulatory authority.

Of the 43 industry members who participated in the survey, 30.23% indicated a fee increase would negatively impact their ability to participate in the program, 32.56% indicated the fee increase would not negatively impact their operation, and 37.21% indicated that they were uncertain if the fee increases would impact their operation. Fee increases will be necessary for NDA to demonstrate adequate staff and resources as required under the Interim Final Rules. The Department does not have the staff or equipment needed to adequately meet the needs of the Hemp industry and the requirements of the Agriculture Improvement Act of 2018 and Interim Final Rules (released October 2019).

b) Both immediate and long-term effects

The federal requirements are anticipated to impact program participation and current producers. NDA released a digital survey along with the proposed NAC changes to hemp growers and handlers to determine whether they would have an economic impact and prevent program participation due to: 1) the proposed increase in fees, and/or 2) the new federal regulations. The survey and regulations were emailed on 7/29/2020 and 8/5/2020. Copies of the survey were offered to be physically mailed to inquiring parties who were unable to complete the survey digitally. Of the 43 survey respondents:

- 30.23% indicated the proposed fee increases would prevent them from participating in Nevada's hemp program;
- 32.56% indicated the fee increases would not prevent them from participating in Nevada's hemp program;
- 37.21% indicated they were uncertain if the fee increases would prevent them from participating in Nevada's hemp program;
- 65.12% indicated the proposed regulation changes required by federal law would prevent them from participating in Nevada's hemp program due to a significant economic burden;
- 34.88% indicated these changes would not.

Concern was expressed from program participants on federal requirements specific to the

following:

- Testing method that includes the conversion of THC-A to THC using a post-decarboxylated or similarly reliable method
- Sampling only flower material
- Crop failures of >0.5% THC being classified as a negligent violation
- Revoking of certification for a minimum of 5 years upon 3 negligent violations within a 5-year period
- Crops must be harvested within 15 days of sample collection
- Measurement of uncertainty established by the chemistry lab should be favorable to the industry
- Background check requirement for all key participants
- Increasing program fees
- Regulations not reflecting specific needs of fiber producers since they are not producing for CBD or ingestion purposes

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

The department has been enforcing regulations involving the state hemp program since 2017 which has required similar program coordination protocols as the new federal requirements. Federal reporting will increase staff demands which are already extensive due to application reviews, crop sampling, compliance and enforcement, and outreach and education. The proposed fee increases are anticipated to cover additional program coordination costs.

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.

The proposed revisions are to meet the minimum requirements listed in the Interim Final Rules for Nevada to be approved for primary regulatory oversight, as desired by industry and USDA. 7 C.F.R. § 990.3.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law. Existing federal law authorizes the production of hemp under the primary jurisdiction of a state or tribal government if the state or tribal government submits a plan to the United States Secretary of Agriculture that satisfies certain requirements. (7 U.S.C. § 1639p) Existing federal regulations set forth requirements for such a plan. (7 C.F.R. Part 990) This regulation establishes certain provisions relating to the growth of hemp and production of agricultural hemp seed in this State in order to comply with the requirements set forth in federal law and regulations.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

NA

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

The proposed fee increase includes increasing the grower application fee from \$500 to \$900 and the hourly inspection rate from \$50 to \$60 per hour. A fee for hemp growers producing solely for nursery stock is being incorporated at a rate of \$725 as they also pay fees for a nursery license (\$175) and must comply with NAC 555.100-NAC 555.235. Based on FY 19 program participation (216 growers) and inspection hours, this would increase annual revenue by \$91,287. Any increase in revenue for certificates will be utilized to fund NDA staff for hemp crop sampling/inspection duties and application processing. As the hemp industry continues to grow, NDA anticipates an increase in applications, crop acreage, and hemp samples to process. Increasing the application fee will support the additional staff and time commitment for application processing, certificate issuing, and certificate revisions. Additional program outreach and education will be provided, as more staff will be available. Increasing the inspector hourly fee will also go towards supporting the increased program demand for inspectors, sampling supplies, and chemistry analysis resource needs.

Staff in the hemp program and administration division determined that new federal requirements per the Agriculture Improvement Act of 2018 and Interim Final Rules will likely result in reduced program participation and potential crop losses for those that don't meet federal compliance.

Persons wishing to comment upon the proposed action of the Nevada Department of Agriculture may comment 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: Allen Whitenack
(775) 353-3670
awhitenack@agri.nv.gov**

Written submissions must be received by the Nevada Department of Agriculture on or before January 12, 2021. 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.

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:

- <http://www.leg.state.nv.us>
- https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/
- <https://notice.nv.gov/>

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

Allen Whitenack
Plant Industry Division
Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431
775-353-3670
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 9:30 a.m. thirty days before the meeting at the following locations: the Nevada Department of Agriculture website at agri.nv.gov or 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 or www.notice.nv.gov or by contacting Allen Whitenack at (775) 353-3670 or awhitenack@agri.nv.gov.

Notice of Hearing to Adopt Temporary Regulation for NAC 557

Agenda

9:30am January 12, 2021

Remote Meeting Information:

Nevada Department of Agriculture

405 South 21st St.

Sparks, NV 89431

Location: Web-ex meeting:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m32eadb0b4e10c74f6938dc3b6cc89fde>

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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 temporary regulation**
- 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/ or by contacting Allen Whitenack at awhitenack@agri.nv.gov. Written comment can be sent to 405 south 21st Street, Sparks NV 89431 or emailed to awhitenack@agri.nv.gov.