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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, Division Administrator – 775-353-3729  
[rlittle@agri.nv.gov](mailto: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, November 13, 2017 at 9:00am.

DATE: October 5, 2017

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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 November 13, 2017.

Please post the agenda for R156-16, before 9:00am on November 8, 2017, 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. 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: 775-353-3601

*Video-conference to:* Nevada Department of Agriculture  
2300 E. St Louis Avenue  
Las Vegas, NV 89104  
Phone: 702-668-4590

Nevada Department of Agriculture  
4780 E. Idaho Street  
Elko, NV 89801  
Phone: 775-738-8076

November 13, 2017 at 9:00am

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 555; *a regulation relating to Pesticides used on crops grown for seed; 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. 21<sup>st</sup> 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. 21<sup>st</sup> Street, Sparks, NV, 89431 or Dept. of Agriculture website at [www.agri.nv.gov](http://www.agri.nv.gov). 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. 21<sup>st</sup> 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 E. St Louis Avenue, 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. R156-16

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 November 13, 2017 at 9:00am, at Agriculture Headquarters, 405 South 21<sup>st</sup> 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 555, of the Nevada Administrative Code. The proposal has been designated as File No. R156-16, 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 555; a regulation relating to Pesticides used on crops grown for seed; and providing other matters properly relating thereto.

1. **The need for and the purpose of the proposed regulation or amendment**  
This is at the request of small business to allow for them to become competitive in the commercial seed market.
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.**  
This regulation permits the application of a pre-emergent seed coating desired by seed purchasers which is currently prohibited under Nevada law.
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:**  
**Business:**
  - a) **Both adverse and beneficial effects:** This will enhance profitability at the request of the growers.
  - b) **Both immediate and long-term effects:** Enhanced seed sales.**Public:**
  - c) **Both adverse and beneficial effects:** None
  - d) **Both immediate and long-term effects:** None
4. **The estimated cost to the agency for enforcement of the proposed regulation.**  
There are no costs to enforce this regulation.
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.**  
N/A
6. **If the regulation is required pursuant to federal law, a citation and description of the federal law.**  
Does not apply
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.**  
No new or increased fees.



A concerted effort was made to determine the impact of the proposed regulation on small businesses. [Staff of the division has proposed this regulation at the request of the seed growers because of the positive impact of their ability to market seed. This aligns Nevada's regulation with other states.](#)

The LCB approved revision can be found on the Nevada Department of Agriculture website at [www.agri.nv.gov](http://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. 21<sup>st</sup> Street**  
**Sparks, NV 89431**  
**ATTN: Ruth Tietjen**  
**(775) 353-3670**  
**[rtietjen@agri.nv.gov](mailto:rtietjen@agri.nv.gov)**

Written submissions must be received by the Nevada Department of Agriculture on or before November 8, 2017. 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 21<sup>st</sup> Street  
Sparks, NV 89431

Nevada Department of Agriculture  
2300 E. St Louis Avenue  
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 & 4<sup>th</sup> Streets, Goldfield, NV 89013  
Eureka Branch Library, 10190 Monroe Street, P.O. Box 293, Eureka, NV 89316  
Humboldt County Library, 85 East 5<sup>th</sup> 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 1<sup>st</sup> 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](http://www.leg.state.nv.us)

**PROPOSED REGULATION OF THE  
DIRECTOR OF THE  
STATE DEPARTMENT OF AGRICULTURE**

**LCB File No. R156-16**

September 11, 2017

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

AUTHORITY: §§1-8, NRS 555.380 and 555.400.

A REGULATION relating to pesticide; requiring the State Department of Agriculture to designate certain areas as nonfood or nonfeed sites or as food or feed sites; authorizing the Department to require an owner of a crop grown for seed production to provide certain information to assist the Department in granting or denying a designation as a nonfood or nonfeed site for certain crops; requiring a pesticide to meet certain conditions for the purposes of registering, labeling, distributing and using the pesticide on a nonfood or nonfeed site; prohibiting certain acts; providing exceptions; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the Director of the State Department of Agriculture to adopt regulations governing the custom application of pesticides for the control of insects, pests and noxious weeds. (NRS 555.400) Existing law further authorizes the Director to adopt regulations prescribing the materials or methods to be used and prohibiting the use of materials or methods in the custom application of pesticides in order to protect health or to prevent injury. (NRS 555.380) Existing regulations require that each person engaged in the application of pesticides for hire must comply with certain requirements, including requirements for: (1) the application of pesticides; and (2) the methods and equipment to use when applying pesticides. (NAC 555.400)

**Section 2** of this regulation requires the Department, for the purposes of registering, labeling, distributing and using a pesticide, to designate an area as a nonfood or nonfeed site if certain crops grown for seed production are grown in that area. **Section 2** further sets forth that if the requirements of **section 5** of this regulation are met, the Department will not require a pesticide residue tolerance to register a pesticide: (1) which has no established pesticide residue tolerance; and (2) which is applied to a nonfood or nonfeed site.



**Section 7** of this regulation sets forth certain exceptions to the labeling requirements in **section 5**.

**Section 1.** Chapter 555 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

**Sec. 2. 1.** *For the purposes of registering, labeling, distributing and using a pesticide pursuant to NRS 555.5605 to 555.470, inclusive, and chapter 586 of NRS or any other applicable law or regulation, the Department will designate an area as a nonfood or nonfeed site if the following crops grown for seed production are grown in that area:*

- |                               |  |
|-------------------------------|--|
| <i>(a) Alfalfa.</i>           | <i>(<u>Medicago sativa</u>)</i>                  |
| <i>(b) Allium.</i>            | <i>(<u>Allium</u>)</i>                           |
| <i>(c) Arugula.</i>           | <i>(<u>Eruca sativa</u>)</i>                     |
| <i>(d) Beetroot.</i>          | <i>(<u>Beta vulgaris var. conditiva</u>)</i>     |
| <i>(e) Birdsfoot trefoil.</i> | <i>(<u>Lotus corniculatus</u>)</i>               |
| <i>(f) Broccoli.</i>          | <i>(<u>Brassica oleracea var. italica</u>)</i>   |
| <i>(g) Brussels sprout.</i>   | <i>(<u>Brassica oleracea var. gemmifera</u>)</i> |
| <i>(h) Burdock.</i>           | <i>(<u>Arctium</u>)</i>                          |
| <i>(i) Cabbage.</i>           | <i>(<u>Brassica oleracea var. capitata</u>)</i>  |
| <i>(j) Carrot.</i>            | <i>(<u>Daucus carota subsp. sativus</u>)</i>     |
| <i>(k) Cauliflower.</i>       | <i>(<u>Brassica oleracea var. botrytis</u>)</i>  |
| <i>(l) Celery.</i>            | <i>(<u>Apium graveolens</u>)</i>                 |
| <i>(m) Chicory.</i>           | <i>(<u>Cichorium intybus</u>)</i>                |
| <i>(n) Clover.</i>            | <i>(<u>Trifolium</u>)</i>                        |

- (kk) *Swiss Chard.* (*Beta vulgaris* subsp. *vulgaris*)
- (ll) *Turnip.* (*Brassica rapa* var. *rapa*)
- (mm) *Vetch.* (*Vicia sativa*)
- (nn) *Winter Squash, not including pumpkins.* (*Cucurbita argyrosperma*, *Curcurbita maxima*, *Cucurbita moschata* and *Cucurbita pepo*)

2. *Notwithstanding the provisions of 40 C.F.R. Part 180 and section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 346a, if the requirements of section 5 of this regulation are satisfied, the Department will not require a pesticide residue tolerance to register a pesticide which has no established pesticide residue tolerance and which is applied to a nonfood or nonfeed site.*

Sec. 3. *The Department will designate an area as a food or feed site that is not eligible for designation as a nonfood or nonfeed site if the following crops, which may be crops grown for seed production, are grown in that area:*

1. *Cereal grains, including, without limitation:*

- (a) *Barley.* (*Hordeum vulgare*)
- (b) *Buckwheat.* (*Fagopyrum esculentum*)
- (c) *Corn.* (*Zea mays*)
- (d) *Millet.* (*Eleusine coracana*, *Panicum miliaceum*, *Pennisetum glaucum* and *Setaria italica*)
- (e) *Oat.* (*Avena sativa*)
- (f) *Rye.* (*Secale cereale*)



*(1) A registration pursuant to section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136v; or*

*(2) An authorization pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136p; and*

*(b) The owner intends to use the pesticide on a crop grown for seed production that is not listed in section 2 of this regulation.*

*2. The Department will grant or deny the designation as a nonfood or nonfeed site for a crop grown for seed production that is not listed in section 2 of this regulation after reviewing and evaluating the information provided pursuant to subsection 1.*

*Sec. 5. 1. Except as otherwise provided in this section, for the purposes of registering, labeling, distributing and using a pesticide pursuant to NRS 555.5605 to 555.470, inclusive, and chapter 586 of NRS or any other applicable law or regulation on a nonfood or nonfeed site, the pesticide must meet the following conditions:*

*(a) The owner of any nonfood or nonfeed site must:*

*(1) Provide all the seed screening from the nonfood or nonfeed site to a seed conditioner for disposal in a manner that ensures the seed screening cannot be distributed as food for human consumption or as feed for animals; and*

*(2) Inform the seed conditioner of each pesticide applied to the nonfood or nonfeed site.*

*(b) The seed conditioner must keep records of the disposal of seed screening for not less than 3 years after the date of the disposal. The seed conditioner must provide copies of such records to the Department upon request. Such a record must contain the following information:*

*This seed was produced using one or more products for which the United States Environmental Protection Agency has not established pesticide residue tolerance. This seed, in whole, as sprouts or in any form, may not be used as food for human consumption or as feed for animals. Failure to comply with this condition may violate requirements of the United States Food and Drug Administration, the Nevada State Department of Agriculture and other regulatory agencies.*

*(e) Any person who possesses any seed labeled pursuant to subparagraph (2) of paragraph (d), including, without limitation, a broker or dealer, must prepare and maintain a record that includes, without limitation, a copy of the labeling placed on the container, shipment invoice or bill of lading.*

*(f) The owner, producer or any other person must not distribute as food for human consumption or feed for animals any crop grown for seed production at a nonfood or nonfeed site that is treated with a pesticide which has no established pesticide residue tolerance, and any byproduct of such a crop, including, without limitation, green chop, hay, pellets, meal, whole seed, cracked seed, straw, roots, bulbs, foliage or seed screening, and any grazing of the field, stubble or regrowth of such a crop.*

*2. The provisions of subsection 1 do not apply to any crop or byproduct of a crop grown in this State, including, without limitation, a crop grown for seed production at a nonfood or nonfeed site, to which:*

*(a) No pesticide has been applied; or*

*(b) Only pesticides registered and labeled for application to the crop have been applied, if the pesticide residue tolerance has been established for the specific crop and its byproducts.*



2. *The Department shall exempt from the labeling requirements of subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation any seed grown in this State but conditioned in another state or territory of the United States, or the District of Columbia, if such other state or territory, or the District of Columbia, has labeling requirements for seeds which, as determined by the Department, are substantially similar to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation. The grower, broker or other responsible party shall label any seed grown in this State pursuant to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation when exporting the seed for conditioning in another state or territory of the United States, or the District of Columbia.*

3. *The Department will exempt from the labeling requirements in subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation any seed that is treated. The owner or purchaser shall label the seed pursuant to subparagraph (2) of paragraph (d) of subsection 1 of section 5 of this regulation before such seed is treated. As used in this subsection, the term “treated” has the meaning ascribed to it in NRS 587.061.*

**Sec. 8.** NAC 555.005 is hereby amended to read as follows:

555.005 As used in this chapter, unless the context otherwise requires:

1. *“Crop grown for seed production” means any crop that is grown:*

*(a) To produce seed that is not intended for human consumption or as feed for animals;*

*and*

*(b) With the sole intent of the seed being:*

*(1) Planted; or*

*(2) Processed to produce industrial or cosmetic oil that is not edible.*



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

(Revised LCB# R156-16)

**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 NDA has contacted all known producers of crops grown for seed. Every producer requested that we proceed with this regulation. Information was available on the website of the Department of Agriculture, [www.agri.nv.gov](http://www.agri.nv.gov) and posted at the following locations:

Nevada Department of  
Agriculture  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431

Nevada Department of  
Agriculture  
2300 East St. Louis Ave.  
Las Vegas, NV 89104

Nevada Department of  
Agriculture  
4780 East Idaho St.  
Elko, NV 89801

**2. The manner in which the analyses was conducted.**

- This regulation is being proposed at the request of the growers of crops for seed.

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

- These regulations will have a positive economic impact.

**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.**

- There is no cost to the agency.

**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.**

- There are no new or increased fees.


**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, this regulation simply clarifies the requirements for growers to market seed.

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

- The NDA concluded that this will have beneficial impact for growers of crops for seed and we are proposing this regulation at their request.

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 was prepared properly and is accurate.

 Deputy Director

James R. Barbee  
Director  
Nevada Department of Agriculture