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## DEPARTMENT OF AGRICULTURE

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### SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY NRS 233B.0608

**August 9, 2021**

#### PROPOSED AMENDMENTS TO NAC CHAPTER 586

- 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.**

The Nevada Department of Agriculture (NDA) released a digital survey along with the proposed Nevada Administrative Code (NAC) changes to Restricted Use Pesticides (RUP) dealerships, RUP certified applicators and pest control licensees to assess the potential impacts of proposed changes to NAC 586 on businesses. The survey was posted to the NDA social media pages on 7/15/2021, 7/19/2021 and 7/21/2021. It was also posted to [www.agri.nv.gov/survey](http://www.agri.nv.gov/survey) on 7/6/2021. It was additionally promoted by the Nevada Farm Bureau through their weekly e-newsletter on 7/16/2021.

Of the 98 survey respondents who answered the question asking if they fall under the definition of a small business as defined by NRS 233B.0382:

- 74% indicated they fall under the definition of a small business.
- 0 respondents skipped the question.

Of the 72 survey respondents who answered the question asking if changes to NAC 586 would impact their ability to do business:

- 55% maybe, 31% yes and 14% no.
- 26 respondents skipped the question.

Of the 50 survey respondents (who identified as a small business) who were asked if changes to NAC 586 would impact their ability to do business:

- 40% maybe, 17% yes and 43% no.
- 23 respondents skipped the question.

Concern was expressed from some respondents on how changes to NAC 586 would impact their ability to do business:

- “Generating useless information when applied to private residential property.”
- “Additional restrictions.”
- “I have a very small income from my business.”
- “Could impact dealers I buy pesticide from.”
- “By locking private citizens out of their own business.”
- “Instead of government license, our applicators would need a nonprivate license. We would have to go through whatever process is set up to get a new license before continuing work.”
- “The changes would be to the way we deliver our business to our customers. On the outside there is not a lot of change. On the inside it would change the way staff would be required to do their jobs. We anticipate the change as good thing for us and the state. Time will tell.”

Concern was expressed from respondents on operational changes to their business may have to make:

- “Need to have temp gauges & wind indicators attached to each vehicle used during the day.”
- “Just time training the sales staff on what to look for and ask when a person says they are licensed vs. certified and getting folks to actually supervise when that’s what they are supposed to be doing anyways/”
- “Staff time.”
- “Go out of business.”
- “Improved record keeping.”
- “No, no changes at the operational level, however changes at the ground level would be minor but still required.”
- “I don’t want to use a contractor.”

Individuals interested in a copy or outcomes of the survey can contact the NDA at 775-353-3715 or [bret.allen@agri.nv.gov](mailto:bret.allen@agri.nv.gov).

## **2. The manner in which the analyses was conducted.**

The NDA launched the survey on July 6, 2021 and closed it on July 23, 2021. The survey was sent out to the NDA’s agriculture email list comprised of 7,195 recipients, including businesses and parties interested in agriculture within the State of Nevada. Of these recipients. 2,270 opened the email, 132 recipients clicked links in the email, 62 emails bounced, and 8 recipients unsubscribed. Unfortunately, spam filters associated with MailChimp delivery system did not allow this email to go out to our licensed pesticide operators. When this technical issue was identified, a supplemental e-mail notice was sent through SurveyMonkey on 7/8/2021 to 2,279 pesticide businesses and operators. This email was opened by 711 recipients, unopened by 1,153, and 345 emails bounced. Of those who opened the email, 117 clicked through the survey and 70 opted out from receiving communications from the NDA. A supplemental reminder email was sent out on 7/19/2021.

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

29 individuals responded to the question asking which level of negative impact the proposed changes would have on their business (skipped by 44 respondents):

- No impact – 13 respondents (44.83%)
- Insignificant impact – 5 respondents (17.24%)
- Minor impact – 6 respondents (20.69%)
- Moderate impact – 2 respondents (6.90%)
- Major impact – 2 respondents (6.90%)
- Severe impact – 1 respondent (3.45%)

Reported cost of the proposed changes to NAC 586 on small business would be between \$23,407 and \$39,396 based on the ranges reported by respondents. However, the median cost to individual small businesses indicates there would be no additional cost to operations.

In total, 18 respondents (58.06%) reported that there would be no change as a result of the proposed regulation changes to NAC 586, while 13 respondents (41.4%) reported they would incur costs. Of those reporting an increase in costs, 8 of 13 reported cost increases of less than \$1,000.

**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 EPA's final revisions to the Certification of Pesticide Applicators rule, which are published in the Federal Register. These revisions provide assurance that RUP certified applicators and licensed applicators are competent to use pesticides. In addition, the changes are required for EPA to approve Nevada's state plan for the certification and licensing of pesticide applicators.

The following will be considered to reduce the impact of the proposed regulation on small businesses:

- Record keeping is only required by private residences if RUPs are used (existing regulation).
- These changes are directed at RUP dealerships where only a few additional record keeping items will be required, and this information can be easily acquired by the applicator at the time of purchase. These changes only pertain to certified applicators who supervise the non-certified applicator when RUPs are used. NDA staff are available to assist industry with these revisions.
- Revisions to NAC 586 do not include additional fees.
- Individuals converting to a nonprivate certificate from a government license will only have to be updated on EPA's new testing competency standards and will not be required to retest. This will be

done through a 1-day training by NDA staff, which would count toward their continuing education unit (CEU) requirements.

- These regulation revisions do not mention pesticide record keeping requirements, which would require applicators to have access to temperature gauges and wind speed/direction indicators. These measurements are already required, for certain applicators, and are as stated in NAC 555.
- NDA staff are available to assist with training RUP dealership sales staff on what to look for and ask when a person says they are licensed versus certified. In addition, the NDA will also spend time with applicators training them on the expectations they must meet to supervise a noncertified applicator.

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

The estimated cost to the NDA is not extensive. NDA staff will be required to conduct additional trainings to inform industry members of EPA's revisions. The NDA would also be required to observe training records and other requirements according to 40 CFR 171.201 when conducting record audits with RUP certified applicators. However, NDA staff is currently active in conducting these types of trainings and audits based off existing regulations. Funding for these activities would be covered under the ongoing NDA and U.S. EPA Cooperative Agreement.

**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 revisions do not provide a new fee or increase an existing fee.

**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 EPA's final revisions to the Certification of Pesticide Applicators rule.

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

On January 4, 2017, the U.S. Environmental Protection Agency (EPA) published final revisions to the Certification of Pesticide Applicators rule (40 CFR Part 171). These revisions provide assurance that RUP certified and licensed applicators are competent to use pesticides in a manner that will not cause unreasonable adverse effects on human health or the environment.

EPA delegates the primary responsibility of implementing this rule to individual states in lieu of EPA ensuring national consistency and minimum standards while also providing flexibility to states in implementing rules. Currently, the NDA has been granted authority to implement the certification program. State certification programs must be at least as stringent as the federal requirements.

Industry was engaged through routine inspections, e-mail and phone correspondence, in addition the small business impact survey. The information gathered from the survey determined that there would

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be minimal impact to small businesses as a result of proposed regulations to NAC 586. Failure to adopt the NAC 586 changes would prevent Nevada from having a RUP certification program.

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.

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Jennifer Ott Director  
Nevada Department of Agriculture