

BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director

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MEMORANDUM

TO: Nevada Department of Agriculture Offices
State Capitol Building
State Library and Archives
Dennis Belcourt – AG's Office

FROM: Flint Wright Division Administrator – 775-353-3708
fwwright@agri.nv.gov Fax Number 775-353-3749

SUBJECT: Posting of Agenda for Hearing on Notice of Intent to Act Upon a Regulation Scheduled for November 30, 2015, 11am-12pm

DATE: October 27, 2015

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 30, 2015 at 11am-12pm

Please post the agenda before 9:00am on October 29, 2015, 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. 21st Street
Sparks, NV 89431
Phone: 775-353-3601

Video-conference to: Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104
Phone: 702-668-4590

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

DATE AND TIME: November 30, 2015 11am-12pm

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 587; *a regulation relating to adopting the American Association of Feed Control Officials model bill for the implementation of the Food Safety Modernization Act; 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. 21st 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. 21st Street, Sparks, NV, 89431 or Dept. of Agriculture website at www.agri.state.nv.us. 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. 21st 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 McLeod Street, 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. R100-15

DIVISION OF ANIMAL 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 November 30, 2015, 11am-12pm at Agriculture Headquarters, 405 South 21st 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 NAC 587 of the Nevada Administrative Code. The proposal has been designated as File No. R100-15 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 587; a regulation relating to adopting the American Association of Feed Control Officials model bill for the implementation of the Food Safety Modernization Act; and providing other matters properly relating thereto.

1. **The need for and the purpose of the proposed regulation or amendment** To implement Food Safety Modernization Act.
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.** Adopt the provisions required to implement the new Food Safety Modernization Act program as mandated by federal 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:
 - a) **Both adverse and beneficial effects;** The adverse effect is that those manufacturing or distributing products regulated under FSMA must now pay a \$75.00 per year registration fee and reporting fees. The beneficial effect is that the public will be better protected from the risk of food borne illnesses. Nevada is the only state in the country that does not presently register these products. Our fees are very low compared to most states in the country.
 - b) **Both immediate and long-term effects;** The immediate effect will be the addition of filing paperwork with the state of Nevada and paying the fees. The long term effects are minimal in regard to business viability and should be very positive in regard to public safety.
4. **The estimated cost to the agency for enforcement of the proposed regulation.** We estimate that the cost for an inspector, equipment and expenses will be less than \$100,000.00 per year.
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.** Does not apply.
6. **If the regulation is required pursuant to federal law, a citation and description of the federal law.** The new Food Safety Modernization Act.
7. **If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.** The provisions are mandated by federal law. The FDA looked to the states to implement the Food Safety Modernization Act. We will be enforcing the federal provisions.
8. **Whether the proposed regulation establishes a new fee or increases an existing fee.** We estimate the fees to generate less than \$100,000.00 annually.

A concerted effort was made to determine the impact of the proposed regulation on small businesses. Division of Animal Industry staff determined that this regulation change will have a minimal effect on small business.

The LCB approved revision can be found on the Nevada Department of Agriculture website at 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. 21st Street
Sparks, NV 89431
ATTN: Flint Wright
(775) 353-3708
fwwright@agri.nv.gov

Written submissions must be received by the Nevada Department of Agriculture on or before November 26, 2015. 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 21st Street
Sparks, NV 89431

Nevada Department of Agriculture
2300 McLeod
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 & 4th Streets, Goldfield, NV 89013
Eureka Branch Library, 10190 Monroe Street, P.O. Box 293, Eureka, NV 89316
Humboldt County Library, 85 East 5th 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 1st 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

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
MICHAEL ROBERSON, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
PAUL ANDERSON, *Assemblyman, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

October 19, 2015

Lynn Hettrick
Deputy Director
Administrative Division
Nevada Department of Agriculture
405 South 21st Street
Sparks, Nevada 89431

Re: LCB File No. R100-15

Dear Mr. Hettrick:

A proposed regulation of the State Department of Agriculture has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,


Roman A. Edwards
Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

RAE/slj
Enclosure



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

LCB File No. R100-15

October 19, 2015

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

AUTHORITY: §§1 and 5, section 46 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2474; §2, section 29 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2468, and section 46 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2474; §3, section 34 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2470, and section 46 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2474; §4, section 37 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2471, and section 46 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2474.

A REGULATION relating to commercial feed; establishing application requirements and fees for a license to manufacture, distribute or be a guarantor of commercial feed; establishing quarterly fees for licensees and certain requirements for the payment of those fees; establishing fees for certain inspections and audits; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires any person who manufactures, distributes or acts as a guarantor of commercial feed in this State to maintain a license issued by the State Department of Agriculture. (Sections 16-46 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at pages 2467-74) **Section 2** of this regulation requires certain materials to be submitted with an application for a new license or for renewal of an existing license and sets forth the applicable application and renewal fees.

Existing law requires that a quarterly report and fee be submitted by each licensee. (Section 34 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2470) **Section 3** of this regulation establishes the amount of the quarterly fee and provides for conditions under which the fee may be submitted by a third party.

Existing law authorizes the Department to inspect or audit any licensee at the request of the licensee and to establish a schedule of fees for such inspections and audits. (Section 37 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2471) **Section 4** of this regulation establishes the fees for those audits or inspections.

Section 1. Chapter 587 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *An application for a license to manufacture, distribute or be a guarantor of commercial feed or an application to renew such a license must include:*

1. A declaration identifying the party responsible for submitting the quarterly reports and fees required by section 34 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2470.

2. A nonrefundable application or annual renewal fee, as applicable, of \$75.

3. For an application for renewal submitted after December 31 of the year the renewal is due, a late fee of \$20.

4. Any other information required by the Department.

Sec. 3. *1. Except as otherwise provided in subsection 2, each licensee must file the quarterly reports and pay the quarterly fee required by section 34 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2470, regardless of whether the licensee manufactured, distributed or acted as the guarantor for any commercial feed during the preceding calendar quarter.*

2. The provisions of subsection 1 requiring the payment of a quarterly fee do not apply to a licensee if:

(a) The fee for the same feed has been submitted in a timely manner by another licensee;

or

(b) The responsibility for the payment of the fee has been assigned to another party

pursuant to a contract which:

(1) Identifies each party by name, address, telephone number and title, if applicable;

(2) Includes the license number of each party;

(3) Identifies the specific product or products covered by the contract;

(4) Includes the effective date, which is on the first of a quarterly reporting period, and the expiration date, which is on the last day of a quarterly reporting period;

(5) Does not exceed a duration of 3 years; and

(6) Is signed by each party or an authorized agent of each party.

3. The quarterly fee due with each report is the greater of:

(a) Five dollars; or

(b) Fifteen cents per ton of commercial feed manufactured, distributed or guaranteed in this State during the preceding calendar quarter.

Sec. 4. 1. The fee for the Department to conduct an audit or inspection at the request of a licensee pursuant to section 37 of Senate Bill No. 488, chapter 430, Statutes of Nevada 2015, at page 2471, is:

(a) For an audit, \$75 per hour per auditor; or

(b) For an inspection, \$60 per hour per inspector.

2. In addition to the hourly rate provided in subsection 1, a charge for miles driven to and from the audit or inspection site will be charged at the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax.

Sec. 5. This regulation becomes effective upon the later of:

1. January 1, 2016; or
2. The date this regulation is filed with the Secretary of State.

2015 OCT 21 AM 9:42

SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY

NRS 233B.0608

(Revised LCB File # here if Appropriate)

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.

- Nevada does not register feed manufacturers at this time. Using the NAIC we found seven businesses which identified themselves as being feed manufacturers. We sent them a multipage survey regarding the potential impact of implementing the regulations. Only one recipient responded as requested. That business indicated there would be no negative impact. The regulations were available on the website of the Department of Agriculture, www.agri.nv.gov and posted at the following locations:

Department of Agriculture

405 S. 21st Street

Sparks, NV 89431

Department of Agriculture

2300 McLeod Street

Las Vegas, NV 89104

Department of Agriculture

4780 E. Idaho Street

Elko, NV 89801

2. The manner in which the analyses was conducted.

- The sole respondent indicated no impact.

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

- Minimal or none.

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. This program is required by federal law.

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

- We estimate that the cost for an inspector, equipment and expenses will be less than \$100,000.00 per year.

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.**
 - We estimate the fees to generate less than \$100,000.00 annually.
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 provisions are mandated by federal law. The FDA looked to the states to implement the Food Safety Modernization Act. We will be enforcing the federal provisions.
8. **The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**
 - We conclude that the impact of these provisions will be minimal. Most businesses already employ many of the safety and "critical point" techniques at this time. The new standards will require formalized planning, record keeping and recall procedures. Setting up a business to comply with the requirements may impose a small burden, but the on-going process should have minimal impact. Most businesses in Nevada will be exempt under the federal provisions.

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 is accurate.



James R. Barbee

Director

Nevada Department of Agriculture