

STEVE SISOLAK
Governor



JENNIFER OTT
Director

Las Vegas Office:
2300 East St. Louis Ave.
Las Vegas, NV 89104
Telephone (702) 668-4590
Fax (702) 668-4567

Elko Office:
4780 East Idaho St.
Elko, NV 89801-4672
Telephone (775) 738-8076
Fax (775) 738-2693

STATE OF NEVADA
DEPARTMENT OF AGRICULTURE
405 South 21st St.
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
agri.nv.gov

**PROPOSED TEMPORARY REGULATION OF THE
NEVADA DEPARTMENT OF AGRICULTURE**

DIVISION OF PLANT INDUSTRY

NOTICE OF WORKSHOP FOR CHANGES TO NAC 586 AND 555

The Nevada Department of Agriculture will hold a public workshop for a temporary regulation on 09/22/2021 at 9:30am, at:

**Remote Meeting
Information:**

Nevada Department of Agriculture

405 South 21st St.
Sparks, NV 89431

Location: Web-ex meeting:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m01097ce3ee124f04affb7aeb6d02300>

Meeting Number: 2556 016 7696

Meeting Password: H3ZdaX6rjp3 (43932967 from phones and video systems)

Join by Phone: 1-408-418-9388

Phone Access Code: 2556 016 7696

Phone Access Password: 43932967

Per 2021 AB 253

ALL PERSONS WISHING TO ATTEND THE MEETING MUST ATTEND VIA WEBEX OR TELEPHONICALLY.

Nevada Revised Statute Chapter 287 has been amended through [2021 AB 253](#) to allow public meetings to be completed by use of remote technology and without a physical location.

This workshop will be conducted in accordance with the Open Meeting Law ([NRS 241.020](#)).

The purpose of the workshop is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapters 555 and 586, of the Nevada Administrative Code (NAC).

This workshop will begin with discussing proposed changes to NAC 586 regarding revisions to align with the updated Certification of Pesticide Applicators rule (40 CFR Part 171) in the Federal Register. Due to the changes to NRS 586, the NDA is proposing changes to certain sections of Chapter 586 in the Nevada Administrative code. At the conclusion of the public comments for NAC 586, the NDA will discuss changes to NAC 555 Pesticide Applicator changes regarding fee revisions for agent testing and requirements to individuals wanting to apply pesticides using unmanned aerial vehicles. At the conclusion of the public comments for NAC 555 Pesticide Applicator proposed changes, the NDA will discuss changes and have public comment on the noxious weeds language changes in addition to fee introductions for Plant Pathology and Entomology sample analysis in NAC 555. There are three diverse program changes in NAC 555 and in consideration of participant's time and topics of interest we are dividing the agenda as aforementioned.

Persons wishing to comment upon the regulation draft of the Nevada Department of Agriculture may appear at the scheduled workshop or may address their comments, data, views, or arguments, in written form, to the address below.

**Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
ATTN: Allen Whitenack
(775) 353-3670
awhitenack@agri.nv.gov**

A copy of all materials relating to the workshop may be obtained by contacting:

Allen Whitenack
Plant Industry Division
Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431
775-353-3670
awhitenack@agri.nv.gov

A reasonable fee for copying may be charged.

Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Please call 775-353-3670.

Notice of this meeting was posted on or before 9:30 a.m. fifteen days before the meeting at the following locations: the Nevada Department of Agriculture website at agri.nv.gov or notice.nv.gov Copies of the agenda, supporting documentation and meeting minutes are available, at no charge, at the Nevada Department of Agriculture website at agri.nv.gov or www.notice.nv.gov or by contacting Allen Whitenack at (775) 353-3670 or awhitenack@agri.nv.gov.

Notice of Workshop to Solicit Comments on NAC 586 and 555

Agenda

9:30am September 22, 2021

Remote Meeting Information:

Nevada Department of Agriculture

405 South 21st St.

Sparks, NV 89431

Location: Web-ex meeting:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m01097ce3ee124f04affb7aeb6d02300>

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Note: Items on the agenda may be taken out of the posted order, items may be combined for consideration, and items may be pulled or removed from the agenda

- I. Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- II. Overview of Chapter 586 Certification of Pesticide Applicators rules proposed changes**
- III. Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- IV. Overview of Chapter 555 Pesticide applicator proposed changes**

- V. **Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- VI. **Overview of Chapter 555 Noxious Weeds, Entomology, and Plant Pathology Proposed Changes**
- VII. **Public Comment:** In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.
- VIII. **Adjourn**

A copy of materials relating to the meeting and proposed regulations are available online at: http://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Workshops_and_Hearings/ or by contacting Allen Whitenack at awhitenack@agri.nv.gov. Written comment can be sent to 405 south 21st Street, Sparks NV 89431 or emailed to awhitenack@agri.nv.gov.

NAC 586 and 555 Workshop Minutes September 22, 2021

Attendees:

Nevada Department of Agriculture (NDA) Staff: Allen Whitenack, Administrative Assistant III; Ashley Jeppson, NDA Plant Health and Compliance Division Administrator; Bret Allen, Environmental Scientist IV; Ciara Ressel, Public Information Officer II; Michael Hendry, Agriculturist II; Raymond Saliga, Agriculturist IV; Mikayla Jones, Public Information Officer I; Shouhua Wang, Plant Pathologist; Jeff Knight, Entomologist

Public- Gary Reese, Doug Busselman, Michael McCampbell, Chris Bramley

Meeting was called order at 9:33am.

Ashley Jeppson, Plant Health and Compliance Division Administrator stated this workshop is being held for both NAC 586 and 555 due to the similarities in pesticide compliance topics and to consolidate time for the public. If this structure was inconvenient, Ms. Jeppson requested public feedback to allow for future workshop structure adjustments. Ms. Jeppson discussed the virtual meeting schedule in starting with NAC 586 and then going through changes to NAC 555 starting with the pesticide applicator portion and then moving on to entomology, plant pathology, and noxious weeds.

Public comment NAC 586-

No public comment

NAC 586 Changes-

Ms. Jeppson discussed that these changes were being drafted in response to updated statute to from 2021 Assembly Bill 74. The changes in NRS and NAC were to ensure adherence to the Code of Federal Regulations (CFR). Mr. Allen, Environmental Scientist IV for the Pesticide Compliance Program discussed the nomenclature changes to NAC regarding private applicators and non-private applicators. Mr. Allen discussed the expansion of individuals who can purchase restricted use pesticides (RUPs). Mr. Allen discussed the

retention schedules of sales or restricted use chemicals. Mr. Allen discussed the Environmental Protection Agency (EPA) rule changes and how they apply to NV state laws. Mr. Allen discussed new certified applicator responsibilities as they pertain to training requirements for non-certified RUP applicators working under their supervision.

Public comment NAC 586-

Michael McCampbell-Question “With this new terminology will government applicators need to get a new license and what will the requirements be?”

Ms. Jeppson stated that the NDA would be able to offer a training class to get previous licensees updated to the new licenses. However, new licensees would be required to take the exam. Mr. Allen stated that there will be a grace period for the changes to take effect. Previously licensed applicators will be able to get re-licensed without testing through a course provided by NDA. They would only need to retest once their license is up for renewal, but new applicators will need to test with the new requirements in order to get licensed.

Chris Bramley-Are the new cards going to be like the old blue cards?

Mr. Allen-The new cards will be similar but will have documentation stating what types of applications the card holder are qualified for.

Gary Reese-Can a teacher get CEUs for teaching a class where students are receiving CEUs?

Ms. Jeppson-NDA will need to have an internal discussion and review possible options.

Gary Reese-Specifically the Elko Weed Extravaganza

Ms. Jeppson stated that the NDA will review options.

NAC 586 portion concluded at 9:56am

NAC 555

Public comment- No public comment

NAC 555 Changes-

Mr. Allen discussed record keeping requirements for non-private applicators. Discussed reviews, suspensions, revocations of licenses per EPA requirements pending a violation. Mr. Allen discussed rodenticides and changes to vertebrate pest control. Mr. Allen discussed changes to soil fumigation and required standards and definitions. Mr. Allen discussed the changes to the regulations in section 5. Mr. Allen discussed the licensee requirements of commercial applicators due to EPA changes, and competency standards. Mr. Allen discussed testing standards for applicators. Mr. Allen said there is a comparison table available for testing standards for the public if they are interested in reviewing the requirements for each RUP category. Mr. Allen discussed expiration dates for licensees. Mr. Allen discussed competency standards for CEU classes.

Ms. Jeppson discussed the language changes to the different types of license applicators and that these changes were also in response to NRS that was passed in 2021 Assembly Bill 34 which included required updates per new CFR. She further explained that in order for operations to be able to perform pesticide applications in

Nevada, NRS and NAC needed to reflect CFR requirements and a Nevada State Plan had to be approved by EPA

Mr. Allen discussed changes to aerial applicators. Mr. Allen discussed changes regarding unmanned aerial vehicles. Mr. Allen discussed fee changes for testing. Mr. Allen discussed pesticide agents and their licensing fee changes. Mr. Allen discussed language changes for section 9 and 10. Mr. Allen discussed language changes regarding adding time of inspection to inspections. Mr. Allen discussed language changes to fines regarding naming conventions. Mr. Allen discussed the updates to the different types of applicator categories. Mr. Allen discussed required testing standards for general use applicators per EPA regulation changes.

Mr. Allen discussed the requirements of NDA regarding the availability of training manuals and updating exams.

Mr. Allen discussed the changes to private applicators, testing requirements, manuals, and exam questions. Mr. Allen discussed the passing score changing from 60% to 70%. Mr. Allen discussed the minimum age requirements for pesticide applicators. Mr. Allen discussed record keeping requirements when pesticides are applied for private applicators.

Ms. Jeppson welcomed any feedback from the public.

Public comment:

Doug Busselman-Question on plans for timetables. Are you planning to run both sections 555 and 586 through the Legislative Council Bureau (LCB) simultaneously? What are the timeframes for the changes?

Ms. Jeppson stated she was hoping by next spring, but it is dependent upon the amount of public comment received. NDA may have additional workshops if needed. Ms. Jeppson noted that it would be appreciated if the NDA could receive comments in the next 10 days that could be included in the draft that is routed to LCB but that there would be future opportunities to provide feedback on these proposed changes as well.

Gary Reese-NDA pesticide record keeping book states “pesticide use records may be stored in any format”- Does a weather station that stores data count as record keeping in terms of weather. Spot spraying is ambiguous. Especially for stump spraying. Especially for small applications. What is the requirement for recording beginning weather and ending weather when applying spot treatments to small areas like tree stumps?

Mr. Allen stated that what an inspector does not want to see is information missing from the applicator’s records. Mr. Allen stated that a single start and single end time and weather would be appropriate for a situation above. Small applications may be review on a case-by-case basis.

Gary Reese-Requested clarification on a spot treatment and discussed ambiguity in NRS. Discussed his agency’s process for preparing treatment plans that adhere to NRS and NAC.

Raymond Saliga NDA-Discussed the NRS and applicable regulations per NRS. Mr. Saliga noted that it is appropriate to document the beginning time and weather for spot applications.

Ms. Jeppson encouraged Mr. Reese to route treatment plans to the NDA as they could advise if the plans are proposing more record keeping than is actually required.

Ms. Jeppson welcomed any and all public comment to be submitted to NDA.

Closed NAC 555 pertaining to the pesticide applicator portion of the changes at 11:02am.

NAC 555-Fee changes

Public comment-No public comment

NAC 555 Fee changes discussion-

Ms. Jeppson discussed the initial test being free due to language in NRS 561, but each subsequent test will be charged at a cost of \$30.00. Charging for the initial test may be a proposed change in statute in the future. The changes to testing are to cover the costs of supplies and personnel (i.e., sample plating and reporting) for testing. These fees align with other states and labs for similar diagnostic services. Ms. Jeppson stated that the NDA's goal is to cover the personnel and supply costs associated with sample diagnostics and reporting.

Ms. Jeppson discussed clarifying language in the proposed regulations for weed free certification regarding propagative parts.

Public comment-No public comment

NAC 555 workshop ended at 11:14am as it pertained to Entomology, Plant Pathology, and Noxious Weed Free Certification.

Public Comment-Received after workshop via email

Amanda Moss, Senior Director of Government Affairs Southern Nevada Home Builders Association

My name is Amanda Moss and I am the Senior Director of Government Affairs for the Southern Nevada Home Builders Association (SNHBA). SNHBA is the oldest and largest local trade association representing the residential construction industry in the state of Nevada. SNHBA represents over 90% of the residential market in Southern Nevada.

SNHBA recently came across the Department of Agriculture - Division of Plant Industry's regulatory workshop agenda and copies of proposed changes to NAC 586 and 555 heard last week per AB 253 of the 2021 legislative session. Although we do not typically get involved in regulatory discussions with your department, we monitor every State Agency's websites in case regulations could impact the homebuilding industry.

I have circulated the proposed regulations to our membership and received some feedback I thought was worth sharing with your office. Your name was listed as the "ATTN" contact for regulatory comments for consideration, so I'm hoping I am sending the below bulletpoints to the appropriate person. I also hope that these comments are not too late to consider prior to the public hearing on 10/4. We are happy to attend those regulations and currently have the morning open after 9:30 AM, but do not yet have details on the date/time/location of the public hearing and hope these comments via email are sufficient. Similarly or in substitution, I am also happy to coordinate a virtual meeting or a conference call with our interested members who have provided this feedback.

Thank you for your time and consideration.

[Changes to NAC Chapter 555](#)
[Section 1. Chapter 555 of NAC](#)

Sec. 2. 1. page | 2

(d) Submit to the Director any reports or records he or she requests.

"2. An employer of a non-private applicator shall pay for the cost of any cleanup resulting from pesticides spilled in the course of operations for pest control."

- We feel as if "any" and "in the course of operations for pest control" is vague. As written, it could be interpreted several ways and could leave operators open to violation. As you may be aware, during the residential construction process, our builder members utilize a number of contractors and third-party vendors to properly analyze and mitigate soils in line with building code, and federal, state, and local regulations. Does the term "operations" mean application, storage, transport, or all of the above?

Sec. 3. "Upon receiving a validated complaint or other credible information, the Director shall review, and where appropriate, suspend or revoke any authorized commercial applicator's license ..."

- The underlined segment in section 3 was also a point of the NAC 555 proposed regulations that drew the attention of some of our membership. This is interpretative and could leave operators open to violation based solely on hearsay. Would the Department be willing to amend/tighten this language (or put their intent on the record) that this would enable the Director to suspend or revoke a commercial applicator's license only if there is "evidence supported information"?

Weed Free Certification Program

NAC 555.015 Establishment; application; standards adopted by reference. (NRS 555.010)

1. A producer of agricultural products who wishes to have his or her agricultural products certified as being free from noxious weeds and their propagative parts may apply to the Department to participate in the Weed Free Certification Program which is hereby established pursuant to NRS 555.010. To participate in the Weed Free Certification Program, the producer must submit, in a form approved by the Department, evidence satisfactory to the Department that the producer meets the standards adopted by reference in subsection 2.

2. The Director hereby adopts by reference the North American Weed Free Forage Minimum Certification Standards, as revised and approved by the board of NAISMA. on March 31, 2015, and the Gravel Pit Inspection Standards and Gravel Pit Inspection Form for the Weed Free Gravel Program. These certification programs issued by the North American Invasive Species Management Association or its successor organization, and any subsequent revisions which have been approved by the Director for use in this State but not limited to: forage, gravel, and mulch. Each new revision shall ..."

- There are many different types of mulches consisting of various contents. The intended definition of "mulch" should be either spelled out carefully in these regulations or refer to other sections of the NRS/NAC that define mulch as some mulches may contain "their propagative parts" yet have been rendered non-reproductive and sterile. This is important in fire burn area remediation (Rice Straw Mulch is used with a seed that sprouts once for cover and can no longer germinate after the first sprout.) The local Burn Area Emergency Response Teams (BAER) has established guidance we have linked [here](#) (and attached) to ensure there are no conflicts in the implementation of your proposed regulations.
- We are still reviewing potential conflicts (or impacts to the following agency's approved mulch mixes) with NDOT, Flood Control, and the Southern Nevada Building Official (SNBO)'s current review and adoption process of the Wildland Urban Interface Code (based on recent legislation that requires adoption at a local level under certain circumstances, as outlined by NRS 477 and SB 33 (2021)).

Lastly, similarly to the above comments, the regulations also alternate between “pesticide” and “herbicide.” We understand OPM language has lumped these two terms together for regulatory purposes (i.e. in Arizona, the Pest Management Division (PMD) regulates the use, disposal and storage of pesticides, including herbicides), but we feel that the text in the State of Nevada’s regulations should also define and point out when the term pesticide is used it means both pesticides and herbicides, to remove the potential for nomenclature changes throughout the bill.