

STEVE SISOLAK  
Governor

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



JENNIFER OTT  
Director

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 21<sup>st</sup> St.  
Sparks, Nevada 89431-5557  
Telephone (775) 353-3601 Fax (775) 353-3661  
[agri.nv.gov](http://agri.nv.gov)

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

**NOTICE OF INTENT TO ACT UPON A REGULATION  
AND  
HEARING AGENDA**

Notice of Hearing for the Adoption of Permanent Regulations Nevada Administrative Code chapter 555 and 586.

**LCB File No. R077-21P and R048-21P**

The Nevada Department of Agriculture (NDA) will hold a public hearing via webex on December 8, 2022. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations pertaining to chapter 555 and 586 of the Nevada Administrative Code (NAC).

**Date:** December 8, 2022

**Time:** 10 a.m. PST

**Location:** This meeting will be held via Webex

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=me81b68ec3e392bfcad7df231fe158186>

**Location:** Webex

**Remote Meeting Information\*:**

To join the meeting virtually, click on the URL and enter the meeting number and password when prompted:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=me81b68ec3e392bfcad7df231fe158186>

Meeting Number: 2557 464 2235

Access code: JPyPmCGz243 (57976249 from phones and video systems)

To join by telephone, call the phone-in number and enter the access code when prompted.

Phone-in Access #: 1-408-418-9388

Access Code: 25574642235#57976249#

**\*Per 2021 AB253 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.

### **INFORMATIONAL STATEMENTS**

Pursuant to NRS 233B.0603, the NDA is providing the following statements pertaining to the public hearing on proposed changes to **Chapter 555** of NAC.

- The need for and the purpose of the proposed regulation or amendment.

In reference to changes proposed to pesticide control applicators:

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) in the Federal Register. These revisions provide assurance that restricted-use pesticide (RUP) certified applicators 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 the EPA implementing them. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. Currently, NDA has been granted authority to implement the certification program. State certification programs must be at least as stringent as the federal requirements.

In order to meet federal requirements, NDA recently made changes to Chapter 586 of the Nevada Revised Statute (NRS) in order to meet the requirements of that new rule. These revisions can be found in Assembly Bill (AB) 74. Due to the changes in NRS 586, NDA is proposing changes to certain sections of Chapter 586 of the Nevada Administrative Code.

In reference to changes on noxious weeds and seed certification:

Language was updated to reflect changes enacted through Senate Bill 34 from the 81<sup>st</sup> Nevada Legislative Session. This included clarifying language to weed free and seed certification, voluntary services that allows for specific marketing and assists with mitigating the spread of noxious weeds.

In reference to changes to proposed fees for plant pathology and entomology diagnostics:

The NDA plant pathogen and entomology diagnostics is a voluntary service offered to small businesses and citizens in Nevada to assist with identifying plant pests. The proposed fee would be used to cover program costs associated with offering these diagnostic services to the public and agriculture industry.

- If the regulation is a temporary one, either the text of the proposed rule or a description of the substance of the rule and the subjects and issues involved. If the regulation is a permanent one, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

The changes to NAC 555 are permanent revisions. The proposed regulation can be obtained by contacting Bret Allen, Environmental Scientist IV, NDA or by visiting this site: [Division of Plant Health and Compliance Workshops and Hearings \(nv.gov\)](#)

- The estimated economic effect of this regulation on the business, which it is to regulate and on the public:

The following is in reference to changes proposed to pesticide control applicators and the effects of the regulation on businesses and the public:

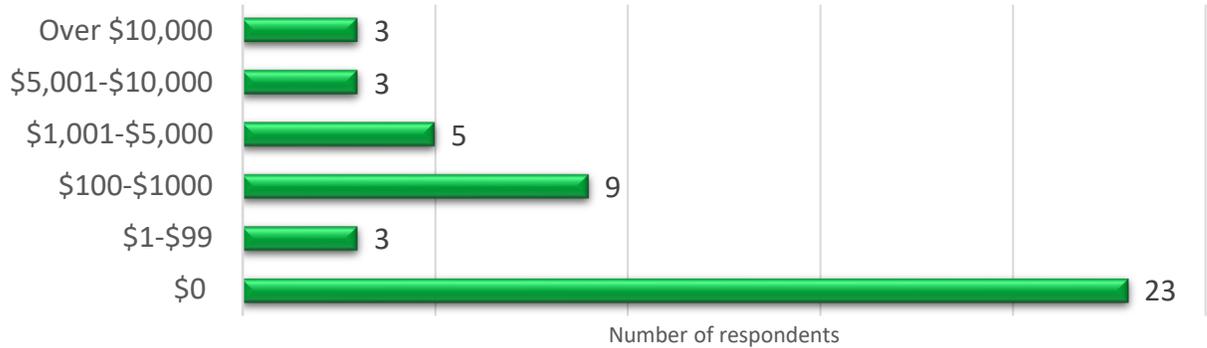
Through the small business assessment performed the information below was reported from respondents. The NDA will be performing outreach and education to assist operations with the training and competency requirements being required by EPA. This may result in additional costs to operations and staff time in securing necessary training, however there are and will continue to be resources offered through the NDA and outside agencies to assist businesses with securing necessary training.

Level of negative impact the proposed changes to NAC 555 have on pest control businesses:

Respondents that Identified as a Small Business: (39 respondents, 28 skipped):

- No impact – 15 respondents (38.46%)
- Insignificant impact – 8 respondents (20.51%)
- Minor impact – 5 respondents (12.82%)
- Moderate impact – 6 respondents (15.38%)
- Major impact – 3 respondents (7.69%)
- Severe impact – 2 respondents (5.13%)

**An estimate of the total annual impact the proposed changes to NAC 555 will have on pest control businesses:**



- Long-term economic effect on the public: None

In reference to changes to proposed fees for plant pathology and entomology diagnostics:

This is a public and voluntary service. To assess the direct and indirect impact to small businesses, four surveys were conducted with an emphasis on recipients that have historically participated in these services. Further, two workshops were held to allow for public comment. Below is a summary of the response:

The economic impact reported by most survey respondents indicated that the financial impact would range from \$100-\$1,000 for those that participate in the voluntary diagnostic service. The proposed fee is less than private labs and is aimed at covering the supply and personnel costs for preparing and reporting the sample.

In reference to changes on noxious weeds and seed certification:

No economic effects on businesses or the public were expressed in the survey or during the workshop.

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

In reference to changes proposed to pesticide control applicators:

The estimated cost to the NDA is not extensive. NDA staff will be required to conduct some additional trainings to inform industry members of EPA’s revisions. In addition, NDA would be required to observe training records and other requirements according to 40 CFR 171.201 when conducting record audits with RUP certified applicators. NDA staff is currently active in conducting these types of trainings and audits based off existing regulations.

In reference to changes to proposed fees for plant pathology and entomology diagnostics:

There is no cost, as this portion is not a regulation that requires enforcement.

In reference to changes on noxious weeds and seed certification:

This is not anticipated to create additional costs for enforcement but is to provide clarification on the program requirements.

- The methods used by the agency in determining the impact on a small business.

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 Nevada Department of Agriculture (NDA) social media on 7/15/2021, 7/19/2021 and 7/21/2021. It was also posted to [agri.nv.gov/survey](http://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.

In reference to changes to proposed fees for plant pathology and entomology diagnostics:

To assess the impact to small businesses, four surveys were conducted with an emphasis on recipients that have historically participated in these services. Further, two workshops have also been held.

- A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

U.S. Environmental Protection Agency (EPA).

- If the regulation is required pursuant to federal law, a citation and description of the federal law will include:

Certification of Pesticide Applicators rule (40 CFR Part 171)

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

The proposed regulations reflect minimum federal requirements for pesticide applicators and align with Nevada Revised Statute. The remaining changes are to provide clarification on program requirements.

- Whether the proposed regulation establishes a new fee or increases an existing fee.  
The total fee collected depends on the number of clients or samples. Based on the samples processed in SFY19 and 20 (SFY20 impacted by COVID-19), approximately \$23,136 may be collected for plant pathogen diagnostics and \$12,360 for insect identification annually under the proposed fee schedule. The money received through this service is to partially cover a lab technician's salary and laboratory supply costs, and to expand the NDA service capability and capacity to attract service contracts from federal agencies.

Pursuant to NRS 233B.0603, the NDA is providing the following statements pertaining to the public hearing on proposed changes to **Chapter 586** of NAC.

- The need for and the purpose of the proposed regulation or amendment.

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) in the Federal Register. These revisions provide assurance that restricted-use pesticide (RUP) certified applicators and licensed applicators are competent to use pesticides in a manner that will not cause adverse effects on human health or the environment.

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

In order to meet federal requirements, NDA recently made changes to Chapter 586 of the Nevada Revised Statute (NRS) in order to meet the requirements of that new rule. These revisions can be found in 2019 Assembly Bill (AB) 74. Due to the changes in NRS 586, NDA is proposing changes to certain sections of Chapter 586 of the Nevada Administrative Code.

- If the regulation is a temporary one, either the text of the proposed rule or a description of the substance of the rule and the subjects and issues involved. If the regulation is a permanent one, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

The changes to NAC 586 are permanent revisions. The proposed regulation can be obtained by contacting Bret Allen, Environmental Scientist IV, NDA or by visiting this site: [Division of Plant Health and Compliance Workshops and Hearings \(nv.gov\)](#)

- The estimated economic effect of the regulation on the business which it is to regulate and on the public:

Through the small business assessment performed the information below was reported from respondents. The NDA will be performing outreach and education to assist operations with the training and competency requirements being required by EPA. This may result in additional costs to operations and staff time in securing necessary training, however there are and will continue to be resources offered through the NDA and outside agencies to assist businesses with securing necessary training.

- a) No impact – 13 respondents (44.83%)
  - b) Insignificant impact – 5 respondents (17.24%)
  - c) Minor impact – 6 respondents (20.69%)
  - d) Moderate impact – 2 respondents (6.90%)
  - e) Major impact – 2 respondents (6.90%)
  - f) Severe impact – 1 respondent (3.45%)
- 
- Adverse economic effect on regulated business  
Little to no adverse economic effect.
  - Beneficial economic effect on regulated business  
No change
  - Immediate economic effect on regulated business  
Little to no immediate economic effect.
  - Long-term economic effect on regulated business  
Little to no long-term economic effect.
  - Adverse economic effect on the public  
None
  - Beneficial economic effect on the public  
None
  - Immediate economic effect on the public  
None
  - Long-term economic effect on the public  
None

No response on the potential impact to the public was received via the surveys or public workshop. The proposed regulations serve to protect the public and environment.

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

The estimated cost to the NDA is not extensive and is currently covered by EPA grant funds. NDA staff will be required to conduct additional trainings to inform industry members of EPA's revisions in order to facilitate industry compliance. In addition, NDA would be required to observe training records and other requirements according to 40 CFR 171.201 when conducting record audits with RUP certified applicators. NDA staff is currently active in conducting these types of trainings and audits based off existing regulations.

- The methods used by the agency in determining the impact on a small business.

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 Nevada Department of Agriculture (NDA) social media on 7/15/2021, 7/19/2021 and 7/21/2021. It was also posted to [agri.nv.gov/survey](http://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. Very few respondents reported there would be an economic impact regarding these new federal requirements.

- A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

These proposed regulations will align with statute as updated through 2020 Nevada Assembly Bill 74 and Code of Federal Regulations under the U.S. Environmental Protection Agency (EPA).

- If the regulation is required pursuant to federal law, a citation and description of the federal law will include:

Certification of Pesticide Applicators rule (40 CFR Part 171)

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

NA

- Whether the proposed regulation establishes a new fee or increases an existing fee.

NA

Copies of this notice and proposed regulations will be mailed to members of the public upon request. Copies may also be requested or inspected by visiting the NDA offices located in Elko, Las Vegas or Sparks or the Nevada State Library and Archives at 100 Stewart Street, Carson City, NV 89701. A reasonable fee may be charged for copies or postage if it is deemed necessary. Requests for mailed copies may be directed to

Nevada Department of Agriculture  
Division of Plant Health and Compliance  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: 775-353-3715; Email: [bret.allen@agri.nv.gov](mailto:bret.allen@agri.nv.gov)

- Notice of this meeting was sent to all persons on the Department’s mailing list for administrative regulations and posted on or before 9 a.m. thirty days before the meeting at the following locations:
  - Nevada Department of Agriculture website at [agri.nv.gov](http://agri.nv.gov)
  - Nevada Public Notice website at <https://notice.nv.gov/>
  - Nevada Legislature Administrative Regulation Notices at <https://www.leg.state.nv.us/App/Notice/A/>
  
- Persons wishing to make oral comment upon the regulation draft of the Nevada Department of Agriculture may participate at the scheduled hearing. Persons wishing to submit written testimony or documentary evidence may submit the material by emailing [s.jones@agri.nv.gov](mailto:s.jones@agri.nv.gov) or via mail to the following address: Nevada Department of Agriculture, Attn: Sylvia Jones, 405 S. 21<sup>st</sup> ST, Sparks, NV 89431. Written submissions must be received by the NDA on or before 12/8/22.
  
- Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Please contact the Department at 775-353-3601 or [s.jones@agri.nv.gov](mailto:s.jones@agri.nv.gov) at least three (3) business days prior to the meeting.
  
- If no person who is directly affected by the proposed action appears to request time to make and oral presentation, the NDA may proceed immediately to act upon any written submissions.
  
- Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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

405 South 21<sup>st</sup> St.  
 Sparks, Nevada, 89431  
 Telephone (775) 353-3601  
 Fax (775) 353-3661

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

**ADOPTION HEARING AGENDA**  
**For R077-21P and R048-21P**  
**NEVADA DEPARTMENT OF AGRICULTURE**  
**December 8, 2022**  
**10AM PCT**

**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. Call to Order**

**II. 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. The agency is precluded from action on items raised during Public Comments that are not on the agenda.

**III. For possible action:** Discussion and Adoption of Proposed Permanent Regulations.  
a. Amendment of regulations that pertain to Chapter 555 and 586 of the Nevada Administrative Code.

**IV. 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. The agency is precluded from action on items raised during Public Comments that are not on the agenda.

**V. Adjourn**