

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

LCB File No. R099-20

January 24, 2022

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

AUTHORITY: §§ 1, 2 and 5, NRS 587.077 and 587.083; §§ 3 and 4, NRS 561.153 and 587.360.

A REGULATION relating to agriculture; establishing annual fees to be paid by certain wholesalers and retailers who sell seed in this State; removing certain definitions to conform with existing law; increasing the fee per acre for certification of seed potatoes; increasing the fees charged for certain inspections and the issuance of certain certificates; increasing the threshold amount of certain fees that triggers the requirement that a processor of potatoes must provide a surety bond or other form of security; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Director of the State Department of Agriculture to establish a schedule of fees for the certification of seed as to variety, purity, quality or other matters relating thereto. (NRS 587.077) Existing regulations establish the fees that the Department will charge for analysis and testing of samples of seed. (NAC 587.220) **Section 1** of this regulation requires a wholesaler or retailer who does not pay a fee that is established in existing regulations to pay certain fees for the analysis and testing of samples of seed to ensure that the labeling of the seed complies with certain labeling requirements set forth in existing law and existing regulations. **Section 1** establishes that: (1) a wholesaler shall pay a fee of \$750 on or before July 1 of each year the wholesaler operates in this State; and (2) a retailer shall pay a fee of \$75 on or before July 1 of each year the retailer operates in this State. **Section 1** requires a wholesaler or retailer to pay the applicable fee for each branch where seed is sold, offered or exposed for sale which the wholesaler or retailers operates in this State. **Section 1** provides that a wholesaler or retailer is not required to pay the applicable fee if the wholesaler or retailer: (1) is selling seeds that were produced by the wholesaler or retailer; (2) is selling seeds of vegetables or seeds of flowers at retail in containers that are one-half pound or less; or (3) has a gross annual income of less than \$500.

Existing law defines “mixture” to mean seed that consists of more than one kind, each in excess of 5 percent by weight of the whole. (Section 7 of Senate Bill No. 443, chapter 344, Statutes of Nevada 2021, at page 2021 (NRS 587.0415)) Existing regulations define “mixture” to mean a seed sample which contains two or more kinds of seed, where each kind: (1) constitutes more than 5 percent of the sample; or (2) is declared on the label to be part of the mixture. (NAC

587.220) **Section 2** of this regulation removes the definition of “mixture” in existing regulations, thereby deferring to the definition set forth in existing law.

Existing regulations provide that, for each planting of seed potatoes, the Department will charge and collect a certification fee of \$25 per acre with a minimum charge of \$40 per application. (NAC 587.418) **Section 5** of this regulation increases the certification fee of \$25 per acre to \$35 per acre.

Existing law designates and appoints the Director as the ex officio State Quarantine Officer and requires the Director to carry out all the duties of the State Quarantine Officer. (NRS 561.165) Existing law authorizes the State Quarantine Officer to fix, assess and collect, or cause to be collected, fees for the services of a state inspector in inspecting or classifying agricultural products. (NRS 587.360) Existing law authorizes the Director to prescribe, in addition to any other fees prescribed, a fee to cover the costs incurred by the Department for any service provided by the Department. (NRS 561.153)

Existing regulations establish: (1) a fee of \$40 per hour for the inspection, grading or certification of certain agricultural products; and (2) a flat fee of \$50 for the inspection of forage for the presence of noxious weeds. (NAC 587.340) **Section 3** of this regulation increases the hourly fee for inspecting, grading or certification to \$60 per hour and the flat fee for inspecting forage to \$60.

Existing regulations provide that the State Quarantine Officer will impose a fee of \$7 per acre if the State Quarantine Officer inspects agricultural products in the field for the purpose of issuing a phytosanitary certificate. (NAC 587.340) **Section 3** increases the fee to \$10 per acre.

Existing regulations establish a fee of \$25 for the issuance of a phytosanitary certificate, an export certificate for processed plant products, a certificate of origin or a free-sale certificate. (NAC 587.340, 587.345) **Sections 3 and 4** of this regulation increase fees to \$40 for each certificate issued.

Existing regulations provide that if the fees for the inspection and certification of potatoes at their point of shipping exceed \$2,000 in a 30-day period, the processor of the potatoes must provide to the Department a surety bond or another form of security. (NAC 587.340) **Section 3** increases this threshold amount from \$2,000 to \$3,000.

Section 1. Chapter 587 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A wholesaler or retailer who does not pay a fee pursuant to NAC 587.220 for a sample of seed shall pay the applicable fee set forth in this section for the analysis and testing of samples of seed to ensure that the labeling of the seed complies with NRS 587.091 to 587.105, inclusive, and this section and NAC 587.010 to 587.220, inclusive.

2. Except as otherwise provided in subsection 4, a wholesaler described in subsection 1 shall pay a fee of \$750 on or before July 1 of each year the wholesaler operates in this State.

3. *Except as otherwise provided in subsection 4, a retailer described in subsection 1 shall pay a fee of \$75 on or before July 1 of each year the retailer operates in this State.*

4. *A wholesaler or retailer described in subsection 1 who operates more than one branch in this State:*

(a) Shall pay the amount set forth in subsection 2 for each branch operated by the wholesaler in this State; and

(b) Shall pay the amount set forth in subsection 3 for each branch operated by the retailer in this State.

5. *A wholesaler or retailer is not required to pay the fee set forth in this section if the wholesaler or retailer:*

(a) Is selling seeds that were produced by the wholesaler or retailer;

(b) Is selling seeds of vegetables or seeds of flowers at retail in containers of one-half pound or less that comply with NRS 587.097 or 587.101, as applicable; or

(c) Has a gross annual income of less than \$500. A wholesaler or retailer seeking to qualify for this exception shall provide evidence satisfactory to the Department of a gross annual income of less than \$500.

6. *As used in this section:*

(a) "Branch" means the physical location where the wholesaler or retailer, as applicable, sells, offers or exposes for sale seed.

(b) "Retailer" means a person who sells seed in this State directly to a consumer.

(c) "Wholesaler" means a person who sells seed in this State for resale to retailers, distributors, brokers or other wholesalers.

Sec. 2. NAC 587.220 is hereby amended to read as follows:

587.220 The following provisions establish the fees that the Department will charge for analysis and testing of samples of seed:

1. ~~[As used in this section, “mixture” means a seed sample which contains two or more kinds of seed, where each kind:~~

~~—(a) Constitutes more than 5 percent of the sample; or~~

~~—(b) Is declared on the label to be part of the mixture.~~

~~—2.]~~ The fee for testing any kind of seed not listed will be determined by the Department.

~~[3.]~~2. If special attention or a priority in examination is requested for a seed sample, the charge will be the fee listed plus 50 percent.

~~[4.]~~3. The charge for a sample requiring an unusual amount of time, such as an excessively dirty sample, a sample of a complicated mixture or a sample requiring special tests, is \$55 per hour.

~~[5.]~~4. The charge for a mixture is \$55 per hour.

~~[6.]~~5. The charge for a tetrazolium test is \$55 per test.

~~[7.]~~6. Service testing fees for purity and germination:

Kind	Purity	Germination
Alfalfa	\$55	\$55
Beans	55	55
Bluegrass	75	55
Bromegrass	55	55
Cereal grains	55	55

Kind	Purity	Germination
Clover	55	55
Fescue	75	55
Flax	55	55
Flowers	55	55
Indian Ricegrass	75	55
Kochia	55	55
Needlegrasses	55	55
Onion	55	55
Orchardgrass	75	55
Peas	55	55
Ryegrass	55	55
Sainfoin	55	55
Saltbush	75	55
Small Brunet	55	55
Sudangrass	55	55
Sunflower	55	55
Timothy	55	55
Trees/Shrubs	55	55
Vegetables not listed	55	55
Vetches	55	55
Wheatgrasses	75	55

Kind	Purity	Germination
Wildrye	75	55
Winterfat	75	55

~~8.1-7.~~ The fee for examination of a sample of seed for noxious weed seed which is designated noxious in any other state is \$55.

Sec. 3. NAC 587.340 is hereby amended to read as follows:

587.340 1. The fees for the inspection and certification of potatoes at their point of shipping will be determined by agreement between the State Quarantine Officer and the processor of the potatoes. If those fees will exceed ~~[\$2,000]~~ \$3,000 in a 30-day period, the processor of the potatoes must provide to the Department a surety bond or another form of security that is satisfactory to the Director to guarantee the payment of the fees for the 30-day period immediately succeeding the date the security is provided. The fees will not be less than:

- (a) The actual cost of providing the inspection and certification services; and
- (b) The fee charged in accordance with the contract between the Department and the Federal Government for certifying that the potatoes comply with the standards and conditions established by the Federal Government.

2. The fees for inspection, grading or certification of other agricultural products:

- (a) Are:
 - (1) ~~Forty]~~ Sixty dollars for each hour the inspector spends conducting the inspection, grading or certification, including the time spent traveling to and from the location where the inspection and certification are conducted;

(2) 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; and

(3) Any fee charged in accordance with the contract between the Department and the Federal Government; and

(b) Unless they are for a one-time or intermittent inspection, grading or certification, must be secured by providing to the Department a surety bond or another form of security that is satisfactory to the Director to guarantee the payment of the fees for the 90-day period immediately succeeding the date the security is provided.

3. In addition to any fees required pursuant to this section, the State Quarantine Officer will charge a fee of ~~[\$50]~~\$60 for the inspection of ~~[forage]~~ products for the presence of noxious weeds.

4. Special arrangements, including arrangements for fees, must be made with the State Quarantine Officer for the inspection of agricultural products for processing. The fees for such an inspection must be secured by providing to the Department a surety bond or another form of security that is satisfactory to the Director to guarantee the payment of the fees for the 90-day period immediately succeeding the date the security is provided.

5. If the State Quarantine Officer or his or her designee inspects agricultural products in the field for the purpose of issuing a phytosanitary certificate required by the government of a state or of a foreign country before those agricultural products may be exported to that state or country, the State Quarantine Officer will impose a fee of ~~[\$7]~~\$10 per acre for the inspection.

6. If the State Quarantine Officer or his or her designee issues a phytosanitary certificate, an export certificate for processed plant products, a certificate of origin or a free-sale certificate as required by the government of a state or of a foreign country before agricultural products or farm equipment may be exported to that state or country, the State Quarantine Officer:

(a) Will impose a fee of ~~[\$25;]~~ *\$40 for each certificate;* and

(b) Will impose any fee required to be collected and passed through to the United States

Department of Agriculture.

7. As used in this section:

(a) “Certificate of origin” means a certificate which certifies that the shipment of agricultural products or farm equipment, or any combination thereof, originated in the State of Nevada and that the agricultural products or farm equipment, or combination thereof, is free from infestation in accordance with NRS 561.147.

(b) “Export certificate for processed plant products” has the meaning ascribed to it in 7 C.F.R. § 353.1.

(c) “Free-sale certificate” has the meaning ascribed to it in paragraph (d) of subsection 4 of NAC 587.345.

(d) “Phytosanitary certificate” has the meaning ascribed to it in NRS 555.23575.

Sec. 4. NAC 587.345 is hereby amended to read as follows:

587.345 1. The State Quarantine Officer or his or her designee may issue:

(a) A federal phytosanitary certificate.

(b) A state phytosanitary certificate.

(c) A free-sale certificate.

(d) An export certificate for processed plant products.

(e) A certificate of origin.

2. If the State Quarantine Officer or his or her designee determines that an applicant for a federal phytosanitary certificate, state phytosanitary certificate, export certificate for processed plant products, certificate of origin or free-sale certificate issued pursuant to subsection 1

provided inaccurate information in conjunction with the application for that certificate, the State Quarantine Officer or his or her designee may revoke that certificate.

3. In addition to any other applicable fees, the State Quarantine Officer or his or her designee will impose a fee of ~~[\$25]~~\$40 for the issuance of ~~[a]~~each federal phytosanitary certificate, state phytosanitary certificate, export certificate for processed plant products, certificate of origin or free-sale certificate that replaces a certificate revoked pursuant to subsection 2.

4. As used in this section:

(a) “Certificate of origin” means a certificate which certifies that the shipment of agricultural products or farm equipment, or any combination thereof, originated in the State of Nevada and that the agricultural products or farm equipment, or combination thereof, is free from infestation in accordance with NRS 561.147.

(b) “Export certificate for processed plant products” has the meaning ascribed to it in 7 C.F.R. § 353.1.

(c) “Federal phytosanitary certificate” means a phytosanitary certificate issued pursuant to federal law.

(d) “Free-sale certificate” means a certificate that certifies that the plants or plant products being exported are the same type of plants or plant products freely marketed and for sale in the State of Nevada.

(e) “State phytosanitary certificate” means a phytosanitary certificate that documents the origin and, if required, the inspection of plants and unprocessed or unmanufactured plant products that do not qualify for a federal phytosanitary certificate.

Sec. 5. NAC 587.418 is hereby amended to read as follows:

- 587.418 1. For each planting, the Department will charge and collect a certification fee of ~~[\$25]~~\$35 per acre with a minimum charge of \$40 per application.
2. Checks must be payable to the “Nevada State Department of Agriculture.”
 3. An applicant must pay the certification fee set forth in subsection 1:
 - (a) On or before May 15 of the year in which the seed stock is planted; or
 - (b) If the seed stock is planted after May 15, not later than 5 days after the date on which the seed stock is planted.
 4. The Department will refund the certification fees paid for any planting that is withdrawn from certification if the request for a refund is submitted in writing to the Department before the first field inspection.