

**Small Business Impact Statement as Required by NRS
233B.0608**
Changes to NAC Chapter 557



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.

NAC 557 revisions are being submitted 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. Requirements under the Interim Final Rules, in addition to the fee increases necessary for meeting federal requirements, are anticipated to have an economic impact to hemp program participants based on program participant feedback provided during 2019 and 2020 meetings, field inspections, and in response to a survey. Program participants have received updates from NDA on federal requirements and notices with the opportunity to issue comment on the Interim Final Rules.

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.

Individuals interested in the outcomes of the survey can contact NDA at 775-353-3601.

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

1. Testing method that includes the conversion of THC-A to THC using a post-decarboxylated or similarly reliable method
2. Sampling only flower material
3. Crop failures of >0.5% THC being classified as a negligent violation
4. Revoking of certification for a minimum of 5 years upon 3 negligent violations within a 5-year period
5. Crops must be harvested within 15 days of sample collection
6. Increasing program fees
7. Regulations not reflecting specific needs of fiber producers since they are not producing for CBD or ingestion purposes

2. The manner in which the analyses was conducted.

The department has been notifying hemp program participants of federal requirement changes since the 2018 growing season. Two informational meetings were held in January 2019, providing an update on requirements described in the Agricultural Improvement Act of 2018. This presentation was posted to the [NDA website](#) so participants were aware of program requirements. A presentation on the Interim Final Rules and corresponding requirements of states with hemp programs was provided during the Nevada Farm Bureau's annual meeting in November 2019. Additionally, program participants received updates via email throughout the 2019 and 2020 growing season, and a presentation on the department's state plan was posted on NDA's webpage and emailed to certificate holders for questions and comments in June 2020. Comments and suggestions have been received and evaluated by NDA hemp program staff and the Plant Industry Administrator via email, phone, and letter. 2019 and 2020 inspections were used to initiate conversations with growers regarding federal requirements and potential regulation changes to learn more about the possible effects on program participants. Furthermore, a small business impact survey was issued to all certificate holders in August 2020.

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

65% of the 43 respondents that participated in the economic impact survey 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).

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 regulations are in direct response to minimum federal requirements and language has been included in the event that the Interim Final Rules are modified to more lenient requirements as described below.

1. The NDA submitted a state plan with more lenient sampling protocols (equal parts flower to stem/leaf), however, USDA denied this approach and stated that the sampling method must be exclusively flower material. In the event that USDA accepts more lenient sampling in the future, language was included that allows for the regulation to be updated to any other acceptable sampling methods that may be accepted by USDA.
2. The state plan submitted did not include enforcement action involving negligent violations due to indication from USDA that this requirement was

- under close review for reconsideration. However, USDA clarified that in order to have the state plan approved, enforcement is needed involving negligent criteria and license revocation currently listed in the Interim Final Rules. As a result, NDA drafted this requirement into NAC 557 to include negligent criteria as defined in federal law. The drafted language will allow regulation to be adapted to any future changes within the Interim Final Rule that would be favorable to Nevada hemp growers.
3. NDA’s initial state plan submission requested that growers have 15 days to harvest after receiving their certificate of analysis from the lab, but this was not accepted by USDA. USDA clarified that, although this requirement is under close review, growers must harvest within 15 days of sampling. In the event that USDA changes this requirement, language such as “or as approved by USDA” has been added to NAC 557.
 4. Due to the increasing interest in hemp production, in addition to federal requirements, maintaining the current fee schedule would constrict the hemp industry. NDA’s limited staff and resources hinder the ability to complete timely hemp inspections, application review, compliance, and enforcement action as required by the Interim Final Rules. Without increasing program fees, NDA would not have primary regulatory authority over hemp production due to a failure to meet federal requirements for adequate staff and resources to implement a state program.
 5. Requests were received to adapt regulations to reflect needs of fiber producers who are producing product not intended for ingestion. However, per federal regulations, all hemp must be tested for THC.

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

The estimated cost to NDA is extensive, particularly as participation has continued to increase since its inception. As a result, an increase in fees for grower applications and hourly inspection rates have been included as this is where most time is required for staff.

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 proposed fee increase includes increasing the grower application fee from \$500 to \$900 and the hourly inspection rate from \$50 to \$60 per hour. 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.

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.

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.

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

Industry was engaged through numerous meetings, routine inspections, email and phone correspondence, in addition to a small business impact survey. The response was consistent, in that, the federal regulations do place challenges involving hemp production. The proposed regulations are required by federal law for NDA to proceed with primary regulatory authority on hemp production in Nevada when the 2014 Farm Bill expires (October 31, 2020). Failure to meet requirements established by USDA would prevent Nevada from having a state-regulated program, which would impact the industry.

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

Jennifer Ott
Director
Nevada Department of Agriculture