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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment

of Regulations of the

Nevada Department of Agriculture

The Nevada Department of Agriculture will hold a public hearing at 9.00 am, on

September 28, 2005, at

Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, Nevada 89502

Video Conference access will be made available in Las Vegas from:

Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104

The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 586 and 588 of the Nevada Administrative Code.

Formal adoption of these amendments will be proposed to the Board of Agriculture at their meeting at :

Washoe County Administration Offices
1001 E. Ninth Street
Reno NV 89512

on: September 30, 2005, following discussion of the results of this hearing.

NEVADA BOARD OF AGRICULTURE
Benny Romero, Chair: *Livestock*
Harvey Barnes: *Livestock*
George Botta: *Pest Control*
Marta Agee: General Farming
David Cassinelli: *Livestock*
Chris Hellwinkel, Vice Chair: *Dairy*
Dan Hetrick: *Row Crop*
Jim Johnson: *Nursery*
Lawrence Waugh: *Petroleum*
Susan Ray: *General Agriculture*
Deloyd Satterthwaite: *Sheep*

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need, Purpose & Background

For a variety of needs and uses, we are proposing to increase registration fees for pesticide and fertilizer products in Nevada.

a. SB293 of the 2005 Nevada Legislature authorized the use of a portion of pesticide registration fees for weed control. It is proposed to fund a position using this source. **Cost: $10.00 per pesticide product, Total expected receipts: $80,000***

b. Reduced EPA grant funding coupled with salary increases, indirect cost recovery and other operating expense increases have seriously reduced the value of the EPA grant. In order to maintain the programs, two actions are proposed:

Transfer the Chemist 4 position from the EPA grant to the Agriculture Registration & Enforcement Account (ARE).

Cost: $10.00 per pesticide product, Total expected receipts: $80,000*

Transfer funds from the ARE Account to support the funding of EPA pesticide programs.

Cost: $5.00 per pesticide product, Total expected receipts: $40,000*

c. Increased salaries, operating costs, various state cost reovery loads and administrative costs have all put pressure on the ARE account. It is also essential to continue funding equipment costs at a reasonable level. In recent years we have calculated this based on depreciation of existing equipment and have transferred funds into a separate G/L account specified for this purpose. Without this funding the laboratories will quickly be unable to maintain their current very high standards of service and currency with modern accepted analytical methods.

Cost: $15.00 per pesticide product, Total expected receipts: $120,000*

Cost: $20.00 per fertilizer product, Total expected receipts: $43,000*

*Based on current registration levels of 8,000 pesticide brands and 2,300 fertilizer brands and grades

All positions referred to in this description are already in existance. No new positions are created by these amendments.

A Report on a Workshop held on July 26, 2005 is attached.

Authority: NRS 586.270, NRS 588.170

2. We are proposing amendments to NAC 586 and NAC 588 as follows:

NAC 586.011 Annual registration fee for each pesticide registered: Amount; separate deposit of portion of fee. (NRS 586.270)

1. Each registrant shall pay an annual registration fee of ***$100*** [~~$60~~] for each pesticide registered.

2. The Director will deposit in a separate account for the disposal of pesticides***; to monitor pesticides; to protect groundwater and surface water from contamination by pesticides; and for the eradication and control of noxious weeds, $15***[~~$5~~] of each annual registration fee collected pursuant to subsection 1[~~, not to exceed $35,000 annually~~].

(This section to take effect 1/1/2006 i.e. for pesticide products registered for 1/1/2006 on)

NAC 588.035 Registration fee. (NRS 588.170) An application for the registration of a brand and grade of commercial fertilizer or agricultural mineral must be accompanied by a registration fee of

$60[~~$40~~] for each combined registration of brand and grade.

(This section to take effect 7/1/2006 i.e. for fertilizer products registered for 7/1/2006 on)

3. Estimated economic effect of the regulation on the (a) business that it is to regulate and (b) on the public:

(a) Total gross cost to the regulated industries is estimated at $363,000. The effect on individual registrants will range from a few thousands for large manufacturers with many registered products to $20 or $40 for very small registrant companies with a single fertilizer or pesticide product. Fee levels are comparable with other states. Some brands may be eliminated from the market, but in past experience very little of this has occurred. Generally, only products with very marginal sales are affected. There should be no significant long term increase in cost beyond the immediate effect of the fee increase. (See also attached report from the Workshop held on these proposed amendments for comments from registrant's representatives.)
The regulated industries gain a 'level playing field' in which to do business. The Nevada Department of Agriculture, in performing its duties under NRS 586 and NRS 588, polices the quality of pesticide and fertilizer offered for sale and distributed in Nevada and eliminates unregistered products from the market. It would be cost prohibitive for individual registrants to attempt this in multiple states including Nevada.
(b) Some measure (but not all) of the fee increase may be expected to be passed on as part of routine price increases. Some brands may be eliminated from the market, but in past experience very little of this has occurred. Generally, only products with very marginal sales are affected. Sales of products marketed to even small agricultural markets normally occur at levels that make any state registration fee marginal, so growers should still have the products they need available to them.
The public gains protection from fraudulent and hazardous products in addition to public health and environmental oversight. Costs of misuse can be in the millions of dollars to affected parties. State of the art analytical services are available to the people of the State of Nevada and other agencies during emergencies and other situations.
Failure to control invasive weeds can result in economic damage, as arable and grazing land may be permanently removed from production. Uncontrolled weeds may also lead to constant expense if allowed to become endemic.

4. No additional cost to the agency for enforcement of the proposed regulation is anticipated, all revenue collection mechanisms are in place.
5. Jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides and devices is, pursuant to NRS 586.010 to 586.450, inclusive, vested exclusively in the Director. (NRS 586.230) There is no duplication or overlap with other state or local laws. Provision in NRS 586.330 eliminates overlap with Federal Law.
6. None of the above amendments are required pursuant to federal law.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. None
8. As noted above, fees for pesticide product registration are proposed to be increased from $60.00 per brand to $100.00 per brand; fees for fertilizer product registration are to be increased from $40.00 per brand and grade to $60.00 per brand and grade.

Persons wishing to comment upon the proposed action of the Nevada Department of Agriculture may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to:

Nevada Department of Agriculture
Attn: Dr Christopher Mason
350 Capitol Hill Avenue
Reno NV 89502-2923

by email to: chrism@agri.state.nv.us, phone: 775 688 1180 ext.247 or fax: 775 688-1178

Written submissions must be received by the Nevada Department of Agriculture on or before September 27, 2005. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Agriculture may proceed immediately to act upon any written submissions. All verbal and written testimony will be in the record of the hearing.

A copy of this notice and the regulations to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be amended will be available at Nevada Department of Agriculture offices listed below and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at http://www.leg.state.nv.us. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, NV 89502

Nevada Department of Agriculture
2150 Frazer Street
Sparks, NV 89431

Nevada Department of Agriculture
1550 South Wells Avenue
Reno, NV 89502

Nevada Department of Agriculture
1200 E. Winnemucca Blvd.
Winnemucca, NV 89445

Nevada Department of Agriculture
Eyer H. Boies Building
1351 Elm Street
Elko, NV 89801

Nevada Department of Agriculture
2300 McLeod
Las Vegas, NV 89104

NOTE: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please call John O'Brien at the Nevada Department of Agriculture, 775-688-1182, as soon as possible.

Don Henderson

Don Henderson, Director

8-18-2005

Date

August 18, 2005

Report on Workshop and subsequent comments regarding Proposed Regulation R087-05

The workshop was held 7/26/05 commencing at 9.00 am at the Nevada Department of Agriculture Offices, 350 Capitol Hill Ave, Reno, NV 89502, with video conference access from the Las Vegas Office at 2300 McLeod Street, Las Vegas, NV 89104. Teleconference access was also provided.

Chris Mason chaired the meeting. He introduced himself & then requested everyone introduce themselves.

Chris Mason outlined proposed rule and then opened the meeting for comments and discussion.

Jim Johnson whose nursery (Star) markets Dr Q's fertilizer products from Sea Source said that Sea Source had communicated that they had no problem with paying the increased fertilizer registration fee.

Nevada Farm Bureau (NFB) representatives indicated that following a meeting with representatives of NDOA, they supported the regulation as long as 'soft' money (grant funds) currently supporting a weed control position would not, if received in the future, be used to fund additional positions, but would be used in field operations such as CWMA support. This would be an administrative Department policy and the NFB representatives were referred to the Board of Agriculture on this issue.

There were also NFB concerns about costs preventing special registrations such as Special Local Needs (SLN) registrations under FIFRA Sections 24c or Section 18 registrations. Chris Mason stated that this had not been encountered in the past as most products were already registered for some other applications and no additional state fee was charged for these registrations. There is an EPA fee ($4,100) for SLNs, over which the state has no control.

Charles Moses asked for clarification on distribution of the funds raised by the fee increase included in the regulation. It is proposed that the portion of pesticide registration fees referred to in NAC 586.011.2 would be increased by $10.00 and that this increase will fund a weed control position. The remaining $5.00 will continue to be used for pesticide disposal and pesticide groundwater protection projects.

The remaining proposed uses of the fee increases are deemed appropriate expenditures from the Agriculture Registration & Enforcement (ARE) account (budget 4545) and will be distributed by normal procedures.

Andrew Hackman of the Consumer Specialty Products Association (CSPA) expressed concerns on behalf of his members. They feel that since many of their products are small consumer packaged products and often have no use in weed control (such as disinfectants) that they are paying fees from which they receive no benefit. They do support reasonable increases to support pesticide programs. It was suggested (Doug Busselman, NFB) that fee funds from some of these product registrations be designated away from weed control activity and assigned to regular pesticide program use only. Chris Mason agreed to contact Legislative Counsel Bureau (LCB) and ask if authority to do this existed, or perhaps some administrative policy would be more appropriate.

Chris Mason contacted LCB. They responded that there is no authority to charge different fees for different types of pesticide; hence NAC is not a suitable place for distribution of fees based on the type of pesticide. This might be done as administrative policy.

Letters of support for the proposed regulations were received from a representative of Dow Agrosciences, Tim Playford, and Janet Valle, a Noxious Weed Coordinator with the US Forest Service, and were read into the record..

The workshop was closed at 10.00 am

Comments continue to be received.

A phone call from Jim Johnson pointed out that there was a cap of $35,000 in NAC 586.011.2. It was proposed that this should be removed and any excess funds be used in the programs as permitted by NRS 586.270.2.

Letters have been received from CSPA (i) and American Pet Products Manufacturers Association (APPMA) (ii).

(i)CSPA stated support of reasonable fees to support registration processes, benefiting all registrants equally. CSPA opposes the use of consumer product fees for noxious weed control. Language was suggested for the regulation accepting an overall pesticide fee increase of $40.00 to $100.00, but designating only a portion, $40.00, from defoliants & desiccants for noxious weed activity.

(ii)APPMA is generally opposed to an across the board increase as they feel it unfairly discriminates against small volume products such as pet protection collars. They point out that other states have sliding fees based on sales, or may exempt wholly or partially "specialty pesticides". They imply that some manufacturers may have to decide whether they will continue doing business in Nevada.

Response: As mentioned above, most of these comments can only be addressed by legislative means, as they would require amendments to NRS 586 in order for the Director to gain the authority to set differential fees. A sliding scale would require sales reporting from all registrants, by product and would create a greatly increased administrative burden. As a mainly urban state, the sales difference between consumer and agricultural pesticides may not fit the national norm. Sampling and testing costs are the same or often more (due to odd formulations such as collars or rodenticide blocks) for some of these products. The funding allocation scheme proposed by CSPA would not generate the revenue required for the proposed weed program (only 28 products in this narrow category according to NPIRS data). A wider definition of herbicide (exempting algaecides, slimicides and anti-fouling products) would generate approx. $60,000 from about 1,500 products, but as mentioned above there is no authority in statute for such a differential allocation.Using 'pets' as a site keyword, an NPIRS registration search listed 1166 products.