

Las Vegas Office:
2300 East St. Louis Ave.
Las Vegas NV 89104-4211
(702) 668-4590
Fax (702) 668-4567



Elko Office:
4780 East Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

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

August 13, 2021

PROPOSED AMENDMENTS TO NAC CHAPTER 555

- 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 555 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 agri.nv.gov/survey on 7/6/2021. It was additionally promoted by the Nevada Farm Bureau through their weekly newsletter on 7/16/2021.

Of the 84 survey respondents who answered the question asking if they fall under the definition of a small business as defined by NRS 233B.0382:

- 80% indicated they fall under the definition of a small business.
- 0 respondents skipped the question.

Of the 67 survey respondents who answered the question asking if changes to NAC 555 would impact their ability to do business:

- 33% maybe, 13% yes and 54% no.
- 17 respondents skipped the question.

Of the 53 survey respondents (who identified as a small business) who were asked if changes to NAC 555 would impact their ability to do business:

- 38% maybe, 15% yes and 47% no.
- 14 respondents skipped the question.

Individuals interested in a copy of the complete survey can contact NDA at 775-353-3715 or bret.allen@agri.nv.gov.

Concern was expressed from some of the respondents on how the changes to NAC 555 would impact their ability to do business (12 respondents answered, 72 skipped the question):

- “Additional expense would have to be passed on to consumers.”
- “I am a rancher not a commercial applicator. I need to be able to purchase and use these restricted use products.”
- “With today’s current job market any changes will impact small business.”
- “I don’t understand the changes.”
- “Put us out of business.”
- “Fewer Customers due to stringent regs and insurance costs.”
- “This may impact end users not the overall function of the operation.”
- “Perhaps an unmanned aerial pesticide vehicle could spray out of bounds. My business depends on non-toxic regenerative methods of growing pollinator plants. Pollinators depend on non-toxic plants.”
- “Cost increase.”
- “How can this be enforced for a small 5 to 10 ac Farm?”
- “Cost of doing business. The Scope of work varies widely for applicators. The program should be tailored to the scope of work business/agencies perform.”

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

- “Increased prices, increased wages, change of chemical to cover expense.”
- “I would have to hire professionals to do jobs I am able to do.”
- “Will have to see final bill.”
- “The changes are super difficult to read in the bill. Can’t we have an abstract of changes, so we don’t have to read the legalize of the Bill?”
- “Yes, lay everyone off.”
- “Customers may have some fiscal impact and regulatory training that may impact procurement.”

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 the 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:

49 individuals responded to the question asking which level of negative impact the proposed changes would have on their business (skipped by 35 respondents):

- No impact – 19 respondents (38.78%)
- Insignificant impact – 11 respondents (22.45%)
- Minor impact – 6 respondents (12.24%)
- Moderate impact – 8 respondents (16.33%)
- Major impact – 3 respondents (6.12%)
- Severe impact – 2 respondents (4.08%)

Reported cost of the proposed changes to NAC 555 on small business would be between \$49,708 and \$87,099 based upon 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 (50%) reported that there would be no change due to NAC 555 as a result of the proposed regulation changes, while 18 respondents (50%) reported they would incur costs. Of those reporting an increase, 10 reported costs between \$100 and \$5,000.

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](#). Pesticides pose a significant risk to public and environmental health, particularly RUPs, if misapplied. These revisions provide assurance that RUP certified applicators and licensed applicators are competent to use pesticides and to do so safely. In addition, the changes are required for EPA to approve Nevada's state plan for the certification and licensing of pesticide applicators to be overseen on a state level.

The following information describes how the proposed NAC 555 changes will have minimal impact on small businesses and addresses concerns received during the Small Business Impact determination process. Furthermore, the following describes how the NDA will coordinate with the pest control industry and certified applicators to reduce the impact of the proposed regulation on small businesses:

- Since the proposed changes to NAC 555 do not impose new fees, it is unlikely that additional expenses would have to be passed on to consumers. The NDA performed an assessment of fees and is proposing to reduce Agent testing fees from \$350 to \$50.
- It is anticipated that additional trainings will have to occur in order to inform the pest control industry and certificated applicators on EPA's testing competency standards. These trainings would count toward continuing education unit (CEU) requirements for renewal.

- Ranchers and farmers wanting to purchase and use RUPs must become certified or work under the supervision of the certified applicator, which is the current regulation.
- Concern was expressed that the revisions were difficult to understand. For more explanation on these changes, individuals can contact Bret Allen at 775-353-3715 or bret.allen@agri.nv.gov.
- Concern was expressed about raised insurance costs. Limited liability insurance requirements (found in NAC 555.370) are already established by the NDA and are not going to be revised in these potential changes.
- NDA has the authority to enter any public or private premises at reasonable times to inspect, audit, sample or monitor any aircraft, ground equipment, records, storage, pesticides, pesticide sprays, disposal operations or other operations. This includes smaller 5–10-acre farms and pesticides being applied by unmanned aerial vehicles.

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

Federal funds are available through EPA to assist with the costs of increasing education and outreach, modifying exams, and examination processes. NDA staff will need to conduct additional trainings to inform industry members of EPA's revisions. In addition, NDA staff would be required to edit the Nevada Pesticide Applicator's Certification Workbook (<https://extension.unr.edu/publication.aspx?PubID=2790>) and corresponding certification exams. In addition, pest control operating exams would have to be thoroughly reviewed and possibly revised. 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.

STEVE SISOLAK
Governor

STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

JENNIFER OTT
Director

Las Vegas Office:
2300 E. St. Louis Ave.
Las Vegas NV 89104-4211
(702) 668-4590
Fax (702) 668-4567

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4780 E. Idaho Street
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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 to a small business impact survey. Failure to adopt the NAC 555 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.

Jennifer Ott Director
Nevada Department of Agriculture