

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

-Revised to Include New Amendments and Additions

June 2, 2021

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

AUTHORITY: §§1 and 2, NRS 561.153 and 587.360.

A REGULATION relating to agriculture; 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 designates and appoints the Director of the State Department of Agriculture 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 1** 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 provides 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 1** increases the fee to \$10 per acre.

Existing regulations establish: (1) 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; and (2) a fee of \$25 for the issuance of a federal phytosanitary certificate, state phytosanitary certificate, export certificate for processed plant products, certificate of origin or free-sale certificate. (NAC 587.340, 587.345) **Sections 1 and 2** of this regulation increase both fees to \$40.

Existing regulations establish a fee of \$25 for potato seed certification. **Section 3** of this regulation is to increase the fee from \$25 to \$35 dollars. This increase is to cover the new services of winter grow out to detect disease.

A new regulation to establish fees for licensing of seed retailers and wholesalers offering seed for sale within the state. **Section 4** of this regulation will require any individual offering seed for sale within the state to obtain a license as either a Seed Retailer or Seed Wholesaler. This regulation is being established to allow the Department to effectively regulate the seed industry pursuant to federal guidelines established under the purview of the Federal Seed Act (FSA) as well as existing state regulations. License fees will be used to carry-out regulatory enforcement procedures to regulate the seed market and ensure that any seed offered for sale complies with both state and federal regulations.

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 1** increases this threshold amount from \$2,000 to \$3,000.

Section 1. 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 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. 2. 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. --5-- LCB Draft of Proposed Regulation

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

NAC 587.418 Fee for certification; refund.

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.

Sec. 4. NAC 587.930, 940, 950 is hereby added to read as follows:

NAC 587.930-950 Seed Dealers' Licenses

NAC 587. 930. An individual may not sell, offer or expose for sale in this state, or contract to have produced in this state for commercial purposes, any agricultural, flower or vegetable seeds unless the individual holds an unsuspended license issued by the State Department of Agriculture. However, an individual is not required to obtain a license if the individual is selling only seeds produced by the individual or if the individual is selling flower or vegetable seeds at retail in packages weighing not more than one-half pound that were prepared for retail sale by a seed company licensed under this section. An individual is not required to obtain a license if the individual's gross annual income is less than \$500. The individual is required to provide evidence in the event that an exemption is applied. For the purposes of this section, individuals operating more than one branch, plant or warehouse where seeds are sold, offered or exposed for sale shall secure a separate license for each such branch, plant or warehouse.

NAC 587.940. A retail license is required for each entity that offers seed for sale directly to the consumer. A wholesale seed dealers license is required for each entity that sells seed to retailers, distributors, brokers, or other wholesalers.

NAC 587.950. Any individual desiring to sell, offer or expose for sale in this state any agricultural, flower or vegetable seeds, for planting purposes, except as provided in this section, shall make application to the Director of Agriculture for a license for this purpose. The application shall be signed by the applicant or the authorized agent of the applicant and shall be in a form approved by the director. Upon presentation of such signed application for a license and the tendering of the license fee established by the department, the department shall issue the license to the applicant. The license shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule.

NAC 587.950. The department shall establish annual license fees, not to exceed \$75 for a retailer's license and not to exceed \$750 for a wholesaler's license. Only one license shall be required for one individual's operation at one location.