

**STATE AGENCY REGULATIONS TO BE REVIEWED
BY THE LEGISLATIVE COMMISSION**

October 22, 2021

REGULATIONS SUBMITTED PURSUANT TO NRS 233B.067:		
LCB NO.	NAC	AGENCY/ SUBJECT
2019 REGULATIONS		
R082-19	501/503	BOARD OF WILDLIFE COMMISSIONERS A REGULATION establishing provisions relating to shed antler collection education course CONTACT Kailey Musso (775) 688-1510 knmusso@ndow.org Mike Scott (775) 688-1520 msscott@ndow.org
R083-19	502	BOARD OF WILDLIFE COMMISSIONERS A REGULATION revising provisions relating to tags to compensate property owners for damage caused by deer or antelope CONTACT Kailey Musso (775) 688-1510 knmusso@ndow.org Mike Scott (775) 688-1520 msscott@ndow.org
2020 REGULATIONS		
R027-20	704	PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION revising provisions relating to renewable energy facilities CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov
R032-20	703	PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION establishing provisions requiring operators of intrastate distribution pipelines transporting natural or liquefied petroleum gas to conduct leakage surveys CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov

R042-20	180	BOARD ON INDIGENT DEFENSE SERVICES A REGULATION establishing provisions governing indigent defense services CONTACT Marcie Ryba (775) 431-0527 mryba@dids.nv.gov
R093-20	445B	STATE ENVIRONMENTAL COMMISSION A REGULATION adopting certain provisions of California regulations for Low-Emission Vehicle and Zero-Emission Vehicle programs relating to air quality CONTACT Jeffrey Kinder (775) 687-9307 jkinder@ndep.nv.gov
R158-20	703	PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION revising provisions relating to compliance with the portfolio standard CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov
R163-20	501	BOARD OF WILDLIFE COMMISSIONERS A REGULATION revising various provisions CONTACT Kailey Musso (775) 688-1510 knmusso@ndow.org Mike Scott (775) 688-1520 msscott@ndow.org
2021 REGULATIONS		
R011-21	557	STATE DEPARTMENT OF AGRICULTURE A REGULATION establishing provisions relating to the registration of growers, handlers and producers CONTACT Ashley Jeppson (775) 353-3729 ajeppson@agri.nv.gov

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2019 REGULATIONS		
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**ADOPTED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R082-19

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

AUTHORITY: § 1, NRS 501.105, 501.181, 501.1818 and 503.655; § 2, NRS 501.105, 501.181 and 503.655.

A REGULATION relating to wildlife; establishing the demerit points to be assessed against a person for certain violations involving the taking or gathering of shed antlers in certain counties; prohibiting the taking or gathering of shed antlers in certain counties during a certain period except under certain circumstances; requiring the Department of Wildlife or an agent designated by the Department to offer an online course in the responsible collection of shed antlers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Wildlife Commissioners to adopt regulations for the taking of antlers which have been naturally shed by any big game mammal in this State. (NRS 503.655) Existing regulations prohibit a person from taking or gathering shed antlers from or on any public land located in certain counties from January 1 to April 30. (NAC 503.172) **Section 2** of this regulation further prohibits a person from taking or gathering shed antlers in those counties from May 1 to June 30 unless the person: (1) is 12 years of age or older and has in his or her possession a certificate indicating that the person has completed a course of instruction in the responsible collection of shed antlers that is offered or approved by the Department of Wildlife; or (2) is under 12 years of age and is accompanied by a person who is at least 18 years of age and who has such a certificate in his or her possession. **Section 2** also requires the Department to offer such a course online, without charge, or to designate an agent to offer such a course online, without charge.

Existing regulations set forth a schedule of demerit points to be assessed against a person for conviction of certain wildlife violations. (NAC 501.200) **Section 1** of this regulation establishes the demerits to be assessed against a person for a conviction involving the unlawful taking or gathering of shed antlers in certain counties.

Section 1. NAC 501.200 is hereby amended to read as follows:

501.200 1. A person who is convicted of a wildlife violation will be assessed demerit points pursuant to the following schedule:

HUNTING AND TAKING

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Unlawfully shooting at a game mammal or game bird from an aircraft, helicopter or motor-driven vehicle or using such a vehicle to molest, rally, stir up or drive game mammals or game birds	503.010	-----	12
Spotting or locating game mammals or game birds from an aircraft or helicopter and communicating that information to a person on the ground for the purpose of hunting	503.010	-----	12
Unlawfully using information obtained in violation of subsection 3 of NRS 503.010 to hunt or kill game mammals or game birds	503.010	-----	12
Unlawfully using a helicopter to transport game, hunters or hunting equipment	503.010	-----	12
Unlawfully killing or attempting to kill birds or animals from an aircraft	503.005	-----	12

HUNTING AND TAKING

Classification of Violations	NRS	NAC	Demerits
	Section	Section	
Unlawfully using an aircraft, balloon, unmanned aerial vehicle or satellite to locate or observe big game mammals, game birds or fur-bearing mammals for the purpose of hunting	501.385	503.148	12
Hunting or taking an endangered species without a special permit	503.585	503.093	12
Unlawfully killing, destroying, wounding, trapping or injuring bald eagles or golden eagles	503.610	-----	12
Unlawfully taking bald eagles or golden eagles	503.620	-----	12
Taking twice the legal limit or more of big game mammals	501.385	-----	12
Hunting or taking a threatened species	501.385	503.093	9
Unlawfully killing a fur-bearing mammal during the closed season	503.440	-----	9
Unlawfully hunting migratory waterfowl by aid of baiting	501.385	503.180	6
Hunting big game mammals during the closed season	503.090	-----	6

HUNTING AND TAKING

Classification of Violations	NRS	NAC	Demerits
	Section	Section	
Hunting fur-bearing mammals during the closed season	501.015	-----	6
Hunting big game mammals in closed areas	501.385	504.340	6
Hunting fur-bearing mammals in closed areas	501.385	504.340	6
Unlawfully hunting in a privately owned wildlife management area	504.140	-----	6
Unlawfully hunting in a state-owned wildlife management area	504.143	-----	6
Hunting big game mammals or migratory waterfowl during prohibited hours	503.140	-----	6
Unlawfully hunting game birds or game mammals with the aid of artificial light	503.150	-----	6
Hunting or taking a sensitive species	501.385	503.093	6
Hunting, trapping, possessing or selling birds of prey or raptors without a permit	503.582	503.205	6
Hunting alternative livestock	503.242	-----	6
Taking a game mammal of a prohibited age or with prohibited physical characteristics	501.385	-----	6

UNLAWFUL POSSESSION

Classification of Violations	NRS	NAC	Demerits
	Section	Section	
Unlawfully possessing live wildlife that is classified as prohibited	504.295	503.110	12
Unlawfully possessing big game mammals during the closed season	503.030	-----	12
Possessing a big game mammal or parts thereof without a tag attached thereto	502.150	-----	9
Possessing twice the legal limit or more of game birds or game mammals, other than big game	501.385	-----	9
Possessing twice the legal limit or more of game fish	501.385	-----	9
Unlawfully possessing a fur-bearing mammal during the closed season	503.030	-----	9
Possessing game birds or game mammals, other than big game, during the closed season	503.030	-----	6
Possessing fish during the closed season	503.030	-----	6

UNLAWFUL POSSESSION

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Possessing game birds or game mammals, other than big game, in excess of the legal limit but less than twice the legal limit	501.385	-----	6
Possessing game fish in excess of the legal limit but less than twice the legal limit	501.385	-----	6
Possessing a species that may not legally be possessed without a license or permit	501.385	-----	6

TAGS AND SEALS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Hunting big game or wild turkey without a tag	502.130	-----	9
Unlawfully transferring a tag to another person	502.140	502.385	9
Possessing or using a tag legally issued to another person	502.140	502.385	9

TAGS AND SEALS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Obtaining tags in excess of the legal limit	502.140	502.331	9
Possessing used tags or tags in excess of the legal limit			
	502.150	-----	9
Unlawfully using a tag	502.200	-----	9
Using a tag in an improper area	502.160	502.385	6
Failing to punch a tag properly	502.160	502.390	6
Failing to attach a tag to a big game mammal in the manner prescribed by regulation	502.160	502.400	6
Hunting by a Native American off an Indian reservation without a tag	502.280	-----	6
Possessing fur-bearing mammals, other than a bobcat, without a seal	501.385	-----	6
Possessing the pelt of a bobcat without a seal	501.385	502.347	6
Possessing the hide of a mountain lion without a seal	501.385	502.370	6
Possessing the horns of a ram bighorn sheep without a seal or brand	501.385	502.345	6

PERMITS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Unlawfully importing or transporting a prohibited species of wildlife without a permit or license	503.597	503.110	12
Collecting unprotected wildlife for commercial purposes without a permit	501.385	503.095	12
Collecting live bait fish or live aquatic bait for commercial purposes without a permit	501.385	503.513	12
Collecting unprotected fish for commercial purposes without a permit	501.385	503.545	12
Selling live bait without a permit	501.379	503.513	6
Conducting a field trial without a permit	503.200	503.610	6
Conducting a dredging operation without a permit	503.425	503.810	6
Possessing a raptor without a permit	503.582	503.205	6
Furnishing false information to obtain a permit	502.060	-----	6
Hunting swan without a swan hunt permit	-----	502.380	6
Transferring or giving a swan hunt permit to any other person	-----	502.380	6
Using or possessing a swan hunt permit issued to another person	-----	502.380	6

FISHING

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Fishing at a fish hatchery or other waters used for the purpose of rearing or growing fish	503.360	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Obstructing, hindering or otherwise interfering with an officer, employee or agent of the Department	501.385	-----	12
Unlawfully selling big game mammals	501.379	-----	12
Unlawfully selling an endangered species	501.379	-----	12
Needless waste of big game mammals	503.050	-----	12
Hunting, fishing in nonnavigable waters or trapping on private property without permission	503.240	-----	9

MISCELLANEOUS FISH AND GAME

Classification of Violations	NRS Section	NAC Section	Demerits
Needless waste of game birds or game mammals, other than big game	503.050	-----	9
Unlawfully selling a threatened species	501.379	-----	9
<i>Taking or gathering shed antlers in certain counties between January 1 and April 30</i>	<i>503.655</i>	<i>503.172</i>	<i>9</i>
Unlawfully selling game other than big game mammals	501.379	-----	6
Unlawfully selling a sensitive or protected species	501.379	-----	6
Unlawfully selling game fish	501.381	-----	6
Needless waste of game fish	503.050	-----	6
Unlawfully carrying a loaded rifle or shotgun in vehicle	503.165	-----	6
Unlawfully discharging a firearm	503.175	-----	6
Failing to retain the cape or scalp and any antlers or horns of wildlife	501.385	503.173	6
Destroying or mutilating signs of the Department	501.383	-----	6
Polluting water	503.430	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Removing, altering or tampering with a tag placed on wildlife or on seized equipment	501.377	-----	6
Commercial taking of crayfish, except in accordance with a permit issued pursuant to NAC 503.540	501.385	503.540	6
Intentionally interfering with a person lawfully hunting or trapping	503.015	-----	6
Failing to make a reasonable effort to retrieve dead or crippled migratory waterfowl	501.385	503.180	6
<i>Taking or gathering shed antlers in certain counties between May 1 and June 30 without a certificate in violation of NAC 503.172</i>	<i>503.655</i>	<i>503.172</i>	<i>6</i>

CATEGORY E FELONIES AND
GROSS MISDEMEANORS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Conviction of a felony for intentionally killing a big game mammal, including aiding and abetting a person in the commission of the killing	501.376	-----	12
Conviction of a gross misdemeanor for intentionally killing a big game mammal, including aiding and abetting a person in the commission of the killing	501.376	-----	12
Conviction of a gross misdemeanor for willfully possessing an unlawfully killed big game mammal	501.376	-----	12
Acting as a master guide or subguide without a license	504.395	-----	12
Furnishing false information to obtain a big game tag	502.060	-----	12

TRAPPING

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Unlawfully capturing a raptor with a steel leghold trap placed, set or maintained within 30 feet of exposed bait	501.385	503.157	6
Trapping in a closed area	501.385	504.340	6
Unlawfully removing or disturbing a trap, snare or similar device lawfully being used by another person	503.454	-----	6
Trapping fur-bearing mammals during closed season	503.440	-----	6
Trapping birds of prey or raptors without a permit or by unlawful means	503.582	503.205	6
Failing to visit traps, snares or similar devices 48 or more hours after the required period for visitation	503.570	503.152	6

LICENSES

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Refusing to exhibit a license, wildlife, weapon, ammunition, device or apparatus	502.120	-----	12
Hunting without having procured a license	502.010	-----	6
Fishing without having procured a license	502.010	-----	6
Hunting without a license in possession	502.120	-----	6
Fishing without a license in possession	502.120	-----	6
Furnishing false information to obtain a license	502.060	-----	6
Furnishing of false information by a person serving in the Armed Forces of the United States to obtain a specialty combination hunting and fishing license	502.290	502.220	6
Unlawfully transferring a license to another person	502.100	-----	6
Unlawfully using a license of another person	502.100	-----	6
Obtaining more than one license of each class	502.110	-----	6
Altering a license	502.105	-----	6
Practicing falconry without a license	503.583	503.235	6
Operating as a fur dealer without a license	505.010	-----	6
Trapping without having procured a license	502.010	-----	6

LICENSES

Classification of Violations	NRS	NAC	Demerits
	Section	Section	
Taking fur-bearing mammals, trapping unprotected mammals or selling raw furs for profit without having procured a license	503.454	-----	6
Trapping without a license in possession	502.120	-----	6
Hunting, fishing or trapping using a license that is invalid by reason of expiration or a false statement made to obtain the license	502.060	-----	6
Operating a shooting preserve without a license	504.310	-----	6
Performing taxidermal services without a license	502.370	502.435	6
Obtaining a hunting license without obtaining certification as a responsible hunter	502.360	-----	6

2. A person who is convicted of committing a wildlife violation that does not appear in the schedule set forth in subsection 1 will be assessed 3 demerit points.

3. A person who is convicted of committing a wildlife violation within 60 months after a conviction for the same violation will be assessed double the amount of demerit points listed in the schedule set forth in subsection 1.

4. A person who is convicted of committing any four wildlife violations arising out of separate events within a 60-month period will be assessed an extra 12 demerit points.

Sec. 2. NAC 503.172 is hereby amended to read as follows:

503.172 **1.** A person shall not take or gather shed antlers from or on any public land located in Elko, Eureka, Lander, Lincoln, Nye or White Pine Counties at any time from :

(a) January 1 to April 30, inclusive.

(b) *May 1 to June 30, inclusive, unless the person:*

(1) Is 12 years of age or older and has in his or her possession a certificate issued by the Department, or an agent designated by the Department, as proof that at any time during the current calendar year the person successfully completed the course of instruction in the responsible collection of shed antlers offered pursuant to subsection 2; or

(2) Is under 12 years of age and is accompanied by a person who:

(I) Is at least 18 years of age; and

(II) Has in his or her possession a certificate issued by the Department, or an agent designated by the Department, as proof that at any time during the current calendar year the person successfully completed the course of instruction in the responsible collection of shed antlers offered pursuant to subsection 2.

2. The Department shall:

(a) Offer, without charge, an online course of instruction in the responsible collection of shed antlers and issue a certificate of completion from the Department to a person who successfully completes the course; or

(b) Designate an agent of the Department to:

(1) Offer, without charge, an online course of instruction in the responsible collection of shed antlers that is approved by the Department; and

(2) Issue a certificate of completion from the Department to a person who successfully completes the course.

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

**LCB FILE NO. R082-19
Commission General Regulation 489**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 501 and 503.

1. A clear and concise explanation of the need for the adopted regulation:

The increased numbers of people hunting for shed antlers has caused large scale disturbance of deer and elk while on their critical winter range habitat during a time of year when they are most vulnerable.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary:

Public comment was solicited during the regulation workshop of the Nevada Board of Wildlife Commissioners (NBWC), the regulation adoption and by email to wildlifecommission@ndow.org

3. The number of persons who:

- (a) Attended each hearing: (date and number of attended for workshops and hearings)**
- (b) Testified at each hearing: (date and number of attended for workshops and hearings)**
- (c) Submitted written comments: (date and number of attended for workshops and hearings)**

September 20, 2019, NBWC Meeting

- a. Attended: 53
- b. Testified: 6
- c. Written Comment: 0

September 24, 2021, NBWC Meeting

- a. Attended: 56
- b. Testified: 4
- c. Written Comment: 0

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) **Name:** Rex Flowers
- (b) **Telephone number:** 775-722-4506
- (c) **Business address:** 3280 Sun Could Circle, Reno, NV 89506
- (d) **Business telephone number:**
- (e) **Electronic mail address:** randbflowers@yahoo.com
- (f) **Name of entity or organization represented:** Nevada Coalition for Wildlife

- (a) **Name:** Jim Cooney
- (b) **Telephone number:** 775-397-2504
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:** jcooney4@gmail.com
- (f) **Name of entity or organization represented:** Elko CABMW

- (a) **Name:** Cory Lytle
- (b) **Telephone number:** (775) 962-8071
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:** cllytle@lincolnnv.com
- (f) **Name of entity or organization represented:** Lincoln CABMW

- (a) **Name:** Paul Dixon
- (b) **Telephone number:** (505) 699-1744
- (c) **Business address:** 9445 Greenville Avenue, Las Vegas, NV 89134
- (d) **Business telephone number:**
- (e) **Electronic mail address:** noxid1960@gmail.com
- (f) **Name of entity or organization represented:** Clark CABMW

- (a) **Name:** John Hiatt
- (b) **Telephone number:** (702) 361-1171
- (c) **Business address:** 8180 Placid St. Las Vegas, NV 89123
- (d) **Business telephone number:**
- (e) **Electronic mail address:** hjhiatt@anv.net
- (f) **Name of entity or organization represented:** Clark CABMW

- (a) **Name:** Steve Marquez
- (b) **Telephone number:**
- (c) **Business address:** 785 Ave. N, Ely NV 89301
- (d) **Business telephone number:**
- (e) **Electronic mail address:** marquez.wpcso@gmail.com
- (f) **Name of entity or organization represented:** White Pine CABMW

- (a) **Name:** Mitch McVicars
- (b) **Telephone number:**
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:**
- (f) **Name of entity or organization represented:**

- (a) **Name:** Karen Boeger
- (b) **Telephone number:**
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:** kboeger1011@gmail.com
- (f) **Name of entity or organization represented:** Nevada Back Country Hunters and Anglers

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:

Comment was not solicited from small businesses. This regulation does not affect small businesses; it only applies to individuals who are collecting shed antlers.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:

N/A

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects on businesses; and

There will be no adverse, or beneficial economic effects from the proposed regulation on small businesses because it does not regulate the operation of any small business.

(b) Both immediate and long-term effects on businesses:

There are no immediate nor long-term effects on businesses.

(a) Both adverse and beneficial effects on the public; and

There will be no economic effect on the public by the proposed regulation.

(b) Both immediate and long-term effects on the public:

There will be no economic effect on the public by the proposed regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation:

The enforcement of the regulation falls within current operations of the Department; therefore, there will be no additional cost to the agency above the current legislatively approved budget.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:

This regulation does not overlap or duplicate any federal, state, or local regulation, nor strengthens others.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

This regulation does not overlap or duplicate any federal regulation.

11. If the 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.

This regulation does not propose new or increased fees.

**STATE OF NEVADA
NEVADA BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
SMALL BUSINESS IMPACT STATEMENT PURSUANT TO NRS233B**

Re: Commission General Regulation 489 LCB File No. R082-19 Shed Antlers NAC 503.172, Demerits NAC 501.200

The purpose of this form is to provide a framework pursuant to NRS 233B.0608 to determine whether a small business impact statement is required for submittal of a proposed regulation before the Nevada Board of Wildlife Commissioners. Note: Small business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS233B.0382).

1. Describe 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:

ANSWER:

Comment was not solicited from small businesses. This regulation does not affect small businesses; it only applies to individuals who are collecting shed antlers.

2. Describe the manner in which the analysis was conducted:

ANSWER:

Agency personnel and board members of the Nevada Board of Wildlife Commissioners concluded that there would be no small business impact.

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

- a.) Both adverse and beneficial effects:

ANSWER:

There will be no adverse, or beneficial economic effects from the proposed regulation on small businesses because it does not regulate the operation of any small business.

- b.) Both direct and indirect effects:

ANSWER:

There will be no direct, or indirect economic effects from the proposed regulation on small businesses because it does not regulate the operation of any small business.

4. Describe 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:

ANSWER:

The agency concluded that this regulation does not regulate any small businesses; therefore, no methods were considered to reduce the impact.

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

ANSWER:

The enforcement of the regulation falls within current operations of the Department; therefore, there will be no additional cost to the agency above the current legislatively approved budget.

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:

ANSWER:

This regulation does not propose 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:

ANSWER:

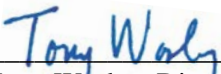
This regulation does not overlap or duplicate any federal, state, or local regulation, nor strengthens others.

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

ANSWER:

The regulation applies to individuals, therefore there is no impact on small businesses.

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



Tony Wasley, Director
Nevada Department of Wildlife

**ADOPTED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R083-19

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

AUTHORITY: § 1, NRS 501.105, 501.181 and 502.145.

A REGULATION relating to wildlife; establishing the method for issuing damage compensation tags when the cumulative number of damage compensation tags for all eligible applicants during a calendar year exceeds the maximum number of damage compensation tags authorized for issuance; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, an owner, lessee or manager of private land which is damaged by deer or antelope is authorized to apply to the Department of Wildlife for the issuance of a tag as compensation for the damage caused by the deer or antelope. Existing law requires the Board of Wildlife Commissioners to adopt regulations establishing the maximum number of damage compensation tags which the Department may issue annually, which must not exceed 2.5 percent of the total number of deer and antelope tags authorized for issuance annually throughout the State. (NRS 502.145) This regulation establishes the method of issuing damage compensation tags if the cumulative number of damage compensation tags for all eligible applicants during a calendar year exceeds 2.5 percent of the total number of deer and antelope tags authorized for issuance throughout the State for that calendar year.

Section 1. NAC 502.426 is hereby amended to read as follows:

502.426 1. If the owner applicant enters into a cooperative agreement with the Department and the Department approves the application for a damage compensation tag, the owner applicant is eligible for the issuance of one or more damage compensation tags pursuant to subsection 2 ~~or~~ *or 3*.

2. ~~Am~~ *Except as otherwise provided in subsection 3, an* owner applicant is eligible for the issuance of:

(a) One damage compensation tag for deer for each 50 deer that caused damage to his or her property; and

(b) One damage compensation tag for antelope for each 50 antelope that caused damage to his or her property.

3. *In accordance with paragraph (a) of subsection 6 of NRS 502.145, if the total number of damage compensation tags for all eligible owner applicants during a calendar year exceeds a number equal to 2.5 percent of the total number of deer and antelope tags which are authorized for issuance throughout the State for that calendar year and:*

(a) The issuance of the first damage compensation tag for deer or the first damage compensation tag for antelope in accordance with subsection 2 would cause the total number of damage compensation tags for all eligible owner applicants during the calendar year to exceed 2.5 percent of the total number of deer and antelope tags which are authorized for issuance throughout the State for that calendar year, the Department shall increase, incrementally by 0.5, the number of deer for which one damage compensation tag for deer must be issued in accordance with subsection 2 and the number of antelope for which one damage compensation tag must be issued in accordance with subsection 2, until the total number of damage compensation tags for all eligible owner applicants during the calendar year is equal to or less than 2.5 percent of the total number of deer and antelope tags which are authorized for issuance throughout the State for that calendar year.

(b) The issuance of the cumulative number of damage compensation tags for deer in accordance with subsection 2 and the cumulative number of damage compensation tags for antelope in accordance with subsection 2 would cause the cumulative number of damage compensation tags for all eligible owner applicants during the calendar year to exceed 2.5

percent of the total number of deer and antelope tags which are authorized for issuance throughout the State for that calendar year, the Department shall:

(1) Issue one damage compensation tag for deer for the first 50 deer that caused damage to the property of an owner applicant and one damage compensation tag for antelope for the first 50 antelope that caused damage to the property of an owner applicant; and

(2) Issue the remaining number of damage compensation tags by increasing, incrementally by 0.5, the number of deer for which one damage compensation tag for deer must be issued in accordance with subsection 2 and the number of antelope for which one damage compensation tag for antelope must be issued in accordance with subsection 2, until the total number of damage compensation tags issued pursuant to this subparagraph and subparagraph (1) for all eligible owner applicants during the calendar year is equal to or less than 2.5 percent of the total number of deer and antelope tags which are authorized for issuance throughout the State for that calendar year.

4. If the Department issues a damage compensation tag, the tag is valid for use in the calendar year after the calendar year in which the application was submitted.

~~14.~~ 5. The unit or units within a management area or areas for which the Department issues a damage compensation tag must be limited to the unit or units within the management area or areas in which the damaged property is located.

~~15.~~ 6. The Department shall indicate on each damage compensation tag it issues:

(a) The period or periods during the calendar year for which the tag is valid, which must be limited to the hunting season or seasons, other than a hunting season for a tag issued pursuant to subsection 5 of NRS 502.250, established by the Commission for antlered mule deer or antelope with horns longer than their ears, as appropriate for the species to which the tag applies, in the

unit or units within the management area or areas in which the damaged property is located and for which the tag is valid; and

(b) The unit or units within the management area or areas in which the damaged property is located and for which the tag is valid.

~~16.1~~ **7.** A person possessing a valid damage compensation tag may hunt only:

(a) During the period or periods indicated by the Department on the tag, as established by the Commission;

(b) With the type of weapon designated for the type of hunt to which each such period applies, as established by the Commission; and

(c) In the unit or units within the management area or areas established by the Commission:

(1) In which the damaged property is located; and

(2) For which the tag is valid.

~~17.1~~ **8.** Damage compensation tags will only be issued to owner applicants and sold to hunters through the headquarters of the Department.

~~18.1~~ **9.** The fee charged for a damage compensation tag will include:

(a) A fee of \$50 for each such tag;

(b) A license fee based on the status of the hunter as a resident or nonresident; and

(c) The fee specified in NAC 502.331 for acting upon each application for a tag.

~~19.1~~ **10.** If the Department provides a refund for a cancelled tag under the conditions set forth in NAC 502.422, the Department may reissue an application for a damage compensation tag to the owner applicant.

~~110.1~~ **11.** If the Department denies an application for a damage compensation tag, the owner applicant may appeal the decision to the Commission within 10 days after the Department

notifies the owner applicant of the decision. A request for an appeal pursuant to this subsection must be submitted in writing to the Secretary of the Commission. As soon as practicable after receiving such a request, the Chair of the Commission will appoint a panel consisting of not less than two members of the Commission to consider the appeal. The panel shall notify the Commission in writing of its determination. If the panel is unable to make a determination, the Commission will appoint another panel to consider the appeal in accordance with this subsection. The determination of a panel appointed pursuant to this subsection is a final decision for the purposes of judicial review.

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

**LCB FILE NO. R083-19
Commission General Regulation 488**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 502.

1. A clear and concise explanation of the need for the adopted regulation:

In spring 2017, the prior statutory limit was exceeded by qualifying cooperators for damage compensation tags. There was no process to equitably redistribute tags among qualifying cooperators, and a statutory amendment was added to open a bill to increase the statutory limit. That statutory change, while addressing the immediate challenge, did not include any redistribution mechanism should the increased limit be reached in the future.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary:

Public comment was solicited during the regulation workshop of the Nevada Board of Wildlife Commissioners (NBWC), the regulation adoption and by email to wildlifecommission@ndow.org.

3. The number of persons who:

- (a) Attended each hearing: (date and number of attended for workshops and hearings)**
- (b) Testified at each hearing: (date and number of attended for workshops and hearings)**
- (c) Submitted written comments: (date and number of attended for workshops and hearings)**

September 20, 2019, NBWC Meeting

- a. Attended: 53
- b. Testified: 0
- c. Written Comment: 0

September 24, 2021 NBWC Meeting

- a. Attended: 56
- b. Testified: 2
- c. Written Comment: 0

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) **Name:** Paul Dixon
- (b) **Telephone number:** 505-699-1744
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:** noxid1960@gmail.com
- (f) **Name of entity or organization represented:** Clark CABMW

- (a) **Name:** Pete Mori
- (b) **Telephone number:**
- (c) **Business address:**
- (d) **Business telephone number:**
- (e) **Electronic mail address:**
- (f) **Name of entity or organization represented:**

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:

The Department sent letters to the 105 cooperators in the compensation tag program during November to inform them that the Department would be hosting public stakeholder meetings in Elko, Ely, and Winnemucca during December 12–14, 2017 to discuss options for equitable reduction if the limit were reached. The ideas were compiled and sent to all participants that provided input and asked for ranking of suggested methods for equitable redistribution of compensation tags if the statutory limit were reached.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:

The regulation was adopted without change because LCB allowed the Department to utilize their own draft language encompassing what the Department was attempting to achieve, therefore the commission had no further questions or changes on the regulation.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects on businesses; and

The most beneficial effect will reduce confusion and provide a simple method by which tags may be equitably reallocated should the qualifying counts exceed statutory limits. No adverse effects are anticipated.

(b) Both immediate and long-term effects on businesses:

There are no immediate nor long-term effects on businesses.

(a) Both adverse and beneficial effects on the public; and

There will be no economic effect on the public by the proposed regulation.

(b) Both immediate and long-term effects on the public:

There will be no economic effect on the public by the proposed regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation:

There is no estimated cost to the agency for the enforcement of the proposed regulation because this regulation currently falls under Department activities.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:

This regulation does not include provisions that duplicate or are more stringent than federal, state, or local standards.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

This regulation does not include provisions that are more stringent than federal standards

11. If the 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 regulation does not provide new or increased fees.

**STATE OF NEVADA
NEVADA BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
SMALL BUSINESS IMPACT STATEMENT PURSUANT TO NRS233B**

Re: Commission General Regulation CGR 488 LCB File No.R083-19 Landowner Deer and Antelope Compensation Tag Program

The purpose of this form is to provide a framework pursuant to NRS 233B.0608 to determine whether a small business impact statement is required for submittal of a proposed regulation before the Nevada Board of Wildlife Commissioners. Note: Small business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS233B.0382).

1. Describe 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:

ANSWER:

Landowners that suffer damage from mule deer or antelope within Nevada can register as a cooperator with the Nevada Department of Wildlife and qualify to receive tags, which they may subsequently use or sell, as compensation for the damage sustained. These landowners may qualify for a compensation tag for each 50 deer or antelope counted on their land by Department biologists. There is a statutory limit in NRS 502.145 on the number of tags that may be awarded annually, yet there is no process in statute or administrative rule to equitably distribute the tags should the cumulative qualifying count across all cooperating landowners exceed the statutory limit.

The Department sent letters to the 105 cooperators in the compensation tag program during November to inform them that the Department would be hosting public stakeholder meetings in Elko, Ely, and Winnemucca during December 12–14, 2017 to discuss options for equitable reduction if the limit were reached. The ideas were compiled and sent to all participants that provided input and asked for ranking of suggested methods for equitable redistribution of compensation tags if the statutory limit were reached.

2. Describe the manner in which the analysis was conducted:

ANSWER:

Based on the information provided through meetings and correspondence, the Landowner Compensation Tagholder Committee created by the Nevada Board of Wildlife Commission indicated that they were interested in proceeding with a process that would equitably reduce tags while protecting the individuals that received the least compensation tags. The Commission discussed these concepts at their public meeting in August 2019.

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

a.) Both adverse and beneficial effects:

ANSWER:

The most beneficial effect will reduce confusion and provide a simple method by which tags may be equitably reallocated should the qualifying counts exceed statutory limits. No adverse effects are anticipated.

b.) Both direct and indirect effects:

ANSWER:

The most direct effect will be beneficial in that it will reduce confusion and provide a simple method by which tags may be equitably reallocated should the qualifying counts exceed statutory limits. No indirect effects are anticipated.

4. Describe 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:

ANSWER:

The regulation does not impact any small business; therefore, no methods were considered to reduce the impact.

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

ANSWER:

There is no estimated cost to the agency for the enforcement of the proposed regulation because this regulation currently falls under Department activities.

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:

ANSWER:

The proposed regulation does not provide 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:

ANSWER:

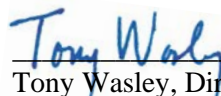
This regulation does not include provisions that duplicate or are more stringent than federal, state, or local standards.

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

ANSWER:

The Department believes that a simple process to address the existing limitations will eliminate confusion, expedite decisions, reduce cost to the agency, and have no measurable impact on small business.

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



Tony Wasley, Director
Nevada Department of Wildlife

REGULATIONS SUBMITTED PURSUANT TO NRS 233B.067:

LCB NO.	NAC	AGENCY/ SUBJECT
2020 REGULATIONS		
R027-20	704	<p>PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION revising provisions relating to renewable energy facilities CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov</p>
R032-20	703	<p>PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION establishing provisions requiring operators of intrastate distribution pipelines transporting natural or liquefied petroleum gas to conduct leakage surveys CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov</p>
R042-20	180	<p>BOARD ON INDIGENT DEFENSE SERVICES A REGULATION establishing provisions governing indigent defense services CONTACT Marcie Ryba (775) 431-0527 mryba@dids.nv.gov</p>
R093-20	445B	<p>STATE ENVIRONMENTAL COMMISSION A REGULATION adopting certain provisions of California regulations for Low-Emission Vehicle and Zero-Emission Vehicle programs relating to air quality CONTACT Jeffrey Kinder (775) 687-9307 jkinder@ndep.nv.gov</p>
R158-20	703	<p>PUBLIC UTILITIES COMMISSION OF NEVADA A REGULATION revising provisions relating to compliance with the portfolio standard CONTACT Samuel S. Crano (775) 684-6151 scrano@puc.nv.gov</p>

R163-20	501	BOARD OF WILDLIFE COMMISSIONERS A REGULATION revising various provisions CONTACT Kailey Musso (775) 688-1510 knmusso@ndow.org Mike Scott (775) 688-1520 msscott@ndow.org
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**ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R027-20

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

AUTHORITY: §§ 1, 6 and 9, NRS 703.025 and 704.210; §§ 2 and 15-20, NRS 703.025, 704.210 and 704.741; §§ 3-5, 7 and 8, NRS 703.025, 704.210 and 704.752; §§ 10, 12 and 13, NRS 703.025, 704.210 and 704.7828; § 11, NRS 703.025, 704.210, 704.7825 and 704.7828; § 14, NRS 703.025, 704.210, 704.7821 and 704.7828.

A REGULATION relating to energy; setting forth certain requirements concerning the establishment by the Public Utilities Commission of Nevada of a just and reasonable price for the energy produced by a renewable energy facility; setting forth requirements for the acquisition of certain renewable energy facilities by certain utilities; revising procedures for the Commission to impose administrative fines or take administrative action under certain circumstances; revising the definition of “renewable energy” for certain purposes relating to the portfolio standard; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires an electric utility with an annual operating revenue of \$2,500,000 or more in this State to submit to the Public Utilities Commission of Nevada, on or before June 1 of every third year, a resource plan to increase its supply of electricity or decrease the demands made on its system by its customers. Existing law requires the Commission to prescribe the contents of the resource plan by regulation. (NRS 704.741) **Section 18** of this regulation revises provisions relating to the required contents of a resource plan.

Existing law authorizes certain electric utilities to file with the Commission, as part of the utility’s resource plan or an amendment to such a plan, a request that the Commission exclude any capital expenses associated with a renewable energy facility owned by the utility from its rate base and any expenses associated with the facility from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the energy produced by the facility. (NRS 704.752) **Section 2** of this regulation requires certain information to be included in such a request. Under existing law, if the Commission establishes a just and reasonable price for the energy produced by a renewable energy facility, the price must be established by reference to a competitive market price for the energy. (NRS 704.752) **Section 3** of this regulation sets forth

criteria that the Commission is authorized to use to determine such a competitive market price. **Section 4** of this regulation provides that if the Commission approves a request to establish a just and reasonable price for the energy produced by a renewable energy facility, the Commission is required to include certain information in its order approving or modifying the resource plan of the utility, including, among other information, the term during which the utility is authorized to recover the just and reasonable price. **Section 4** further requires a utility to, at least 1 year before the conclusion of such a term, file a resource plan or an amendment to such a plan with a proposed disposition of the renewable energy facility following the conclusion of the term. Under **section 4**, if the utility wishes to recover a just and reasonable price for the energy produced by the renewable energy facility beyond the term approved by the Commission, it must file a new request with the Commission.

Existing law authorizes certain utilities to acquire an existing renewable energy facility or a renewable energy facility under development if: (1) the Commission had previously accepted a resource plan or an amendment to such a plan that provided for the purchase of the electricity generated by the facility pursuant to an agreement between the utility and facility; and (2) the utility provides a notice to the Commission containing certain information. (NRS 704.753) **Section 5** of this regulation sets forth certain additional information that such a notice must include. Additionally, **section 5** requires the utility to, at least 1 year before the conclusion of the existing term of the agreement, file a resource plan or an amendment to such a plan that includes a proposed disposition of the renewable energy facility following the conclusion of the term. Under **section 5**, if the utility wishes to recover a just and reasonable price for the energy produced by the renewable energy facility beyond the term approved by the Commission, it must file a new request with the Commission.

Existing law requires a utility that has been approved by the Commission to charge a just and reasonable price for the electricity generated by a renewable energy facility to use deferred accounting in accordance with regulations adopted by the Commission. (NRS 704.187, 704.452) **Section 7** of this regulation prescribes the entries that such a utility is required to make in its deferred energy account at the end of each month. **Section 8** of this regulation requires such a utility to include certain information concerning the amount of energy delivered by the renewable energy facility and the cost charged for such energy in certain monthly reports submitted to the Commission.

Existing law requires the Commission to establish a portfolio standard which requires each provider of electric service in this State to generate, acquire or save electricity from portfolio energy systems or efficiency measures in a certain percentage of the total amount of electricity sold by the provider to its retail customers in this State during a calendar year. (NRS 704.7821) Senate Bill No. 358 (SB 358) of the 2019 Legislative Session revised the portfolio standard for providers of new electric resources to require, with certain exceptions, the portfolio standard for such providers to be the same as that of other providers of electric service. (Sections 22 and 23 of chapter 3, Statutes of Nevada 2019, at pages 18 and 21 (NRS 704.7821, 704.78213)) **Section 14** of this regulation revises certain existing regulations relating to compliance with the portfolio standard to conform to this change. Additionally, SB 358 revised the circumstances under which the Commission is authorized to impose an administrative fine or take other administrative action against a provider of electric services that does not comply with its portfolio standard.

(Section 24.5 of chapter 3, Statutes of Nevada 2019, at page 23 (NRS 704.7828)) **Section 12** of this regulation revises procedures for the Commission to impose administrative fines or take other administrative action against a provider to conform to these changes. Finally, SB 358 revised the definition of the term “renewable energy” for certain provisions relating to the portfolio standard. (Section 21 of chapter 3, Statutes of Nevada 2019, at page 16 (NRS 704.7811)) **Sections 6, 16, 17 and 19** of this regulation revise the definition of “renewable energy” in various provisions of existing regulations to conform to this change.

Sections 10 and 11 of this regulation exclude from certain calculations for determining the compliance of a provider with its portfolio standard any kilowatt-hours sold as a result of customer participation in a voluntary option to purchase energy from renewable resources.

Existing law requires the Commission to exempt a provider from the requirements of its portfolio standard if the Commission makes certain determinations concerning the supply of electricity or amount of energy made available to the provider pursuant to renewable energy contracts and energy efficiency contracts. (NRS 704.7821) **Section 13** of this regulation sets forth the criteria under which the Commission will make such determinations.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *A request filed with the Commission to establish a just and reasonable price for the energy produced by a renewable energy facility pursuant to NRS 704.752, must include, without limitation:*

(a) A brief description of the renewable energy facility which includes, without limitation:

(1) The generating capacity of the renewable energy facility;

(2) The technical and operational characteristics of the renewable energy facility; and

(3) The geographical location of the renewable energy facility;

(b) An acknowledgement by the utility that the utility will not include any capital investment associated with the renewable energy facility in the rate base of the utility or expenses associated with such facility in the revenue requirement of the utility;

(c) The request required pursuant to subsection 1 of NRS 704.752 requiring that the Commission exclude any capital investment associated with the renewable energy facility from the rate base of the utility and all expenses associated with such facility from the revenue requirement of the utility;

(d) A description of the safeguards that the utility will implement to monitor and ensure that any capital investment associated with the renewable energy facility will be excluded from the rate base of the utility and all expenses associated with such facility will be excluded from the revenue requirement of the utility;

(e) Material terms for the generation and sale of energy by the renewable energy facility, including, without limitation, the price for the energy produced by such facility and the term during which the utility wishes to recover the just and reasonable price as established by the Commission for the energy produced by such facility through the mechanism set forth in NRS 704.187;

(f) A recommendation by the utility of a just and reasonable price to be paid for the energy produced by the renewable energy facility and a justification for the recommendation;

(g) If applicable, a brief description of the financing of the renewable energy facility, including, without limitation, its effects on the capital structure and creditworthiness of the utility;

(h) A comparison of the rate impact on customers of the utility between:

(1) Ownership of the renewable energy facility by the utility pursuant to NRS 704.752;
and

(2) Inclusion of the renewable energy facility within the rate base of the utility; and

(i) Any other data and information necessary to facilitate an evaluation of the request.

2. As used in this section, “capital investment” and “expenses” include, without limitation, costs relating to operating and maintenance, permitting, property rights acquisition, engineering, procurement, construction, generator line extension, interconnection, internal utility labor and overhead, project management, depreciation, interest and related financing costs and decommissioning.

Sec. 3. The Commission may determine a competitive market price for the energy produced by a renewable energy facility pursuant to NRS 704.752 based on, without limitation:

1. The price and performance terms and conditions recommended by the utility or another party as compared to the price and performance terms and conditions of energy and ancillary services from all conforming, substantially similar technology bids received by the utility in reasonably contemporaneous renewable energy requests for proposals;

2. Projections of market trends for the price of energy produced by similar renewable energy facilities;

3. Relative performance capabilities of the renewable energy facility as compared with the renewable energy facilities referenced in subsections 1 and 2;

4. Relative design differences, including, without limitation, size, between the renewable energy facility and the renewable energy facilities referenced in subsections 1 and 2; and

5. Whether the energy and ancillary services produced by the renewable energy facility are consistent with the resource needs of the utility and the customers of the utility.

Sec. 4. 1. *If the Commission approves a request to establish a just and reasonable price for the energy produced by a renewable energy facility filed with the Commission pursuant to NRS 704.752, the Commission will include in an order approving or modifying the resource plan filed by the utility or an amendment to such a plan:*

(a) A provision requiring the utility to exclude any capital investment made by utility in the renewable energy facility from the rate base of the utility and all expenses associated with such facility from the revenue requirement of the utility;

(b) Performance terms and conditions for the generation and sale of energy from the renewable energy facility;

(c) The term during which the utility may recover the just and reasonable price for the energy produced by a renewable energy facility as established by the Commission through the mechanism set forth in NRS 704.187;

(d) A finding of whether the utility has provided a valid comparison of the rate impact on customers of the utility between:

(1) Ownership of the renewable energy facility by the utility pursuant to NRS 704.752;
and

(2) Inclusion of the renewable energy facility within the rate base of the utility or utilities; and

(e) The findings required by subsection 5 of NRS 704.752.

2. A utility whose request to establish a just and reasonable price for the energy produced by a renewable energy facility pursuant to NRS 704.752 has been approved shall:

(a) Include in the filings required pursuant to NRS 704.187 sufficient detail to demonstrate compliance with the terms and conditions set forth by the Commission in the order pursuant to subsection 1; and

(b) At least 1 year before the conclusion of the term specified by the Commission in the order issued pursuant to subsection 1, file a resource plan or an amendment to such a plan which includes a proposed disposition of the renewable energy facility following the conclusion of the term.

3. If a utility whose request to establish a just and reasonable price for the energy produced by a renewable energy facility pursuant to NRS 704.752 has been approved wishes to recover a just and reasonable price for the energy beyond the term specified by the Commission in the order issued pursuant to subsection 1, the utility must file, and the Commission must approve, a new request to establish a just and reasonable price for the energy produced by a renewable energy facility pursuant to NRS 704.752.

4. As used in this section, “capital investment” and “expenses” have the meanings ascribed to them in section 2 of this regulation.

Sec. 5. 1. *In addition to the information required pursuant to NRS 704.753, the notice described in NRS 704.753 must include, without limitation:*

(a) Any information necessary to ensure that the renewable energy facility is not public utility property as defined in section 168(i) of the Internal Revenue Code, 26 U.S.C. § 168(i); and

(b) A document listing all surviving terms and conditions of the agreement for the purchase of electricity included as part of the plan for the purchase of electricity approved by

the Commission pursuant to NRS 704.751, which the utility assumes, including, without limitation, the price of the electricity generated and the duration of the term.

2. At least 1 year before the conclusion of the term of the agreement for the purchase of electricity approved by the Commission pursuant to NRS 704.751, the utility must file a resource plan or an amendment to such a plan which includes a proposed disposition of the renewable energy facility following the conclusion of the term.

3. If a utility that has acquired an existing renewable energy facility or a renewable energy facility that is being developed pursuant to NRS 704.753 wishes to recover a just and reasonable price for the energy produced by the renewable energy facility beyond the term of the agreement for the purchase of electricity approved by the Commission pursuant to NRS 704.751, the utility must file, and the Commission must approve, a request to establish a just and reasonable price for the energy produced by a renewable energy facility pursuant to NRS 704.752.

Sec. 6. *“Renewable energy” has the meaning ascribed to it in NRS 704.7715.*

Sec. 7. NAC 704.101 is hereby amended to read as follows:

704.101 1. Each electric utility and gas utility using deferred energy accounting shall maintain a deferred energy account. Entries must be made to the deferred energy account at the end of each month as follows:

(a) For electric operations:

(1) A debit entry or credit entry, if negative, to a subaccount of FERC Account No. 182.3, if the cumulative month-end balance is a debit, or a subaccount of FERC Account No. 254, if the cumulative month-end balance is a credit, equal to the cost of both fuel for electric generation

and purchased power, reduced for revenues from off-system sales, distributed to the applicable jurisdiction by the ratio of the jurisdiction's contribution to the output to lines, less the amount of revenue derived by applying the base tariff energy rate to that month's applicable jurisdictional sales exclusive of interruptible irrigation sales.

(2) A separate credit entry or debit entry, if negative, equal to the amount of revenue derived by applying the appropriate deferred energy accounting adjustment to that month's applicable jurisdictional sales, exclusive of interruptible irrigation sales.

(3) A credit entry equal to the amount of revenue from interruptible irrigation sales.

(4) A credit entry equal to the jurisdictional amount of any cash refund, including interest if applicable, received from suppliers of fuel or purchased power.

(5) A separate debit entry or credit entry, if negative, equal to the product of the ending balance multiplied by one-twelfth of the authorized rate of return as provided in NAC 704.150.

(6) A debit entry equal to the amount of any provided discount resulting from participation in the Economic Development Electric Rate Rider Program established pursuant to NRS 704.7875.

(7) A credit entry equal to any amount recovered by order of the Commission pursuant to NRS 704.7879.

(8) A separate credit entry or debit entry, if negative, equal to the cost of electricity generated by a renewable energy facility owned by the electric utility calculated based on the just and reasonable price established by the Commission pursuant to NRS 704.752.

(b) For gas operations:

(1) A debit entry or credit entry to FERC Account No. 191, if negative, equal to the cost of purchased gas for the month distributed to applicable jurisdictional sales by the ratio of those jurisdictional sales to total sales, less the amount of the revenue derived by applying the base tariff energy rate to that month's applicable jurisdictional sales.

(2) A credit entry or debit entry, if negative, equal to the amount of revenue derived by applying the appropriate deferred energy accounting adjustment to that month's applicable jurisdictional sales.

(3) A credit entry equal to the jurisdictional amount of any cash refund, including interest if applicable, received from suppliers of purchased gas.

(4) A debit entry or credit entry, if negative, equal to the product of the ending balance multiplied by one-twelfth of the authorized rate of return as provided in NAC 704.150.

2. As used in this section, "output to lines" means the net generation by the system's own generation, plus purchased power and less energy applicable to off-system sales.

Sec. 8. NAC 704.195 is hereby amended to read as follows:

704.195 1. Not later than 45 days after the end of each month in every deferred energy period, each electric utility and gas utility shall submit to the Commission a report containing all transactions and calculations affecting the deferred energy accounts. The monthly reports must include any other information or data required by the Commission to expedite or facilitate the deferred energy application or annual rate adjustment application and hearing necessary to clear the balances of deferred energy accounts.

2. Each electric utility shall submit in its monthly reports for electric operations the monthly cost of all energy generated and purchased, indicating:

(a) The number of megawatt-hours generated as to quantity, cost and type of fuel used in each generating unit;

(b) The number of megawatt-hours purchased and the cost, including demand charges, for each supplier by rate schedule or contract; ~~and~~

(c) *The number of megawatt-hours delivered by a renewable energy facility owned by the electric utility and the cost charged based on a just and reasonable price established by the Commission pursuant to NRS 704.752; and*

(d) The basis of charges and data supporting those charges.

3. Each gas utility shall submit in its monthly reports for gas operations the monthly cost of all gas purchased, indicating:

(a) The quantity and cost of gas purchased from each supplier by rate schedule or contract; and

(b) The basis of the charges and the invoices supporting the charges.

Sec. 9. NAC 704.881 is hereby amended to read as follows:

704.881 As used in NAC 704.881 to 704.8825, inclusive, *and section 6 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 704.8811 to 704.8819, inclusive, *and section 6 of this regulation* have the meanings ascribed to them in those sections.

Sec. 10. NAC 704.8877 is hereby amended to read as follows:

704.8877 1. Not later than April 15 of each compliance year, each provider *to which the provisions of NRS 704.7825 apply* shall submit to the Regulatory Operations Staff and the Bureau of Consumer Protection:

(a) The total number of kilowatt-hours sold by the provider to its retail customers in this State during the most recently completed compliance year. ~~For compliance year 2003, calendar year 2002 shall be deemed to be the most recently completed compliance year for the purposes of this paragraph.~~

(b) The estimated number of kilowatt-hours that the provider expects to sell to its retail customers in this State during the current compliance year.

(c) The estimated number of kilowatt-hours that the provider must generate, acquire or save from portfolio energy systems or efficiency measures to comply with its portfolio standard for the current compliance year, as calculated by the provider pursuant to subsection 2.

2. To calculate the estimated number of kilowatt-hours that the provider must generate, acquire or save from portfolio energy systems or efficiency measures to comply with its portfolio standard for the current compliance year, the provider must multiply the estimated number of kilowatt-hours that the provider expects to sell to its retail customers in this State during the current compliance year by the required percentage that is set forth pursuant to NRS 704.7821 or 704.78213, as applicable, for the current compliance year. *Any kilowatt-hours sold as a result of customer participation in a voluntary option to purchase all or a portion of the customer's energy from renewable resources must be excluded from the calculations performed pursuant to this subsection.*

3. Except as otherwise provided in NRS 704.7828, if the total number of kilowatt-hours that the provider generates, acquires or saves from portfolio energy systems or efficiency measures for the current compliance year is equal to or exceeds the estimated number of kilowatt-hours as calculated by the provider pursuant to subsection 2, the Commission will not impose an

administrative fine or take other administrative action against the provider for that compliance year.

Sec. 11. NAC 704.8879 is hereby amended to read as follows:

704.8879 1. ~~{Beginning with compliance year 2004, not}~~ *Not* later than April 15 of each compliance year, each provider *to which the provisions of NRS 704.7825 apply* shall submit to the Commission an annual report that sets forth all the information required by this section.

2. The annual report must set forth:

(a) The capacity of each renewable energy system owned, operated or controlled by the provider, the total number of kilowatt-hours generated by each such system during the most recently completed compliance year and the percentage of that total amount which was generated directly from renewable energy.

(b) Whether, during the most recently completed compliance year, the provider began construction on, acquired or placed into operation any renewable energy system and, if so, the date of any such event.

(c) The total number of kilowatt-hours sold by the provider to its retail customers in this State during the most recently completed compliance year ~~{}~~, *excluding any kilowatt-hours sold as a result of customer participation in a voluntary option to purchase all or a portion of the customer's energy from renewable resources.*

(d) The total number of kilowatt-hours that the provider generated, acquired or saved from portfolio energy systems or efficiency measures during the most recently completed compliance year and, from that total number of kilowatt-hours, subtotals for the number of kilowatt-hours:

(1) Generated or saved by the provider from its own portfolio energy systems or efficiency measures;

(2) Acquired by the provider pursuant to long-term portfolio energy credits contracts;

(3) Acquired by the provider pursuant to long-term renewable energy contracts;

(4) Acquired by the provider pursuant to short-term portfolio energy credits contracts;

(5) Acquired by the provider pursuant to short-term renewable energy contracts;

(6) Acquired or saved by the provider pursuant to energy efficiency contracts;

(7) Attributable to the provider from solar thermal systems;

(8) Fed back to the provider from net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive;

(9) Deemed to be electricity that the provider generated or acquired from a renewable energy system for the purposes of complying with its portfolio standard pursuant to paragraph (a) of subsection 3 of NRS 704.775; and

(10) Saved by the provider as a result of energy efficiency measures installed at service locations of residential customers of the provider for the purposes of paragraph (a) of subsection 2 of NRS 704.7821.

(e) The total number of kilowatt-hours that the provider:

(1) Sold as a result of customer participation in a voluntary option to purchase all or a portion of the customer's energy from renewable resources; and

(2) Sold pursuant to paragraphs (b) and (c) of subsection 2 of NRS 704.7828.

(f) The total number of kilowatt-hours that the provider:

(1) Carried forward as excess from the previous compliance years;

- (2) Intends to carry forward as excess from the most recently completed compliance year;
 - (3) Intends to carry forward as excess from previous compliance years, indicating the amount from each separate year;
 - (4) Carried forward as deficiencies from previous compliance years;
 - (5) Intends to carry forward as deficiencies from the most recently completed compliance year; and
 - (6) Intends to carry forward as deficiencies from previous compliance years, indicating the amount from each separate year.
- (g) The estimated number of kilowatt-hours that the provider expects to sell to its retail customers in this State during the current compliance year **†**, *with a separate subtotal for kilowatt-hours to be sold as a result of customer participation in a voluntary option to purchase all or a portion of the customer's energy from renewable resources.*
- (h) The estimated number of kilowatt-hours that the provider must generate, acquire or save from portfolio energy systems or efficiency measures to comply with its portfolio standard for the current compliance year, as calculated by the provider pursuant to NAC 704.8877.
- (i) If the provider is a utility provider, the estimated costs for the utility provider to comply with its portfolio standard for the current compliance year. If appropriate, the utility provider must report such estimated costs for each major type of cost, such as general and administrative costs and costs for purchased power.

3. In the annual report, the provider must make an affirmative showing that the provider complied with its portfolio standard during the most recently completed compliance year. If the

provider did not comply with its portfolio standard during the most recently completed compliance year, in the annual report the provider must:

(a) Make a detailed explanation for its noncompliance; and

(b) Provide any information that would support an exemption for the provider from any administrative fine or other administrative action.

4. If, to comply with its portfolio standard during the most recently completed compliance year, the provider acquired any kilowatt-hours from a renewable energy system that is not owned, operated or controlled by the provider, the annual report must include an attestation from the owner or operator of the renewable energy system that the energy represented by those kilowatt-hours:

(a) Has not been and will not be sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and

(b) Has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction.

Sec. 12. NAC 704.8881 is hereby amended to read as follows:

704.8881 1. Not later than 90 days after the date on which a provider submits its annual report, the Commission will issue an order stating whether the provider complied with its portfolio standard during the most recently completed compliance year.

2. If the Commission determines that the provider complied with its portfolio standard during the most recently completed compliance year, the Commission will determine whether the provider is authorized to carry forward any excess kilowatt-hours pursuant to NRS 704.7828. If the Commission determines that the total number of kilowatt-hours which the provider

generated, acquired or saved from portfolio energy systems or efficiency measures during the most recently completed compliance year exceeded the total number of kilowatt-hours which the provider needed to comply with its portfolio standard for that compliance year:

(a) The Commission will state in its order the number of excess kilowatt-hours which the provider is authorized to carry forward from that compliance year;

(b) The provider may use those excess kilowatt-hours to comply with its portfolio standard for any following compliance year; and

(c) If the provider is a utility provider, the Commission will state in its order the number of excess kilowatt-hours which are:

(1) More than 10 percent but less than 25 percent of the amount of portfolio energy credits projected to be necessary to comply with the portfolio standard for the current compliance year based upon the estimated number of kilowatt-hours the utility provider expects to sell; and

(2) More than 25 percent of the amount of portfolio energy credits projected to be necessary to comply with the portfolio standard for the current compliance year based upon the estimated number of kilowatt-hours the utility provider expects to sell.

3. If the Commission determines that the provider did not comply with its portfolio standard during the most recently completed compliance year, the Commission will:

(a) State in its order the number of kilowatt-hours by which the provider failed to comply with its portfolio standard; and

(b) ~~Issue~~ *If the provider is subject to an administrative fine or any other administrative action pursuant to subsection 4 of NRS 704.7828, issue* a notice of noncompliance and schedule a hearing on the matter.

4. At the hearing, the provider has the burden to prove that it complied with its portfolio standard during ~~the most recently completed~~ *each applicable* compliance year.

5. Except as otherwise provided in NAC 704.8831 to 704.8899, inclusive, if, after the hearing, the Commission determines that the provider did not comply with its portfolio standard during ~~the most recently completed~~ *each applicable* compliance year, and the Commission has not exempted the provider pursuant to NRS 704.7821 or 704.78213, the Commission will:

(a) Proceed pursuant to NRS 704.7828; and

(b) In any order requiring a provider to carry forward a deficiency, set forth the terms and conditions for resolution of the deficiency. ~~Except that a deficiency will not be applied to any determination of compliance with the portfolio standard set forth in NRS 704.7821 or 704.78213, as applicable, for subsequent compliance years.~~

6. While resolving any deficiency, a provider shall continue to meet its portfolio standard for the current compliance year.

7. In determining whether to impose an administrative fine or take other administrative action against the provider, the Commission will consider whether the provider should have built its own renewable energy systems to comply with its portfolio standard.

8. If a utility provider sells any portfolio energy credits pursuant to paragraph (b) or (c) of subsection 2 of NRS 704.7828 in any calendar year in which the Commission determines that the utility provider did not comply with its portfolio standard and the sale caused the utility provider not to comply with its portfolio standard, the Commission will not impose an administrative fine on the utility provider if the requirements of subsection 6 of NRS 704.7828 are satisfied.

9. If the Commission imposes an administrative fine that is assessed against a provider on each kilowatt-hour by which the provider failed to comply with its portfolio standard, the Commission will calculate the administrative fine, on a per kilowatt-hour basis:

(a) For a utility provider, in an amount that is not less than the difference between the just and reasonable average cost per kilowatt-hour to acquire or save electricity pursuant to renewable energy contracts or energy efficiency contracts and the overall average cost per kilowatt-hour to generate, acquire and save electricity that is incurred by the utility provider.

(b) For a nonutility provider, in an amount that is not less than the difference between the just and reasonable average cost per kilowatt-hour to acquire or save electricity pursuant to renewable energy contracts or energy efficiency contracts and the overall average cost per kilowatt-hour to generate, acquire and save electricity that is incurred by a utility provider designated by the Commission.

Sec. 13. NAC 704.8883 is hereby amended to read as follows:

704.8883 1. If the Commission imposes an administrative fine or takes other administrative action against a provider pursuant to NAC 704.8881, not later than 30 days after the date on which the Commission issues its order, the provider may file with the Commission a petition for an exemption from the administrative fine or other administrative action. If the provider files such a petition, the Commission will schedule a hearing on the petition to be held not later than 75 days after the date on which the petition is filed.

2. For the provider to be entitled to an exemption, the Commission must determine that :
~~{there was not a sufficient supply of electricity from renewable energy systems or a sufficient amount of energy savings from energy efficiency measures made available to the provider during~~

~~the most recently completed compliance year. The Commission will make such a determination only if it finds that:~~

(a) ~~{After the provider made its request for proposals for renewable energy contracts or energy efficiency contracts, the proposals received by the provider did not offer sufficient quantities of electricity or a sufficient amount of energy savings for the provider to comply with its portfolio standard or did not offer sufficient quantities of electricity pursuant to renewable energy contracts or a sufficient amount of energy savings pursuant to energy efficiency contracts with just and reasonable terms and}~~ *One of the conditions ~~{}~~ specified in paragraph (a) or (b) of subsection 6 of NRS 704.7821 existed in the most recently completed compliance year;*

(b) ~~{After the provider contracted for sufficient quantities of electricity pursuant to renewable energy contracts or for a sufficient amount of energy savings pursuant to energy efficiency contracts with just and reasonable terms and conditions, one or more of the portfolio energy systems or efficiency measures under contract were unable or failed to meet their contractual commitments to the provider or were prevented from meeting their contractual commitments to the provider based on federal, state or local requirements or standards;~~

~~—(c)}~~ The provider could not have economically or technically placed into commercial operation its own portfolio energy systems or efficiency measures; or

~~{(d)}~~ (c) Other facts and circumstances which the Commission deems relevant support a conclusion that there was not a sufficient supply of electricity from renewable energy systems or a sufficient amount of energy savings from energy efficiency measures made available to the provider. Such other facts and circumstances may include, without limitation, any regulatory delay attributable to the State of Nevada or any other governmental entity.

3. *The Commission will determine that the condition set forth in paragraph (a) of subsection 6 of NRS 704.7821 existed only if it finds that after the provider made its request for proposals for renewable energy contracts or energy efficiency contracts, the proposals received by the provider did not offer sufficient quantities of electricity or a sufficient amount of energy savings for the provider to comply with its portfolio standard or did not offer sufficient quantities of electricity pursuant to renewable energy contracts with just and reasonable terms and conditions.*

4. *The Commission will determine that the condition set forth in paragraph (b) of subsection 6 of NRS 704.7821 existed only if it finds that after the provider contracted for sufficient quantities of electricity pursuant to renewable energy contracts or for a sufficient amount of energy savings pursuant to energy efficiency contracts with just and reasonable terms and conditions, one or more of the renewable energy systems or efficiency measures under contract were unable or failed to meet their contractual commitments to the providers or were prevented from meeting their contractual commitments to the provider based on federal, state or local requirements or standards.*

5. If, after the hearing, the Commission determines that ~~there was not a sufficient supply of electricity from renewable energy systems or a sufficient amount of energy savings from energy efficiency measures made available to the provider during the most recently completed compliance year,~~ *one or more of the conditions set forth in subsection 2 existed,* the Commission:

(a) Will grant, in whole or in part, the petition for an exemption from the administrative fine or other administrative action; and

(b) Will not impose an administrative fine or take other administrative action against the provider with regard to any insufficiency in the portfolio standard . ~~that occurs because one or more of the portfolio energy systems or efficiency measures under contract were unable or failed to meet their contractual commitments to the provider or were prevented from meeting their contractual commitments to the provider based on federal, state or local requirements or standards.~~

Sec. 14. NAC 704.8927 is hereby amended to read as follows:

704.8927 1. Except as otherwise provided in NAC 704.8893, electricity generated by a renewable energy system which is authorized to participate in the system of portfolio energy credits must be metered and the renewable energy system shall submit meter readings quarterly to the Commission.

2. Except as otherwise provided in subsections 3 to 13, inclusive, the Administrator shall certify portfolio energy credits to a portfolio energy system or efficiency measure for:

(a) The net output of electricity in kilowatt-hours delivered to the transmission system or the distribution system and sold to a provider of electric service. The net output must be provided to the Administrator by the entity that owns, operates or controls the meters used to monitor the net output of electricity of the renewable energy system.

(b) The amount of electricity used by the portfolio energy system for its basic operations as set forth in NRS 704.78215, if the system:

(1) Is placed into operation on or before December 31, 2015; or

(2) Is placed into operation on or after January 1, 2016, and the provider entered into a contract for the purchase of electricity generated by the portfolio energy system on or before December 31, 2012.

(c) The amount of electricity used by a portfolio energy system that generates electricity from geothermal energy for the extraction and transportation of geothermal brine or used to pump and compress geothermal brine.

↳ Unless otherwise provided for in a contract for renewable energy, the portfolio energy credits certified by the Administrator pursuant to paragraphs (b) and (c) must be awarded to the owner of the renewable energy system.

3. The Administrator shall certify portfolio energy credits for the line loss factor of:

(a) A customer-maintained distributed renewable energy system placed into operation on or before December 31, 2015, by multiplying the metered number of kilowatt-hours generated and used by the customer who is served by the customer-maintained distributed renewable energy system by a factor of 1.05; and

(b) An energy efficiency measure by multiplying the number of kilowatt-hours saved by the energy efficiency measure by a factor of 1.05.

4. For a solar energy system, as defined in NRS 701B.150, placed into operation on or before December 31, 2015, the Administrator shall certify portfolio energy credits for participants in the Solar Energy Systems Incentive Program created in NRS 701B.240 by multiplying the actual kilowatt-hours produced by the solar renewable energy system by a factor of 2.4.

5. For a solar photovoltaic system, as described in NRS 704.7822, placed into operation on or before December 31, 2015, the Administrator shall certify portfolio energy credits by multiplying the actual kilowatt-hours produced by the solar renewable energy system by a factor of 2.4.

6. The Administrator shall certify portfolio energy credits for a system that uses a reverse polymerization process described in NRS 704.7823 by multiplying the actual kilowatt-hours produced by the renewable energy system by a factor of 0.7.

7. The Administrator shall certify portfolio energy credits for electricity saved by a ~~utility~~ provider ~~for provider of new electric resources~~ during its peak load periods, as defined in the applicable approved tariffs, from energy efficiency measures described in NRS 704.7802, by multiplying each kilowatt-hour of electricity saved by the ~~utility~~ provider during its peak load period from energy efficiency measures by a factor of 2.0.

8. A solar thermal energy system may use a thermal energy meter to measure the amount of energy generated by the system. The system will be credited with 1 kilowatt-hour of electricity generated for each 3,412 British thermal units of heat generated by the solar thermal energy system.

9. Except as otherwise provided in this subsection, the energy, measured in British thermal units, generated by a geothermal energy system providing heated water to one or more customers must be calculated as $(F \times T) \times 500$, less the system losses as calculated by a professional engineer and accepted by the Administrator, where:

(a) "F" equals the flow rate, measured in gallons per minute; and

(b) “T” equals the change in temperature across a heat exchanger or system, measured by the difference in temperature of the incoming fluid in degrees Fahrenheit and the temperature of the outgoing fluid in degrees Fahrenheit after it has passed through the heat exchanger or system.

↪ For heat exchangers used by end-use customers, it is assumed that no system losses occur, and no calculation of system losses by a professional engineer is required.

10. A net metering system will be credited annually with portfolio energy credits based upon the amount of metered electricity generated by the system or, if metering is not used, upon an estimate of the electricity generated by the net metering system by using the method of calculation designated by the Regulatory Operations Staff of the Commission for a solar energy system which does not use a meter to measure the generation of electricity of the system.

11. The portfolio energy credits generated by a net metering system must be assigned to the owner of the net metering system, unless the provisions of paragraph (a) of subsection 3 of NRS 704.775 apply, or another allocation of the portfolio energy credits is provided for in a written agreement between the utility provider and the owner of the net metering system.

12. If the Administrator is required by subsections 4 to 7, inclusive, to apply a multiplier in certifying portfolio energy credits for a portfolio energy system or efficiency measure and he or she determines that more than one multiplier may be applicable to the portfolio energy system or efficiency measure, the Administrator shall only apply the largest applicable multiplier in certifying the portfolio energy credits.

13. The Administrator shall certify portfolio energy credits for electricity saved from energy efficiency measures only for the period during which a provider may use energy efficiency measures to comply with its portfolio standard in accordance with NRS 704.7821 or 704.78213.

14. For the purposes of:

(a) Paragraph (b) of subsection 2, the date on which a portfolio energy system is placed into operation shall be deemed to be the date on which the system is placed into commercial operation and the system's capacity and estimated yearly generation must be measured by the system's capacity and estimated yearly generation on that date.

(b) Subsection 3, the date on which a customer-maintained distributed renewable energy system is placed into operation shall be deemed to be the date on which the system is installed on the premises of the customer and energized and the system's capacity and estimated yearly generation must be measured by the system's capacity and estimated yearly generation on that date.

(c) Subsection 4, the date on which a solar energy system is placed into operation shall be deemed to be the date on which the system is installed on the premises of the participant in the Solar Energy Systems Incentive Program and energized and the system's capacity and estimated yearly generation must be measured by the system's capacity and estimated yearly generation on that date.

(d) Subsection 5, the date on which a solar photovoltaic system is placed into operation shall be deemed to be the date on which the system is installed on the premises of a retail customer and energized and the system's capacity and estimated yearly generation must be measured by the system's capacity and estimated yearly generation on that date.

15. As used in this section:

(a) "Customer-maintained distributed renewable energy system" means a facility or energy system which:

- (1) Is used and maintained by an end-use customer;
 - (2) Uses renewable energy to generate electricity;
 - (3) Does not use the utility's system to transmit or distribute electricity; and
 - (4) Uses a meter and other equipment to:
 - (I) Measure the electricity generated by the energy system; and
 - (II) Reduce part, but not more than all, of the electrical load of the customer.
- (b) "Geothermal energy system" means an energy system that provides geothermally heated water to one or more customers and reduces the consumption of electricity or any fossil fuel.
- (c) "Reverse polymerization process" has the meaning ascribed to it in NRS 704.7823.
- (d) "Solar thermal energy system" means a renewable energy system that uses solar energy for the purpose of producing heat to reduce directly the consumption of electricity, natural gas or propane.

Sec. 15. NAC 704.9005 is hereby amended to read as follows:

704.9005 As used in NAC 704.9005 to 704.9525, inclusive, *and sections 2 to 5, inclusive, of this regulation*, and when used in a utility's resource plan, unless the context otherwise requires, the words and terms defined in NAC 704.9006 to 704.9173, inclusive, have the meanings ascribed to them in those sections.

Sec. 16. NAC 704.9154 is hereby amended to read as follows:

704.9154 "Renewable energy" has the meaning ascribed to it in NRS ~~704.7811~~ 704.7715.

Sec. 17. NAC 704.9215 is hereby amended to read as follows:

704.9215 1. A utility's resource plan must be accompanied by a summary that is suitable for distribution to the public. The summary must contain easily interpretable tables, graphs and

maps and must not contain any complex explanations or highly technical language. The summary must be approximately 40 pages in length.

2. The summary must include:

(a) A brief introduction, addressed to the public, describing the utility, its facilities and the purpose of the resource plan, and the relationship between the resource plan and the strategic plan of the utility for the duration of the period covered by the resource plan.

(b) The forecast of low growth, the forecast of high growth and the forecast of base growth of the peak demand for electric energy and of the annual electrical consumption, for the next 20 years, commencing with the year following the year in which the resource plan is filed, both with and without the impacts of programs for energy efficiency and conservation and an explanation of the economic and demographic assumptions associated with each forecast.

(c) A summary of the demand side plan listing each program and its effectiveness in terms of costs and showing the 20-year forecast of the reduction of demand and the contribution of each program to this forecast.

(d) A summary of the preferred plan:

(1) Showing each planned addition to the system for the next 20 years, commencing with the year following the year in which the resource plan is filed, with its anticipated capacity, cost and date of beginning service; and

(2) Explaining how the preferred plan reduces customer exposure to the price volatility of fossil fuels and the potential social cost of carbon as calculated pursuant to subsection 5 of NAC 704.937.

(e) A summary of renewable energy showing how the utility intends to comply with the portfolio standard and listing each existing contract for renewable energy and each existing contract for the purchase of renewable energy credits and the term and anticipated cost of each such contract.

(f) A summary of:

(1) The energy supply plan for the next 3 years setting out the anticipated cost, price volatility and reliability risks of the energy supply plan;

(2) The risk management strategy;

(3) The fuel procurement plan; and

(4) The purchased power procurement plan.

(g) A summary of the distributed resources plan for the next 3 years covered by the action plan of the utility setting out:

(1) The locational benefits and costs of the distributed resources, which may include benefits and costs to the electric grid.

(2) Identified barriers and recommendations to accept or overcome these barriers to the deployment of cost-effective distributed resources and proposed mechanisms pursuant to which cost-effective distributed resources will be deployed, in coordination with existing programs that have been approved by the Commission.

(3) Incremental utility investment or expenditures to be funded for the next 3 years to identify, evaluate and integrate cost-effective distributed resources into the distribution planning process.

(4) A summary of the methods and outcomes of the hosting capacity analysis described by paragraph (b) of subsection 3 of NAC 704.9237.

(5) A summary of forecasted loads and the forecasted growth of distributed energy resources for the electric grid over a 6-year period, at minimum, beginning with the year after the distributed resources plan is filed.

(h) A summary of the activities, acquisitions and costs included in the action plan of the utility.

(i) An integrated evaluation of the components of the resource plan which relates the preferred plan to the objectives of the strategic plan of the utility, and any other information useful in presenting to the public a comprehensive summary of the utility and its expected development.

3. As used in this section, “renewable energy” has the meaning ascribed to it in NRS 704.7811.

Sec. 18. NAC 704.9355 is hereby amended to read as follows:

704.9355 1. A utility shall develop a set of analyses of its options for supply to be considered for meeting the expected future demand on its system. These analyses must include an examination of the environmental impact of each option, taking into account the best available technologies and the environmental benefit of renewable resources. The options to be analyzed must include:

(a) Construction *or acquisition* of new generation facilities or upgrades to existing generation facilities, including retrofitting existing facilities with more efficient systems or converting to other fuels;

- (b) Construction of new transmission facilities or upgrades to existing transmission facilities;
- (c) Purchase of long-term transmission rights on transmission facilities owned by other persons;
- (d) Improvements in the efficiency of operations and scheduling, including, without limitation, improvements that are attributable to the proposed implementation of new digital and computer information system technologies;
- (e) Options of low carbon intensity; and
- (f) Transactions with other utilities, independent producers and utility customers for:
 - (1) Pooling of power;
 - (2) Purchases of power; or
 - (3) Exchanges of power.

2. As used in this section:

- (a) “Carbon intensity” has the meaning ascribed to it in subsection 5 of NRS 704.741.
- (b) “Environmental benefit of renewable resources” means the present worth over a 20-year period of the benefits associated with the generation and maintenance of renewable resources for supply of capacity or energy, or supply of both capacity and energy, that results in a reduction of harm to the environment.

Sec. 19. NAC 704.937 is hereby amended to read as follows:

704.937 1. A utility’s supply plan must contain a diverse set of alternative plans which include a list of options for the supply of capacity and electric energy that includes a description of all existing and planned facilities for generation and transmission, existing and planned power purchases, and other resources available as options to the utility for the future supply of electric

energy. The description must include the expected capacity of the facilities and resources for each year of the supply plan. At least one alternative plan must be of low carbon intensity and include:

(a) The generation or acquisition of an amount of renewable energy greater than required by NRS 704.7821;

(b) Changes to the utility's existing fleet of resources for the generation of power;

(c) The application of technology that would significantly reduce emissions of carbon; or

(d) Any combination thereof.

2. A utility shall identify the criteria it has used for the selection of its options for meeting the expected future demands for electric energy and shall explain how any conflicts among criteria are resolved.

3. In comparing alternative plans containing different resource options, the utility shall calculate the present worth of future requirements for revenue for each alternative plan for the supply of power. A comparison of the present worth of future requirements for revenue for each alternative plan must be presented in the resource plan. As calculated pursuant to this subsection, the present worth of future requirements for revenue for each alternative plan must include, without limitation, a reasonable range of costs associated with emissions of carbon in the 20-year period of the resource plan as private costs to the utility.

4. The utility shall calculate the present worth of societal costs for each alternative plan for the supply of power. The present worth of societal costs of a particular alternative plan must be determined by adding the environmental costs that are not internalized as private costs to the utility pursuant to subsection 3 to the present worth of future requirements for revenue. In

calculating the present worth of societal costs for each alternative plan pursuant to this subsection, the utility shall include as environmental costs the utility's estimate of the level of environmental costs resulting from carbon dioxide emissions for that year and the social cost of carbon.

5. For the purposes of subsection 4 and NAC 704.9215 and 704.9359, the social cost of carbon must be determined by subtracting the costs associated with emissions of carbon internalized as private costs to the utility pursuant to subsection 3 from the net present value of the future global economic costs resulting from the emission of each additional metric ton of carbon dioxide. The net present value of the future global economic costs resulting from the emission of an additional ton of carbon dioxide must be calculated using the best available science and economics such as the analysis set forth in the "Technical Support Document: - Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis" released by the Interagency Working Group on Social Cost of Greenhouse Gases in August 2016. This publication may be obtained, free of charge, at the Internet website https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf. The utility shall submit information supporting the method used by the utility to calculate the social cost of carbon.

6. The utility shall consider for each alternative plan the mitigation of risk by means of:

- (a) Flexibility;
- (b) Diversity;
- (c) Reduced size of commitments;
- (d) Choice of projects that can be completed in short periods;

- (e) Displacement of fuel;
- (f) Reliability;
- (g) Selection of fuel and energy supply portfolios; and
- (h) Financial instruments or electricity products.

7. The alternative plans of the utility must:

- (a) Provide adequate reliability;
- (b) Be within regulatory and financial constraints;
- (c) Meet the portfolio standard; and
- (d) Meet the requirements for environmental protection.

8. The utility shall identify its preferred plan and fully justify its choice by setting forth the criteria that influenced the utility's choice.

9. As used in this section, "renewable energy" has the meaning ascribed to it in NRS 704.7811.

Sec. 20. NAC 704.9489 is hereby amended to read as follows:

704.9489 1. Each resource plan of a utility must include a detailed action plan based on an integrated analysis of the demand side plan and supply plan of the utility. In its action plan, the utility shall specify all its actions that are to take place during the 3 years commencing with the year following the year in which the resource plan is filed. The action plan must contain:

- (a) An introductory section that explains how the action plan fits into the longer-term strategic plan of the utility.
- (b) A list of actions for which the utility is seeking the approval of the Commission.

(c) A schedule for the acquisition of data, including planned activities to update and refine the quality of the data used in forecasting.

(d) A specific timetable for acquisition of options for the supply of electric energy and for programs for energy efficiency and conservation.

(e) If changes in the methodology are being proposed, a description fully justifying the proposed changes, including an analysis of the costs and benefits. Any changes in methodology that are approved by the Commission must be maintained for the period described in the action plan.

(f) A section describing any plans of the utility to acquire additional modeling instruments.

(g) A section for the utility's program for energy efficiency and conservation, including:

(1) A description of continued planning efforts;

(2) A plan to carry out and continue selected measures for energy efficiency and conservation that have been identified as desirable; and

(3) Any impacts of imputed debt calculations associated with energy efficiency contracts in the preferred plan.

(h) A section for the utility's program for acquisition of resources for the supply of electric energy for the period covered by the action plan, including:

(1) The immediate plans of the utility for construction *or acquisition* of facilities or long-term purchases of power;

(2) The expected time for construction *or acquisition* of facilities and acquisition of long-term purchases of power identified in subparagraph (1);

(3) The major milestones of construction; and

(4) Any impacts of imputed debt calculations associated with renewable energy contracts or energy efficiency contracts in the preferred plan.

2. The action plan must contain an energy supply plan and a distributed resources plan.

3. The action plan must contain a budget for planned expenditures suitable for comparing planned and achieved expenditures. Expenses must be listed in a format that is consistent with the categories and periods to be presented in subsequent filings. The budget must be organized in the following categories:

(a) Forecasting of loads;

(b) Energy efficiency and conservation;

(c) Distributed resources;

(d) Plan for supply; and

(e) Financial plan.

4. The action plan must contain schedules suitable for comparing planned and actual activities and accomplishments. Milestones and points of decision committing major expenditures must be shown.

5. The action plan must contain a renewable energy zone transmission action plan for serving one or more of the renewable energy zones designated by the Commission or an explanation of why no renewable energy zone transmission action plan is contained in the action plan. In addition to the other action plan requirements set forth in this section, the renewable energy zone transmission action plan must include, with supporting data and documentation, for each action item recommended by the utility:

(a) For permitting, routing study and right-of-way acquisition expenses, evidence addressing:

(1) How such expenditures will facilitate compliance with NRS 704.7821 in a manner consistent with NAC 704.8901 to 704.8937, inclusive; and

(2) All other benefits Nevada retail ratepayers will derive from the expenses;

(b) For proposed construction and expansion of transmission facilities:

(1) Evidence of how the proposed construction and expansion will facilitate compliance with NRS 704.7821 in a manner consistent with NAC 704.8901 to 704.8937, inclusive;

(2) A listing and description, including detailed cost estimates and development schedules, of the transmission facilities recommended by the utility for construction or expansion;

(3) A listing and description of transmission alternatives that were considered by the utility, including transmission development partnerships;

(4) Data and economic analysis that supports the transmission projects recommended by the utility, including, without limitation, a comparison of the levelized cost, including transmission, of procuring renewable resources from the renewable energy zones proposed to be served by the utility's recommended transmission projects to other renewable resource options, including those that are located in and out of renewable energy zones designated by the Commission;

(5) Evidence of the financial commitments from developers of renewable energy projects located in the affected renewable energy zones;

(6) An estimate of the level of capacity and energy that the utility expects to utilize from the affected renewable energy zones in the next 20 years, commencing with the year following the year in which the resource plan is filed; and

(7) The estimated time frame to fully utilize the capacity of the construction and expansion of transmission facilities recommended by the utility; and

(c) In addition to the renewable energy zone transmission action plan requirements set forth in paragraph (b), for construction and expansion of transmission infrastructure that will serve both Nevada retail ratepayers and export markets outside of Nevada:

(1) Evidence that any renewable energy developers wishing to export energy outside of Nevada have a buyer for their energy and that the buyer has a means of delivering the energy from the transmission system of the Nevada utility to the point of delivery;

(2) A strategic plan to mitigate the potential financial risks to Nevada retail ratepayers associated with stranded investment and infrastructure that is not intended to provide service to Nevada retail ratepayers, including, without limitation, safeguards to monitor the financial risk to Nevada's retail ratepayers and criteria to trigger an amendment to the renewable energy transmission action plan should changes in circumstance occur which could expose Nevada retail ratepayers to such risks; and

(3) Identification of the potential resources in the renewable energy zones, including the resources under contract, resources under development, known completion dates and the known amount of capacity and energy to be produced by renewable energy projects in the affected renewable energy zones for customers outside of Nevada.

6. The action plan must include the surplus asset retirement plan required by NRS 704.734 for each asset that has been classified as surplus by the utility pursuant to NRS 704.7338 or reclassified as surplus by the Commission pursuant to NRS 704.7339.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File Nos. R027-20 and R158-20

1. A clear and concise explanation of the need for the adopted regulation.

The regulations implement Senate Bill (“SB”) 358 (2019).

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

(b) The Reno Sparks Chamber of Commerce; Conservatives for Responsible Stewardship; the Bonneville Power Administration (“BPA”); The Western Way; the Nevada Rural Electric Association (“NREA”); Western Resource Advocates; e-centricity, LLP; the Nevada Conservation League; Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively referred to as “NV Energy”); Interwest Energy Alliance (“Interwest”); Wells Rural Electric Company; Mt. Wheeler Power Inc.; Vote Solar; First Solar, Inc.; the Bureau of Consumer Protection (“BCP”); and the Regulatory Operations Staff (“Staff”) of the Commission filed comments in the matter prior to the draft regulation language being sent to the Legislative Counsel Bureau (“LCB”) for review. Following LCB review, NV Energy, BCP and Interwest filed comments. The commenters generally supported the proposed regulation with some suggestions for modification of specific provisions as summarized at ¶¶15-18 of the July 14, 2021, PUCN Order adopting the regulation as permanent.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

3. The number of persons who:

(a) **Attended each hearing:** 6

- (b) **Testified at each hearing:** 6
- (c) **Submitted written comments:** 3

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

- (a) **Name;**
- (b) **Telephone number;**
- (c) **Business address;**
- (d) **Business telephone number;**
- (e) **Electronic mail address; and**
- (f) **Name of entity or organization represented.**

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- 5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Proposed revisions to the regulations proposed by the participants were generally incorporated in the regulation.

- 7. 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: both adverse and beneficial effects, and both immediate and long-term effects.**

- (a) Estimated economic effect on the businesses which they are to regulate.**

The regulation does not impose any economic effect on the businesses the regulation is to regulate.

(b) Estimated economic effect on the public which they are to regulate.

The regulation does not regulate the public.

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

Any costs associated with the regulation are considered incremental in nature.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate other State or federal regulations.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A

11. If the 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.

N/A

12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?

The Regulatory Operations Staff (“Staff”) of the Commission conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended to the Commission that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 19-06010 on March 16, 2021.

STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)

LCB File Nos. R027-20 and R158-20 (PUCN Docket No. 19-06010)

- 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.**

N/A. *See* Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608(1), the Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“PUCN”) conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on March 5, 2021, Staff memorialized its conclusion that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 1 hereto.

On March 16, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 2 hereto.

NRS 233B.0608(2)(a) only requires an agency to consult with owners and officers of small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such “affected” small businesses exist.

- 2. The manner in which the analysis was conducted.**

See Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Staff Delphi method to determine the potential impact of a regulation on small businesses.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
 - (a) Both adverse and beneficial effects; and**
 - (b) Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

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.

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608(1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On March 16, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. See Attachment 2.

NRS 233B.0608(2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business ...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods that were considered for reducing the non-existent impacts.

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

See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

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.

N/A. See also Informational Statement accompanying the Regulation, Question No. 11.

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.


See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. *See also* Attachment 1.

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

The PUCN complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses or directly restricts the formation, operation, or expansion of a small business. The PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of Staff.

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

DATED this 27th day of July, 2021.



STEPHANIE MULLEN,
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: February 17, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: Christine Greve, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 05-21; Item No. 4A; Docket No. 19-06010;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate
Bill 358 (2019).

I. Summary

On June 6, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Senate Bill 358 (2019) (“SB 358”). The Commission designated this matter as Docket No. 19-06010.

On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop (“Notice”).

On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments. On July 22, 2019, the Conservatives for Responsible Stewardship filed comments. On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments. On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, the Regulatory Operations Staff of the Commission (“Staff”), Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Attorney General’s Bureau of Consumer Protection (“BCP”) filed a letter stating that it will not submit initial comments but may file reply comments. On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP filed comments. On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments. On August 15, 2019, NREA filed reply comments. On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.

On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to the Commission’s Procedural Order No. 1, paragraph (A)(13)(a). After an informal stakeholder process and multiple workshops, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review on February 24, 2020. The first set of regulations addressed the acquisition of renewable energy facilities by the electric utility, Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”).

On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review regarding Renewable Portfolio Standard (“RPS”) compliance for rural electric cooperative associations described in SB 358.

On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form. On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.

On January 28, 2021, the Presiding Officer issued a procedural order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulation, provided as Attachments 1 and 2 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff to present a report of the results of this investigation along with a statement identifying the methodology used in determining the impact on small business and the reasons supporting the conclusions of the report. Staff was further directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for March 9, 2021.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- a. Impose a direct and significant economic burden upon small businesses; or
- b. Directly restrict the formation, operation, or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Staff Electrical Engineers, one (1) Staff Financial Analyst, and one (1) Staff Economist, all of whom were involved in the rulemaking in this Docket and all of whom are some of the most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four of whom were involved in the rulemaking in this Docket and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used their background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

Immediate Adverse Effects:

The proposed regulations will not directly restrict the formation, operation, or expansion of small businesses. The proposed regulations will not have immediate adverse effects on small businesses.

The first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility. The proposed regulations should not create a direct economic burden on small businesses.

Regarding RPS compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

Immediate Beneficial Effects:

The proposed regulations will not have immediate beneficial effects on small businesses. With regards to the acquisition of renewable generation facilities, any short-term benefit is enjoyed by NV Energy, as they will be able to own and operate renewable generation facilities outside of the resource planning process and gain the opportunity to compete in the open market. This may also reduce uncertainty in the marketplace and for its participants. With regards to RPS compliance, the proposed regulations could provide a public relations opportunity. To Staff’s knowledge, Nevada is the first state to qualify large hydropower for RPS compliance. More education and awareness of renewable energy will lead to more

acquisition of sustainable and reliable energy, and lead to the reduction of carbon dioxide over time.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will not have direct long-term adverse effects on small businesses. The proposed regulations could potentially increase electric rates long-term by requiring additional renewable energy investment, which is typically more expensive than the classic fossil fuel counterparts. However, any impact that may occur is a result of SB 358, not the proposed regulations.

Long-Term Beneficial Effects:

The proposed regulations will not have direct long-term beneficial effects on small businesses. As discussed previously, allowing the purchase of renewable generation facilities by NV Energy should reduce uncertainty in the marketplace, increase financial security for the utility, and provide more sustainable and reliable energy. Additional potential beneficial effects will likely flow to the public in the form of increased process codification and oversight. While those effects might not translate into significant economic benefits, they could lead to some reduced cost over the long term through some increased regulatory efficiency. Those potential cost reductions, however, would likely be minimal. Similarly, allowing hydropower to qualify as “renewable energy” will encourage more sustainable and reliable energy growth for the State of Nevada and lead to the reduction of carbon dioxide emissions. However, any impacts would be due to SB 358, not the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission may incur additional workload to administer the proposed regulations and address any non-compliance with the proposed regulations. However, Staff anticipates that such workload would be minimal, and any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission’s and Staff’s existing resources.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

III. Notice and Subsequent Action

On January 28, 2021, the Presiding Officer issued a procedural order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusions and Recommendations

Staff recommends, in accordance with NRS 233B.0608(1), the Commission find the proposed regulations are not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

Staff further recommends, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

ATTACHMENT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 358 (2019).)
) Docket No. 19-06010
)

At a general session of the Public Utilities Commission of Nevada, held at its offices on March 9, 2021.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following findings and conclusions:

I. INTRODUCTION

The Commission opened a Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 358 (2019) (“SB 358”). This rulemaking has been designated by the Commission as Docket No. 19-06010.

II. SUMMARY

The proposed regulation in Docket No. 19-06010 is neither likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- On June 6, 2019, the Commission opened a rulemaking docket to implement SB 358.
- This matter is being conducted pursuant to NRS and the Nevada Administrative Code (“NAC”) Chapters 233B, 703, 704, and SB 358, including, but not limited to, NRS 703.025 and 704.210.
- On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- The Regulatory Operations Staff of the Commission (“Staff”) participates as a matter of

right pursuant to NRS 703.301.

- On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments.
- On July 22, 2019, the Conservatives for Responsible Stewardship filed comments.
- On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments.
- On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, Staff, Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP (“e-centricity”) filed comments.
- On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments.
- On August 15, 2019, NREA filed reply comments.
- On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.
- On September 12, 2019, the Presiding Officer issued Procedural Order No. 1.
- On September 30, 2019, the Presiding Officer issued Amended Procedural Order No. 1.
- On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to Procedural Order No. 1, paragraph (A)(13)(a).
- On November 7, 2019, the Commission held an informal workshop.
- On November 12, 2019, the Presiding Officer issued Procedural Order No. 2.
- On December 5, 2019, Interwest, NREA, NV Energy, e-centricity, Vote Solar, Staff, BCP, and WRA filed comments.
- On December 13, 2019, the Commission held a continued workshop. Staff, BCP, NV Energy, WRA, BPA, Interwest, NREA, Vote Solar, and e-centricity made appearances.
- On December 16, 2019, the Presiding Officer issued Procedural Order No. 3.

- On January 22, 2020, NREA, First Solar, Inc. (“First Solar”), BCP, NV Energy, Staff, Interwest, WRA, Vote Solar, and e-centricity filed status updates, as requested in Procedural Order No. 3.
- On January 27, 2020, Staff filed a letter advising its support of the draft regulations filed by NV Energy in its January 22, 2020, status update filed in response to Procedural Order No. 3.
- On January 27, 2020, the Commission held a continued workshop. Staff, NV Energy, BCP, BPA, WRA, Interwest, NREA, e-centricity, Vote Solar, and First Solar made appearances.
- On January 28, 2020, the Presiding Officer issued Procedural Order No. 4, requesting reply comments regarding draft regulations and a status report regarding language for a proposed regulation governing technical compliance for rural electric cooperative associations for providers that exceed the one million megawatt-hour threshold.
- On February 10, 2020, WRA, BCP, NREA, NV Energy, Staff, e-centricity, and Vote Solar filed reply comments regarding proposed draft regulations.
- On February 24, 2020, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review.
- On February 25, 2020, the Presiding Officer issued Procedural Order No. 5, requesting information from NV Energy and interested parties regarding planning information consistent with a net-zero carbon emissions goal by the year 2050.
- On July 27, 2020, NREA, BCP, and Staff filed status updates requested by Procedural Order No. 4.
- On August 10, 2020, NREA filed an addendum to its July 27, 2020, status update.
- On August 14, 2020, the Presiding Officer issued Procedural Order No. 6.
- On September 11, 2020, NV Energy, NREA, BCP, WRA, BPA, and Staff filed comments responsive to Procedural Order No. 6.
- On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review.
- On September 24, 2020, the Presiding Officer issued Procedural Order No. 7.
- On November 4, 2020, NV Energy requested additional time to file the information regarding a net-zero carbon emissions goal by the year 2050 requested by Procedural Order No. 5. NV Energy states it has been working diligently on the report but needs

additional time to refine and finalize the report.

- On November 6, 2020, the Presiding Officer issued Procedural Order No. 8, extending the time for NV Energy's report and extending the time for responses by other participants to said report.
- On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form.
- On November 13, 2020, NV Energy filed a report containing information regarding planning to achieve a net-zero carbon emissions goal by the year 2050, in accordance with Procedural Order No. 5 and Procedural Order No. 8.
- On January 8, 2021, Interwest, WRA, and BCP filed comments responsive to NV Energy's report.
- On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.
- On January 28, 2021, the Commission issued Procedural Order No. 9, requesting Staff perform an investigation pursuant to NRS 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that Procedural Order, are likely to: impose a direct and significant economic burden upon small businesses; or directly restrict the formation, operation, or expansion of small business.
- On March 5, 2021, Staff filed with the Commission its Small Business Impact Report, attached hereto as Attachment 1.

IV. SMALL BUSINESS IMPACT REPORT

Staff's Report

1. Staff conducted a Delphi Method exercise to determine the impact of the proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses.

2. Staff states that the first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility.

3. Staff further states that regarding renewable portfolio standard (“RPS”) compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will

continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

4. Staff states that the proposed regulations will not have immediate or long term direct adverse effects on small businesses.

5. Additionally, Staff states that the proposed regulations will not have immediate or long term direct beneficial effects on small businesses.

6. Based on the foregoing, Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations in Docket No. 19-06010 are neither likely to impose a direct and significant economic burden on small businesses, nor are they likely to directly restrict the formation, operation or expansion of a small business. Staff recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses.

Commission Discussion and Findings

7. The Commission finds that the proposed regulation is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

8. The Commission finds that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses. The Commission further finds that the provisions of NRS 233B.0608 have been met.

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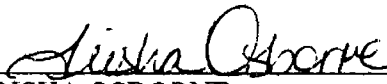
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THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 19-06010 is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,

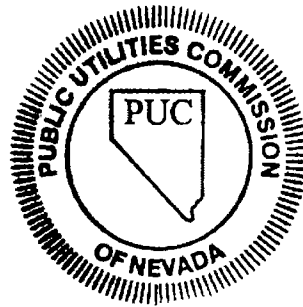


TRISHA OSBORNE,
Assistant Commission Secretary
On behalf of the Commissioners

Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada
 3/16/21

(SEAL)



ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: February 17, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: Christine Greve, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 05-21; Item No. 4A; Docket No. 19-06010;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate
Bill 358 (2019).

I. Summary

On June 6, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Senate Bill 358 (2019) (“SB 358”). The Commission designated this matter as Docket No. 19-06010.

On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop (“Notice”).

On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments. On July 22, 2019, the Conservatives for Responsible Stewardship filed comments. On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments. On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, the Regulatory Operations Staff of the Commission (“Staff”), Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Attorney General’s Bureau of Consumer Protection (“BCP”) filed a letter stating that it will not submit initial comments but may file reply comments. On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP filed comments. On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments. On August 15, 2019, NREA filed reply comments. On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.

On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to the Commission’s Procedural Order No. 1, paragraph (A)(13)(a). After an informal stakeholder process and multiple workshops, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review on February 24, 2020. The first set of regulations addressed the acquisition of renewable energy facilities by the electric utility, Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”).

On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review regarding Renewable Portfolio Standard (“RPS”) compliance for rural electric cooperative associations described in SB 358.

On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form. On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.

On January 28, 2021, the Presiding Officer issued a procedural order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulation, provided as Attachments 1 and 2 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff to present a report of the results of this investigation along with a statement identifying the methodology used in determining the impact on small business and the reasons supporting the conclusions of the report. Staff was further directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for March 9, 2021.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- a. Impose a direct and significant economic burden upon small businesses; or
- b. Directly restrict the formation, operation, or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Staff Electrical Engineers, one (1) Staff Financial Analyst, and one (1) Staff Economist, all of whom were involved in the rulemaking in this Docket and all of whom are some of the most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four of whom were involved in the rulemaking in this Docket and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used their background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

Immediate Adverse Effects:

The proposed regulations will not directly restrict the formation, operation, or expansion of small businesses. The proposed regulations will not have immediate adverse effects on small businesses.

The first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility. The proposed regulations should not create a direct economic burden on small businesses.

Regarding RPS compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

Immediate Beneficial Effects:

The proposed regulations will not have immediate beneficial effects on small businesses. With regards to the acquisition of renewable generation facilities, any short-term benefit is enjoyed by NV Energy, as they will be able to own and operate renewable generation facilities outside of the resource planning process and gain the opportunity to compete in the open market. This may also reduce uncertainty in the marketplace and for its participants. With regards to RPS compliance, the proposed regulations could provide a public relations opportunity. To Staff’s knowledge, Nevada is the first state to qualify large hydropower for RPS compliance. More education and awareness of renewable energy will lead to more

acquisition of sustainable and reliable energy, and lead to the reduction of carbon dioxide over time.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will not have direct long-term adverse effects on small businesses. The proposed regulations could potentially increase electric rates long-term by requiring additional renewable energy investment, which is typically more expensive than the classic fossil fuel counterparts. However, any impact that may occur is a result of SB 358, not the proposed regulations.

Long-Term Beneficial Effects:

The proposed regulations will not have direct long-term beneficial effects on small businesses. As discussed previously, allowing the purchase of renewable generation facilities by NV Energy should reduce uncertainty in the marketplace, increase financial security for the utility, and provide more sustainable and reliable energy. Additional potential beneficial effects will likely flow to the public in the form of increased process codification and oversight. While those effects might not translate into significant economic benefits, they could lead to some reduced cost over the long term through some increased regulatory efficiency. Those potential cost reductions, however, would likely be minimal. Similarly, allowing hydropower to qualify as “renewable energy” will encourage more sustainable and reliable energy growth for the State of Nevada and lead to the reduction of carbon dioxide emissions. However, any impacts would be due to SB 358, not the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission may incur additional workload to administer the proposed regulations and address any non-compliance with the proposed regulations. However, Staff anticipates that such workload would be minimal, and any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission’s and Staff’s existing resources.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

III. Notice and Subsequent Action

On January 28, 2021, the Presiding Officer issued a procedural order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusions and Recommendations

Staff recommends, in accordance with NRS 233B.0608(1), the Commission find the proposed regulations are not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

Staff further recommends, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

**ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R032-20

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

AUTHORITY: §§1 and 2, NRS 703.025, 703.154 and 704.210.

A REGULATION relating to gas pipelines; requiring an operator of certain intrastate gas pipelines to conduct periodic leakage surveys; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal regulations require a person who engages in the transportation of gas through a distribution system to conduct a leakage survey with leak detector equipment at intervals not exceeding 15 months, but at least once per calendar year, in business districts. Outside of business districts, federal regulations require a person who engages in the transportation of gas through a distribution system to conduct such a leakage survey at intervals not exceeding either 39 months or 63 months, depending on the type of distribution line. (49 C.F.R. § 192.723)

Existing state law authorizes the Public Utilities Commission of Nevada to adopt regulations to ensure the safe operation and maintenance of storage facilities and intrastate pipelines used to store and transport natural gas, liquefied petroleum gas, in its liquid or vapor form, or any mixture thereof. (NRS 703.154)

Section 1 of this regulation requires a person who operates or maintains an intrastate pipeline for the transportation of natural gas, liquefied petroleum gas, in its liquid or vapor form, or any mixture thereof, to conduct a leakage survey with leak detector equipment on all such pipelines at least once per calendar year, at intervals not exceeding 15 months.

Section 2 of this regulation establishes January 1, 2023, as the effective date of this regulation.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A person who operates or maintains any intrastate pipeline in this State which is used to transport natural gas, liquefied petroleum gas, in its liquid or vapor form, or any mixture thereof, shall conduct a leakage survey with leak detector equipment on any such intrastate pipeline, including, without limitation, tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at least once per calendar year, at intervals not exceeding 15 months.

2. As used in this section, “pipeline” has the meaning ascribed to it in 49 C.F.R. § 192.3, as adopted by reference in NAC 704.460.

Sec. 2. This regulation becomes effective on January 1, 2023.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R032-20

1. A clear and concise explanation of the need for the adopted regulation.

The regulation establishes increased leak survey requirements for distribution pipelines transporting natural gas and/or liquefied petroleum gas in the interests of public safety.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Reno Gazette Journal
Tonopah Times-Bonanza

and posted at the following locations:

Public Utilities Commission 1150 East William Street Carson City, Nevada 89701	Public Utilities Commission 9075 West Diablo Drive, Suite 250 Las Vegas, Nevada 89148
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(b) Sierra Pacific Power Company d/b/a NV Energy (“SPPC”); Southwest Gas Corporation (“SWG”); AmeriGas Propane, L.P.; the National Propane Gas Association; and the Regulatory Operations Staff (“Staff”) of the Commission filed comments in the matter prior to the draft regulation language being sent to the Legislative Counsel Bureau (“LCB”) for review. Following LCB review, SPPC and SWG filed comments. The commenters generally supported the proposed regulation with some questions and suggestions regarding regulatory accounting treatment summarized at ¶3 of the July 14, 2021, PUCN Order adopting the regulation as permanent.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

3. The number of persons who:

- (a) **Attended each hearing:** 3
- (b) **Testified at each hearing:** 3
- (c) **Submitted written comments:** 2

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
- (a) **Name;**
 - (b) **Telephone number;**
 - (c) **Business address;**
 - (d) **Business telephone number;**
 - (e) **Electronic mail address; and**
 - (f) **Name of entity or organization represented.**

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Carson City, Nevada 89701
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davidnoble@puc.nv.gov

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation language, as returned from LCB, was acceptable to all participants, and accomplished the purpose of the rulemaking.

- 7. 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: both adverse and beneficial effects, and both immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation does not impose any economic effect on the businesses the regulation is to regulate due to the regulatory accounting allowances discussed in ¶¶3 and 6 of the July 14, 2021, PUCN Order adopting the regulation as permanent.

(b) Estimated economic effect on the public which they are to regulate.

The regulation does not regulate the public.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

Any costs associated with the regulation are considered incremental in nature.

- 9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The regulation somewhat overlaps 49 CFR §192.723, a regulation promulgated by the Pipeline and Hazardous Materials Administration, of the Department of Transportation. 49 CFR §192.723 requires annual leakage surveying in business districts, but only requires leakage surveying outside of business districts every five years. The regulation in R032-20 requires annual leakage surveying in all areas in Nevada. The PUCN and other participants in the rulemaking believe the more stringent requirement will lead to safer pipelines, and fewer catastrophic incidents.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

See the response to question 9 above.

- 11. If the 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.**

N/A.

- 12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?**

The Regulatory Operations Staff (“Staff”) of the Commission conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 19-09011 on February 2, 2021.

STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)

LCB File No. R032-20 (PUCN Docket No. 19-09011)

- 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.**

N/A. *See* Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608 (1), the Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“PUCN”) conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on January 21, 2021, Staff memorialized its conclusion that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 1 hereto.

On February 2, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 2 hereto.

NRS 233B.0608 (2)(a) only requires an agency to consult with owners and officers of small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such “affected” small businesses exist.

- 2. The manner in which the analysis was conducted.**

See Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Staff Delphi method to determine the potential impact of a regulation on small businesses.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
 - (a) Both adverse and beneficial effects; and**
 - (b) Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

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.

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608 (1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On February 2, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. See Attachment 2.

NRS 233B.0608 (2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business ...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods that were considered for reducing the non-existent impacts.

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

See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

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.

N/A. See also Informational Statement accompanying the Regulation, Question No. 11.

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.

See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. See also Attachment 1.

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

The PUCN complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses or directly restricts the formation, operation, or expansion of a small business. The PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of Staff.

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

DATED this 23 day of July, 2021.



STEPHANIE MULLEN,
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: January 11, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: David Noble, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda No. 02-21; Item No. 4A; Docket No. 19-09011; Investigation and rulemaking to consider, amend, and/or adopt regulations establishing increased leak survey requirements for distribution pipelines transporting natural gas and/or liquefied petroleum gas.

I. Background:

The Public Utilities Commission of Nevada (“Commission”) opened an investigation and rulemaking to consider amending and/or adopting regulations in Chapter 703 of the Nevada Administrative Code (“NAC”) establishing increased leak survey requirements for distribution pipelines transporting natural gas and/or liquefied petroleum gas. The Commission designated this matter as Docket No. 19-09011.

On December 23, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.

On January 24, 2020, Sierra Pacific Power Company d/b/a NV Energy (“NV Energy”), Southwest Gas Corporation, the Regulatory Operations Staff (“Staff”) of the Commission, AmeriGas Propane, L.P., and National Propane Gas Association filed comments.

On February 7 and 21, 2020, Staff and NV Energy, respectively, filed reply comments.

On March 5, 2020, the Commission held a workshop.

On December 9, 2020, the Commission issued a Procedural Order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that Procedural Order, are likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation or expansion of small business.

The Procedural Order directed Staff to conduct an investigation into whether the proposed regulations are likely to affect small businesses as contemplated in NRS 233B.0608(1) and to present a report of the results of this investigation, including all information required by NRS

233B.0609(1), along with a statement identifying the methodology used in determining the impact on small businesses. Staff was further directed to place the report on a Commission agenda meeting not later than the open meeting of the Commission scheduled for January 27, 2021.¹

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608 (1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Financial Analysts and two (2) Engineers, all of whom were involved in the rulemaking in this Docket and who are most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis:

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four (4) of whom are involved in the rulemaking and who are most familiar with the subject matter of the rulemaking. Specifically, two (2) Financial Analysts and two (2) Engineers participated in this analysis. Each participant in the exercise used the participant’s background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

The proposed regulations apply to operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, to conduct leakage surveys with leak detector equipment, on all such pipelines at least once per calendar year, at intervals not exceeding 15 months.

¹ The open meeting has been rescheduled for January 26, 2021.

Immediate Adverse Effects:

The proposed regulations will have immediate adverse effects on small businesses that operate intrastate gas pipelines resulting in additional hours dedicated to leak testing as a result of this regulation. However, the cost of the additional leak testing is outweighed by the benefits of decreasing the likelihood of a significant gas leak causing significant damage to property and/or lives.

Immediate Beneficial Effects:

The proposed regulations will have immediate beneficial effects on small businesses that operate intrastate gas pipelines to the extent that additional testing decreases the likelihood of gas leaks causing significant damage to property and/or lives.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will have direct long-term adverse effects on small businesses that operate intrastate gas pipelines resulting in additional hours dedicated to leak testing as a result of this regulation. However, the cost of the additional leak testing is outweighed by the benefits of decreasing the likelihood of a significant gas leak causing significant damage to property and/or lives.

Long-Term Beneficial Effects:

Similar to the immediate beneficial effects outlined above, the proposed regulations will have direct long-term beneficial effects on small businesses that operate intrastate gas pipelines to the extent that additional testing decreases the likelihood of gas leaks causing significant damage to property or lives.

Further, small businesses will no longer have to track the disparate leakage survey requirements between residential areas and business districts, thereby eliminating potential penalties for not correctly identifying business districts which are already subject to the annual leakage survey requirement.

Cost to the Commission to enforce or administer the proposed regulations, including start-up and ongoing costs:

There should be no incremental costs associated with the Commission's enforcement or administration of this regulation. The costs of responding to leak incidences could be reduced if pipeline operators are detecting and repairing leaks before any major incidence occurs.

As a result of the investigation, Staff has concluded that the proposed regulations are intended to regulate the activities of operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, some of which may be small businesses. However, the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation,

or expansion of small businesses. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

It is anticipated that the proposed regulations will benefit small businesses over time by reducing the significant risks posed by a leak that goes undetected and causes an explosion endangering lives and property, resulting in significant financial exposure to the pipeline operator.

III. Notice and Subsequent Action:

On December 9, 2020, the Presiding Officer issued a Procedural Order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusion:

The proposed regulations affecting operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, are intended to increase public safety by increasing the frequency of leakage surveys in residential areas.

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, or to restrict the formation, operation or expansion of a small business.

Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

ATTACHMENT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and Rulemaking to consider, amend, and/or)
adopt regulations establishing increased leak survey)
requirements for distribution pipelines transporting natural) Docket No. 19-09011
gas and/or liquefied petroleum gas.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 26, 2021.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following findings and conclusions:

I. INTRODUCTION

The Public Utilities Commission of Nevada (“Commission”) opened an Investigation and Rulemaking to consider, amend, and/or adopt a regulation in Chapter 703 of the Nevada Administrative Code (“NAC”) regarding annual leak surveys of distribution pipelines transporting natural gas and/or liquefied petroleum, consistent with ordering paragraph 2 of the September 18, 2019, Order in Docket No. 19-08021. This rulemaking has been designated by the Commission as Docket No. 19-09011.

II. SUMMARY

The proposed regulation in Docket No. 19-09011 is neither likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation or expansion of a small business. Therefore, a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- This Investigation and Rulemaking is being conducted pursuant to the NRS and the NAC Chapters 703 and 704, including but not limited to, NRS 703.025, 704.210, and NRS Chapter 233B.

- On December 23, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments and Notice of Workshop.
- On January 24, 2020, the Regulatory Operations Staff of the Commission (“Staff”), Southwest Gas Corporation (“SWG”), Sierra Pacific Power Company d/b/a/ NV Energy (“SPPC”), AmeriGas Propane, L.P. (“AmeriGas”), and the National Propane Gas Association (“NPGA”) filed comments.
- On February 7, 2020, Staff filed Reply Comments.
- On February 21, 2020, SPPC filed Reply Comments.
- On March 5, 2020, the Presiding Officer held a workshop. Staff, SWG, SPPC, AmeriGas, and the Clark County Water Reclamation District made appearances. Comments and the next procedural steps were discussed.
- On March 5, 2020, the draft regulation language was sent to the Legislative Counsel Bureau (“LCB”) for pre-adoption review, pursuant to NRS 233B.063.
- On November 30, 2020, the Commission received revised regulations from LCB.
- On December 9, 2020, the Commission issued a Procedural Order requesting Staff perform an investigation pursuant to NRS 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that Procedural Order, are likely to: Impose a direct and significant economic burden upon small businesses; or Directly restrict the formation, operation, or expansion of small business.
- On January 21, 2021, Staff filed with the Commission its Small Business Impact Report, attached hereto as Attachment 1.

IV. SMALL BUSINESS IMPACT REPORT

Staff’s Report

1. Staff conducted a Delphi Method exercise to determine the impact of the proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses.

2. Staff states that the proposed regulations apply to operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, requiring those operators to perform leakage surveys with leak detector equipment on all such pipelines at least once each calendar year at intervals not exceeding 15 months.

3. Staff further states that the proposed regulations will have immediate and long term direct adverse effects on small businesses, consisting of the increased costs related to more frequent leak testing but that those potential effects are outweighed by the benefits of decreasing the likelihood of a significant gas leak causing significant damage to property and/or significant risk to public health and safety.

4. Additionally, Staff states that the proposed regulations will have immediate and long term direct beneficial effects on small businesses, to the extent that additional testing decreases the likelihood of a significant gas leak causing significant damage to property and/or significant risk to public health and safety, and could result in significant financial liability to the small business. Further, the proposed regulations eliminate the need for operators to track the differences in leakage survey requirements between residential areas and business districts, thereby eliminating potential penalties for not correctly identifying business districts, which are already subject to the annual leakage survey requirement.

5. Based on the foregoing, Staff contends that the potential benefits outweigh the potential burdens and, therefore, recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulation in Docket No. 19-09011 is neither likely to impose a direct and significant economic burden on small businesses, nor is it likely to directly restrict the formation, operation or expansion of a small business. Staff recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination

of the impact of the proposed regulation on small businesses.

Commission Discussion and Findings


6. The Commission finds that the proposed regulation is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

7. The Commission finds that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses. The Commission further finds that the provisions of NRS 233B.0608 have been met.

THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 19-09011 is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,

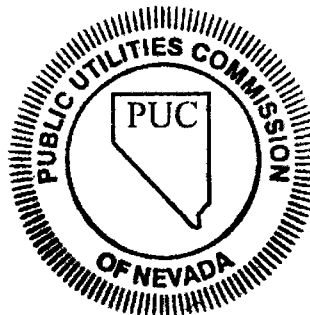


TRISHA OSBORNE,
Assistant Commission Secretary
On behalf of the Commissioners

Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada
 2/2/21

(SEAL)



ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: January 11, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: David Noble, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda No. 02-21; Item No. 4A; Docket No. 19-09011; Investigation and rulemaking to consider, amend, and/or adopt regulations establishing increased leak survey requirements for distribution pipelines transporting natural gas and/or liquefied petroleum gas.

I. Background:

The Public Utilities Commission of Nevada (“Commission”) opened an investigation and rulemaking to consider amending and/or adopting regulations in Chapter 703 of the Nevada Administrative Code (“NAC”) establishing increased leak survey requirements for distribution pipelines transporting natural gas and/or liquefied petroleum gas. The Commission designated this matter as Docket No. 19-09011.

On December 23, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.

On January 24, 2020, Sierra Pacific Power Company d/b/a NV Energy (“NV Energy”), Southwest Gas Corporation, the Regulatory Operations Staff (“Staff”) of the Commission, AmeriGas Propane, L.P., and National Propane Gas Association filed comments.

On February 7 and 21, 2020, Staff and NV Energy, respectively, filed reply comments.

On March 5, 2020, the Commission held a workshop.

On December 9, 2020, the Commission issued a Procedural Order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that Procedural Order, are likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation or expansion of small business.

The Procedural Order directed Staff to conduct an investigation into whether the proposed regulations are likely to affect small businesses as contemplated in NRS 233B.0608(1) and to present a report of the results of this investigation, including all information required by NRS

233B.0609(1), along with a statement identifying the methodology used in determining the impact on small businesses. Staff was further directed to place the report on a Commission agenda meeting not later than the open meeting of the Commission scheduled for January 27, 2021.¹

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608 (1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Financial Analysts and two (2) Engineers, all of whom were involved in the rulemaking in this Docket and who are most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis:

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four (4) of whom are involved in the rulemaking and who are most familiar with the subject matter of the rulemaking. Specifically, two (2) Financial Analysts and two (2) Engineers participated in this analysis. Each participant in the exercise used the participant’s background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

The proposed regulations apply to operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, to conduct leakage surveys with leak detector equipment, on all such pipelines at least once per calendar year, at intervals not exceeding 15 months.

¹ The open meeting has been rescheduled for January 26, 2021.

Immediate Adverse Effects:

The proposed regulations will have immediate adverse effects on small businesses that operate intrastate gas pipelines resulting in additional hours dedicated to leak testing as a result of this regulation. However, the cost of the additional leak testing is outweighed by the benefits of decreasing the likelihood of a significant gas leak causing significant damage to property and/or lives.

Immediate Beneficial Effects:

The proposed regulations will have immediate beneficial effects on small businesses that operate intrastate gas pipelines to the extent that additional testing decreases the likelihood of gas leaks causing significant damage to property and/or lives.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will have direct long-term adverse effects on small businesses that operate intrastate gas pipelines resulting in additional hours dedicated to leak testing as a result of this regulation. However, the cost of the additional leak testing is outweighed by the benefits of decreasing the likelihood of a significant gas leak causing significant damage to property and/or lives.

Long-Term Beneficial Effects:

Similar to the immediate beneficial effects outlined above, the proposed regulations will have direct long-term beneficial effects on small businesses that operate intrastate gas pipelines to the extent that additional testing decreases the likelihood of gas leaks causing significant damage to property or lives.

Further, small businesses will no longer have to track the disparate leakage survey requirements between residential areas and business districts, thereby eliminating potential penalties for not correctly identifying business districts which are already subject to the annual leakage survey requirement.

Cost to the Commission to enforce or administer the proposed regulations, including start-up and ongoing costs:

There should be no incremental costs associated with the Commission's enforcement or administration of this regulation. The costs of responding to leak incidences could be reduced if pipeline operators are detecting and repairing leaks before any major incidence occurs.

As a result of the investigation, Staff has concluded that the proposed regulations are intended to regulate the activities of operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, some of which may be small businesses. However, the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation,

or expansion of small businesses. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

It is anticipated that the proposed regulations will benefit small businesses over time by reducing the significant risks posed by a leak that goes undetected and causes an explosion endangering lives and property, resulting in significant financial exposure to the pipeline operator.

III. Notice and Subsequent Action:

On December 9, 2020, the Presiding Officer issued a Procedural Order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusion:

The proposed regulations affecting operators of intrastate pipelines that transport natural gas, liquified petroleum gas, in its liquid or vapor form, or any mixture thereof, are intended to increase public safety by increasing the frequency of leakage surveys in residential areas.

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, or to restrict the formation, operation or expansion of a small business.

Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

**ADOPTED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES**

LCB File No. R042-20

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

AUTHORITY: §§ 1-45, NRS 180.320.

A REGULATION relating to indigent defense services; establishing provisions concerning petitions for the adoption, filing, amendment or repeal of a regulation of the Board on Indigent Defense Services and the issuance of certain declaratory orders and advisory opinions by the Department of Indigent Defense Services; establishing provisions relating to the funding for indigent defense services and the plans of counties for the provision of indigent defense services; establishing provisions relating to the training, education, qualification, compensation and workload of attorneys who provide indigent defense services; establishing requirements relating to the reporting of certain information by providers of indigent defense services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board on Indigent Defense Services to adopt any regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of law governing indigent defense services. (NRS 180.320) **Section 10** of this regulation establishes the procedure for a person to file a petition for the adoption, filing, amendment or repeal of a regulation of the Board with the Department of Indigent Defense Services. **Section 11** of this regulation provides that the Board or Department may review such a petition and requires the Department to notify the petitioner of the decision of the Board or Department not later than 90 days after the petition is filed. **Section 12** of this regulation generally authorizes a person to petition the Executive Director of the Department to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department and establishes requirements relating to such a petition. **Section 13** of this regulation authorizes the Executive Director to take certain actions relating to the review of a petition and issuance of a declaratory order or advisory opinion or to designate a deputy director to do the same. **Section 13** also requires the Executive Director or deputy director to mail a copy of the declaratory order or advisory opinion to the petitioner within a certain number of days. **Section 14** of this regulation provides that if a petitioner receives a declaratory order or advisory opinion from a deputy director, the petitioner is authorized to request that the Executive Director review the decision. **Section 15** of this regulation prohibits the Executive Director, a deputy director or any other staff member of the Department from rendering an oral response to a request for an advisory opinion.

Existing law requires the Board to adopt regulations establishing a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. (NRS 180.320) **Section 16** of this regulation establishes such a formula. **Section 17** of this regulation establishes the methods by which a county may seek state contributions for indigent defense services in excess of the maximum county contribution and requires a county seeking such state contributions to submit a financial status report to the Department not later than 15 days after the end of each quarter. **Section 18** of this regulation provides that state contributions for indigent defense services are provided for a period of 1 fiscal year and any unencumbered or unexpended balance remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

Section 19 of this regulation authorizes the State Public Defender, upon request of a county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), to handle for the county all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction. **Section 19** also provides that after the responsibility for handling such cases is transferred, such responsibility cannot be transferred back to the county unless the county receives the approval of the Executive Director of the Department.

Sections 20-27 of this regulation establish various provisions relating to the plans of counties for the provision of indigent defense services. **Section 20** of this regulation requires a county to provide its initial plan for the provision of indigent defense services to the Department within a certain period after this regulation becomes effective and each subsequent plan as part of an annual report the county is required to submit to the Department. **Section 21** of this regulation requires that a plan be designed to promote the integrity of the relationship between an attorney and a client. **Section 22** of this regulation requires that a plan provide the process a county will use for hiring attorneys who are independent contractors and panels of appointed attorneys. **Section 23** of this regulation provides that a plan must set forth the process of screening for indigency necessary for the judicial determination of eligibility for an appointed counsel. **Section 25** of this regulation requires that a plan ensure an attorney has the resources to perform certain actions. **Section 25** also provides that it is recommended that plans provide for the payment of trial-related expenses in a certain manner. **Section 27** of this regulation provides that a plan must require representation to be provided in a professional, skilled manner and impose certain duties on attorneys.

Existing law requires the Board to adopt regulations requiring the Department and each county that employs or contracts for the provision of indigent defense services to ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others. (NRS 180.320) **Section 26** of this regulation imposes such a requirement.

Existing law requires the Board to adopt regulations establishing requirements for specific continuing education and experience for attorneys who provide indigent defense services. (NRS 180.320) **Sections 30-38** of this regulation establish provisions relating to the training, education and qualification of such attorneys. **Section 30** of this regulation establishes provisions relating to the application of an attorney who wishes to provide indigent defense

services in a county whose population is less than 100,000 and: (1) requires the Department to review an application and provide written notice of its determination to the attorney not later than 30 days after receiving the application; and (2) if the Department determines that an attorney is qualified to provide indigent defense services, place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services. **Section 30** also authorizes an attorney who disagrees with the determination of the Department to submit a request for reconsideration. **Sections 31-36** of this regulation establish the qualifications that an attorney must have to provide indigent defense services to various persons in a county whose population is less than 100,000. **Section 37** of this regulation establishes additional qualifications that attorneys who provide indigent defense services are required to possess in a county whose population is less than 100,000 and requires such attorneys to: (1) complete annually a minimum of 5 hours of continuing legal education courses relevant to indigent defense services; and (2) submit proof of compliance to the Department unless an attorney satisfies the continuing legal education requirement through courses offered by the Department. **Section 38** of this regulation requires the Department to monitor and regularly assess whether: (1) counties and attorneys who provide indigent defense services meet the requirements established by this regulation; and (2) indigent defense services are being provided in a constitutional manner.

Sections 39-41 of this regulation establish provisions relating to the compensation of attorneys who provide indigent defense services and contracts between a county and an attorney who provides indigent defense services and is an independent contractor. **Section 39** of this regulation provides that an attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources that are in parity, subject to any applicable negotiated collective bargaining agreements, with the corresponding prosecutor's office that appears adverse to the office of public defender in criminal proceedings. **Section 40** of this regulation establishes requirements of the terms of any contract between a county and an attorney who is an independent contractor. **Section 41** of this regulation requires that an attorney who is selected to provide indigent defense services when a public defender is disqualified receive prompt compensation.

Existing law requires the Board to adopt regulations establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services. (NRS 180.320) **Section 42** of this regulation provides that the workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation and prohibits any office, organization or attorney who provides indigent defense services from accepting a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct. **Section 42** also requires the Department to conduct certain workload studies at the direction of the Board and provides that the results of a study must include a recommendation to the Board for determining the maximum workloads for attorneys who provide indigent defense services.

Existing law requires the Board to adopt regulations: (1) requiring attorneys who provide indigent defense services to track their time and provide reports; and (2) establishing standards to ensure that attorneys who provide indigent defense services track and report information in a uniform manner. (NRS 180.320) **Section 43** of this regulation provides that in a county whose

population is less than 100,000, each plan must require annual caseload reporting by providers of indigent defense services, and **section 44** of this regulation provides that each plan in such a county must require annual time reporting by attorneys who provide indigent defense services. **Section 45** of this regulation requires providers of indigent defense services in a county whose population is less than 100,000 to use the data collection and case management system provided by the Department for the purposes of caseload and time reporting required by **sections 43 and 44**.

Section 1. Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 45, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Attorney” means an attorney who provides indigent defense services.*

Sec. 4. *“Case” means:*

1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or

2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a matter concerning a child who is alleged to be delinquent or in need of supervision pursuant to title 5 of NRS.

↪ For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time counsel is appointed.

Sec. 5. *“Expert witness” means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.*

Sec. 6. *“Indigency” means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal*

counsel on his or her own. As used in this section, a defendant is presumed to have substantial hardship if:

1. The defendant:

(a) Receives public assistance, as that term is defined in NRS 422A.065;

(b) Resides in public housing, as that term is defined in NRS 315.021;

(c) Has a household income that is less than 200 percent of the federally designated level signifying poverty;

(d) Is serving a sentence in a correctional institution; or

(e) Is housed in a mental health facility; or

2. Despite not meeting any of the requirements set forth in subsection 1, because of his or her particular circumstances, including, without limitation, the seriousness of the charges being faced, monthly expenses and local rates for private counsel, it is determined, after a more rigorous screening process, that substantial hardship would result if the defendant were to seek to retain private counsel.

Sec. 7. "Investigator" means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is:

1. Licensed by the Private Investigator's Licensing Board;

2. An employee of a person who is licensed by the Private Investigator's Licensing Board;

or

3. An employee of an attorney or an office of public defender.

Sec. 8. "Plan for the provision of indigent defense services" or "plan" means the processes established by a county for the provision of indigent defense services and the

estimated cost to carry out the provision of indigent defense services in accordance with sections 2 to 45, inclusive, of this regulation and any applicable laws.

Sec. 9. *The provisions of this chapter and chapter 180 of NRS govern the provision of indigent defense services.*

Sec. 10. 1. *An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition.*

2. The petition must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;

(c) The reason for the adoption, filing, amendment or repeal of the regulation;

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation;

and

(e) The name of the Board.

Sec. 11. 1. *The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in section 10 of this regulation are not met.*

2. The Board may require the Department to review a petition filed pursuant to section 10 of this regulation.

3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 90 days after a petition is filed.

Sec. 12. 1. *Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.*

2. *The original and one copy of the petition must be filed with:*

(a) *The deputy director selected by the Executive Director pursuant to NRS 180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or*

(b) *The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.*

3. *The petition must include:*

(a) *The name and address of the petitioner;*

(b) *The reason for requesting the declaratory order or advisory opinion;*

(c) *A statement of the facts that support the petition; and*

(d) *A clear and concise statement of the question to be decided by the Executive Director or deputy director and the relief sought by the petitioner.*

4. *An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.*

Sec. 13. 1. *The Executive Director may refuse to review a petition filed pursuant to section 12 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in that section are not met.*

2. *The Executive Director may, or may designate a deputy director to:*

(a) *Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing;*

(b) Request a petitioner to provide additional information or arguments relating to a petition;

(c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition;

(d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and

(e) Enter any reasonable order to assist his or her review of a petition.

3. The Executive Director or deputy director shall:

(a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 90 days after whichever of the following events is the last to occur:

(1) The petition is filed;

(2) The petition is referred to the Executive Director for a decision;

(3) An informal hearing is conducted; or

(4) The Executive Director or deputy director receives any additional information or written arguments; and

(b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.

Sec. 14. 1. *After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.*

2. A request made pursuant to subsection 1 must:

(a) Be in writing;

(b) Contain the information required by subsection 3 of section 12 of this regulation; and

(c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.

3. The Executive Director shall review any request made pursuant to subsection 1 in accordance with the provisions of section 13 of this regulation.

Sec. 15. The Executive Director, a deputy director or any other staff member of the Department shall not render an oral response, including, without limitation, a response over the telephone, to a request for an advisory opinion. Any oral response is not a decision or an advisory opinion of the Department.

Sec. 16. 1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:

(a) In a county whose population is less than 100,000:

(1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

(b) In a county whose population is 100,000 or more:

(1) The actual costs to the county for providing indigent defense services, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

2. If a county whose population is less than 100,000 chooses, pursuant to section 19 of this regulation, to transfer to the State Public Defender the responsibility of providing representation in:

(a) Direct appeals to the appellate court of competent jurisdiction, the cost of providing representation in those cases is a charge against the State and is excluded from the required maximum contribution of the county.

(b) Death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county is responsible for paying 25 percent of the estimate and shall make such a payment in accordance with NRS 180.110. Such payments count towards the maximum contribution of the county.

3. If a county, in its plan for the provision of indigent defense services, follows the recommendations set forth in section 25 of this regulation pertaining to the payment of case-

related expenses, such expenses may be a charge against the State and reimbursed to the county in accordance with sections 17 and 18 of this regulation.

Sec. 17. 1. *A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to section 16 of this regulation, through:*

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) Pursuant to NRS 180.450, as amended by section 14 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2268, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution requested by a county is subject to the approval of the Board. Any disagreement with respect to a plan for the provision of indigent defense services or state contributions necessary to comply with sections 2 to 45, inclusive, of this regulation will be resolved by the Board.

3. A county seeking state contributions pursuant to subsection 1 must submit to the Department a financial status report, certified by the board of county commissioners or its designee and in a form approved by the Department, not later than 15 days after the end of each calendar quarter.

Sec. 18. 1. *Any state contributions for the provision of indigent defense services must be provided for:*

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards and regulations and improving the provision of indigent defense services in a county.

2. If a county reaches its maximum contribution for the provision of indigent defense services as determined in accordance with section 16 of this regulation, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement, up to the amount approved by the Board and the Legislature in the county's plan for indigent defense services, upon the quarterly submission of the financial status report of the county in accordance with subsection 3 of section 17 of this regulation.

3. If a county reaches the maximum state contributions approved by the Board in accordance with section 17 of this regulation, any additional state contributions necessary for the provision of indigent defense services must, in accordance with NRS 180.450, as amended by section 14 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2268, be sought by a corrective action plan pursuant to a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.

4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5. As used in this section, "fiscal year" means the period beginning on July 1 of a given year and ending on June 30 of the following year.

Sec. 19. 1. *Upon the request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases, direct appeals to the*

appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction.

2. If a county wishes to have the State Public Defender handle all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction, as applicable, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450, as amended by section 14 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2268.

3. After the responsibility of handling all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction for a county, as applicable, is transferred to the State Public Defender, such responsibility must not be transferred back to the county unless the county receives the approval of the Executive Director of the Department in accordance with NRS 180.460.

Sec. 20. *1. A plan for the provision of indigent defense services must include, without limitation, the processes for providing indigent defense services in a manner consistent with sections 2 to 45, inclusive, of this regulation and any applicable laws.*

2. Each county shall provide its initial plan for the provision of indigent defense services to the Department not later than 180 days after the date on which this section becomes effective or on the next occurring May 1, as determined by the Department.

3. If a county elects to receive assistance from a deputy director of the Department in the development of its plan for the provision of indigent defense services pursuant to subsection 4 of NRS 180.430, the county must notify the Department at least 90 days before the plan is due.

4. For the purpose of assessing local needs, a county should consult with local providers of indigent defense services when formulating its plan for the provision of indigent defense services.

5. If a county joins with one or more other counties to establish one office of public defender to serve those counties in accordance with NRS 260.020, the joining counties may submit a single, joint plan for the provision of indigent defense services.

6. After a county provides its initial plan for the provision of indigent defense services, the county shall submit each subsequent plan in accordance with subsection 2 of NRS 260.070.

7. A plan for the provision of indigent defense services that is approved pursuant to ADKT No. 411 of the Nevada Supreme Court is deemed to satisfy the requirements of this section.

Sec. 21. A plan for the provision of indigent defense services must be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys providing indigent defense services pursuant to the plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

Sec. 22. 1. A plan for the provision of indigent defense services must provide the process a county will use to hire attorneys who are independent contractors to provide indigent defense services and panels of appointed attorneys. The process must be designed to provide

notice of the opportunity to apply and a reasonable opportunity for interested parties to respond.

2. Consistent with the provisions of section 21 of this regulation, the process should exclude prosecuting and law enforcement officials. The creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department, is recommended. Judicial input in the hiring process may be considered but should not be the sole basis for selection.

3. For the purposes of evaluating an application, the process must require, without limitation:

(a) In a county whose population is less than 100,000, verification that the applicant is included on the roster of attorneys who are eligible to provide indigent defense services that the Department compiles pursuant to section 30 of this regulation; and

(b) The consideration of the following factors:

(1) The experience and qualifications of the applicant;

(2) The past performance of the applicant in representing defendants in criminal cases;

(3) The ability of the applicant to comply with sections 2 to 45, inclusive, of this regulation, and the terms of a contract; and

(4) If the applicant is an independent contractor, the cost of the service under the contract.

Sec. 23. 1. *A plan for the provision of indigent defense services must set forth the process of screening for indigency that is necessary for the judicial determination of eligibility for appointed counsel. The process of screening for indigency must:*

(a) Occur prior to, or at the earlier of, the initial arraignment or appearance and not later than 48 hours after the arrest of the defendant; and

(b) Describe the person or agency responsible for the screening.

2. After such screening and upon a judge, justice of the peace or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, as amended by section 11 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2266, the plan must provide for the prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the selection of another attorney in accordance with NRS 7.115, as amended by section 5 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263, and NRS 171.188, as amended by section 11 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2266.

3. If a county uses attorneys who are independent contractors in lieu of an office of public defender or if the public defender is disqualified, a plan must describe how attorneys are assigned cases. The distribution of cases may be made on a rotational basis or in accordance with another method that ensures the fair distribution of cases.

4. A plan for indigent defense services must require that an attorney be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with all relevant laws, rules of criminal procedure and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. A plan should ensure the presence of counsel at all other critical stages, whether in court or out of court.

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.188, as amended by section 11 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2266.

Sec. 24. *A plan must:*

- 1. Seek to provide, through cooperation with local agencies, necessary resources and accommodations for private discussions between an attorney and a client in courthouses, jails, prisons, detention centers and other places where a client must confer with an attorney; and*
- 2. Provide a description of such resources and accommodations.*

Sec. 25. *1. A plan for the provision of indigent defense services must ensure that an attorney has the resources to:*

(a) Conduct an independent investigation of the charges filed against a client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and

(b) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of a client.

2. In accordance with paragraph (e) of subsection 2 of NRS 180.320, it is recommended that a plan provide for the payment of expenses related to trial, including, without limitation, expenses for expert witnesses and investigators, in the following manner:

(a) In a county whose population is less than 100,000:

(1) By excluding the judiciary from the payment of reasonably necessary investigative, expert or other case-related expenses for providers of indigent defense services.

(2) If the office of public defender is created pursuant to chapter 260 of NRS, by providing a budget for investigative, expert and other case-related expenses that is administered by the public defender.

(3) If public defense services are provided by independent contractors, by providing a budget for case-related expenses that is administered by the Department or its designee and that includes a mechanism for judicial review of any modified or denied requests.

(4) If the public defender has been disqualified, by providing a budget for case-related expenses that is administered by the Department or its designee and that includes a mechanism for judicial review. A budget provided pursuant to this subparagraph and subparagraph (3) may be the same budget.

(5) To ensure the prompt approval of frequent and necessary case-related expenses, by providing for the automatic approval of case-related expenses up to \$2,500.

(b) In a county whose population is 100,000 or more, in accordance with the determination of the county.

Sec. 26. 1. A plan for the provision of indigent defense services must ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated.

2. The provisions of subsection 1 do not preclude a county from using a single attorney or rotation of attorneys to provide representation to an indigent defendant at an initial appearance or arraignment, but any such attorney should, to the extent possible, discuss only

matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.

Sec. 27. 1. *A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.*

2. *Any plan or contract for the provision of indigent defense services must require the attorney representing the defendant to:*

(a) Advise each client not to waive any substantive rights or plead guilty at the initial appearance unless doing otherwise is in the best interest of the client; and

(b) Make all reasonable efforts to meet with each client within the first 7 days following the assignment of the case and, unless there are no significant updates in the client's case, every 30 days thereafter.

3. *A plan for the provision of indigent defense services in a county whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.*

Sec. 28. *As used in sections 28 to 37, inclusive, of this regulation, unless the context otherwise requires, "CLE" means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.*

Sec. 29. *The provisions of sections 28 to 37, inclusive, of this regulation apply only to the provision of indigent defense services in counties whose population is less than 100,000.*

Sec. 30. 1. *To ensure that the ability, training and experience of an attorney in a criminal matter matches the complexity of a case, the attorney must demonstrate compliance*

with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

(a) By mail; or

(b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the areas of indigent defense services in which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.

4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may, at any time, seek qualification for different or other areas of indigent defense by submitting another application pursuant to this section that demonstrates the additional qualifications.

5. If an attorney disagrees with the determination of the Department regarding the areas in which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the

determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.

6. The failure of an attorney to submit an application before providing indigent defense services for a county or to practice only within the areas in which the attorney is qualified may result in the exclusion or removal of the attorney, as applicable, from the roster of attorneys who are eligible to provide indigent defense services established pursuant to subsection 4.

Sec. 31. *1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:*

(a) Be licensed to practice law in the State of Nevada; and

(b) Have sufficient training or experience to provide competent representation.

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060, as amended by section 17 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2270.

Sec. 32. *An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is 10 years or less, a category C, D or E felony or a gross misdemeanor must:*

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have been trial counsel, alone or with other trial counsel, in two or more bench or jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

Sec. 33. An attorney who seeks to provide indigent defense services to a person charged with a non-capital category A felony or a category B felony for which the maximum penalty is more than 10 years must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada;

(b) Have practiced criminal law for 3 full years, either as a prosecutor, provider of indigent defense services or retained counsel; and

(c) Have been trial counsel, alone or with other trial counsel, and handled a significant portion of three felony jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1, have a significant record of quality representation in criminal trials and have the ability to handle complex felony matters.

Sec. 34. An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria set forth in Supreme Court Rule 250.

Sec. 35. An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:

1. Be licensed to practice law in the State of Nevada; and

2. Have sufficient training or experience to provide competent representation.

Sec. 36. 1. *An attorney who seeks to represent a juvenile who is alleged to be delinquent or in need of supervision must:*

(a) Be licensed to practice law in the State of Nevada;

(b) Have the knowledge and skills necessary to represent a child diligently and effectively;

and

(c) Be familiar with:

(1) The department of juvenile justice services in the county and other relevant state and local programs;

(2) Issues concerning competency and child development;

(3) Issues concerning the interaction between an attorney and a client; and

(4) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.

2. An attorney who seeks to represent a child in a certification proceeding pursuant to NRS 62B.390, as amended by section 4 of Assembly Bill No. 230, chapter 515, Statutes of Nevada 2021, at page 3421, additionally must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience.

3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

Sec. 37. 1. *In addition to any other requirements provided by law or this chapter, an attorney must:*

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in

this paragraph, “reasonable knowledge” means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.1 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete, on an annual basis, a minimum of 5 hours of CLE courses relevant to indigent defense services;

(b) Except as otherwise provided in subsection 3, submit proof of compliance with the CLE requirements in paragraph (a) to the Department before January 1 each year by submitting a copy of the annual transcript for the attorney from the State of Nevada Board of Continuing Legal Education:

(1) By mail; or

(2) Electronically, as provided on the website of the Department; and

(c) Follow the minimum standards of the Board in determining which CLE courses are relevant to the provision of indigent defense services.

3. Any CLE courses provided by the Department count toward satisfaction of the annual CLE requirement set forth in subsection 2. If an attorney satisfies the annual CLE requirement through CLE courses provided by the Department, the annual submission of

proof of compliance with the CLE requirements required by paragraph (b) of subsection 2 is waived.

Sec. 38. *The Department shall monitor and regularly assess whether counties and attorneys meet the requirements set forth in sections 2 to 45, inclusive, of this regulation and whether indigent defense services are being provided in a constitutional manner. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:*

- 1. Client feedback;*
- 2. Client surveys;*
- 3. Other providers of indigent defense services;*
- 4. Office staff;*
- 5. Judicial personnel;*
- 6. Observations of a deputy director of the Department;*
- 7. Data provided to the Department pertaining to attorney workload;*
- 8. Contracts for the provision of indigent defense services;*
- 9. Financial information pertaining to the provision of indigent defense services; and*
- 10. Information obtained through the procedure for receiving complaints and recommendations concerning the provision of indigent defense services established by the Board pursuant to paragraph (b) of subsection 2 of NRS 180.320.*

Sec. 39. *An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources that are in parity, subject to negotiated collective bargaining agreements if applicable, with the corresponding prosecutor's office that appears adverse to the office of public defender in criminal proceedings.*

Sec. 40. The terms of any contract between a county and an attorney who provides indigent defense services as an independent contractor must avoid any actual or apparent financial disincentives to the obligation of the attorney to provide clients with competent legal services. Such a contract must include, without limitation, the following:

1. The identification of the contracting authority and each attorney subject to the contract.

2. The terms of the contract, including, without limitation, the duration of the contract, any provision for renewal and any provision for terminating the contract by a party.

3. The category of cases in which each attorney subject to the contract is to provide services.

4. The minimum qualifications for each attorney subject to the contract, which must be equal to or exceed the qualifications required by sections 2 to 45, inclusive, of this regulation, and a requirement that each attorney maintain the applicable qualifications during the entire term of the contract. If a contract covers services provided by more than one attorney, the qualifications may be graduated according to the seriousness of offense, and each attorney must be required to maintain only those qualifications established for the offense levels for which the attorney is approved to provide indigent defense services.

5. The identification of each attorney who will provide legal representation in each category of case covered by the contract and a provision that ensures consistency in representation in accordance with section 26 of this regulation.

6. A provision establishing the maximum workload that each attorney may be required to handle pursuant to the contract based upon the applicable guidelines established by the Board

pursuant to section 42 of this regulation and a provision requiring the reporting of indigent defense data in accordance with sections 43 and 44 of this regulation.

7. In accordance with section 27 of this regulation, a requirement that each attorney provide legal representation to all clients in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.

8. The statement of a policy that ensures that an attorney does not provide representation to a defendant when doing so would involve a conflict of interest.

9. A provision regarding how investigative services, expert witnesses and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with all applicable laws and regulations.

10. A provision requiring compensation to be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and that is determined after taking into consideration comparable workload, overhead costs, expenses and costs relating to significant attorney travel.

Sec. 41. If a public defender is disqualified from providing indigent defense services and another attorney is selected in accordance with NRS 7.115, as amended by section 5 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263:

1. The selected attorney must receive prompt compensation in accordance with NRS 7.125, as amended by section 6 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are to be considered equally

important to effective representation and must be included in the compensation of the selected attorney.

2. A plan for the provision of indigent defense services must include the process of the county for the payment of counsel selected pursuant to NRS 7.115, as amended by section 5 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263.

Sec. 42. *1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct.*

2. At the direction of the Board, the Department shall conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is 100,000 or more to determine workload guidelines and requirements for attorneys. Counties shall ensure that all attorneys providing indigent defense services participate in such workload studies. The results of each study must include a recommendation to the Board for the purpose of establishing guidelines to be used to determine maximum workloads for attorneys providing indigent defense services pursuant to subparagraph (4) of paragraph (d) of subsection 2 of NRS 180.320.

Sec. 43. *1. In a county whose population is less than 100,000, a plan must require caseload reporting by providers of indigent defense services in the county. The plan must specify whether such reporting will be done by each attorney or collectively by an office of public defender. The plan must require such reporting to be made on an annual basis and include, without limitation, the total number of:*

(a) Beginning pending cases;
(b) New appointments;
(c) Cases returned from warrant or reactivated;
(d) Cases adjudicated, disposed or closed and the manner in which each case was adjudicated, disposed or closed, including, without limitation, pursuant to a plea, dismissal or verdict at trial;

(e) Warrant or placed on inactive status cases;

(f) Cases set for review;

(g) End pending cases;

(h) Motions to suppress:

(1) Filed; and

(2) Litigated; and

(i) Trials completed during the reporting period.

2. The cases included in a report required pursuant to subsection 1 must be further arranged by the following case type:

(a) Death penalty cases;

(b) Non-capital category A felonies and category B felonies for which the maximum penalty is more than 10 years;

(c) Category B felonies for which the maximum penalty is 10 years or less, category C, D and E felonies, and gross misdemeanors;

(d) Misdemeanor cases involving driving under the influence of alcohol or a prohibited substance and misdemeanor cases involving allegations of domestic violence;

(e) Other misdemeanor cases, including, without limitation, misdemeanor direct appeals;

- (f) Probation and parole violations;*
- (g) Direct appeals of capital convictions;*
- (h) Direct appeals of non-capital felony and gross misdemeanor convictions;*
- (i) Juvenile cases, including, without limitation, cases involving a child who is alleged to be delinquent or in need of supervision, and appeals;*
- (j) Juvenile probation and parole violations; and*
- (k) Specialty court cases.*

3. If an attorney who is an independent contractor or an office of public defender provides representation beyond those services set forth in NRS 180.004, the reporting required pursuant to subsection 1 must also include the total number of cases under:

- (a) Chapter 128 of NRS for which representation was provided;*
- (b) Chapter 159 of NRS for which representation was provided;*
- (c) Chapter 432B of NRS for which representation was provided; and*
- (d) Chapter 433A of NRS for which representation was provided.*

4. As used in this section:

(a) "Adjudicated, disposed or closed" means a case in which an original entry of final adjudication has been entered.

(b) "Beginning pending" means a case which, at the start of the reporting period, is awaiting disposition.

(c) "End pending" means a case which, at the end of the reporting period, is awaiting disposition.

(d) "Final adjudication" means an entry of judgment or adjudication, an order of dismissal or the end of the appointment of an attorney regardless of adjudicatory status.

(e) “Juvenile case” means a matter involving an allegation of a juvenile in need of supervision or an act committed by a juvenile which, if committed by an adult, would result in criminal prosecution and over which a juvenile court has statutory original or concurrent jurisdiction.

(f) “New appointment” means a case in which a defendant has been assigned counsel for the first time.

(g) “Returned from warrant or reactivated” means a case that is reopened because a defendant has been arrested on a warrant for failure to appear and has appeared before the court or has returned from a diversion program or another similar event has occurred that reactivates a case.

(h) “Set for review” means a case that, after an initial entry of judgment during the reporting period, is awaiting regularly scheduled reviews involving a hearing before a judicial officer.

(i) “Warrant or placed on inactive status” means a case closed because a warrant for failure to appear has been issued, the defendant has been ordered to participate in a diversion program or another similar incident has occurred to make the case not active.

Sec. 44. 1. Each county whose population is less than 100,000 shall include in its plan a requirement for time reporting by attorneys who provide indigent defense services. Such a report must be submitted on an annual basis and provide:

(a) The total number of hours an attorney spent providing indigent defense services in each case;

(b) The total number of hours that investigators worked on each case;

(c) The total number of hours that staff worked on each case;

(d) The total number of hours that expert witnesses worked on each case; and

(e) The total number of hours an attorney spent on any private workload.

2. A plan must require that time entries be:

(a) Kept as close to contemporaneous as reasonably practicable to ensure the accuracy of time reporting and the ability of the Department to generate quarterly reports; and

(b) Recorded in increments of one-tenth of an hour.

3. As used in this section, "staff" means a paralegal, as that term is defined in the bylaws of the Paralegal Division of the State Bar of Nevada, or a similar employee.

4. In each county whose population is 100,000 or more, time records must be kept only during the periods in which weighted caseload studies are conducted pursuant to section 42 of this regulation.

Sec. 45. *In a county whose population is less than 100,000, providers of indigent defense services shall use the data collection and case management system provided by the Department, at the expense of the State, for the purposes of the caseload and time reporting required by sections 43 and 44 of this regulation.*



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8493 | dids.nv.gov

**INFORMATIONAL STATEMENT REQUIRED BY NRS 233B.066
CONCERNING ADOPTED REVISED PROPOSED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES
LCB FILE NO. RO42-20**

The following statement is submitted for the adoption of regulations to Nevada Administrative Code (NAC) Chapter 180.

1. A clear and concise explanation of the need for the adopted regulation:

The purpose of the adopted regulations is to regulate indigent defense services. The regulations are required by the passage of Assembly Bill ("AB") 81 during the 80th Session of the Nevada Legislature as codified in NRS 180 and 260. The regulations are also required to comply with the terms of the "Stipulated Consent Judgment" filed on August 11, 2020, in the *Davis v. State* case in the First Judicial District Court.

The adopted regulations establish provisions relating to the funding for indigent defense services and the plans of counties for the provision of indigent defense services; establishing provisions relating to the training, education, qualification, and compensation of attorneys who provide indigent defense services; establishing requirements relating to the reporting of certain information by certain attorneys who provide indigent defense services; and providing other matters properly relating thereto to allow the Department of Indigent Defense Services ("Department") to implement AB 81 and to comply with the *Davis* "Stipulated Consent Judgement."

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in the subject of indigent defense services. These documents were made available at the website of the Department of Indigent Defense Services, <http://dids.nv.gov/> and the Nevada State Official Website: <https://notice.nv.gov>

and the Nevada Legislature Website for Administrative Regulation Notices:
<https://www.leg.state.nv.us/app/notice/a/>.

A workshop was held on September 1, 2021, in conjunction with the Board of Indigent Defense Services (“Board”) Meeting to provide an opportunity to comment on the proposed regulations. The minutes of the meeting, contain a summary of the discussion held at the Workshop regarding the proposed amendments.

Thereafter, on September 2, 2021, the Director of the Department issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed regulations the suggestions of the parties attending the September 1st Workshop, as well as the recommendations of the Board.

A copy of the minutes of the September 1, 2021, Workshop and Board Meeting, which includes a summary of the public response to the proposed regulations, may be obtained by visiting the Department website at <http://dids.nv.gov/> or by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

The Notice of Intent to Act Upon the Regulation and the regulations were additionally posted on the Administrative Regulation Notices Website, <https://www.leg.state.nv.us/App/Notice/A/>, was on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection, and was posted at the following location:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
<http://dids.nv.gov/>

The Public Hearing was held in conjunction with the October Board Meeting on October 6, 2021. Interested persons were invited to comment at the Public Hearing in written form or in oral presentation. The Board received one written comment. A copy of the written comment may be obtained by visiting the Department website at <http://dids.nv.gov/> or by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

Recordings of the September 1, 2021, Workshop and the October 6, 2021, Public Hearing can be viewed on our YouTube Channel:
<https://www.youtube.com/channel/UCAGEFbVylncGB12zzaB4uqw/videos>

3. The number persons who:

a. Attended the hearing:

- i. September 1 Workshop: Approximately 27. This is an estimate as the public hearing was virtual.
- ii. October 6 Public Hearing: Approximately 35. This is an estimate as the public hearing was virtual.

b. Testified at the hearing:

- i. September 1 Workshop: 2
- ii. October 6 Public Hearing: 4

c. Submitted to the agency written comments:

- i. September 1 Workshop: No written comments were received.
- ii. October 6 Public Hearing: 1

4. A list of names and contact information, including telephone number, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

September 1 Workshop: See Exhibit A.

October 6 Public Hearing: See Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. No comments were received during the September 1 Workshop nor the October 6 Public Hearing from affected businesses. A copy of the minutes of the workshop and/or the public hearing may be obtained by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 8903
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulations were adopted with clarifications.

The regulations presented at the Public Hearing included all changes discussed during the September 1, 2021, Workshop. This discussion can be found in the minutes of the September 1, 2021, Workshop.

- 7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
- a. Both adverse and beneficial effects; and**
 - b. Both immediate and long-term effects.**

(a.) Adverse Effect;

a. Immediate effect:

i. Businesses: Attorneys may have an increase in duties with the time-keeping requirement dependent upon whether they were previously required to keep time. Overall, the Department has determined that the regulations do not have an adverse economic impact on small businesses.

ii. Public: The public will not have an adverse effect.

b. Long-term effect

i. Businesses: Attorneys may have an increase in duties with the time-keeping requirement dependent upon whether they were previously required to keep time. Overall, the Department has determined that the regulations do not have an adverse economic impact on small businesses.

ii. Public: The public will not have an adverse effect.

(b.) Beneficial Effect;

a. Immediate effect:

i. Businesses: The case management system which will be provided to the indigent defense attorneys in the rural areas will assist in timekeeping, calendaring, and management of cases.

ii. Public: The public will be benefitted because their constitutional rights to counsel under the Sixth and Fourteenth Amendments of the United States Constitution will be protected.

b. Long-term effect:

i. Businesses: The case management system which will be provided to the indigent defense attorneys in the rural areas will assist in timekeeping, calendaring, and management of cases. Ultimately, the regulations may reduce attorney workload and allow them additional time to process cases. The creation as a maximum caseload would assist attorneys in their practice.

ii. Public: The public will be benefitted because their constitutional rights to counsel under the Sixth and Fourteenth Amendments of the United States Constitution will be protected. A more efficient and effective indigent defense system will be provided to the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The estimated cost to the agency for the maximum contribution formula:
FY22 = \$ 5,598,050 FY23 = \$5,598,050

The estimated cost to the agency for the creation of a complex litigation unit in the Nevada State Public Defender's Office:
FY22 = \$602,978 FY23 = \$765,654

The estimated cost to the agency for providing LegalServer to indigent defense providers in the rural counties:
FY22 = \$17,400 Fy23 = \$17,400

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

To our knowledge, the proposed regulation does not duplicate any existing federal, state, or local standards regulating the same activity.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

To our knowledge, there are no federal regulations that apply.

11. If the 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 regulation does NOT establish a new fee nor increase an existing fee.

EXHIBIT A

A list of names and contact information, including telephone number, business address, business telephone number, electronic email address, and name of entity or organization represented, for each person identified in #3 of the Informational Statement.

September 1 Workshop: Public Comment:

JoNell Thomas
Clark County Special Public Defender
330 S. 3rd St. 8th Floor
Las Vegas, NV 89101
(702) 455-6266

Karin Kreizenbeck
State of Nevada Public Defender
511 E. Robinson, Suite 1
Carson City, NV 89701
775-684-1080

October 6 Public Hearing: Written Comment

Carson City, Nevada
Consolidated Municipality and State Capital
Signed by:
Nancy Paulson, City Manager
Maxine Cortes, Court Administrator
Todd E. Reese, Deputy District Attorney as Counsel for Carson City

October 6 Public Hearing: Public Comment

Todd Reese
Deputy District Attorney as Counsel for
Carson City
885 E. Musser St, Suite 2030
Carson City, NV 89701
775-887-2070
Email: TReese@carson.org

Franny Foresman
Law Office of Franny Forsman, PLLC
1509 Becke Circle
Las Vegas, NV 89104
(702) 501-8728

Anne Langer
201 South "C" Street
Virginia City, NV 89440
775-847-0964
alanger@storeycounty.org

Maxine Cortes
Court Administrator for the First
Judicial District Court and the
Consolidated Justice and Municipal
Courts in Carson City, NV
885 E. Musser Street, Suite 2007
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Phone: 775-887-2121
Email: MCortes@carson.org



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

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**SMALL BUSINESS IMPACT STATEMENT REGARDING
LCB FILE NO. R042-20**

- 1. A description of the manner in which comment was solicited from affected small business, a summary of their responses, and explanation of the manner in which other interested persons may obtain a copy of the summary:**

The Department of Indigent Defense Services requested input from private attorneys via an e-mailed survey link. The Department sent out 67 emails to the attorneys that are on the Department's List of Contract and Appointed Counsel.

The Department also sent out similar surveys in March 2020 and November 2021. In March, no responses were received. In November 2021, three surveys were completed. In August 2021, five surveys were completed.

The survey asked for input on adverse/beneficial economic effects on small businesses, and indirect adverse/beneficial effects – with space to elaborate on responses.

The survey results expressed concern that uniform timekeeping, as required by NRS 180.320(2)(d), would be too time consuming, a waste of time, and would require the employment of extra staff. However, the timekeeping is required pursuant to statute. Comments were received that the establishment of a maximum caseload for indigent defense counsel would be beneficial for their practice.

A copy of this small business impact statement may be obtained by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

2. The manner in which the analysis was conducted:

The Department reviewed the completed surveys and discussed the results.

3. The estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects, and both direct and indirect effects.

There are no reasonably foreseen potential economic impacts to small business. Multiple surveys expressed concern that uniform timekeeping, as required by NRS 180.320(2)(d), would be too time consuming, a waste of time, and would require the employment of an extra staff. However, the timekeeping is required pursuant to statute.

One completed survey believed regulations would prevent small business from providing indigent legal services in the rural counties because there are not enough law firms to comply with the onerous regulations but believed the regulations would be workable in the urban counties.

One survey expressed support for the creation of a maximum caseload standard for indigent defense attorneys would assist their indigent defense practice.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulations on small businesses and a statement regarding whether the agency actually used any of those methods.

Concerns on the possible impacts to small business were considered during the drafting of the proposed regulations. The Department proposes a regulation which requires the use of Department provided time keeping software. The software and training to use the software is provided at no cost to the county or attorney. The use of software for time keeping and automatic submission of reports would save the time of an attorney and make their practice more efficient and effective.

The Board of Indigent Defense Services discussed a requirement to use a time keeping software at a meeting on June 29, 2020. The Board could not agree on whether to require the use of software and the Chair called for public comment on this issue for the next meeting. This issue was discussed on September 24, 2020. No written comment on the issue had been received.

A workshop to solicit further comment on the proposed regulations was held on December 2, 2020, and a public hearing to adopt the temporary regulations was held on January 28, 2021. Ultimately the Board contracted with LegalServer and has been providing the system and training for the system at no cost since June 2021.

Further, a workshop for the proposed regulations was held on September 1, 2021 and a Public Hearing was held on October 6, 2021. No public comment was received on this issue.

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

The estimated cost to the agency for the maximum contribution formula:
FY22 = \$ 5,598,050 FY23 = \$5,598,050

The estimated cost to the agency for the creation of a complex litigation unit in the Nevada State Public Defender's Office:
FY22 = \$602,978 FY23 = \$765,654

The estimated cost to the agency for providing LegalServer to indigent defense providers in the rural counties:
FY22 = \$17,400 Fy23 = \$17,400

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 amendments do not involve an increase to existing fees or create any new fees.

7. If the Proposed Regulation Included 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.

NRS 180.320 set forth regulations which must be adopted by the Board of Indigent Defense Services. These regulations meet those legislative mandates.

8. The Reasons for the Conclusions of the Agency Regarding the Impact of a Regulation on Small Businesses.

a. Does the Proposed Regulation Impose a Direct and Significant Economic Burden Upon Small Businesses?


The proposed regulation does not impose a direct or significant economic burden upon small businesses. Attorneys that provide indigent defense services in the rural counties are paid for their time spent working on cases. The Department believes that use of a software program for case management and time keeping will save attorneys' time. Any time that is spent entering data into the case management system will be captured and used to determine an appropriate workload.

b. Will the Proposed Regulation Directly Restrict the Formation, Operation or Expansion of a Small Business?

The proposed regulations will not directly restrict the formation, operation, or expansion of a small business.

“I certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this statement was prepared properly and is accurate.” (See NRS 233B.0608(3) and 233B.0609(2))

Signed and effective this 8th day of October, 2021.



Marcie Ryba, Executive Director
Nevada State Department of Indigent Defense Services

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R093-20

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

AUTHORITY: §§ 1-35 and 37, NRS 445B.210 and 445B.760; § 36, NRS 445B.760 and 445B.835.

A REGULATION relating to air pollution; adopting certain emissions standards of the State of California; defining certain terms relating to emissions standards; establishing the types of vehicles and vehicle engines to which this regulation applies; adopting by reference certain provisions of California law relating to emissions standards; prohibiting the sale, lease and certain other actions to provide or acquire motor vehicles that do not comply with certain emission standards; prohibiting manufacturers of certain vehicles from exceeding certain fleet average non-methane organic gas plus oxides of nitrogen and greenhouse gas emission standards; requiring manufacturers of certain motor vehicles to submit annual reports related to certain emissions of the manufacturer's fleet; requiring a manufacturer to submit certain information related to motor vehicles sold in this State upon request; providing that certain authorized representatives of the State Department of Conservation and Natural Resources and the Department of Motor Vehicles may enter and inspect the premises of vehicle dealers; requiring a vehicle dealer or short-term lessor of vehicles to submit certain information upon request; setting forth various provisions relating to emissions warranties for certain motor vehicles; prohibiting the sale of certain new motor vehicles without certain emissions labels; setting forth requirements for emissions-related recall campaigns for motor vehicles; setting forth various provisions relating to the sale of zero emission vehicles; requiring manufacturers to submit an annual report of credits generated and transferred for zero emission vehicles; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing federal law, the United States Environmental Protection Agency (EPA) may grant the State of California a waiver to adopt emissions standards other than those set forth in the Clean Air Act, 42 U.S.C. § 7521, as long as such standards are at least as protective of public health and welfare as the standards adopted by the Federal Government and if the Administrator of the EPA determines that the adoption of such standards was not arbitrary and capricious or that the standards are not necessary to meet compelling and extraordinary

circumstances. (42 U.S.C. § 7543) Existing federal law also authorizes the remaining states to adopt emissions standards for new motor vehicles if the standards are identical to those standards adopted by California which have been granted a waiver by the EPA. (42 U.S.C. § 7507) The State of California has adopted emissions standards which include: (1) various emissions standards for new motor vehicles; (2) requirements for manufacturers to meet certain fleet standards for emissions of non-methane organic gas plus oxides of nitrogen and greenhouse gases; (3) requirements that a certain percentage of new motor vehicles produced and delivered for sale be zero emission vehicles; and (4) the establishment of a credit bank for zero emission vehicle credits which manufacturers may trade, sell, buy or transfer. (Cal. Code Regs. tit. 13 §§ 1900 et seq.)

Existing law authorizes the State Environmental Commission to prescribe standards for exhaust emissions, fuel evaporative emissions and visible emissions of smoke from mobile internal combustion engines. (NRS 445B.760) Beginning with model year 2025, this regulation: (1) adopts emissions standards that are identical to those adopted by California; (2) prohibits manufacturers from exceeding the fleet average non-methane organic gas plus oxides of nitrogen and greenhouse gases emissions standards set by California; and (3) adopts requirements for the sale of zero emission vehicles consistent with the requirements for such vehicles adopted by California to achieve emissions reductions in this State.

Sections 4-17 of this regulation define certain terms relating to emissions standards. **Section 18** of this regulation provides that if any provision of this regulation is found invalid by a court, such a provision is severable from the remaining provisions of this regulation. **Section 19** of this regulation sets forth: (1) the motor vehicles to which this regulation applies beginning in model year 2025; and (2) certain exceptions to the requirements of this regulation. **Section 20** of this regulation adopts by reference certain provisions of California law relating to emissions standards and low and zero emission vehicles.

Section 21 of this regulation prohibits, with certain exceptions, the sale, lease, import, delivery, registering or otherwise receiving or acquiring of passenger cars, light-duty trucks, medium-duty passenger vehicles or medium-duty vehicles that are not certified to California's emissions standards for non-methane organic gas plus oxides of nitrogen and greenhouse gas. **Sections 22 and 23** of this regulation prohibit manufacturers of passenger cars, light-duty trucks and medium-duty vehicles from exceeding the fleet average non-methane organic gas plus oxides of nitrogen and greenhouse gas emission standards established by California and adopted by reference in this regulation. **Sections 22 and 23** further provide that a manufacturer may earn and utilize credits and debits for the sale of vehicles in this State in accordance with California law which sets forth the provisions for the calculation of credits and debits based on emissions.

Sections 24 and 25 of this regulation require manufacturers to submit annual reports to the State Department of Conservation and Natural Resources detailing the non-methane organic gas plus oxides of nitrogen or greenhouse gas emissions of the manufacturer's fleet produced and delivered for sale in this State. If the manufacturer is not in compliance with the fleet average non-methane organic gas plus oxides of nitrogen and greenhouse gas emission standards, **sections 24 and 25** of this regulation further require a manufacturer to submit a fleet average remediation report.

Section 26 of this regulation requires a manufacturer to submit upon request certain documents related to motor vehicles sold in this State by the manufacturer. **Section 27** of this regulation provides that an authorized representative of the Department or the Department of Motor Vehicles may enter any premises of a vehicle dealer to inspect motor vehicles with a model year of 2025 or later.

Section 28 of this regulation provides that the Department may require a vehicle dealer or short-term lessor of vehicles to submit certain information to determine compliance with the requirements of this regulation. **Section 28** requires any manufacturer, vehicle dealer, short-term lessor of vehicles or any other person subject to this regulation to retain his or her records for at least 3 years.

Section 29 of this regulation requires manufacturers of certain motor vehicles to provide an emissions control system warranty to purchasers of the manufacturer's vehicles that complies with the requirements of California law for such warranties. **Section 29** further requires the manufacturer to include with each vehicle, with certain exceptions, an emissions control system warranty statement.

Section 30 of this regulation prohibits selling, renting, leasing and various other actions to provide, acquire or deliver certain types of new motor vehicles in this State if certain emission control labels and Environmental Performance labels have not been affixed to the vehicle.

Section 31 of this regulation requires manufacturers of certain types of vehicles to comply with various requirements for emissions-related recall campaigns set forth in California law.

Existing California law requires vehicles to be certified as zero emission vehicles (ZEV) by the Executive Officer of the California Air Resources Board. Manufacturers must meet a minimum ZEV credit obligation for the production and delivery of zero emission vehicles in the state which is calculated as a percentage of the number of passenger cars and light-duty trucks that the manufacturer produces and delivers for sale in the state. (Cal Code Regs. tit. 13, § 1962.2) **Section 32** of this regulation requires: (1) all zero emission vehicles produced and delivered for sale in this State to be certified as zero emission vehicles under California law; and (2) manufacturers to comply with the minimum ZEV credit obligation for the sale of zero emission vehicles set forth in California law.

Section 33 of this regulation authorizes manufacturers to earn early action credits for model years 2022, 2023 and 2024 for certain vehicles produced and delivered for sale in this State beginning on January 1, 2022. Such credits must be managed by the Department and available for use by the manufacturer beginning in model year 2025. **Section 34** of this regulation requires manufacturers to open an account in the California ZEV Credit Reporting and Data Tracking System for ZEV credits in this State. **Section 34** further sets forth requirements for the calculation of initial ZEV credits and restrictions on the use of these credits for the 2025 and 2026 model years. **Section 35** of this regulation requires manufacturers to submit an annual report of ZEV credits generated or transferred for each vehicle sold in this State.

Section 36 of this regulation provides that a manufacturer who fails to meet its credit obligation for the sale of zero emission vehicles in this State must make up the credit deficit by the next model year or the manufacturer may be subject to a civil penalty.

On September 27, 2019, the EPA and National Highway Traffic Safety Administration of the United States Department of Transportation (NHTSA) issued a joint rule, “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” which revoked the waiver previously issued to California by the EPA. (84 Fed. Reg. 51310 (Sept. 27, 2019) (codified at 49 C.F.R. Parts 531 and 533)) The EPA and NHTSA are currently accepting comments on a revised rule to grant a waiver to California. **Section 37** of this regulation provides that: (1) the Department shall not enforce the provisions of this regulation until the later of January 1, 2022, or the date that the waiver issued by the EPA to California pursuant to 42 U.S.C. § 7543 is reinstated or a new waiver is issued; and (2) any requirements set forth in this regulation for model years 2025 and later must be adopted and filed with the Secretary of State not later than 2 years before the model year in order for those requirements to be enforced by the Department.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 36, inclusive, of this regulation.

Sec. 2. *The provisions of sections 2 to 36, inclusive, of this regulation set forth the emissions standards for motor vehicles in this State beginning with model year 2025.*

Sec. 3. *As used in sections 2 to 36, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 17, inclusive, of this regulation have the meaning ascribed to them in those sections.*

Sec. 4. **1.** *“Auxiliary power unit” means any device that:*
(a) Provides electrical or mechanical energy to a range extended battery electric vehicle after the zero emission range has been fully depleted; and
(b) Meets the requirements of section 1962.2(c)(2) of Title 13 of the California Code of Regulations, which is adopted by reference pursuant to section 20 of this regulation.

2. *The term does not include a fuel-fired heater.*

Sec. 5. *“CARB” means the California Air Resources Board or its successor agency which is established and empowered to regulate air pollution in the state of California*

pursuant to section 39003 of the California Health and Safety Code, as amended or supplemented.

Sec. 6. *“Department” means the State Department of Conservation and Natural Resources.*

Sec. 7. *“Director” means the Director of the State Department of Conservation and Natural Resources.*

Sec. 8. *“Greenhouse gas” means any of the following gases, either alone or in combination:*

- 1. Carbon dioxide;*
- 2. Hydrofluorocarbons (HFCs);*
- 3. Methane; and*
- 4. Nitrous oxide.*

Sec. 9. *“Gross vehicle weight rating” means the value specified by the manufacturer as the loaded weight of a single vehicle.*

Sec. 10. *“Light-duty truck” means:*

- 1. Any motor vehicle that is:
 - (a) Certified to the standards set forth in section 1961(a)(1) or 1961.2 of Title 13 of the California Code of Regulations, as applicable, which are adopted by reference pursuant to section 20 of this regulation; and*
 - (b) Rated at 8,500 pounds gross vehicle weight or less; or**
- 2. Any motor vehicle that is rated at 6,000 pounds gross vehicle weight or less that is:
 - (a) Designed primarily to transport property or is a derivative of such a vehicle; or**

(b) Available with special features enabling off-street or off-highway operation and use.

Sec. 11. *“Medium-duty passenger vehicle” means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The term does not include any vehicle that:*

- 1. Is a truck that does not have a primary load carrying device or container attached, commonly known as an incomplete truck;*
- 2. Has a seating capacity of more than 12 persons;*
- 3. Is designed for more than 9 persons in seating rearward of the driver’s seat; or*
- 4. Is equipped with an open cargo area of 72 inches or more in interior length. A covered box that is not readily accessible from the passenger compartment is considered an open cargo area for purposes of this subsection.*

Sec. 12. *“Medium-duty vehicle” means any heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle that:*

- 1. Is certified to the standards in section 1961(a)(1), 1961.2, 1962 or 1962.1 of Title 13 of the California Code of Regulations, as applicable, which are adopted by reference pursuant to section 20 of this regulation; and*
- 2. Has a manufacturer’s gross vehicle weight rating of at least 8,501 pounds but not more than 14,000 pounds.*

Sec. 13. *“Neighborhood electric vehicle” means a motor vehicle that is certified to zero emission vehicle standards and meets the definition of a low-speed vehicle as that term is defined in section 385.5 of the California Vehicle Code or meets the standards for a low-speed vehicle set forth in 49 C.F.R. § 571.500, as it existed on July 1, 2000.*

Sec. 14. *“Passenger car” means any motor vehicle designed primarily for the transportation of people that has a design capacity of 12 persons or less.*

Sec. 15. *“Range extended battery electric vehicle” means a vehicle that:*

- 1. Is powered predominantly by a zero emission energy storage device that is able to drive for more than 75 all-electric miles;*
- 2. Is equipped with a backup auxiliary power unit which does not operate until the energy storage device is fully depleted; and*
- 3. Meets the requirements set forth in section 1962.2(d)(5)(G) of Title 13 of the California Code of Regulations, which is adopted by reference pursuant to section 20 of this regulation.*

Sec. 16. *“Transitional zero emission vehicle” means a vehicle that:*

- 1. Meets the requirements set forth in section 1962.2(c)(2) of Title 13 of the California Code of Regulations, which is adopted by reference pursuant to section 20 of this regulation; and*
- 2. Qualifies for an allowance in accordance with section 1962.2(c)(3)(A) or (E) of Title 13 of the California Code of Regulations, which is adopted by reference pursuant to section 20 of this regulation.*

Sec. 17. *“Zero emission vehicle” or “ZEV” means a vehicle that produces zero exhaust emissions of any criteria pollutant, precursor pollutant or greenhouse gas under any possible operational mode or condition.*

Sec. 18. *If any provision of sections 2 to 36, inclusive, of this regulation or its application thereof to any person, thing or circumstance is held invalid by a court of competent*

jurisdiction, the invalidity does not affect the remaining provisions or applications thereof, and to this end the provisions of sections 2 to 36, inclusive, of this regulation are severable.

Sec. 19. 1. *Except as otherwise provided in subsection 2 and section 33 of this regulation, the provisions of sections 2 to 36, inclusive, of this regulation apply to all 2025 and later model year:*

(a) Motor vehicles offered for sale or lease in this State or sold or leased for registration in this State that are:

- (1) Passenger cars;*
- (2) Light-duty trucks;*
- (3) Medium-duty passenger vehicles; or*
- (4) Medium-duty vehicles;*

(b) Motor vehicle engines offered for sale in this State that will be installed in:

- (1) Passenger cars;*
- (2) Light-duty trucks;*
- (3) Medium-duty passenger vehicles; or*
- (4) Medium-duty vehicles; and*

(c) Motor vehicles sold or leased to the United States government or an agency thereof or to the State of Nevada or a political subdivision thereof that are or will be registered in this State that are:

- (1) Passenger cars;*
- (2) Light-duty trucks;*
- (3) Medium-duty passenger vehicles; or*

(4) Medium-duty vehicles.

2. The provisions of sections 2 to 36, inclusive, of this regulation do not apply to:

(a) A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to the resident which was damaged, became inoperative beyond reasonable repair or was stolen while out of this State, provided that the replacement vehicle is acquired outside of this State at the time the previously owned vehicle was either damaged, became inoperative or was stolen, as applicable;

(b) A vehicle transferred by inheritance;

(c) A vehicle transferred by court decree;

(d) Any vehicle that has a certificate of conformity issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 et seq., that was originally registered in another state by a person who subsequently established residency in this State and who, upon registration of the vehicle in this State, provides satisfactory evidence to the Department of Motor Vehicles or its designee of the previous residence and registration;

(e) Any vehicle with 7,500 miles or more of use as of the date of sale or lease;

(f) Any vehicle designated as an authorized emergency vehicle pursuant to NRS 484A.480, as amended by section 5 of Senate Bill No. 46, chapter 151, Statutes of Nevada 2021, at page 669; and

(g) Any vehicle that meets the definition of a military tactical vehicle pursuant to NRS 445B.759.

Sec. 20. 1. *The following provisions of Title 13 of the California Code of Regulations are hereby adopted by reference:*

- (a) Section 1900, as it existed on January 1, 2020;*
- (b) Section 1956.8(h), as it existed on January 1, 2020;*
- (c) Section 1960.1, as it existed on January 1, 2020;*
- (d) Section 1961, as it existed on January 1, 2020;*
- (e) Section 1961.1, as it existed on January 1, 2020;*
- (f) Section 1961.2, as it existed on January 1, 2020;*
- (g) Section 1961.3, as it existed on January 1, 2020;*
- (h) Section 1962, as it existed on January 1, 2020;*
- (i) Section 1962.1, as it existed on January 1, 2020;*
- (j) Section 1962.2, as it existed on January 1, 2020;*
- (k) Section 1962.3, as it existed on January 1, 2020;*
- (l) Section 1965, as it existed on January 1, 2020;*
- (m) Section 1968.2, as it existed on January 1, 2020;*
- (n) Section 1968.5, as it existed on January 1, 2020;*
- (o) Section 1976, as it existed on January 1, 2020;*
- (p) Section 1978, as it existed on January 1, 2020;*
- (q) Section 2035, as it existed on January 1, 2020;*
- (r) Section 2037, as it existed on January 1, 2020;*
- (s) Section 2038, as it existed on January 1, 2020;*
- (t) Section 2039, as it existed on January 1, 2020;*
- (u) Section 2040, as it existed on January 1, 2020;*
- (v) Section 2041, as it existed on January 1, 2020;*

- (w) Section 2046, as it existed on January 1, 2020;*
- (x) Section 2062, as it existed on January 1, 2020;*
- (y) Section 2109, as it existed on January 1, 2020;*
- (z) Section 2111, as it existed on January 1, 2020;*
- (aa) Section 2112, as it existed on January 1, 2020;*
- (bb) Section 2113, as it existed on January 1, 2020;*
- (cc) Section 2114, as it existed on January 1, 2020;*
- (dd) Section 2115, as it existed on January 1, 2020;*
- (ee) Section 2116, as it existed on January 1, 2020;*
- (ff) Section 2117, as it existed on January 1, 2020;*
- (gg) Section 2118, as it existed on January 1, 2020;*
- (hh) Section 2119, as it existed on January 1, 2020;*
- (ii) Section 2120, as it existed on January 1, 2020;*
- (jj) Section 2121, as it existed on January 1, 2020;*
- (kk) Section 2122, as it existed on January 1, 2020;*
- (ll) Section 2123, as it existed on January 1, 2020;*
- (mm) Section 2124, as it existed on January 1, 2020;*
- (nn) Section 2125, as it existed on January 1, 2020;*
- (oo) Section 2126, as it existed on January 1, 2020;*
- (pp) Section 2127, as it existed on January 1, 2020;*
- (qq) Section 2128, as it existed on January 1, 2020;*
- (rr) Section 2129, as it existed on January 1, 2020;*

- (ss) Section 2130, as it existed on January 1, 2020;*
- (tt) Section 2131, as it existed on January 1, 2020;*
- (uu) Section 2132, as it existed on January 1, 2020;*
- (vv) Section 2133, as it existed on January 1, 2020;*
- (ww) Section 2134, as it existed on January 1, 2020;*
- (xx) Section 2135, as it existed on January 1, 2020;*
- (yy) Section 2139, as it existed on January 1, 2020;*
- (zz) Section 2141, as it existed on January 1, 2020;*
- (aaa) Section 2142, as it existed on January 1, 2020;*
- (bbb) Section 2143, as it existed on January 1, 2020;*
- (ccc) Section 2144, as it existed on January 1, 2020;*
- (ddd) Section 2145, as it existed on January 1, 2020;*
- (eee) Section 2146, as it existed on January 1, 2020;*
- (fff) Section 2147, as it existed on January 1, 2020;*
- (ggg) Section 2148, as it existed on January 1, 2020;*
- (hhh) Section 2149, as it existed on January 1, 2020; and*
- (iii) Section 2235, as it existed on January 1, 2020.*

2. For the purposes of applying the provisions of Title 13 of the California Code of Regulations adopted by reference in subsection 1, unless the context otherwise requires:

- (a) “California” means the State of Nevada;*
- (b) “CARB” or “AIR Resources Board” means the Department; and*
- (c) “Executive Officer” means the Director.*

3. *A copy of the provisions of the California Code of Regulations, as adopted by reference in subsection 1, may be obtained free of charge at the Internet address <http://www.oal.ca.gov>.*

Sec. 21. *A person shall not sell or lease, offer for sale or lease, register, import, deliver, purchase, acquire or receive a 2025 or subsequent model year new passenger car, light-duty truck, medium-duty passenger vehicle or medium-duty vehicle in this State which is not certified to the provisions of California emissions standards, as adopted by reference pursuant to section 20 of this regulation, unless the car, truck or vehicle, as applicable, is:*

1. *Sold to another dealer;*
2. *Sold for the purpose of being wrecked or dismantled;*
3. *Sold exclusively for off-highway use; or*
4. *Sold for registration outside of this State.*

Sec. 22. 1. *Beginning with the 2025 model year, each manufacturer of passenger cars, light-duty trucks and medium-duty vehicles produced and delivered for sale in this State shall not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission standards set forth in section 1961.2 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.*

2. *Each manufacturer subject to subsection 1 may accrue and utilize credits and debits based upon the sales of vehicles by the manufacturer in this State, in accordance with the provisions set forth in section 1961.2 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.*

Sec. 23. 1. *Beginning with the 2025 model year, each manufacturer of passenger cars, light-duty trucks and medium-duty vehicles produced and delivered for sale in this State shall*

not exceed the fleet average greenhouse gas emission standards set forth in section 1961.3 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

2. Each manufacturer subject to subsection 1 may accrue and utilize credits and debits based upon the sales of vehicles by the manufacturer in this State in accordance with the provisions set forth in section 1961.3 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

Sec. 24. 1. Beginning with the 2025 model year, each manufacturer must submit to the Department, not later than March 1 following the end of the model year, a report of the non-methane organic gas plus oxides of nitrogen exhaust emissions of the manufacturer's fleet produced and delivered for sale in this State for the applicable model year. The report must be prepared in the same format that this information is reported to CARB and in accordance with the requirements of this section.

2. If a manufacturer elects to report the information required pursuant to subsection 1 using the pooling provision set forth in section 1961.2 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation, the manufacturer must report to the Department the information required pursuant to subsection 1 for the entire pool as well as for the portion specific to this State.

3. If the Department determines that a report submitted by a manufacturer pursuant to subsection 1 or 2 demonstrates that the manufacturer is not in compliance with section 22 of this regulation, the Department shall require the manufacturer to submit a fleet average

remediation report to the Department within 60 days after the manufacturer receives notice from the Department that the manufacturer is not in compliance. The report must:

(a) Describe how the manufacturer intends to equalize any accrued debits;

(b) Identify all vehicle models delivered for sale in this State, the corresponding certification levels of the vehicle models and the percentage of each vehicle model delivered for sale in this State and the state of California in relation to total fleet sales in each respective state; and

(c) Describe how the manufacturer intends to achieve compliance with the fleet average non-methane organic gas plus oxides of nitrogen emission standard in future model years.

Sec. 25. 1. *Beginning with the 2025 model year, each manufacturer must submit to the Department, not later than March 1 following the end of the model year, a report of the greenhouse gas exhaust of the fleet produced and delivered for sale in this State by the manufacturer for the applicable model year. The report must be prepared in the same format that this information is reported to CARB and in accordance with the requirements of this section.*

2. If a manufacturer elects to report the information required pursuant to subsection 1 using option 2 for the calculation of fleet average carbon dioxide value set forth in section 1961.3(a)(5)(D) of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation, the manufacturer must report to the Department the information required pursuant to subsection 1 for the entire pool as well as for the portion specific to this State.

3. If the Department determines that a report submitted by a manufacturer pursuant to subsection 1 or 2 demonstrates that the manufacturer is not in compliance with section 23 of this regulation, the Department shall require the manufacturer to submit a fleet average remediation report to the Department within 60 days after the manufacturer receives notice from the Department that the manufacturer is not in compliance. The report must:

(a) Describe how the manufacturer intends to equalize any accrued debts;

(b) Identify all vehicle models delivered for sale in this State, the corresponding certification levels of the vehicle models and the percentage of each vehicle model delivered for sale in this State and the state of California in relation to total fleet sales in each respective state; and

(c) Describe how the manufacturer intends to achieve compliance with the fleet average greenhouse gas emission standard for future model years.

Sec. 26. *Within 30 days of receiving a request from the Department, a manufacturer must submit to the Department:*

1. A copy of the California Executive Order and Certificate of Conformity for certification of new motor vehicles for each engine family to be sold in this State by the manufacturer. If these records are available electronically, the manufacturer must submit the records in an electronic format approved by the Director.

2. Any documentation the Department deems necessary for the effective administration and enforcement of sections 2 to 36, inclusive, of this regulation, which may include, without limitation, all certification materials submitted to CARB.

3. *Any emissions warranty information report prepared in accordance with section 2144 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.*

Sec. 27. 1. *For the purposes of enforcing or administering any federal or state law, order, regulation or rule relating to vehicular sources of emissions, an authorized representative of the Department or the Department of Motor Vehicles may enter any premises owned, operated, used, leased or rented by any new or used vehicle dealer in order to inspect any vehicle with a model year of 2025 or later.*

2. *Nothing in the provisions of this section or sections 2 to 36, inclusive, of this regulation limits the authority of the Department pursuant to NRS 445B.240 to enter and inspect premises.*

Sec. 28. 1. *For the purposes of determining compliance with sections 2 to 36, inclusive, of this regulation, the Department may require any vehicle dealer or short-term lessor of vehicles to submit any documentation requested by the Department that the Department determines is necessary for the effective administration and enforcement of sections 2 to 36, inclusive, of this regulation.*

2. *Any person subject to the provisions of sections 2 to 36, inclusive, of this regulation must retain all records for at least 3 years from the creation of the record. Such records must be provided to the Department upon request of the Department.*

3. *The provisions of this section do not require the creation of any new records.*

Sec. 29. 1. *Beginning with model year 2025, each manufacturer of passenger cars, light-duty trucks, medium-duty vehicles and motor vehicle engines subject to the requirements*

of sections 2 to 36, inclusive, of this regulation must provide to the ultimate purchaser of the vehicle and each subsequent purchaser a warranty that complies with the requirements set forth in:

(a) Sections 2035, 2037 and 2038 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation;

(b) Section 2040 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation; and

(c) Section 2046 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

2. Except as otherwise provided in this subsection, beginning with model year 2025, each manufacturer of passenger cars, light-duty trucks, medium-duty vehicles and motor vehicle engines must include with each new vehicle or engine manufactured the emissions control system warranty statement that complies with the requirements of section 2039 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation, except:

(a) A manufacturer may modify the emissions control system warranty statement as necessary to inform vehicle owners of the applicability of the warranty in this State.

(b) For the purpose of the documents required pursuant to section 2039(c) of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation, a manufacturer is only required to submit such documents upon request of the Department.

3. For the purposes of this section:

(a) “Subsequent purchaser” means any person who purchases a motor vehicle or motor vehicle engine after the ultimate purchaser.

(b) “Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

Sec. 30. A person shall not sell or lease, offer for sale or lease, register, import, deliver, purchase, rent or otherwise acquire or receive a new passenger car, light-duty truck, medium-duty passenger vehicle or medium-duty vehicle in this State to which emission control labels and Environmental Performance labels have not been affixed pursuant to the requirements of section 1965 of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

Sec. 31. 1. Except as otherwise provided in subsection 2, for all passenger cars, light-duty trucks, medium-duty vehicles, and motor vehicle engines subject to an emissions-related recall in the state of California, each manufacturer shall undertake a recall campaign in this State pursuant to sections 2111 to 2135, inclusive, of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

2. A manufacturer is not required to undertake a recall campaign pursuant to subsection 1 if the manufacturer demonstrates to the Department that such emissions-related recall is not applicable to vehicles registered in this State.

Sec. 32. 1. Beginning with model year 2025, all zero emission vehicles must be certified by the Executive Officer of CARB in accordance with section 1962.2(a) of Title 13 of the

California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

2. Each manufacturer of vehicles must comply with the minimum ZEV credit percentage requirement for the sale of zero emission vehicles set forth in section 1962.2(b) of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

Sec. 33. 1. A manufacturer may earn early action credits for any 2022, 2023 and 2024 model year range extended battery electric vehicles, neighborhood electric vehicles, transitional zero emission vehicles and zero emission vehicles the manufacturer produces and delivers for sale in this State on or after January 1, 2022, by reporting the total production and delivery of such vehicles to the Department at the end of the 2022, 2023 and 2024 model years.

2. Any early action credits earned for model years 2022, 2023 and 2024 pursuant to subsection 1 will be managed by the Department and deposited into the manufacturer's account in the California ZEV Credit Reporting and Data Tracking System for use beginning in model year 2025 in accordance with section 34 of this regulation.

Sec. 34. 1. Beginning with model year 2025, a manufacturer shall open an account in the California ZEV Credit Reporting and Data Tracking System for banking credits generated in this State. The manufacturer may deposit and earn ZEV credits for each qualifying vehicle delivered for sale in this State in accordance with this section and sections 1962.2(c), (d) and (g) of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

2. For use beginning in model year 2025, the Department shall deposit into the manufacturer's account in the California ZEV Credit Reporting and Data Tracking System any early action credits earned by the manufacturer pursuant to section 33 of this regulation.

3. For use beginning in model year 2026, once the manufacturer has satisfied all credit obligations for model years 2024 and earlier in California, the Department shall deposit into the manufacturer's account in the California ZEV Credit Reporting and Data Tracking System a number of initial credits equal to the manufacturer's 2025 model year starting California credit balance multiplied by the number of new passenger cars and light-duty trucks the manufacturer produced and delivered for sale in this State in model year 2024 and divided by the number of new passenger cars and light-duty trucks that the manufacturer produced and delivered for sale in California in model year 2024.

Sec. 35. On or before September 1 of each year, each manufacturer must submit to the Department a report detailing the credits generated or credits transferred to or from any manufacturer for each qualifying vehicle produced and delivered for sale in this State during the previous model year. The report must be prepared in the same format as the report submitted to CARB.

Sec. 36. 1. A manufacturer that fails to meet the credit obligation for the production and delivery of zero emission vehicles in this State in a given model year must make up the credit deficit by submitting a commensurate amount of ZEV credits to the Director pursuant to and within the time specified in section 1962.2(g)(7) of Title 13 of the California Code of Regulations, as adopted pursuant to section 20 of this regulation.

2. If a manufacturer fails to submit an appropriate amount of ZEV credits as required pursuant to subsection 1 and does not make up the deficit, the Director must refer the matter to the Department of Motor Vehicles. The Department of Motor Vehicles may impose an administrative fine on the manufacturer pursuant to NRS 445B.835 for each motor vehicle sold by the manufacturer for which the manufacturer did not meet its credit obligation, as determined pursuant to subsection 3.

3. For the purposes of the administrative fine imposed by the Department of Motor Vehicles pursuant to subsection 2, the number of vehicles for which the manufacturer did not meet the credit obligation is equal to the manufacturer's credit deficit, rounded to the nearest 1/100th and calculated according to the equation provided in section 1962(g)(8) of Title 13 of the California Code of Regulations, as adopted pursuant to section 20 of this regulation, provided that the percentage of a manufacturer's ZEV requirement for a given model year that may be satisfied with transitional zero emission vehicles or credits from such vehicles may not exceed the percentages permitted under section 1962.2(b)(2) of Title 13 of the California Code of Regulations, as adopted by reference pursuant to section 20 of this regulation.

Sec. 37. This regulation, LCB File No. R093-20, is hereby amended by adding thereto the following transitory language which has the force and effect of law but which will not be codified in the Nevada Administrative Code:

1. Except as otherwise provided in subsection 2, the State Department of Conservation and Natural Resources shall enforce the provisions of sections 1 to 36, inclusive, of this regulation beginning on January 1, 2022, or the date the waiver of emissions standards granted by the United States Environmental Protection Agency pursuant to 42 U.S.C. §7543 to the State of

California for the emission standards adopted by California is reinstated by the United States Environmental Protection Agency or a court of law or a new waiver is issued by the United States Environmental Protection Agency, whichever is later. The Department shall not enforce the provisions of sections 1 to 36, inclusive, of this regulation before that date.

2. The State Department of Conservation and Natural Resources shall not enforce the provisions of sections 1 to 36, inclusive, of this regulation for vehicles of model year 2025 or later unless the date that this regulation is filed with the Secretary of State occurs at least 2 years before the release of vehicles for that model year.

3. The State Department of Conservation and Natural Resources shall post notice of the date on which the Department is authorized to begin enforcing the provisions of sections 1 to 36, inclusive, of this regulation pursuant to subsections 1 and 2 on the Internet website of the Department and make such other efforts to notify manufacturers of motor vehicles as the Director of the Department deems appropriate.

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: 093-20

Permanent Regulation R093-20:

Nevada Revised Statutes (NRS) 445B.100 establishes that it is public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State. It further states that it is the intent of NRS 445B.100 to 445B.640, inclusive, to require the use of reasonably available methods to prevent, reduce or control air pollution throughout the State of Nevada.

NRS 445B.210 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to prevent, abate and control air pollution. NRS 445B.760 establishes the authority of the SEC to adopt standards for emissions from mobile internal combustion engines found in motor vehicles after those standards have been approved by the Department of Motor Vehicles.

SPECIFIC CHANGES:

The amendments to the Nevada Administrative Code (NAC) Chapter 445B adopt:

- a) The California Low Emission Vehicle (LEV) standards for exhaust emissions and fuel evaporative emissions of criteria pollutants and greenhouse gases from mobile internal combustion engines found in new, light-duty and medium duty motor vehicles and engines sold in Nevada starting from model year 2025.
- b) The California Zero Emission Vehicle (ZEV) program, starting with sales of model year 2025 vehicles. The ZEV program requires that automobile manufacturers earn a specified percentage of credits that are related to the delivery for sale of new light-duty motor vehicles in the state that are zero emission vehicles.

The proposed regulation amends NAC 445B by creating a new subsection for the LEV and ZEV programs under the Emissions from Engines section. The subsection includes general provisions, definitions, severability, adoption of California Administrative Code by reference, LEV program provisions, ZEV program provisions, warranty and recall provisions, and civil penalties.

1. Need for Regulation:

Governor Sisolak has directed his administration through Executive Order 2019-22 to evaluate policies and regulatory strategies, including but not limited to those identified pursuant to Senate Bill 254 from the 2019 Legislative Session, to achieve reductions in greenhouse gas emissions consistent with Nevada's commitment as a member of the U.S. Climate Alliance. That commitment includes goals agreed to by member states of reducing statewide greenhouse gas emissions 28% by 2025 and 45% by 2030 as compared to 2005 emissions. As a significant step toward achieving those goals, on June 22, 2020, Governor Sisolak announced the Clean Cars Nevada initiative.

NDEP has evaluated the Clean Cars Nevada proposal and the adoption of these new regulations will provide Nevadans with more choices for low and zero emission electric passenger cars and trucks at dealerships throughout the state beginning in 2024 with model year 2025 new vehicles. In addition to increasing consumer options, Clean Cars Nevada will help advance the State's climate change and sustainability goals and reduce harmful air pollution from cars and trucks on Nevada's roads.

Emissions of criteria pollutants (like nitrogen oxides, NOx, particulate matter, PM, and carbon monoxide, CO) from transportation are the main source of pollution in Nevada's urban areas. NOx emissions contribute to the formation of ground level ozone (smog), for which the Las Vegas valley has been designated in non-attainment by the Environmental Protection Agency (EPA); the city of Reno is in attainment for ozone, but concentrations have been very close to the non-attainment threshold in recent years.

The proposed regulation aims to reduce both greenhouse gas and criterial pollutants emissions from the fleet of vehicles sold annually by motor vehicle manufacturers in the State.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

Beginning December 2020, NDEP held multiple public outreach events as listed below. Recordings and presentations from these outreach efforts are posted on the Clean Cars Nevada website at <https://ndep.nv.gov/air/clean-cars-nevada>

Clean Cars Nevada Kick - Off	December 8, 2020	Webinar
Virtual Listening Session	January 14, 2021	Webinar
Technical Session 1 - LEV	February 23, 2021	Webinar
Technical Session 2 - ZEV	March 30, 2021	Webinar
Air Quality Impacts Analysis 1	April 27, 2021	Webinar
Air Quality Impacts Analysis 2	May 27, 2021	Webinar
Economic Impacts	June 15, 2021	Webinar
Stakeholder Presentations	June 17, 2021	Webinar

Chispa Nevada Clean Cars Initiative	July 26, 2021	Bi-Lingual Webinar
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Additionally, on July 28, 2021, NDEP conducted a public workshop on regulation R093-20 both virtually and in person at NDEP's offices in Carson City and Las Vegas. A total of sixty-seven (67) members of the public attended this workshop.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: <https://sec.nv.gov/meetings/sec-regulatory-meeting-september-1-2021>

On August 4, 2021, the Nevada Department of Motor Vehicles (DMV) provided a letter (attached) to the State Environmental Commission stating that the DMV is in approval and support of proposed regulation R093-20, as provided for under DMV authority within NRS 445B.760 et. seq.

Following the workshop, the SEC held a formal regulatory hearing on September 1, 2021, at the Bryan Building, Second Floor Tahoe Conference Room, located at 900 South Carson Street and video-conferenced in Las Vegas at the Red Rock Conference Room, located at 375 East Warm Springs Road, Suite 200; the meeting was also accessible remotely via web and phone line. A public notice for the regulatory meeting and a copy of the proposed regulation were posted at the State Library in Carson City, at NDEP offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and disseminated to the SEC email distribution list. The public notice was also physically posted at the Division of Minerals in Carson City, and the Department of Agriculture in Reno as well as on LCB, Division of Administration and SEC respective websites.

The agenda and location of supporting documents were posted at NDEP offices located in both Carson City and Las Vegas, the Division of Minerals in Carson City, at the Department of Agriculture in Reno, and on LCB, Division of Administration and SEC respective websites, and disseminated to the SEC email distribution list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC's September 1, 2021, regulatory hearing. Other information about this regulation was made available on the SEC website at: <https://sec.nv.gov/meetings/sec-regulatory-meeting-september-1-2021>

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended September 1, 2021, hearing: 77 (approximately)
- (b) Testified on this Petition at the hearing: 23
- (c) Submitted to the agency written comments: 16

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through email, public webinars, a public workshop, and regulatory hearing held on September 1, 2021, as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted without change because the public and the SEC were satisfied with the proposed regulation.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The proposed regulation will have an indirect economic effect on regulated businesses and industry; including the motor vehicle franchised dealers, automotive repair facilities, automotive parts suppliers and retail outlets, automotive fuel retailers and suppliers, and the motor vehicle manufacturers. However, only a generalized and qualitative impact on these businesses can be predicted. The requirement of selling an increasing percentage of zero emission vehicles may increase costs and uncertainty over consumer acceptance for the dealers. Automotive dealerships may also expect vehicle service revenue to decline over time due to the greater reliability of and lower maintenance costs for electric vehicles. Automotive manufacturers will incur compliance and reporting costs.

Public. The proposed regulation is anticipated to have a positive economic effect on the public. Prices of zero emission vehicles are likely to be initially higher than comparable vehicles, though prices are expected to achieve parity within the next five to seven years. However, repair costs of zero emission vehicles are lower over the life of the vehicle due to many fewer moving parts. Lifetime fueling costs of electric vehicles in place of petroleum-fueled vehicles are lower. In general, the requirement for increasing zero emission vehicle sales will provide a much larger choice of makes and models available to the public, and lower lifetime vehicle ownership costs. In the long term, the fleet transformation to low emission and zero emission vehicles will lead to significant reductions in greenhouse gases and criteria pollutants from the transportation sector. This is expected to provide significant health and societal benefits, especially for those Nevadans living in areas already impacted by air pollution.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The proposed regulation will have an economic effect on the Nevada agencies charged with implementing the regulation. NDEP will take the lead on this

program implementation. NDEP will also coordinate with the DMV on the compliance and enforcement of the program. Initial implementation of the program will be done with existing staff, however, ongoing program implementation and future rulemakings associated with this program may require additional staff.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Clean Air Act provides exclusive authority for the EPA to regulate emission standards from motor vehicles, with the exception of the state of California, which can adopt more stringent standards with the approval of the EPA through a waiver process. Other states can adopt California vehicle emission standards as long as they are identical to those adopted by California. This regulation adopts California standards for certain types of vehicles and model years, hence replacing the federal standards.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is more stringent than what is established by federal law. Section 177 of the federal Clean Air Act, 42 U.S.C. Section 7507, provides states the option of requiring compliance with either federal or approved California emission standards for vehicles sold within their borders. This option is made available to states in order to facilitate additional emissions reductions that states can use to meet individual statewide emission reduction goals.

10. If the 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 regulation does not address fees.

FORM #4

NEVADA STATE ENVIRONMENTAL COMMISSION SMALL BUSINESS IMPACT DISCLOSURE PROCESS PURSUANT TO 233B “Nevada Administrative Procedures Act”

The purpose of this Form is to provide a framework pursuant to NRS 233B.0608 for drafting and submitting a Small Business Impact Statement (SBIS) to the State Environmental Commission (SEC) and to determine whether a SBIS is required to be noticed and available at the public workshop. A SBIS must be completed and submitted to the Legislative Counsel Bureau for ALL adopted regulations.

Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS 233B.0382).

To determine whether a SBIS must be noticed and available at the public workshop, answer the following questions:

1. Does this proposed regulation impose a direct and significant economic burden upon a small business?

No, the proposed regulation does not impose a direct and significant economic burden upon small business. The proposal directly regulates large and intermediate car manufacturers through a Zero Emission Vehicle sales credit compliance mechanism and reporting requirements. However, there are indirect impacts on a broader spectrum of automotive-related businesses, including small business, and retail automobile customers. Therefore, in the interest of transparency, NDEP has elected to explain the indirect economic impacts that the proposed regulation may impart to affected small businesses and inform all stakeholders of those potential impacts.

2. Does this proposed regulation restrict the formation, operation or expansion of a small business?

No, the proposed regulation does not restrict the formation, operation or expansion of a small business.

If **Yes** to either of questions 1 & 2, a SBIS must be noticed and available at the public workshop.

INDIRECT ECONOMIC IMPACTS TO SMALL BUSINESSES

Clean Cars Nevada would result in a direct economic impact to auto manufacturers by requiring them to deliver for sale in Nevada Low Emission Vehicles and increased numbers of Zero Emission Vehicles, and to prepare and submit associated compliance reporting.

The proposed regulation would not impose a direct and significant economic burden upon small businesses in Nevada, and would not directly restrict the formation, operation or expansion of a small business.

The impacts on small businesses are indirect. NDEP has prepared a qualitative assessment of small business impacts presented below.

Impacts to Automotive Dealerships

- 1) Revenue from new vehicle sales will depend more on sales of ZEVs, and profit margins per vehicle for ZEVs may be less certain for auto dealers.
- 2) Auto dealers will likely experience a gradual decline of repair and maintenance revenue.
- 3) There will be costs to install needed electric vehicle charging infrastructure at dealerships.
- 4) There may be additional marketing, advertising, and purchase incentive costs associated with the introduction of ZEVs.

Impacts to Used Car Retailers

- 1) Used car retailers may need to install charging infrastructure.
- 2) Remaining battery life on ZEVs is difficult to assess at the present time, creating greater uncertainty in assigning value to used ZEVs for customers and in the used car wholesale market.

Impacts to Automotive Repair and Maintenance Shops

- 1) Fewer mechanical components in ZEVs will result in fewer repairs.
- 2) Greater electronic complexity in ZEVs will necessitate the need for better diagnostics and technician training.
- 3) No required fluid and filter changes in ZEVs will mean a decline in maintenance revenue.

Impacts to Automotive Parts Shops and Suppliers

- 1) Fewer mechanical replacement parts will be needed for ZEVs, though many parts found on current vehicles will still be needed (steering, suspension, tires, brakes, windows, interior, exterior, and electronic components).

Impacts to the Collision Repair Industry

- 1) Better diagnostics and training will be needed to service new lighter-weight automotive materials and innovative ZEV designs.

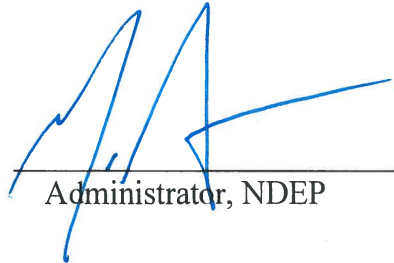
- 2) Collision damage to batteries and associated electronic hardware will present new challenges requiring new repair methods.

Impacts to Retail Fuel Providers, Fuel Suppliers, and the Smog Check Industry

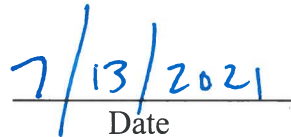
- 1) Decreased fuel sales will impact retailers and suppliers.
- 2) The business model for convenience stores that sell fuel may change.
- 3) Smog checks performed at smog check stations will decline.

Summary of Small Business Impacts

- 1) There may be automotive dealer uncertainty over consumer acceptance of ZEVs, and how to market and profitably sell ZEVs.
- 2) There will be a decline in revenue for maintenance of ZEVs.
- 3) Capital costs for charging infrastructure, new diagnostic equipment and updated training will be required in the automotive service sector.
- 4) A decline in fossil fuel sales and associated businesses will occur.



Administrator, NDEP



Date

**ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R158-20

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

AUTHORITY: §§1 and 3, NRS 703.025, 704.210, 704.7821 and 704.7828; §2, NRS 703.025, 704.210 and 704.7828.

A REGULATION relating to energy; establishing the portfolio standard for certain providers of electric service; establishing provisions governing portfolio energy credits earned by certain providers; revising the portfolio standard for providers of new electric resources; setting forth the procedure for certain providers to establish compliance with the portfolio standard; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Public Utilities Commission of Nevada to establish a portfolio standard which requires each provider of electric service in this State to generate, acquire or save electricity from renewable energy systems or efficiency measures in a certain percentage of the total amount of electricity sold by the provider to its retail customers in this State during a calendar year. (NRS 704.7821) For the purposes of determining compliance with the portfolio standard established by the Commission, existing law exempts the first 1,000,000 megawatt-hours of electricity sold by certain providers of electric service from the total amount of electricity sold by such providers to their customers during a calendar year. (NRS 704.7821)

Section 1 of this regulation requires such a provider, if the amount of electricity sold to its retail customers in a compliance year exceeds 1,000,000 megawatt-hours, to generate, acquire or save electricity from portfolio energy systems or efficiency measures in an amount calculated as a percentage of the amount of electricity sold by the provider to its retail customers in excess of 1,000,000 megawatt-hours and requires the provider to submit certain reports to the Commission. **Section 1** also establishes limits on when portfolio energy credits may be earned by such a provider.

Section 3 of this regulation revises the portfolio standard applicable to providers of new electric resources. **Section 3** also establishes requirements for certain providers of electric service to establish compliance with the portfolio standard for each compliance year.

Section 2 of this regulation makes a conforming change to indicate the appropriate placement of **section 1** in the Nevada Administrative Code.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the total amount of electricity sold by a provider described in subsection 9 of NRS 704.7821 to its retail customers in this State during the most recently completed compliance year is greater than 1,000,000 megawatt-hours, the provider shall:

(a) Comply with its portfolio standard during the compliance year by generating, acquiring or saving electricity from a portfolio energy system or efficiency measure in the amounts required pursuant to NRS 704.7821, except that, for the purposes of subsection 1 of NRS 704.7821, the total amount of electricity sold by the provider to its retail customers in this State during the compliance year shall be deemed not to include the first 1,000,000 megawatt-hours of electricity sold by the provider to such customers during that compliance year;

(b) Report to the Commission the total amount of electricity in excess of 1,000,000 megawatt-hours sold to its retail customers in this State during the most recently completed compliance year and submit to the Commission either:

(1) An attestation by the provider that the electricity in excess of 1,000,000 megawatt-hours sold to such customers was generated or acquired from a portfolio energy system described in paragraph (b) of subsection 1 of NRS 704.7804; or

(2) If the electricity in excess of 1,000,000 megawatt-hours sold was not generated or acquired from a portfolio energy system described in paragraph (b) of subsection 1 of NRS 704.7804, a report pursuant to NAC 704.8879; and

(c) If the provider intends to participate in the system of portfolio energy credits for the amount of electricity in excess of 1,000,000 megawatt-hours sold to its retail customers in this State, file a report pursuant to NAC 704.8879 and comply with the provisions of NAC 704.8901 to 704.8937, inclusive.

2. A provider described in subsection 9 of NRS 704.7821 only earns portfolio energy credits equal to 1 kilowatt-hour of electricity generated, acquired or saved by that provider from a portfolio energy system or efficiency measure, not including the first 1,000,000 megawatt-hours supplied by the provider to its members or retail customers in a compliance year.

Sec. 2. NAC 704.8831 is hereby amended to read as follows:

704.8831 As used in NAC 704.8831 to 704.8899, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 704.8833 to 704.8867, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NAC 704.8871 is hereby amended to read as follows:

704.8871 1. ~~Except as otherwise provided in NAC 704.8831 to 704.8899, inclusive:~~
~~—(a)~~ Each ~~utility~~ provider shall comply with its portfolio standard during each compliance year by generating, acquiring or saving electricity from a portfolio energy system or efficiency measure in the amounts required by NRS 704.7821 *or 704.78213, as applicable*, for that compliance year. ~~‡~~

~~(b) If a provider of new electric resources made energy, capacity or ancillary services from a new electric resource available to an eligible customer before July 1, 2009, the portfolio standard set forth in NRS 704.7821 which was effective on the date on which the order approving the~~

~~application or request was approved shall be deemed to apply to the provider of new electric resources, and the provider of new electric resources shall comply with its portfolio standard by generating, acquiring or saving electricity from a portfolio energy system or efficiency measure in the amounts required by NRS 704.7821 for that compliance year; and~~

~~—(c) If a provider of new electric resources made energy, capacity or ancillary services from a new electric resource available to an eligible customer on or after July 1, 2009, the provider of new electric resources shall comply with its portfolio standard during each compliance year by generating, acquiring or saving electricity from a portfolio energy system or efficiency measure in the amounts required pursuant to NRS 704.78213.]~~

2. Each provider has the burden to prove that it complied with its portfolio standard during each compliance year.

3. ~~[As used in this section, “provider of new electric resources” has the meaning ascribed to it in NRS 704B.130.]~~ *A provider described in subsection 9 of NRS 704.7821 shall meet the burden to prove that it complied with its portfolio standard during each compliance year by:*

(a) Including a statement in the report filed pursuant to paragraph (b) of subsection 1 of NRS 703.191 of the total amount of electricity supplied to its members in this State during the most recently completed compliance year if the total amount of electricity supplied by the provider to such members during the most recently completed compliance year is not more than 1,000,000 megawatt-hours and the provider is a provider described in paragraphs (a) or (d) of subsection 9 of NRS 704.7821;

(b) Submitting to the Commission, not later than April 15 of each compliance year, a report stating that the total amount of electricity sold by the provider to its retail customers in

this State during the most recently completed compliance year is not more than 1,000,000 megawatt-hours and the provider is a provider described in paragraphs (b) or (c) of subsection 9 of NRS 704.7821; or

(c) Submitting to the Commission a statement certifying that the provider complied with the requirements of paragraph (a) of subsection 1 of section 1 of this regulation for the compliance year if the total amount of electricity sold by the provider to its retail customers in this State during the most recently completed compliance year is more than 1,000,000 megawatt-hours.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File Nos. R027-20 and R158-20

1. A clear and concise explanation of the need for the adopted regulation.

The regulations implement Senate Bill (“SB”) 358 (2019).

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

(b) The Reno Sparks Chamber of Commerce; Conservatives for Responsible Stewardship; the Bonneville Power Administration (“BPA”); The Western Way; the Nevada Rural Electric Association (“NREA”); Western Resource Advocates; e-centricity, LLP; the Nevada Conservation League; Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively referred to as “NV Energy”); Interwest Energy Alliance (“Interwest”); Wells Rural Electric Company; Mt. Wheeler Power Inc.; Vote Solar; First Solar, Inc.; the Bureau of Consumer Protection (“BCP”); and the Regulatory Operations Staff (“Staff”) of the Commission filed comments in the matter prior to the draft regulation language being sent to the Legislative Counsel Bureau (“LCB”) for review. Following LCB review, NV Energy, BCP and Interwest filed comments. The commenters generally supported the proposed regulation with some suggestions for modification of specific provisions as summarized at ¶¶15-18 of the July 14, 2021, PUCN Order adopting the regulation as permanent.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

3. The number of persons who:

(a) **Attended each hearing:** 6

- (b) **Testified at each hearing:** 6
- (c) **Submitted written comments:** 3

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

- (a) **Name;**
- (b) **Telephone number;**
- (c) **Business address;**
- (d) **Business telephone number;**
- (e) **Electronic mail address; and**
- (f) **Name of entity or organization represented.**

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Donald J. Lomoljo
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dlomoljo@puc.nv.gov

5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Proposed revisions to the regulations proposed by the participants were generally incorporated in the regulation.

7. 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: both adverse and beneficial effects, and both immediate and long-term effects.

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation does not impose any economic effect on the businesses the regulation is to regulate.

(b) Estimated economic effect on the public which they are to regulate.

The regulation does not regulate the public.

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

Any costs associated with the regulation are considered incremental in nature.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate other State or federal regulations.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A

11. If the 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.

N/A

12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?

The Regulatory Operations Staff (“Staff”) of the Commission conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended to the Commission that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 19-06010 on March 16, 2021.

STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)

LCB File Nos. R027-20 and R158-20 (PUCN Docket No. 19-06010)

- 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.**

N/A. *See* Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608(1), the Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“PUCN”) conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on March 5, 2021, Staff memorialized its conclusion that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 1 hereto.

On March 16, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 2 hereto.

NRS 233B.0608(2)(a) only requires an agency to consult with owners and officers of small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such “affected” small businesses exist.

- 2. The manner in which the analysis was conducted.**

See Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Staff Delphi method to determine the potential impact of a regulation on small businesses.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
 - (a) Both adverse and beneficial effects; and**
 - (b) Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

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.

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608(1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On March 16, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. See Attachment 2.

NRS 233B.0608(2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business ...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods that were considered for reducing the non-existent impacts.

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

See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

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.

N/A. See also Informational Statement accompanying the Regulation, Question No. 11.

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.


See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. *See also* Attachment 1.

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

The PUCN complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses or directly restricts the formation, operation, or expansion of a small business. The PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of Staff.

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

DATED this 27th day of July, 2021.



STEPHANIE MULLEN,
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: February 17, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: Christine Greve, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 05-21; Item No. 4A; Docket No. 19-06010;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate
Bill 358 (2019).

I. Summary

On June 6, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Senate Bill 358 (2019) (“SB 358”). The Commission designated this matter as Docket No. 19-06010.

On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop (“Notice”).

On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments. On July 22, 2019, the Conservatives for Responsible Stewardship filed comments. On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments. On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, the Regulatory Operations Staff of the Commission (“Staff”), Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Attorney General’s Bureau of Consumer Protection (“BCP”) filed a letter stating that it will not submit initial comments but may file reply comments. On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP filed comments. On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments. On August 15, 2019, NREA filed reply comments. On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.

On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to the Commission’s Procedural Order No. 1, paragraph (A)(13)(a). After an informal stakeholder process and multiple workshops, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review on February 24, 2020. The first set of regulations addressed the acquisition of renewable energy facilities by the electric utility, Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”).

On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review regarding Renewable Portfolio Standard (“RPS”) compliance for rural electric cooperative associations described in SB 358.

On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form. On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.

On January 28, 2021, the Presiding Officer issued a procedural order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulation, provided as Attachments 1 and 2 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff to present a report of the results of this investigation along with a statement identifying the methodology used in determining the impact on small business and the reasons supporting the conclusions of the report. Staff was further directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for March 9, 2021.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- a. Impose a direct and significant economic burden upon small businesses; or
- b. Directly restrict the formation, operation, or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Staff Electrical Engineers, one (1) Staff Financial Analyst, and one (1) Staff Economist, all of whom were involved in the rulemaking in this Docket and all of whom are some of the most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four of whom were involved in the rulemaking in this Docket and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used their background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

Immediate Adverse Effects:

The proposed regulations will not directly restrict the formation, operation, or expansion of small businesses. The proposed regulations will not have immediate adverse effects on small businesses.

The first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility. The proposed regulations should not create a direct economic burden on small businesses.

Regarding RPS compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

Immediate Beneficial Effects:

The proposed regulations will not have immediate beneficial effects on small businesses. With regards to the acquisition of renewable generation facilities, any short-term benefit is enjoyed by NV Energy, as they will be able to own and operate renewable generation facilities outside of the resource planning process and gain the opportunity to compete in the open market. This may also reduce uncertainty in the marketplace and for its participants. With regards to RPS compliance, the proposed regulations could provide a public relations opportunity. To Staff’s knowledge, Nevada is the first state to qualify large hydropower for RPS compliance. More education and awareness of renewable energy will lead to more

acquisition of sustainable and reliable energy, and lead to the reduction of carbon dioxide over time.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will not have direct long-term adverse effects on small businesses. The proposed regulations could potentially increase electric rates long-term by requiring additional renewable energy investment, which is typically more expensive than the classic fossil fuel counterparts. However, any impact that may occur is a result of SB 358, not the proposed regulations.

Long-Term Beneficial Effects:

The proposed regulations will not have direct long-term beneficial effects on small businesses. As discussed previously, allowing the purchase of renewable generation facilities by NV Energy should reduce uncertainty in the marketplace, increase financial security for the utility, and provide more sustainable and reliable energy. Additional potential beneficial effects will likely flow to the public in the form of increased process codification and oversight. While those effects might not translate into significant economic benefits, they could lead to some reduced cost over the long term through some increased regulatory efficiency. Those potential cost reductions, however, would likely be minimal. Similarly, allowing hydropower to qualify as “renewable energy” will encourage more sustainable and reliable energy growth for the State of Nevada and lead to the reduction of carbon dioxide emissions. However, any impacts would be due to SB 358, not the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission may incur additional workload to administer the proposed regulations and address any non-compliance with the proposed regulations. However, Staff anticipates that such workload would be minimal, and any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission’s and Staff’s existing resources.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

III. Notice and Subsequent Action

On January 28, 2021, the Presiding Officer issued a procedural order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusions and Recommendations

Staff recommends, in accordance with NRS 233B.0608(1), the Commission find the proposed regulations are not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

Staff further recommends, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

ATTACHMENT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 358 (2019).)
) Docket No. 19-06010
)

At a general session of the Public Utilities Commission of Nevada, held at its offices on March 9, 2021.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following findings and conclusions:

I. INTRODUCTION

The Commission opened a Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 358 (2019) (“SB 358”). This rulemaking has been designated by the Commission as Docket No. 19-06010.

II. SUMMARY

The proposed regulation in Docket No. 19-06010 is neither likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- On June 6, 2019, the Commission opened a rulemaking docket to implement SB 358.
- This matter is being conducted pursuant to NRS and the Nevada Administrative Code (“NAC”) Chapters 233B, 703, 704, and SB 358, including, but not limited to, NRS 703.025 and 704.210.
- On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- The Regulatory Operations Staff of the Commission (“Staff”) participates as a matter of

right pursuant to NRS 703.301.

- On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments.
- On July 22, 2019, the Conservatives for Responsible Stewardship filed comments.
- On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments.
- On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, Staff, Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP (“e-centricity”) filed comments.
- On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments.
- On August 15, 2019, NREA filed reply comments.
- On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.
- On September 12, 2019, the Presiding Officer issued Procedural Order No. 1.
- On September 30, 2019, the Presiding Officer issued Amended Procedural Order No. 1.
- On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to Procedural Order No. 1, paragraph (A)(13)(a).
- On November 7, 2019, the Commission held an informal workshop.
- On November 12, 2019, the Presiding Officer issued Procedural Order No. 2.
- On December 5, 2019, Interwest, NREA, NV Energy, e-centricity, Vote Solar, Staff, BCP, and WRA filed comments.
- On December 13, 2019, the Commission held a continued workshop. Staff, BCP, NV Energy, WRA, BPA, Interwest, NREA, Vote Solar, and e-centricity made appearances.
- On December 16, 2019, the Presiding Officer issued Procedural Order No. 3.

- On January 22, 2020, NREA, First Solar, Inc. (“First Solar”), BCP, NV Energy, Staff, Interwest, WRA, Vote Solar, and e-centricity filed status updates, as requested in Procedural Order No. 3.
- On January 27, 2020, Staff filed a letter advising its support of the draft regulations filed by NV Energy in its January 22, 2020, status update filed in response to Procedural Order No. 3.
- On January 27, 2020, the Commission held a continued workshop. Staff, NV Energy, BCP, BPA, WRA, Interwest, NREA, e-centricity, Vote Solar, and First Solar made appearances.
- On January 28, 2020, the Presiding Officer issued Procedural Order No. 4, requesting reply comments regarding draft regulations and a status report regarding language for a proposed regulation governing technical compliance for rural electric cooperative associations for providers that exceed the one million megawatt-hour threshold.
- On February 10, 2020, WRA, BCP, NREA, NV Energy, Staff, e-centricity, and Vote Solar filed reply comments regarding proposed draft regulations.
- On February 24, 2020, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review.
- On February 25, 2020, the Presiding Officer issued Procedural Order No. 5, requesting information from NV Energy and interested parties regarding planning information consistent with a net-zero carbon emissions goal by the year 2050.
- On July 27, 2020, NREA, BCP, and Staff filed status updates requested by Procedural Order No. 4.
- On August 10, 2020, NREA filed an addendum to its July 27, 2020, status update.
- On August 14, 2020, the Presiding Officer issued Procedural Order No. 6.
- On September 11, 2020, NV Energy, NREA, BCP, WRA, BPA, and Staff filed comments responsive to Procedural Order No. 6.
- On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review.
- On September 24, 2020, the Presiding Officer issued Procedural Order No. 7.
- On November 4, 2020, NV Energy requested additional time to file the information regarding a net-zero carbon emissions goal by the year 2050 requested by Procedural Order No. 5. NV Energy states it has been working diligently on the report but needs

additional time to refine and finalize the report.

- On November 6, 2020, the Presiding Officer issued Procedural Order No. 8, extending the time for NV Energy's report and extending the time for responses by other participants to said report.
- On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form.
- On November 13, 2020, NV Energy filed a report containing information regarding planning to achieve a net-zero carbon emissions goal by the year 2050, in accordance with Procedural Order No. 5 and Procedural Order No. 8.
- On January 8, 2021, Interwest, WRA, and BCP filed comments responsive to NV Energy's report.
- On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.
- On January 28, 2021, the Commission issued Procedural Order No. 9, requesting Staff perform an investigation pursuant to NRS 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that Procedural Order, are likely to: impose a direct and significant economic burden upon small businesses; or directly restrict the formation, operation, or expansion of small business.
- On March 5, 2021, Staff filed with the Commission its Small Business Impact Report, attached hereto as Attachment 1.

IV. SMALL BUSINESS IMPACT REPORT

Staff's Report

1. Staff conducted a Delphi Method exercise to determine the impact of the proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses.

2. Staff states that the first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility.

3. Staff further states that regarding renewable portfolio standard (“RPS”) compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will

continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

4. Staff states that the proposed regulations will not have immediate or long term direct adverse effects on small businesses.

5. Additionally, Staff states that the proposed regulations will not have immediate or long term direct beneficial effects on small businesses.

6. Based on the foregoing, Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations in Docket No. 19-06010 are neither likely to impose a direct and significant economic burden on small businesses, nor are they likely to directly restrict the formation, operation or expansion of a small business. Staff recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses.

Commission Discussion and Findings

7. The Commission finds that the proposed regulation is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

8. The Commission finds that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses. The Commission further finds that the provisions of NRS 233B.0608 have been met.

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THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 19-06010 is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,

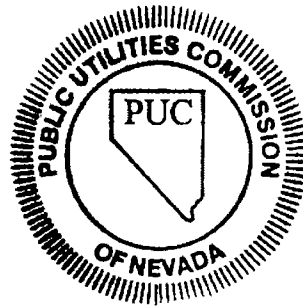


TRISHA OSBORNE,
Assistant Commission Secretary
On behalf of the Commissioners

Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada
 3/16/21

(SEAL)



ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: February 17, 2021

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: Christine Greve, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 05-21; Item No. 4A; Docket No. 19-06010;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate
Bill 358 (2019).

I. Summary

On June 6, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Senate Bill 358 (2019) (“SB 358”). The Commission designated this matter as Docket No. 19-06010.

On June 13, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop (“Notice”).

On July 18, 2019, the Reno Sparks Chamber of Commerce filed comments. On July 22, 2019, the Conservatives for Responsible Stewardship filed comments. On July 23, 2019, Bonneville Power Administration (“BPA”) and the Western Way filed comments. On July 24, 2019, Western Resource Advocates (“WRA”), Nevada Conservation League, the Regulatory Operations Staff of the Commission (“Staff”), Interwest Energy Alliance (“Interwest”), Wells Rural Electric Company, and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”) filed comments. The Nevada Attorney General’s Bureau of Consumer Protection (“BCP”) filed a letter stating that it will not submit initial comments but may file reply comments. On July 25, 2019, Mt. Wheeler Power Inc., Nevada Rural Electric Association (“NREA”), and e-centricity, LLP filed comments. On August 14, 2019, WRA, NV Energy, BCP, Staff, and Vote Solar filed reply comments. On August 15, 2019, NREA filed reply comments. On September 10, 2019, the Commission held a workshop in Docket No. 19-06010. BCP, BPA, Interwest, NREA, NV Energy, Staff, and WRA made appearances.

On October 18, 2019, NV Energy filed comprehensive draft regulations pursuant to the Commission’s Procedural Order No. 1, paragraph (A)(13)(a). After an informal stakeholder process and multiple workshops, the Commission submitted a first set of proposed draft regulations to the Legislative Counsel Bureau (“LCB”) for pre-adoption review on February 24, 2020. The first set of regulations addressed the acquisition of renewable energy facilities by the electric utility, Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”).

On September 23, 2020, the Presiding Officer sent a second set of proposed regulations to the LCB for review regarding Renewable Portfolio Standard (“RPS”) compliance for rural electric cooperative associations described in SB 358.

On November 13, 2020, the Presiding Officer filed a letter attaching the second set of regulations returned from the LCB in revised form. On January 19, 2021, the Presiding Officer filed a letter attaching the first set of regulations returned from the LCB in revised form.

On January 28, 2021, the Presiding Officer issued a procedural order directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed regulation, provided as Attachments 1 and 2 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff to present a report of the results of this investigation along with a statement identifying the methodology used in determining the impact on small business and the reasons supporting the conclusions of the report. Staff was further directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for March 9, 2021.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- a. Impose a direct and significant economic burden upon small businesses; or
- b. Directly restrict the formation, operation, or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation “shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two (2) Staff Electrical Engineers, one (1) Staff Financial Analyst, and one (1) Staff Economist, all of whom were involved in the rulemaking in this Docket and all of whom are some of the most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the small business impact of the proposed regulations.

II. Investigation and Analysis

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinions, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all four of whom were involved in the rulemaking in this Docket and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used their background and expertise to reflect upon and analyze the impact of the regulations on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

Immediate Adverse Effects:

The proposed regulations will not directly restrict the formation, operation, or expansion of small businesses. The proposed regulations will not have immediate adverse effects on small businesses.

The first part of the proposed regulations allows NV Energy to exclude certain renewable energy facilities from its rate base and associated expenses from its revenue requirement and, instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility. The just and reasonable price must be established by reference to a competitive market price for electricity and without reference to rate of return or cost of service principles. Electricity service can be a significant operating expense for small businesses. Renewable energy investment is typically more expensive than the classic fossil fuel counterparts. However, the Commission retains its authority to set rates for these facilities and can protect small businesses from any potential price volatility. The proposed regulations should not create a direct economic burden on small businesses.

Regarding RPS compliance, the proposed regulations add rural electric cooperative associations to the list of entities that must comply with the RPS. Rural electric cooperative associations rely on large hydropower (now included in the definition of “renewable energy”) facilities to serve their members. The proposed regulations may increase administrative workload but should not require significant additional resources. Rural electric cooperative associations that supply less than one million megawatt-hour (“MWh”) to retail customers in a compliance year only need to provide to the Commission the total amount of electricity supplied. Rural electric cooperative associations that supply more than one million MWh to retail customers in a compliance year must also submit a statement certifying that the provider complied with the RPS requirements by utilizing an appropriate amount of large hydropower in relation to the retail sales. However, no provider is projected to cross the one million MWh annual threshold for several years, even under the most aggressive load growth projections. Rural electric cooperative associations will continue to serve their members in the same manner and therefore the members should not be affected by the proposed regulations.

Immediate Beneficial Effects:

The proposed regulations will not have immediate beneficial effects on small businesses. With regards to the acquisition of renewable generation facilities, any short-term benefit is enjoyed by NV Energy, as they will be able to own and operate renewable generation facilities outside of the resource planning process and gain the opportunity to compete in the open market. This may also reduce uncertainty in the marketplace and for its participants. With regards to RPS compliance, the proposed regulations could provide a public relations opportunity. To Staff’s knowledge, Nevada is the first state to qualify large hydropower for RPS compliance. More education and awareness of renewable energy will lead to more

acquisition of sustainable and reliable energy, and lead to the reduction of carbon dioxide over time.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulations will not have direct long-term adverse effects on small businesses. The proposed regulations could potentially increase electric rates long-term by requiring additional renewable energy investment, which is typically more expensive than the classic fossil fuel counterparts. However, any impact that may occur is a result of SB 358, not the proposed regulations.

Long-Term Beneficial Effects:

The proposed regulations will not have direct long-term beneficial effects on small businesses. As discussed previously, allowing the purchase of renewable generation facilities by NV Energy should reduce uncertainty in the marketplace, increase financial security for the utility, and provide more sustainable and reliable energy. Additional potential beneficial effects will likely flow to the public in the form of increased process codification and oversight. While those effects might not translate into significant economic benefits, they could lead to some reduced cost over the long term through some increased regulatory efficiency. Those potential cost reductions, however, would likely be minimal. Similarly, allowing hydropower to qualify as “renewable energy” will encourage more sustainable and reliable energy growth for the State of Nevada and lead to the reduction of carbon dioxide emissions. However, any impacts would be due to SB 358, not the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission may incur additional workload to administer the proposed regulations and address any non-compliance with the proposed regulations. However, Staff anticipates that such workload would be minimal, and any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission’s and Staff’s existing resources.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

III. Notice and Subsequent Action

On January 28, 2021, the Presiding Officer issued a procedural order, attaching the proposed regulations. The Procedural Order directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

IV. Conclusions and Recommendations

Staff recommends, in accordance with NRS 233B.0608(1), the Commission find the proposed regulations are not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

Staff further recommends, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

**ADOPTED REGULATION OF THE BOARD OF
WILDLIFE COMMISSIONERS**

LCB File No. R163-20

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

AUTHORITY: § 1, NRS 501.181; § 2, NRS 501.105, 501.181 and 501.1818; § 3, NRS 501.105, 501.115, 501.117 and 501.181.

A REGULATION relating to wildlife; revising provisions that require the Department of Wildlife to preserve and disclose its comments on certain federal actions; revising the wildlife violations for which a person convicted of such violations will be assessed demerit points; revising the list of funding sources for a grant program administered by the Department to facilitate wildlife restoration and research; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Wildlife Commissioners to adopt regulations requiring the Department of Wildlife to make public its comments on drafts of statements concerning the environmental effects of proposed federal actions or regulations on public lands. (NRS 501.181) Existing regulations require the Department to: (1) maintain a record book of such comments for 2 years; (2) enter its comments in the record book before the comments are submitted to the State Planning Coordinator or the appropriate federal agency; and (3) make the contents of the record book available upon request at the Department's offices. (NAC 501.100) **Section 1** of this regulation revises these provisions by requiring instead that the Department: (1) maintain a record of such comments in accordance with a schedule for the retention and disposition of official state records; and (2) make the record available upon request.

Existing law requires the Commission to establish a system of assessing demerit points for wildlife convictions and authorizes the Commission to adopt such regulations as necessary to administer the system. (NRS 501.1814, 501.1818) Existing regulations provide that a person who is convicted of a wildlife violation will be assessed demerit points according to a set schedule. If a person is convicted of committing a wildlife violation that does not appear in the schedule, that person will be assessed 3 demerit points. (NAC 501.200) **Section 2** of this regulation revises the schedule of demerit points and provides that no demerit points will be assessed for certain violations.

Existing regulations: (1) require the Department to administer a grant program to facilitate wildlife restoration activities and wildlife research; and (2) authorize the Department to

solicit applications for grants. (NAC 501.400) **Section 3** of this regulation revises the list of funding sources for grants.

Section 1. NAC 501.100 is hereby amended to read as follows:

501.100 The Department will:

1. Maintain a record ~~{book}~~ containing copies of the Department's comments on proposed federal actions, on drafts of environmental impact statements and on proposed federal regulations affecting public lands. The copies will be maintained ~~{for 2 years.}~~ *in accordance with the schedule for the retention and disposition of such a record that has been developed pursuant to NRS 239.080.*

2. ~~{Enter its comments in the record book before the comments are submitted to the State Planning Coordinator or the appropriate federal agency.}~~

~~—3.} Make {the contents of} the record {book} available {in the Department's office at 1100 Valley Road, Reno, Nevada, and in the Department's regional offices at Fallon, Elko and Las Vegas, for inspection and copying by the public during business hours.} *upon request.*~~

Sec. 2. NAC 501.200 is hereby amended to read as follows:

501.200 1. A person who is convicted of a wildlife violation will be assessed demerit points pursuant to the following schedule:

HUNTING AND TAKING

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully shooting at a game mammal or game bird from an aircraft, helicopter or motor- driven vehicle or using such a vehicle to molest, rally, stir up or drive game mammals or game birds.....	503.010	-----	12
Spotting or locating game mammals or game birds from an aircraft or helicopter and communicating that information to a person on the ground for the purpose of hunting.....	503.010	-----	12
Unlawfully using information obtained in violation of subsection 3 of NRS 503.010 to hunt or kill game mammals or game birds.....	503.010	-----	12
Unlawfully using a helicopter to transport game, hunters or hunting equipment.....	503.010	-----	12
Unlawfully killing or attempting to kill birds or animals from an aircraft.....	503.005	-----	12

HUNTING AND TAKING

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully using an aircraft, balloon, unmanned aerial vehicle or satellite to locate or observe big game mammals, game birds or fur-bearing mammals for the purpose of hunting	501.385	503.148	12
Hunting or taking an endangered species without a special permit	503.585	503.093	12
Unlawfully killing, destroying, wounding, trapping or injuring bald eagles or golden eagles.....	503.610	-----	12
Unlawfully taking bald eagles or golden eagles	503.620	-----	12
Taking twice the legal limit or more of big game mammals	501.385	-----	12
Hunting or taking a threatened species	501.385	503.093	9

HUNTING AND TAKING

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully killing a fur-bearing mammal during the closed season.....	503.440	-----	9
Unlawfully hunting migratory waterfowl by aid of baiting	501.385	503.180	6
Hunting big game mammals during the closed season.....	503.090	-----	6
Hunting fur-bearing mammals during the closed season.....	501.015	-----	6
Hunting big game mammals in closed areas.....	501.385	504.340	6
Hunting fur-bearing mammals in closed areas	501.385	504.340	6
Unlawfully hunting in a privately owned wildlife management area.....	504.140	-----	6
Unlawfully hunting in a state-owned wildlife management area.....	504.143	-----	6

HUNTING AND TAKING

Classification of Violations	NRS Section	NAC Section	Demerits
Hunting big game mammals or migratory			
waterfowl during prohibited hours.....	503.140	-----	6
Unlawfully hunting game birds or game			
mammals with the aid of artificial light	503.150	-----	6
Hunting or taking a sensitive species.....	501.385	503.093	6
Hunting, trapping, possessing or selling birds of			
prey or raptors without a permit.....	503.582	503.205	6
Hunting alternative livestock	503.242	-----	6
Taking a game mammal of a prohibited age or			
with prohibited physical characteristics.....	501.385	-----	6

UNLAWFUL POSSESSION

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully possessing live wildlife that is classified as prohibited	504.295	503.110	12
Unlawfully possessing big game mammals during the closed season	503.030	-----	12
Possessing a big game mammal or parts thereof without a tag <i>an</i> attached thereto <i>or validated tag</i>	502.150 , <i>as amended by section 3 of Senate Bill No. 406, chapter 304, Statutes of Nevada 2021, at page 1757</i>	-----	9
Possessing twice the legal limit or more of game birds or game mammals, other than big game	501.385	-----	9

UNLAWFUL POSSESSION

Classification of Violations	NRS Section	NAC Section	Demerits
Possessing twice the legal limit or more of game fish.....	501.385	-----	9
Unlawfully possessing a fur-bearing mammal during the closed season	503.030	-----	9
Possessing game birds or game mammals, other than big game, during the closed season.....	503.030	-----	6
Possessing fish during the closed season	503.030	-----	6
Possessing game birds or game mammals, other than big game, in excess of the legal limit but less than twice the legal limit.....	501.385	-----	6
Possessing game fish in excess of the legal limit but less than twice the legal limit.....	501.385	-----	6
Possessing a species that may not legally be possessed without a license or permit	501.385	-----	6

TAGS AND SEALS

Classification of Violations	NRS Section	NAC Section	Demerits
Hunting big game or wild turkey without a tag	502.130	-----	9
Unlawfully transferring a tag to another person	502.140	502.385	9
Possessing or using a tag legally issued to another person	502.140	502.385	9
Obtaining tags in excess of the legal limit	502.140	502.331	9
Possessing used tags or tags in excess of the legal limit	502.150	-----	9
Unlawfully using a tag	502.200	-----	9
Using a tag in an improper area	502.160	502.385	6
Failing to punch a tag properly	502.160	502.390	6
Failing to attach a tag to a big game mammal in the manner prescribed by regulation	502.160	502.400	6
Hunting by a Native American off an Indian reservation without a tag	502.280	-----	6
Possessing fur-bearing mammals, other than a bobcat, without a seal	501.385	-----	6

TAGS AND SEALS

Classification of Violations	NRS Section	NAC Section	Demerits
Possessing the pelt of a bobcat without a seal	501.385	502.347	6
Possessing the hide of a mountain lion without a seal	501.385	502.370	6
Possessing the horns of a ram bighorn sheep without a seal or brand	501.385	502.345	6

PERMITS

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully importing or transporting a prohibited species of wildlife without a permit or license.....	503.597	503.110	12

PERMITS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Collecting unprotected wildlife for commercial purposes without a permit	501.385	503.095	12
Collecting live bait fish or live aquatic bait for commercial purposes without a permit.....	501.385	503.513	12
Collecting unprotected fish for commercial purposes without a permit	501.385	503.545	12
Selling live bait without a permit.....	501.379	503.513	6
Conducting a field trial without a permit.....	503.200	503.610	6
Conducting a dredging operation without a permit	503.425	503.810	6
Possessing a raptor without a permit	503.582	503.205	6
Furnishing false information to obtain a permit	502.060	-----	6
Hunting swan without a swan hunt permit	-----	502.380	6
Transferring or giving a swan hunt permit to any other person	-----	502.380	6

PERMITS

Classification of Violations	NRS Section	NAC Section	Demerits
Using or possessing a swan hunt permit issued to another person.....	-----	502.380	6
<i>Commercial taking of crayfish, except in accordance with a permit issued pursuant to NAC 503.540</i>	<i>501.385</i>	<i>503.540</i>	<i>6</i>

FISHING

Classification of Violations	NRS Section	NAC Section	Demerits
Fishing at a fish hatchery or other waters used for the purpose of rearing or growing fish.....	503.360	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Obstructing, hindering or otherwise interfering with an officer, employee or agent of the Department.....	501.385	-----	12
Unlawfully selling big game mammals	501.379	-----	12
Unlawfully selling an endangered species.....	501.379	-----	12
Needless waste of big game mammals	503.050	-----	12
Hunting, fishing in nonnavigable waters or trapping on private property without permission.....	503.240	-----	9
Needless waste of game birds or game mammals, other than big game.....	503.050	-----	9
Unlawfully selling a threatened species.....	501.379	-----	9
Unlawfully selling game other than big game mammals	501.379	-----	6
Unlawfully selling a sensitive or protected species	501.379	-----	6
Unlawfully selling game fish.....	501.381	-----	6
Needless waste of game fish.....	503.050	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Unlawfully carrying a loaded rifle or shotgun in vehicle	503.165	-----	6
Unlawfully discharging a firearm	503.175	-----	6
Failing to retain the cape or scalp and any antlers or horns of wildlife.....	501.385	503.173	6
Destroying or mutilating signs of the Department.....	501.383	-----	6
Polluting water	503.430	-----	6
Removing, altering or tampering with a tag placed on wildlife or on seized equipment	501.377	-----	6
Commercial taking of crayfish, except in accordance with a permit issued pursuant to NAC 503.540	501.385	503.540	6
Intentionally interfering with a person lawfully hunting or trapping.....	503.015	-----	6
Failing to make a reasonable effort to retrieve dead or crippled migratory waterfowl.....	501.385	503.180	6

CATEGORY E FELONIES AND
GROSS MISDEMEANORS

Classification of Violations	NRS Section	NAC Section	Demerits
Conviction of a felony for intentionally killing a big game mammal, including aiding and abetting a person in the commission of the killing	501.376	-----	12
Conviction of a gross misdemeanor for intentionally killing a big game mammal, including aiding and abetting a person in the commission of the killing.....	501.376	-----	12
Conviction of a gross misdemeanor for willfully possessing an unlawfully killed big game mammal.....	501.376	-----	12
Acting as a master guide or subguide without a license.....	504.395	-----	12
Furnishing false information to obtain a big game tag.....	502.060	-----	12

TRAPPING

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully capturing a raptor with a steel leghold trap placed, set or maintained within 30 feet of exposed bait.....	501.385	503.157	6
Trapping in a closed area	501.385	504.340	6
Unlawfully removing or disturbing a trap, snare or similar device lawfully being used by another person.....	503.454	-----	6
Trapping fur-bearing mammals during closed season.....	503.440	-----	6
Trapping birds of prey or raptors without a permit or by unlawful means.....	503.582	503.205	6
Failing to visit traps, snares or similar devices 48 or more hours after the required period for visitation.....	503.570	503.152	6

LICENSES

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Refusing to exhibit a license, wildlife, weapon, ammunition, device or apparatus	502.120	-----	12
Hunting without having procured a license	502.010	-----	6
Fishing without having procured a license	502.010	-----	6
Hunting without a license in possession	502.120	-----	6
Fishing without a license in possession	502.120	-----	6
Furnishing false information to obtain a license.....	502.060	-----	6
Furnishing of false information by a person serving in the Armed Forces of the United States to obtain a specialty combination hunting and fishing license	502.290	502.220	6
Unlawfully transferring a license to another person	502.100	-----	6
Unlawfully using a license of another person.....	502.100	-----	6
Obtaining more than one license of each class	502.110	-----	6
Altering a license	502.105	-----	6

LICENSES

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Practicing falconry without a license.....	503.583	503.235	6
Operating as a fur dealer without a license.....	505.010	-----	6
Trapping without having procured a license.....	502.010	-----	6
Taking fur-bearing mammals, trapping			
unprotected mammals or selling raw furs for			
profit without having procured a license.....	503.454	-----	6
Trapping without a license in possession.....	502.120	-----	6
Hunting, fishing or trapping using a license that is			
invalid by reason of expiration or a false			
statement made to obtain the license.....	502.060	-----	6
Operating a shooting preserve without a license.....	504.310	-----	6
Performing taxidermal services without a license.....	502.370	502.435	6
Obtaining a hunting license without obtaining			
certification as a responsible hunter.....	502.360	-----	6

2. ~~A~~ *Except as otherwise provided in this subsection, a* person who is convicted of committing a wildlife violation that does not appear in the schedule set forth in subsection 1 will

be assessed 3 demerit points. *No demerit points will be assessed for a violation of NRS 502.370, 502.390, 503.185, 503.310 or 504.295 to 504.398, inclusive.*

3. A person who is convicted of committing a wildlife violation within 60 months after a conviction for the same violation will be assessed double the amount of demerit points listed in the schedule set forth in subsection 1.

4. A person who is convicted of committing any four wildlife violations arising out of separate events within a 60-month period will be assessed an extra 12 demerit points.

Sec. 3. NAC 501.400 is hereby amended to read as follows:

501.400 1. The Department shall administer a grant program to provide funding to facilitate wildlife restoration activities and wildlife research.

2. The Department may solicit applications for grants by giving public notice of the availability of grants and the deadlines. Public notice given pursuant to this section must include, without limitation, the criteria for receiving a grant, reporting and recordkeeping requirements for applicants that have received a grant and any other information relating to the grant program that the Department determines is necessary.

3. An application for a grant may be submitted to the Department by a federal, state or local governmental entity or a private nonprofit organization.

4. The program will be administered with the following money received by the Department:

(a) Federal grants from the United States Fish and Wildlife Service, the United States Coast Guard, the United States Bureau of Land Management and the United States Bureau of Reclamation pursuant to NRS 501.115 and 501.117;

(b) Money deposited in the Wildlife Heritage Account pursuant to NRS 501.3575;

- (c) Money received for Dream Tag fees pursuant to NRS 502.219;
- (d) Resource enhancement stamp fees collected pursuant to NRS 502.222;
- (e) Fees collected for processing applications for game tags pursuant to NRS 502.253;
- (f) Fees deposited pursuant to NRS 502.294;
- (g) Fees for any projects for waterfowl deposited pursuant to NRS 502.310;
- (h) Fees for the trout program deposited pursuant to NRS 502.3262;
- (i) Permit fees collected pursuant to NRS 502.390; and
- (j) If applicable, any *federal grants or* other money received for development projects with potential impacts to wildlife . ~~as determined by the United States Fish and Wildlife Service or any other agency within the United States Department of the Interior.~~

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

**LCB FILE NO. R163-20
Commission General Regulation 494**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 501.

1. A clear and concise explanation of the need for the adopted regulation:

The proposed regulation is necessary for review pursuant to NRS 233B.050.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary:

Public comment was solicited during the regulation workshop of the Nevada Board of Wildlife Commissioners (NBWC), the regulation adoption and by email to wildlifecommission@ndow.org.

3. The number of persons who:

- (a) Attended each hearing: (date and number of attended for workshops and hearings)**
- (b) Testified at each hearing: (date and number of attended for workshops and hearings)**
- (c) Submitted written comments: (date and number of attended for workshops and hearings)**

September 25, 2020 NBWC Meeting

- a. Attended: 18
- b. Testified: 0
- c. Written Comment: 0

September 24, 2021 NBWC Meeting

- a. Attended: 56
- b. Testified: 1
- c. Written Comment: 0

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) Name:** Rex Flowers
- (b) Telephone number:** 775-722-4506
- (c) Business address:** 3280 Sun Could Circle, Reno, NV 89506
- (d) Business telephone number:**
- (e) Electronic mail address:** randbflowers@yahoo.com
- (f) Name of entity or organization represented:** Nevada Coalition for Wildlife

- 5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:**

This regulation does not regulate any small businesses. Therefore, the Department concluded that there would be no small business impact.

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:**

N/A

- 7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects on businesses; and**

There will be no economic effect on small businesses by the proposed regulation.

- (b) Both immediate and long-term effects on businesses:**

There will be no economic effect on small businesses by the proposed regulation.

- (a) Both adverse and beneficial effects on the public; and**

There will be no economic effect on the public by the proposed regulation.

- (b) Both immediate and long-term effects on the public:**

There will be no economic effect on the public by the proposed regulation.

- 8. The estimated cost to the agency for enforcement of the adopted regulation:**

There will be no additional cost to the Department for the enforcement of this regulation.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**

This regulation does not overlap or duplicate any local, state, or federal regulation.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:**

This regulation does not overlap or duplicate any local, state, or federal regulation.

- 11. If the 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.**

This regulation will not propose new fees or increase fees.

**STATE OF NEVADA
NEVADA BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE
SMALL BUSINESS IMPACT STATEMENT PURSUANT TO NRS233B**

Re: Commission General Regulation 494 LCB File No. R163-20 NAC 501 Simplification

The purpose of this form is to provide a framework pursuant to NRS 233B.0608 to determine whether a small business impact statement is required for submittal of a proposed regulation before the Nevada Board of Wildlife Commissioners. Note: Small business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS233B.0382).

1. Describe 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:

ANSWER:

This regulation does not regulate any small businesses. Therefore, the Department concluded that there would be no small business impact.

2. Describe the manner in which the analysis was conducted:

ANSWER:

Analysis was not conducted because the Department concluded that there would be no impact to small businesses.

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

- a.) Both adverse and beneficial effects:
- b.) Both direct and indirect effects:

ANSWER:

There will be no economic effect on small businesses by the proposed regulation.

4. Describe 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:

ANSWER:

The Department concluded that there would be no impact to small businesses.

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

ANSWER:

There will be no additional cost to the Department for the enforcement of this regulation.

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:

ANSWER:

This regulation will not propose new fees or increase 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:

ANSWER:

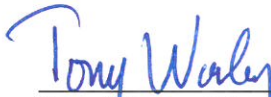
This regulation does not overlap or duplicate any local, state, or federal regulation.

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

ANSWER:

This regulation does not regulate any small businesses. Therefore, the Department concluded that there would be no small business impact and no need for a small business impact statement.

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



Tony Wasley, Director
Nevada Department of Wildlife

REGULATIONS SUBMITTED PURSUANT TO NRS 233B.067:

LCB NO.	NAC	AGENCY/ SUBJECT
2021 REGULATIONS		
R011-21	557	STATE DEPARTMENT OF AGRICULTURE A REGULATION establishing provisions relating to the registration of growers, handlers and producers CONTACT Ashley Jeppson (775) 353-3729 ajeppson@agri.nv.gov

**ADOPTED REGULATION OF THE
STATE DEPARTMENT OF AGRICULTURE**

LCB File No. R011-21

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

AUTHORITY: §§ 1-7, 9, 11, 12, 17, 18 and 21, NRS 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156; §§ 8 and 10, NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704, and 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156; §§ 13-16, NRS 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156, and 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706; § 19, NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704; § 20, NRS 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156, and 557.280, as amended by section 3 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 707; § 22, NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704, and 587.077; § 23, NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704, 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156, 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706, and 557.280, as amended by section 3 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 707.

A REGULATION relating to hemp; establishing the maximum THC concentration for hemp for the purposes of provisions governing the regulation of hemp; establishing provisions relating to the registration of growers, handlers and producers; setting forth certain requirements for the transfer of a registration; setting forth certain reporting requirements for a registrant; establishing provisions relating to the sampling and testing of hemp; setting forth certain requirements for the disposal or remediation of noncompliant crops; establishing provisions relating to persons who commit certain violations relating to the regulation of hemp; establishing certain fees; imposing civil penalties; repealing certain obsolete provisions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the growth and handling of hemp and the production of agricultural hemp seed in this State by persons registered with the State Department of Agriculture. (Chapter 557 of NRS) Existing federal law authorizes the production of hemp under the primary jurisdiction of a state or tribal government if the state or tribal government submits a plan to the United States Secretary of Agriculture that satisfies certain requirements. (7 U.S.C. § 1639p) Existing federal regulations set forth the requirements for such a plan. (7 C.F.R. Part 990) This regulation establishes certain provisions relating to the growth and handling of hemp and the production of agricultural hemp seed in this State in order to comply with the requirements set forth in federal law and regulations.

Existing law requires the Department to adopt regulations establishing the maximum THC concentration for hemp. (NRS 557.260, as amended by section 3.9 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156) Existing law defines "THC" to include delta-9-tetrahydrocannabinol and any structural, optical or geometric isomer thereof, including delta-8-tetrahydrocannabinol, delta-7-tetrahydrocannabinol and delta-10-tetrahydrocannabinol. (NRS 453.139, as amended by section 3.5 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3155) Existing federal regulations designate the maximum THC level of hemp for the purpose of compliance with a state plan as the "acceptable hemp THC level." Existing federal regulations define "acceptable hemp THC level" to mean, in general, a delta-9-tetrahydrocannabinol concentration level that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes 0.3 percent or less. (7 C.F.R. § 990.1) **Section 3** of this regulation defines "acceptable hemp THC level" to mean, in general, a concentration level of THC, including delta-9-tetrahydrocannabinol and any isomer thereof, that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes a THC content concentration level that is equal to or less than the maximum delta-9-tetrahydrocannabinol concentration level for hemp established by federal law. **Section 7** of this regulation provides that the maximum THC concentration for hemp for the purposes of provisions of existing law governing hemp is the acceptable hemp THC level.

Existing federal regulations require a state plan for the production of hemp to include provisions prohibiting, with certain exceptions, certain persons who have been convicted of a felony relating to a controlled substance from producing hemp for a 10-year period. (7 C.F.R. § 990.6) Existing law requires an applicant for registration as a grower, handler or producer to submit to the Department, for the purposes of demonstrating compliance with such federal regulations, a complete set of the fingerprints of the applicant or any document or other information required by the Department to perform a background check of the applicant. (NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704) **Section 8** of this regulation sets forth certain requirements for registration as a grower, handler or producer. Among these requirements is a requirement that the application be accompanied by a criminal history report of the applicant, or, if the applicant is a business entity, one key participant, as defined in **section 4** of this regulation. **Sections 8 and 9** of this regulation prohibit, with certain exceptions, an applicant from obtaining a registration as a grower, handler or producer if the applicant or, if the applicant is a business entity, the key participant for which

the criminal history report was submitted has been convicted of a felony relating to a controlled substance within the previous 10 years.

Existing law requires the Department to adopt regulations that: (1) authorize the transfer of a registration as a grower, handler or producer; and (2) establish conditions for such a transfer. (NRS 557.200, as amended by section 1 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 704) **Section 10** of this regulation authorizes a registration to be transferred to another person if the Department approves a request for such a transfer. **Section 10** sets forth the required contents for such a request and the circumstances under which the Department will approve such a request.

Existing federal regulations require a state plan to provide for the reporting of certain information relating to the production of hemp to the United States Department of Agriculture. (7 C.F.R. § 990.3) Existing federal regulations further require a state with an approved plan to report certain violations to certain governmental entities. (7 C.F.R. § 990.6) **Section 11** of this regulation requires each registrant to submit reports containing certain information to the Department and the Farm Service Agency of the United States Department of Agriculture. **Section 18** of this regulation authorizes the Department to share certain information with any governmental entity as necessary to comply with federal regulations.

Existing federal regulations require a state plan to include certain procedures for the conducting of inspections. (7 C.F.R. § 990.3) **Section 12** of this regulation authorizes the Department to inspect, sample and analyze all plants of a registrant and all land, buildings and other structures used for growing, cultivating or storing hemp.

Existing federal regulations require a state plan to include certain procedures for the sampling of hemp. (7 C.F.R. § 990.3) Existing law requires the Department to collect a sample of a crop of hemp before the harvest of the crop. Existing law also authorizes a grower or producer whose crop has failed a required test to request that the Department collect a new sample for retesting. (NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706) **Section 13** of this regulation requires the Department, in collecting such samples, to use the procedures and methods set forth in federal regulations. **Section 13** also requires a registrant to notify the Department before harvesting or conducting remediation activities on a crop of hemp.

Existing federal regulations require a state plan to include certain procedures and methods for the testing of a sample of hemp to identify whether a sample of hemp contains a THC level that exceeds the acceptable hemp THC level. (7 C.F.R. §§ 990.1, 990.3) Existing law requires the Department to test each sample of a crop it collects to determine whether the crop has a THC concentration that exceeds the maximum THC concentration established by federal law for hemp. (NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706) **Section 14** of this regulation requires the Department to conduct such testing in accordance with: (1) procedures that meet the requirements set forth in federal regulations; and (2) certain requirements published by the Association of Official Analytical Collaboration International which **section 15** of this regulation adopt by reference. Existing law requires the Department, upon the completion of the testing of a sample of a crop, to issue to the grower or producer a report of the results of the testing. (NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706)

Section 14 prohibits a registrant from allowing a crop of hemp to enter the stream of commerce until the Department has issued such a report indicating that the crop has a THC concentration that does not exceed the acceptable hemp THC level.

Existing federal regulations require a state plan to include a procedure to verify the disposal or remediation of plants that exceed the acceptable hemp THC level. (7 C.F.R. § 990.3) Under existing law, if the testing of a growing crop in the field reveals that the crop contains a THC level that exceeds the maximum THC concentration level for hemp, the grower is required to submit a plan for the effective disposal or remediation of the crop to the Department for its approval. (NRS 557.240, as amended by section 1.5 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 705) **Section 16** of this regulation requires such a plan to comply with federal regulations. **Section 16** further authorizes the Department to order the destruction or remediation, as applicable, of any plants of a registrant if the Department determines that a sample of hemp, whether growing or harvested, exceeds the acceptable hemp THC level.

Existing federal regulations require a state plan to establish certain provisions relating to negligent violations committed by a producer of hemp. (7 C.F.R. § 990.6) **Section 17** of this regulation requires the Department to establish a corrective action plan for any registrant who commits a violation that would constitute a negligent violation under federal regulations. **Section 17** also provides for the revocation of the registration of a registrant who commits three negligent violations within a 5-year period. Under **section 17**, such a registrant is ineligible for registration for a period of 5 years after the date of the third violation. **Section 20** of this regulation establishes civil penalties for certain violations of the provisions governing hemp.

Sections 19 and 22 of this regulation establish certain fees relating to the growing and handling of hemp and the production of agricultural hemp seed. **Section 23** of this regulation repeals certain regulations relating to a program for the growth and cultivation of industrial hemp for research purposes, which was repealed by Senate Bill No. 347 of the 80th Session of the Nevada Legislature. (Section 22 of Senate Bill No. 347, chapter 414, Statutes of Nevada 2019, at page 2593)

Section 1. Chapter 557 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Acceptable hemp THC level” means a THC content concentration level on a dry weight basis that, when reported with the laboratory’s measurement of uncertainty, produces a distribution or range that includes a THC content concentration level on a dry weight basis*

that is equal to or less than the maximum delta-9-tetrahydrocannabinol concentration level on a dry weight basis for hemp established by 7 U.S.C. § 1639o.

Sec. 4. 1. “Key participant” means:

(a) A sole proprietor;

(b) A partner in a partnership; or

(c) A person with executive managerial control in a corporation, including, without limitation, a chief executive officer, chief operating officer and chief financial officer.

2. The term does not include managers who are not executives, including, without limitation, a farm, field or shift manager.

Sec. 5. “Measurement of uncertainty” has the meaning ascribed to it in 7 C.F.R. § 990.1.

Sec. 6. “Registrant” means a person whose application for registration as a grower, handler or producer has been approved by the Department pursuant to section 8 of this regulation.

Sec. 7. For the purposes of NRS 557.160, as amended by section 3.7 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3156, the maximum THC concentration for hemp is the acceptable hemp THC level.

Sec. 8. 1. In addition to any other requirements set forth in chapter 557 of NRS or NAC 587.450 to 587.491, inclusive, an application submitted to the Department for registration as a grower, handler or producer must:

(a) If the applicant is a natural person, contain the physical and mailing addresses, telephone number and electronic mail address of the applicant.

(b) If the applicant is a business entity, contain the employee identification number of the business entity and the name, title, physical and mailing addresses, telephone number and electronic mail address of each key participant.

(c) Be accompanied by a criminal history report of the applicant, or, if the applicant is a business entity, a criminal history report of one key participant of the applicant. The criminal history report must have been completed within 120 days immediately preceding the date on which the application is submitted. The applicant or key participant must not have any change in his or her criminal history between the date on which the criminal history report was completed and the date on which the application is submitted.

(d) Contain the following, as applicable:

(1) A description of the approvals that the applicant will be required to obtain.

(2) Proof satisfactory to the Department demonstrating that the applicant is in compliance with all applicable federal and state laws.

(3) A description of the manner by which the applicant will produce hemp.

(4) A map of each location where hemp will be produced and stored.

(5) The street address of each lot or greenhouse where hemp will be produced.

(6) The geospatial location of each lot or greenhouse where hemp will be produced.

(7) The acreage of the lot or indoor square footage of the greenhouse dedicated to the production of hemp.

(e) Include all other information deemed appropriate by the Department.

2. The Department will approve an application for registration as a grower, handler or producer only if:

(a) The applicant or, if applicable, the key participant for which the criminal history report was submitted pursuant to subsection 1 is not ineligible pursuant to this section or section 9 or 17 of this regulation.

(b) The Department determines that the application adequately describes the approvals the applicant will be required to obtain.

(c) The Department determines that the application adequately demonstrates that the applicant is in compliance with all applicable federal and state laws.

(d) The application includes all information required pursuant to subsection 1 and any other information that the Department deems appropriate.

(e) The application is accompanied by all fees required by the Department at the time the application is submitted.

3. A person who materially falsifies any information contained in an application for registration as a grower, handler or producer is not eligible for registration as a grower, handler or producer.

4. As used in this section, “criminal history report” has the meaning ascribed to it in 7 C.F.R. § 990.1.

Sec. 9. 1. Except as otherwise provided in subsection 2, a person who has been convicted of a felony under a state or federal law relating to a controlled substance is not eligible for registration as a grower, handler or producer for a period of 10 years after the date of conviction.

2. The period of ineligibility set forth in subsection 1 does not apply to:

(a) A person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014, 7 U.S.C. § 5940, before December 20, 2018, and whose conviction occurred before that date; or

(b) A person who was lawfully growing hemp with a license, registration or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014, 7 U.S.C. § 5940, before October 31, 2019.

Sec. 10. 1. *The registration of a registrant may be transferred to another person if the Department approves a request for such a transfer.*

2. *A request for the transfer of a registration must be submitted to the Department and must:*

(a) Describe the proposed transfer.

(b) Contain proof satisfactory to the Department that both parties to the proposed transfer have agreed to the proposed transfer.

(c) Be accompanied by a criminal history report of the proposed transferee or, if the proposed transferee is a business entity, a criminal history report of one key participant of the proposed transferee. The criminal history report must have been completed within 120 days immediately preceding the date on which the request is submitted. The proposed transferee or key participant must not have any change in his or her criminal history between the date on which the criminal history report was completed and the date on which the application is submitted.

(d) If applicable, contain the approval of the landowner of the land on which the registrant grows hemp or produces agricultural hemp seed.

(e) Be accompanied by the fee for making a revision to an issued registration as set forth in NAC 587.491 or section 19 of this regulation, as applicable.

(f) Include any other information the Department deems appropriate.

3. The Department will approve a request for the transfer of a registration only if:

(a) The proposed transferee or, if applicable, the key participant for which the criminal history report was submitted pursuant to subsection 1 is not ineligible for registration as a grower, handler or producer pursuant to section 9 or 17 of this regulation.

(b) There will be no change in the physical location where the crop of the registrant is grown, if applicable.

(c) The application includes all information required pursuant to subsection 2 and any other information that the Department deems appropriate.

4. As used in this section, “criminal history report” has the meaning ascribed to it in 7 C.F.R. § 990.1.

Sec. 11. 1. Each registrant shall, on or before the date specified by the Department in the registration of the registrant, submit to the Department a report that includes, without limitation, as applicable, the following information:

(a) The total acreage of hemp planted, harvested and disposed;

(b) The license or authorization number of the registrant;

(c) The street address of each lot or greenhouse where hemp will be produced;

(d) The geospatial location of each lot or greenhouse where hemp will be produced; and

(e) The acreage of the lot or indoor square footage of the greenhouse dedicated to the production of hemp.

2. Each registrant shall annually submit a report to the Farm Service Agency of the United States Department of Agriculture containing any information regarding the production of hemp that the United States Department of Agriculture deems appropriate.

Sec. 12. 1. The Department may inspect, sample and analyze, during normal business hours and in such manner as the Department deems necessary, all plants of a registrant, whether growing or harvested, and all land, buildings and other structures used by a registrant for growing, cultivating or storing hemp.

2. A registrant shall ensure that the Department is provided with complete and unrestricted access during normal business hours to carry out the purposes set forth in subsection 1.

Sec. 13. 1. A registrant shall notify the Department before:

- (a) The harvest or any other form of disposition of a crop; or*
- (b) Conducting remediation activities on a crop.*

2. In collecting a sample of a crop pursuant to subsection 2 or 6 of NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706, the Department will use the sampling procedures and methods set forth in 7 C.F.R. § 990.3.

Sec. 14. 1. The testing required pursuant to NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706, must be conducted using testing procedures that meet the requirements set forth in 7 C.F.R. § 990.3. Such testing procedures must include, without limitation:

- (a) The conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC using a post-decarboxylation or similarly reliable method; or*

(b) Other methods that meet the requirements set forth in 7 C.F.R. § 990.3.

2. In determining whether a crop has a THC concentration that exceeds the acceptable hemp THC level, the Department will use a measurement of uncertainty that meets:

(a) The requirements set forth in the publication adopted by reference pursuant to section 15 of this regulation; and

(b) Any requirements set forth in 7 C.F.R. Part 990.

3. A registrant shall not allow a crop to enter the stream of commerce until the registrant has received a report issued by the Department pursuant to subsection 4 of NRS 557.270, as amended by section 2 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 706, indicating that the crop contains a THC concentration that does not exceed the acceptable hemp THC level.

Sec. 15. *1. The Department hereby adopts by reference Standard Method Performance Requirements (SMPRs) for Quantitation of Cannabinoids in Plant Materials of Hemp (Low THC Varieties Cannabis sp.), AOAC SMPR 2019.003, published by the Association of Official Analytical Collaboration (AOAC) International on October 9, 2019. A copy of this publication may be obtained free of charge at the Internet address https://www.aoac.org/wp-content/uploads/2020/11/SMPR202019_003.pdf.*

2. If the publication adopted by reference pursuant to subsection 1 is revised, the Department will review the revision to ensure its suitability for this State. If the Department determines that the revision is not suitable for this State, the Department will hold a public hearing to review its determination and give notice of that hearing within 6 months after the date of publication of the revision. If, after the hearing, the Department does not revise its

determination, the Department will give notice that the revision is not suitable for this State within 30 days after the hearing. If the Department does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 16. *1. A plan submitted to the Department by a grower for the effective disposal or remediation of a crop pursuant to subsection 2 of NRS 557.240, as amended by section 1.5 of Senate Bill No. 63, chapter 156, Statutes of Nevada 2021, at page 705, must comply with the requirements for disposal or remediation set forth in 7 C.F.R. § 990.27.*

2. If, after testing a sample of hemp, whether growing or harvested, the Department determines that the sample exceeds the acceptable hemp THC level, the Department may order the destruction or remediation, as applicable, of any plants grown by the registrant at the expense of the registrant. The destruction or remediation of such plants must be performed in accordance with a plan for the effective disposal or remediation, as applicable, of the plants that complies with the requirements of 7 C.F.R. § 990.27 and is approved by the Department.

Sec. 17. *1. If a registrant commits a violation that would constitute a negligent violation pursuant to 7 C.F.R. § 990.6, the Department will establish a corrective action plan for the registrant to correct the negligent violation. The registrant shall comply with the corrective action plan. Each corrective action plan established by the Department must meet the requirements of 7 C.F.R. § 990.6.*

2. The Department will revoke the registration of a registrant who commits three violations that would constitute negligent violations under 7 C.F.R. § 990.6 within a 5-year period.

3. A person whose registration has been revoked pursuant to subsection 2 is not eligible for registration as a grower, handler or producer for 5 years after the date of the third violation.

Sec. 18. Any information obtained by the Department in carrying out the provisions of this chapter and chapter 557 of NRS may be reported to any governmental entity without notice to the registrant as necessary to comply with the provisions of 7 C.F.R. Part 990.

Sec. 19. The Department will collect the following fees:

1. For an application for registration or renewal of registration as a grower:

(a) If the applicant holds a valid license issued pursuant to NRS 555.235 to 555.249, inclusive, and grows hemp solely for use as nursery stock, as defined in NRS 555.23562, a nonrefundable application fee of \$725 and an additional fee of:

(1) For each acre or portion thereof of an outdoor site used for growing hemp, \$5; and

(2) For each 1,000 square feet or portion thereof of an indoor site used for growing hemp, 33 cents; and

(b) For any applicant other than an applicant described in paragraph (a), a nonrefundable application fee of \$900 and an additional fee of:

(1) For each acre or portion thereof of an outdoor site used for growing hemp, \$5; and

(2) For each 1,000 square feet or portion thereof of an indoor site used for growing hemp, 33 cents.

2. For an application for registration or renewal of registration as a handler, a nonrefundable application fee of \$1,000.

3. For inspecting a site used for growing hemp:

(a) A fee of not more than \$60 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(b) The mileage reimbursement rate 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 to and from the site.

4. For sampling and analyzing hemp pursuant to this chapter, a fee in the amount of the actual costs to the Department for the sampling and analysis, as approximated by the Department.

5. For making a revision to an issued registration, \$150.

Sec. 20. *1. The Department will impose the following civil penalties for violations of the provisions of this chapter or chapter 557 of NRS:*

(a) For a first violation, \$250.

(b) For a second violation, \$500.

(c) For a third or subsequent violation, \$1,000 per violation.

2. Any money collected from the imposition of a civil penalty pursuant to subsection 1 must be accounted for separately and:

(a) Fifty percent of the money must be used to fund a program selected by the Director of the Department that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger; and

(b) Fifty percent of the money must be deposited in the Account for the Control of Weeds created by NRS 555.035.

Sec. 21. NAC 587.463 is hereby amended to read as follows:

587.463 “THC” has the meaning ascribed to it in NRS ~~453A.155~~ 453.139, *as amended by section 3.5 of Senate Bill No. 49, chapter 486, Statutes of Nevada 2021, at page 3155.*

Sec. 22. NAC 587.491 is hereby amended to read as follows:

587.491 1. In addition to any other fee charged and collected pursuant to this chapter, ~~for~~ *the Department will collect the following fees:*

(a) For an application for registration or renewal of registration as a producer, a nonrefundable application fee of \$100 and an additional fee of:

(1) For each acre or portion thereof on an outdoor site used for producing agricultural hemp seed, \$5; and

(2) For each 1,000 square feet or portion thereof of an indoor site used for producing agricultural hemp seed, 33 cents;

(b) For inspecting a site used for producing agricultural hemp seed:

(1) A fee of not more than \$60 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(2) The mileage reimbursement rate 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 to and from the site;

(c) For making a revision to an issued registration, \$150; and

(d) For each planting of an agricultural hemp seed crop ~~the Department will charge and collect a~~:

(1) A certification fee of \$15 per acre ~~in addition to a~~; and

(2) A minimum fee of \$50 for each application for certification.

2. Checks must be payable to the Nevada State Department of Agriculture.
3. Each applicant must pay the fee for certifying an agricultural hemp seed crop:
 - (a) On or before June 1 of the year in which the agricultural hemp seed stock is planted; or
 - (b) If the agricultural hemp seed stock is planted after June 1 of that year, not later than 5 days after the date on which the agricultural hemp seed stock is planted.
4. The Department will refund any fee paid by an applicant for certifying an agricultural hemp seed crop for any planting that is withdrawn from certification if the applicant submits a written request for a refund of the fee before the Department conducts the first inspection of the field in which the agricultural hemp seed crop is planted.

Sec. 23. NAC 557.010, 557.020, 557.030, 557.100, 557.110, 557.120, 557.130, 557.140 and 557.200 and section 1 of LCB File No. R065-17 are hereby repealed.

TEXT OF REPEALED SECTIONS

557.010 Definitions. (NRS 557.080) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 557.020 and 557.030 have the meanings ascribed to them in those sections.

557.020 “Applicant” defined. (NRS 557.080) “Applicant” means a person who submits an application to the Department for certification and registration of a site used for growing or

cultivating industrial hemp in conjunction with an agricultural pilot program or other agricultural or academic research.

557.030 “Registrant” defined. (NRS 557.080) “Registrant” means a person whose application for certification and registration of a site used for growing or cultivating industrial hemp has been approved by the Department.

557.100 Application for certification and registration. (NRS 557.080)

1. A person who represents the Department or an institution of higher education, directly or pursuant to a contract to conduct an agricultural pilot program or other agricultural or academic research on behalf of the Department or institution of higher education, may submit an application to the Department for certification and registration of a site to be used for growing or cultivating industrial hemp in conjunction with the program or research. The application must be accompanied by a current background check performed by a law enforcement agency that includes a check performed by the Federal Bureau of Investigation. The application must be on a form prescribed by the Department and include all information deemed appropriate by the Department. The Department shall certify and register such a site if:

(a) The Department determines that the application adequately describes the purpose of the agricultural pilot program or other agricultural or academic research which requires the growth or cultivation of industrial hemp;

(b) The applicant has not been convicted of any felony related to the possession, production, sale or distribution of a controlled substance in any form within the 5 years immediately preceding the date of the application;

(c) The application includes all other information that the Department determines is appropriate; and

(d) The application is accompanied by all fees determined by the Department to be required at the time the application is submitted.

2. An applicant may submit a request to amend an application to the Department if the request is accompanied by all fees determined by the Department to be required at the time the request is submitted. Upon approval of such a request, the Department shall use the amended information to adjust the calculation of all fees required to accompany the application.

557.110 Required reports; inspection; notification to Department of harvest; analysis of THC concentration; disclosure of information. (NRS 557.080)

1. A registrant shall submit all reports required by the Department on or before the date specified by the Department in the certification.

2. The Department may inspect, sample and analyze, in such manner and at such times as the Department deems necessary, all plants, whether growing or harvested, and all land, buildings and other structures used for growing, cultivating or storing industrial hemp and all documents and other records relating to the agricultural pilot program or other agricultural or academic research certified by and registered with the Department. The registrant shall ensure such unrestricted access.

3. A registrant shall notify the Department before any harvest or any other form of disposition of a growing crop of industrial hemp.

4. The Department shall conduct an analysis of the THC concentration of a sample of the growing crop described in subsection 3 in a timely manner using appropriate sampling and analysis protocols.

5. Any information obtained by the Department in carrying out the provisions of this chapter and chapter 557 of NRS may be provided to any law enforcement agency without notice to the applicant or registrant.

557.120 Certified seed and propagating material: Required use; request by registrant for Department to obtain. (NRS 557.080, 561.153)

1. A registrant shall ensure that only certified seed and propagating material approved by the Department are used when growing or cultivating industrial hemp for the certified and registered agricultural pilot program or other agricultural or academic research.

2. A registrant may request that the Department obtain certified seed or propagating material, or both, for the registrant's use.

3. If the Department obtains certified seed or propagating material, or both, for a registrant, the registrant shall:

(a) Release the Department from any liability for the quality and fitness of the certified seed and propagating material for any use or purpose;

(b) Pay to the Department in advance:

(1) All of the costs incurred by the Department in obtaining the certified seed and propagating material;

(2) A fee of \$1 per pound of seed obtained for the registrant; and

(3) A fee of \$30 per acre for propagating material obtained for the registrant; and

(c) Relinquish any portion of the certified seed and propagating material which is not used for the certified and registered agricultural pilot program or other agricultural or academic research to the Department. Any certified seed and propagating material relinquished to the Department pursuant to this paragraph becomes the property of the Department.

4. As used in this section:

(a) “Certified seed” has the meaning ascribed to it in NRS 587.021.

(b) “Propagating material” means plants and parts thereof that are intended for plant cultivation.

557.130 Fees. (NRS 557.080, 561.153) The Department shall assess the following fees:

1. For the submission of an application pursuant to NAC 557.100, a nonrefundable application fee of \$500.

2. For the submission of a request to amend an application pursuant to NAC 557.100, a nonrefundable fee of \$500.

3. For a certified and registered site used for growing and cultivating industrial hemp outdoors, a fee of \$5 per acre or portion thereof.

4. For a certified and registered site used for growing or cultivating industrial hemp indoors, a fee of 33 cents per 1,000 square feet, or portion thereof.

5. For inspecting a site used for growing or cultivating industrial hemp:

(a) A fee of not more than \$50 per hour for each hour an inspector spends conducting the inspection, including the time spent traveling to and from the site; and

(b) 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 to and from the site.

6. For sampling and analyzing industrial hemp pursuant to this chapter, a fee in the amount of the actual costs of the Department for the sampling and analysis, as approximated by the Department.

557.140 Revocation of registration and certification or destruction of plants if sample contains THC concentration exceeding limit. (NRS 557.080) If, after testing a sample of industrial hemp, whether growing or not, the Department determines that the sample contains a THC concentration of more than 0.3 percent on a dry weight basis, the Department may:

1. Revoke the certification and registration of the registrant; and
2. Order the destruction of the plants grown or cultivated by the registrant at the registrant's expense.

557.200 Civil penalties; use of money collected. (NRS 557.080, 561.153)

1. Violations of the provisions of this chapter or chapter 557 of NRS are subject to the following civil penalties:

- (a) For a first violation, the Department shall impose a civil penalty of \$250.
- (b) For a second violation, the Department shall impose a civil penalty of \$500.
- (c) For a third or subsequent violation, the Department shall impose a civil penalty of \$1,000 per violation.

2. Any money collected from the imposition of a civil penalty pursuant to subsection 1 must be accounted for separately and:

(a) Fifty percent of the money must be used to fund a program selected by the Director of the Department that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger; and

(b) The remaining 50 percent of the money must be deposited in the Account for the Control of Weeds established by NRS 555.035.

Section 1 of LCB File No. R065-17

Section 1. Chapter 557 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The Department will create and publish a list of pesticides that are allowed for use on industrial hemp as part of an agricultural pilot program. Upon submission of a request for an evaluation of a pesticide pursuant to subsection 2, the Department will evaluate each active ingredient used in the pesticide to determine whether to include the pesticide on the list. If the Department includes a pesticide on the list, any person who uses the pesticide on any industrial hemp shall, before using the pesticide, ensure that the pesticide:

- (a) Is registered for use in this State; and
- (b) Is appropriately labeled by the United States Environmental Protection Agency.

2. A request for an evaluation of a pesticide pursuant to subsection 1 may be submitted to the Department by:

- (a) An employee of the Department;
- (b) Any committee or other entity specified by the Department;
- (c) Any manufacturer of a pesticide; or
- (d) A grower, handler or producer.

3. The Department will determine whether a pesticide may be included on the list created and published pursuant to subsection 1 based upon:

(a) The provisions of NRS 586.010 to 586.4065, inclusive, and any other applicable law or regulation; and

(b) The label approved for the pesticide by the United States Environmental Protection Agency.

4. The Department will charge and collect the following fees:

(a) For evaluating a pesticide pursuant to subsection 1.....\$75 per hour

(b) For verifying that a pesticide is appropriately labeled for use in a cultivation facility that is registered pursuant to chapter 453A of NRS..... \$75 per hour

(c) For submission to the Department of an application to register an additional use of a pesticide to meet a special local need pursuant to 7 U.S.C. § 136.....\$300

5. As used in this section:

(a) “Active ingredient” has the meaning ascribed to it in NRS 586.030.

(b) “Cultivation facility” has the meaning ascribed to it in NRS 453A.056, as amended by section 8 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3679.

(c) “Industrial hemp” has the meaning ascribed to it in NRS 557.040.

(d) “Pesticide” has the meaning ascribed to it in NRS 586.195.

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LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
Permanent adoption of Temporary Regulation for
Nevada Administrative Code Chapter 557 R011-21

1. A clear and concise explanation of the need for the adopted regulation.

In order to have primary regulatory oversight over hemp production in Nevada, the Nevada Department of Agriculture (NDA) must submit a state plan to the United States Department of Agriculture (USDA) that complies with the [Agriculture Improvement Act of 2018, 7 Code of Federal Regulations \(CFR\) Part 990](#). Hemp and marijuana are both cannabis plants and are only able to be differentiated through chemical analysis for THC (psychoactive cannabinoid). The definition of hemp is based on THC concentrations not exceeding limits as established by federal law (0.3%) and the program requirements are based on preventing psychoactive product from being sold as this would be considered “marijuana”.

USDA requires a state plan be approved that details program oversight processes and enforcement authority for a state hemp program. The Department submitted a state plan in June and September of 2020 and USDA indicated that some regulation revisions would be needed prior to accepting the state plan, particularly involving negligent criteria and enforcement action. Temporary regulations were adopted in January of 2021, which resulted in an approved Nevada State Plan on May 28, 2021. To maintain the approved plan, the NDA must adopt the temporary regulation as permanent.

As part of the state plan, adequate infrastructure for implementing a state program must be demonstrated. As a result, the proposed regulations include a fee increase to support program administration. Being that hemp production is still a relatively new state and federal program, the regulations primarily reference CFR. This will allow state regulations to adapt upon any changes to CFR. The proposed regulations include the following:

- establishing provisions relating to the registration of growers and producers;
- setting forth certain reporting requirements for registrants;
- establishing provisions relating to the sampling and testing of hemp;
- setting forth certain requirements for the disposal of noncompliant crops;
- establishing provisions relating to persons who commit certain violations relating to the regulation of hemp;
- establishing fees for registration as a grower, handler or producer;
- imposing civil penalties
- repealing certain obsolete provisions;

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Four public workshops on the proposed regulations were properly noticed and held via the Webex online meeting platform on 08/27/20, 10/09/20, 11/04/20, and 6/23/21. An adoption hearing for temporary regulation was held 1/12/21 and for permanent regulation adoption on 9/16/21. To encourage engagement from current and previous hemp program participants and other agriculture stakeholder groups, the public meeting notice was also issued to the following: 2019, 2020, and 2021 program participants, the Nevada Cattleman’s Association, Nevada Farm Bureau, University of Nevada Reno, Nevada Cooperative Extension, the Cannabis Compliance Board, Nevada Resource and Conservation Services, in addition to individuals that have requested to be added to the Department’s public notice contact list. Written comment received and meeting minutes are available upon request to the department. In addition, meeting recordings and/or minutes have been made available on the department’s public meeting website at https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/. A general summary of comments received (though not all inclusive) are provided in question 5 as most comments were received by industry.

3. The number of persons who:

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: August 27, 2020
(a) Number in attendance: 24
(b) Number testifying: 4
(c) Written statements submitted: 4

Workshop date: October 9, 2020
(a) Number in attendance: 32
(b) Number testifying: 10
(c) Written statements submitted: 1

Workshop date: November 4, 2020
(a) Number in attendance: 20
(b) Number testifying: 4
(c) Written statements submitted: 0

Workshop date: June 23, 2021
(a) Number in attendance: 9
(b) Number testifying: 4
(c) Written statements submitted: 1

Hearing date: January 12, 2021
(a) Number in attendance: 20

- (b) Number testifying: 4
- (c) Written statements submitted: 2 via email, 3 during public chat in web-ex

Hearing date scheduled: September 16, 2021

- (d) Number in attendance: 8
- (e) Number testifying: 4
- (f) Written statements submitted: 1

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

- (a) **Name;**
- (b) **Telephone number;**
- (c) **Business address;**
- (d) **Business telephone number;**
- (e) **Electronic mail address; and**
- (f) **Name of entity or organization represented.**

The workshops and hearing were held virtually through the Web-ex online meeting platform. Participants provided the information below through this system. Multiple announcements were provided during the workshops and hearing inviting participants to submit written comments if connection issues were experienced during public comment.

Workshop August 27, 2020 NAC 557	Workshop 10.9.20NAC 557	Workshop 11.4.20 NAC 557	01.12.21 Temporary Reg Adoption Hearing NAC 557	6.23.21 Workshop for Permanent Adoption of Temporary Regulation	9.16.21 Permanent Regulation Adoption Hearing
Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (Host)	Ashley Jeppson-NDA (host)	Ashley Jeppson-NDA (host)	Ashley Jeppson-NDA (host)
Audrey Blondfield-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Alexa Johnson-NDA	Marla McDade Williams; marlamw@strategies360.com
Alexa Johnson-NDA	Shayda Sanjidey-NDA	Shayda Sanjidey-NDA	Leycha Ortiz-NDA	Leycha Ortiz-NDA	Joe Frey
Allen Whitenack-NDA	Allen Whitenack-NDA	Allen Whitenack-NDA	Audrey Blondfield-NDA	Audrey Blondfield-NDA	Audrey Blondfield-NDA

James McCoy	Chris Rusby; chris@rusbylaw.com	Patty Herzos	Allen Whitenack-NDA	Allen Whitenack-NDA	Allen Whitenack-NDA
Erik G	Lauren McGue, UNR; lmcgue@unr.edu (written comment)	August Klein	Alex Tanchek	Alex Tanchek; alex@ssgr.us	Alex Tanchek; alex@ssgr.us
Robert Daniell; rdaniell@amerhempco.com (written comment)	Robert Daniell	Robert Daniell	August Klein	Chris Rusby; chris@rusbylaw.com	Katelyn Brinkerhoff
Lynn Keller	775-8xxxx49	Peter Keegan (Deputy Attorney General)	Diane King	Leana Carey-Progressiverancher@gmail.com	
Teri Bath	Teri Bath	Teri Bath	Doug Busselman, Nevada Farm Bureau		Misha Allen
Leycha Ortiz-NDA	Alex Tanchek	Alex Tanchek	Angela O'Callaghan, UNR		Sarah Scott
John O'Brien; jobriennevada@gmail.com (written comment)	Harlan	Joe Frey	Bryce Lister		Scheril Murray Powell, Esq
Tessa Rognier	Donna Bath	Donna Bath	Letty Elias		
Call-in User_4	Will Adler	Will Adler	Linda King		
Letty Elias	775-353-xxxx73	Rebecca Allured-NDA	Rebecca Allured-NDA		
Alfred Balloque	Hemp Sun	Hemp Sun	Bob Daniell		
Stacey Verboom	775-2xxxx00	User 4	ML Robinson, UNR		
Call-in User_6	Jeff Anderson	Derek Connor	Marysia Movaske, UNR written comment		
Call-in User_7	Mark	NDA	Shayda Sanjideh-NDA		
Call-in User_8	Jason Strull	Diane	Hemp Sun Farms		
Call-in User_5	702-9xxxx49	Leana Carey	Will Adler		

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Call-in User_9	Maurice Robinson		Chris Rusby, chris@rusbylaw.com (written comment only)		
Tyree Brown	Joe Frey		Joe Frey, joe@westernstatehemp.com (written comment only)		
Call-in user_10	Cary Yamamoto				
Call-in user_3	Michael				
Chris Rusby; chris@rusbylaw.com (written comment)	Jim				
Rodney Mehring; rodneydm2003@yahoo.com (written comment only)	5056xxxx58				
	NDA				
	Marysia Movaske				
	Mareo Jimenez				
	Mark O'Farrell				
	NDA-Rebecca Allured				
	Leycha-Ortiz-NDA				

5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

To encourage engagement from current and previous hemp program participants and other agriculture stakeholder groups, the public meeting notice was issued to the following: 2019 and 2020 program participants, the Nevada Cattleman’s Association, Nevada Farm Bureau, University of Nevada Reno, Nevada Cooperative Extension, the Cannabis Compliance Board, Nevada Resource and Conservation Services, in addition to individuals that have requested to be added to the Department’s public notice contact list. 2019 and 2020 hemp program participants were also engaged through annual inspections, department presentations, federal regulation updates, and through a small business impact survey. USDA provided three public comment periods on the federal requirements detailed under the Interim Final Rules. NDA issued multiple notices to industry involving this opportunity and public comment received resulted in some

favorable changes to the Final rules. The department's intention is to meet minimum federal requirements through these temporary regulations. A summary of the small business impact statement, survey, and comments received throughout this process can be obtained by contacting:

Nevada Department of Agriculture
Attn: Allen Whitenack
(775)-353-3601

Department staff have been engaging with hemp certificate holders since 2018 involving changes to federal requirements. Concerns expressed by industry were summarized in the small business impact summary, were discussed during the public workshops, and are provided below.

Federal requirement industry concerns:

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 was the requirement of the Interim Rules, which was modified as of March 2021 to allow for sampling of flower material from the top 6-8 inches of the main stem allowing for some leaf and stem material to be included in the sample.
3. Crop failures of >0.5% THC being classified as a negligent violation which would result in revoked or denied certification and stifle crop research. This was increased in CFR to 1% in March of 2021, which is reflected in this regulation.
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. This was increased to 30 days in CFR in March of 2021, which is reflected in this regulation
6. Increasing program fees
7. Regulations not reflecting specific needs of fiber producers since they are not producing for CBD or ingestion purposes
8. Crop disposal requirements

During the regulation change workshops, public comment was received in opposition to the federal requirements (listed above). In addition, below is a summary of repeat comments received (not all inclusive) during workshops and the temporary regulation adoption hearing:

Fee increase:

During the workshops, approximately four comments were received expressing concerns on the grower registration fee increase (\$500 to \$900) and the hourly inspection rate (hourly rate increase from \$50 to \$60). Written comment was received involving concerns of nursery license costs in addition to the increased grower certification fee for those selling hemp plant starts. As a result, this fee was reduced since nursery inspectors can perform the hemp site inspection and nursery inspection simultaneously.

Third-party lab analysis THC reporting requirements:

Numerous comments were received on the existing NAC requirement for third-party labs to report hemp analysis results to the NDA. The NDA removed this requirement from NAC and agreed that this requirement could deter certificate holders from performing appropriate sampling that is critical to timing NDA compliance sampling.

Sampling method comments:

It was requested that the NDA specify their crop sampling method in regulation. Provisions were added for sampling flower material from throughout the plant as long as it met federal requirements. However, a reference to the minimum federal requirements was included to allow the Department to adapt should there be a change. Multiple comments were received suggesting that the Department adopt a crop sampling method that encompasses the bio-mass of the crop to allow for more favorable testing outcomes and a more representative use of the plant. This request was included as the CFR was modified in March of 2021 to allow for biomass to be sampled if the initial crop sample taken fails THC compliance. In addition, the Department has included the minimum federal requirements for sampling, which would allow taking samples of the top 6-8 inches of flowering material of the mainstem from throughout the plant. Comment was also provided that sampling should only occur on a scheduled basis with operation staff present. This is a requirement of USDA and will be implemented through NDA procedure, which is detailed in the NDA's state plan submission to USDA. One comment was received that the Department should opt to not sample all farms and to provide a pre-season notification involving who would be sampled on an annual basis.

Measurement of Uncertainty Comments:

Comment was received that the department has the leniency to adopt whatever they deem appropriate for a measurement of uncertainty which would widen the range of acceptable THC limits. The department provided clarification that the measurement of uncertainty established by the lab must be scientifically based and meet the standards as set forth by USDA. It was also requested that the department include their methods for establishing a measurement of uncertainty in regulation. The specific standards recognized by USDA were incorporated into the regulation.

Research exemption:

The University of Nevada Reno provided comment that the Department should adopt regulations that would allow for exemptions for hemp crop research. This request would conflict with federal requirements and was not included.

Requirements to secure local jurisdictional approval:

Comment was received that the Department should not deny or revoke certification if other state requirements were not met. This language addition was specific to issues expressed from the state water authority and local government agencies pertaining to land and water misuse occurring involving hemp. This language was not removed in order to work collaboratively with these agencies and to prevent the issuing of certification that would conflict with other state requirements.

Clarification and consideration of back-ground check requirements:

During the initial regulation change workshops, concern was expressed on the lengthy process that can be experienced with FBI background checks, which must accompany each application. The Department

included a modification that allows background checks to be valid if completed within 120 days of the application submission. The Interim Final Rules required that a background check be provided for all “key-participants”. The NDA received support and opposition to this requirement. On March of 2021, the hemp rules were revised which limited this requirement to one background check per application. The temporary regulation draft allows for a background submission from the applicant or a single key participant as applicable.

Application deadline frequency:

Comment was received that applications should be accepted for three-year terms. This would require a statute change.

Operate under the 2014 Farm Bill for 2021:

Comment was received advising the Department to continue operating under the 2014 Farm Bill for the 2021 production season in order to provide more time for the final federal rules to be published. [Final Rules](#) governing the Establishment of a Domestic Hemp Production Program were published and replaced the [Interim Final Rules](#) in March of 2021. The temporary regulations for NAC 557 reference CFR and are still reflective of the published final rules. In moving forward with the adoption of temporary regulations, the Department will be able to maintain primary regulatory oversight.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulations underwent numerous changes throughout the workshops. The proposed regulations are to meet minimum federal requirements. Once in effect, the department will be able to maintain an approved state plan in order to comply with the 2018 Agriculture Improvement Act and to have primary regulatory oversight.

7. The estimated immediate and long-term economic effect of the regulation on the business which it is to regulate and on the public, whether beneficial or adverse.

(a) Estimated economic effect on the businesses which they are to regulate.

- Immediate
 - The proposed regulations would increase fees to cover program costs from \$500 to \$900 per grower and from \$50 to \$60 per hour in completing an inspection, which could have immediate economic effects on hemp growers. The regulations include changes to new federal requirements that allow for a crop to be remediated as opposed to disposed of, which is favorable to the grower and results in economic benefits.
- Long-term
 - The proposed regulations allow the NDA to meet the minimum federal requirements that require operations to harvest within 30 days of sampling, which could be more costly for growers with large acreages. However, the changes in federal law to allow crop remediation in lieu of disposal, should a crop fail the THC testing, is economically beneficial to those participating in the program.

Due to the new federal regulations for this voluntary program being more rigorous, reduced program participation may be experienced. The increase in fees is anticipated to cost program participants (at

2020 participation levels of 115 growers) an additional \$48,870, which will be used to cover personnel, lab equipment and supplies, education and outreach.

(b) Estimated economic effect on the public which they are to regulate.

- Immediate and long-term
 - Hemp production is a voluntary program, and the rigorous federal requirements may result in adverse impacts such as reduced program participation. In addition, the increase in fees may result in increased hemp product pricing. The public will benefit from the proposed regulation because they will have access to Nevada-sourced hemp rather than purchasing out-of-state. By having the NDA serve as the primary regulatory authority in lieu of the USDA, in-state activities will be tracked more efficiently, discouraging marijuana from being falsely sold as hemp.

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

The Department has been enforcing the hemp program since 2016, however the new federal requirements have increased the reporting and sampling volume requirements. The estimated \$48,870 increase in fee revenue will be used to fill these requirements and to cover ongoing operational costs.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

Not applicable. Only the NDA regulates hemp.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Not applicable. The regulations are to meet minimum federal requirements.

11. If the 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 increase in fees at 2020 participation levels (115 growers) would result in an additional \$48,870 in department revenue. This will be used to cover personnel, lab equipment and supplies, in addition to education and outreach.

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.

Jennifer Ott
Director
Nevada Department of Agriculture

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**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