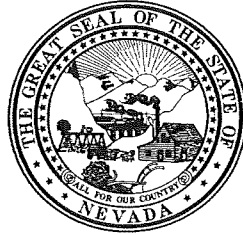


BRIAN SANDOVAL  
Governor

STATE OF NEVADA

JAMES R. BARBEE  
Director

Las Vegas Office:  
2300 McLeod Street  
Las Vegas NV 89104-4314  
(702) 668-4590  
Fax (702) 668-456



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

## MEMORANDUM

TO: Nevada Department of Agriculture Offices  
State Capitol Building  
State Library and Archives  
Dennis Belcourt – AG's Office

FROM: Bart O'Toole Consumer Equitability Administrator – 775-353-3726  
[botoole@agri.nv.gov](mailto:botoole@agri.nv.gov) Fax Number 775-353-3798

SUBJECT: Posting of Agenda for Hearing on Notice of Intent to Act Upon a Regulation Scheduled for Monday, November 23, 2015 at 1:30 pm.

DATE: 10/21/15

I have attached a copy of the agenda for the Nevada Department of Agriculture Hearing for Notice of Intent to Act Upon a Regulation that will be held on Monday, November 23, 2015 at 1:30 pm.

Please post the agenda before 9:00am on Wednesday, November 18, 2015, per *open meeting law* and return this memo to my attention, signed with the date of posting, as I need this for our files.

We appreciate your assistance in this posting.

Thank you.

Distribution: State Capitol Building  
State Library and Archives  
Dennis Belcourt – AG's Office  
Sparks Office – Nevada Department of Agriculture  
Las Vegas Office – Nevada Department of Agriculture  
Elko Office – Nevada Department of Agriculture  
Consumer Equitability – Department of Agriculture

OFFICE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE & TIME OF POST: \_\_\_\_\_

## MEETING NOTICE AND AGENDA

Public Hearing

Notice of Intent to Act Upon a Regulation

LOCATION: Nevada Department of Agriculture  
405 S. 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: 775-353-3601

*Video-conference to:* Nevada Department of Agriculture  
2300 McLeod Street  
Las Vegas, NV 89104  
Phone: 702-668-4590

Nevada Department of Agriculture  
4780 E. Idaho Street  
Elko, NV 89801  
Phone: 775-738-8076

DATE AND TIME: Monday, November 23, 2015 at 1:30 pm

Public comment will be taken on the intent to adopt a regulation. The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 581; *a regulation relating to implement regulations pertaining to random testing of Point of Sale devices; and providing other matters properly relating thereto.*

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 notify The Dept. of Agriculture in writing at 405 S. 21<sup>st</sup> Street, Sparks, NV 89431 or contact Jerri Conrad at 775-353-3619.

Copies of both the State of Nevada Board of Agriculture Agenda with supporting documentation and Open Meeting Minutes are available, at no charge, for inspection at the Dept. of Agriculture 405 S. 21<sup>st</sup> Street, Sparks, NV, 89431 or Dept. of Agriculture website at [www.agri.state.nv.us](http://www.agri.state.nv.us). For additional information contact Jerri Conrad at 775-353-3619.

Notice of this meeting was posted on or before 9:00 a.m. on the third working day before the meeting at the following locations: Nevada Department of Agriculture, 405 S. 21<sup>st</sup> Street, Sparks, NV 89431, Nevada Department of Agriculture, 2150 Frazer Ave., Sparks, NV 89431, Nevada Department of Agriculture, 4780 E. Idaho Street, Elko, NV 89801, Nevada Department of Agriculture, 2300 McLeod Street, Las Vegas, NV 89104, State of Nevada Capital Building, Carson City NV, State Library and Archives, Carson City.

# PROPOSED REGULATION OF THE NEVADA DEPARTMENT OF AGRICULTURE

LCB File No. R096-15

DIVISION OF CONSUMER EQUITABILITY

## NOTICE OF INTENT TO ACT UPON A REGULATION And NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS

The Nevada Department of Agriculture will hold a public hearing on Monday, November 23, 2015, 1:30 pm, at Agriculture Headquarters, 405 South 21<sup>st</sup> Street, Sparks, NV 89431; Phone: (775) 353-3601. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 581 of the Nevada Administrative Code. The proposal has been designated as File No. R096-15 by the Nevada Legislative Counsel Bureau.

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

The purpose is to solicit public comments from interested persons on the following proposed regulation: NAC 581; *a regulation relating to implementing regulations pertaining to random testing of Point of Sale devices; and providing other matters properly relating thereto.*

1. The need for and the purpose of the proposed regulation or amendment
  - The provisions of the proposed regulations change two sections in NAC. The first 581.030 simply formally adopts a national standard for fuels and lubricants, we did not solicit comment for it. The second 581.210, adds point of sale (POS) devices to NAC and raises the fees for certain services. The POS language has been vetted twice with the Retailers Association of Nevada and the Chamber of Commerce. Small businesses can opt not to use our services so the fee increases will only have an impact if the business chooses to use us for service.
2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.
  - Most of the language has no impact on small businesses. Businesses have the option to purchase services elsewhere if the fees are an issue. However; even with the fee increase proposed, our service fees are still lower than the surrounding states.
3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:
  - The increased fee for services will have a small impact on businesses if they choose to use us
4. The estimated cost to the agency for enforcement of the proposed regulation.
  - The proposed regulations will not increase enforcement costs
5. 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.
  - Does not apply
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
  - Does not apply
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
  - Does not apply
8. Whether the proposed regulation establishes a new fee or increases an existing fee.
  - We anticipate increased revenue of \$12-15,000 annually. The money will offset the existing expenses to provide the services.

A concerted effort was made to determine the impact of the proposed regulation on small businesses. Division administration determined that this regulation change will not have an impact on small businesses.

The LCB approved revision can be found on the Nevada Department of Agriculture website at [www.agri.nv.gov](http://www.agri.nv.gov).

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 the address below.

**Nevada Department of Agriculture**  
**405 S. 21<sup>st</sup> Street**  
**Sparks, NV 89431**  
**ATTN: Bart O'Toole**  
**(775) 353-3726**  
**[botoole@agri.nv.gov](mailto:botoole@agri.nv.gov)**

Written submissions must be received by the Nevada Department of Agriculture on or before 5:00 pm on November 18, 2015. 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.

A copy of this notice and the regulation 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 regulation to be amended will be available at:

Nevada Department of Agriculture  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431

Nevada Department of Agriculture  
2300 McLeod  
Las Vegas, NV 89104

Nevada Department of Agriculture  
4780 E. Idaho Street  
Elko, NV 89445

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. A reasonable fee may be charged for copies if it is deemed necessary.

NRS 233B.064(2) provides: 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, and incorporate therein its reason for overruling the consideration urged against its adoption.

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

**The Nevada State Library in Carson City, and all Nevada county libraries. The Department of Agriculture offices in Sparks, Las Vegas or Elko during the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday.**

Clark County Library, 833 Las Vegas Boulevard North, Las Vegas, NV 89101  
Douglas County Library, 1625 Library Lane, Minden, NV 89423  
Elko County Library, 720 Court Street, Elko, NV 89801  
Esmeralda County Library, Corner of Crook & 4<sup>th</sup> Streets, Goldfield, NV 89013  
Eureka Branch Library, 10190 Monroe Street, P.O. Box 293, Eureka, NV 89316  
Humboldt County Library, 85 East 5<sup>th</sup> Street, Winnemucca, NV 89445  
Lander County Library, 625 South Broad Street, Battle Mountain, NV 89820  
Lincoln County Library, 63 Main Street, Pioche, NV 89043  
Lyon County Library, 20 Nevin Way, Yerington, NV 89447  
Mineral County Public Library, 110 1<sup>st</sup> Street, Hawthorne, NV 89415  
Pershing County Library, 1125 Central Avenue, Lovelock, NV 89419  
Storey County Public Library, 95 South R Street, Virginia City, NV 89440  
Tonopah Public Library, 167 Central Street, Tonopah, NV 89049  
Washoe County Library, 301 South Center Street, Reno, NV 89501  
White Pine County Library, 950 Campton Street, Ely, NV 89301  
Nevada State Legislature Website: [www.leg.state.nv.us](http://www.leg.state.nv.us)

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
401 S. CARSON STREET  
CARSON CITY, NEVADA 89701-4747  
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800  
MICHAEL ROBERSON, *Senator, Chairman*  
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821  
PAUL ANDERSON, *Assemblyman, Chairman*  
Cindy Jones, *Fiscal Analyst*  
Mark Krmpotic, *Fiscal Analyst*

RICK COMBS, *Director*  
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830  
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815  
SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

October 15, 2015

Bartley O'Toole, Administrator  
Division of Consumer Equitability  
2150 Frazer Avenue  
Sparks, NV 89431

Re: LCB File No. R096-15

Dear Mr. O'Toole:

The above proposed regulation of the State Sealer of Consumer Equitability has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roman A. Edwards".

Roman A. Edwards  
Deputy Legislative Counsel

Brenda J. Erdoes  
Legislative Counsel

RAE/jbg  
Enclosure

**PROPOSED REGULATION OF THE  
STATE SEALER OF CONSUMER EQUITABILITY**

**LCB File No. R096-15**

October 15, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 581.050, 581.067, as amended by section 136 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3620, and NRS 581.075.

A REGULATION relating to measuring devices; requiring a fee to be charged for the retesting of certain cash registers and point-of-sale systems; setting the amount of the fee; revising the amount of the fee for certification of standards used in testing; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law authorizes the State Sealer of Consumer Equitability to conduct random tests of cash registers and point-of-sale systems to ensure compliance with certain standards. (NRS 581.067, as amended by section 136 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3620) Existing law also authorizes the State Sealer to establish necessary fees for testing. (NRS 581.075) Existing regulations establish fees for certain tests conducted by the State Sealer. (NAC 581.210) This regulation adds fees for the retesting of cash registers and point-of-sale systems which are found to be out of compliance with standards during a random test. This regulation also revises the fees for the certification of standards used in testing.

**Section 1.** NAC 581.210 is hereby amended to read as follows:

581.210 1. The tests and services for which fees will be charged pursuant to this section include, without limitation:

(a) A retest of ~~[a]~~ :

*(1) A device which was marked “out of order” during a test ~~[+]~~ ; or*

*(2) A point-of-sale system or cash register found to not be in compliance during a test conducted pursuant to subsection 19 of NRS 581.067, as amended by section 136 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3620.*

(b) A trip to test a device which was not available or ready for testing at the time scheduled for a test.

(c) A test requested for a device if a special trip is required to perform the test. If, upon the arrival of the inspector, the test scheduled for the device cannot be performed for any reason which is not the fault of the Division or the inspector, any fee which would have been charged for that test remains due.

(d) A test requested for a noncommercial device.

(e) A calibration according to industrial standards of weights and measures.

(f) An adjustment of a commercial device immediately following a determination of noncompliance during an annual test.

2. The fees for tests of devices are:

(a) For scale devices:

500 pounds and under .....	\$25
Over 500 pounds through 2,000 pounds .....	50
Over 2,000 pounds through 5,000 pounds .....	100
Over 5,000 pounds .....	160
Hopper, 5,000 pounds and under .....	300
Hopper, over 5,000 pounds .....	350
Livestock or vehicle scale, 40,000 pounds and under .....	130

Livestock or vehicle scale, over 40,000 pounds .....	200
(b) For linear devices .....	25
(c) For meter devices: .....	
Dispenser, hose, meter or octane grade tested with a 5-gallon prover .....	25
Dispenser tested with a prover larger than 5 gallons .....	95
Truck- or rack-mounted meter, rated to a maximum capacity of up to 120 gallons per minute .....	95
Truck- or rack-mounted meter, rated to a maximum capacity of over 120 gallons per minute .....	160
Nontemperature-compensated meter used to measure liquid petroleum gas.....	100
Temperature-compensated meter used to measure liquid petroleum gas .....	200
(d) For standards of mass, volume or length, per hour:	
For certification of standards for use in testing a commercial device for a service agency or serviceperson .....	<del>{40}</del> 75
For certification of standards for use in testing a noncommercial device .....	<del>{30}</del> 95
(e) <i>For point-of-sale systems and cash registers not in compliance:</i>	
<i>For not more than five point-of-sale systems or cash registers .....</i>	<i>50</i>
<i>For six or more point-of-sale systems or cash registers .....</i>	<i>125</i>
3. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section.	



## SMALL BUSINESS IMPACT STATEMENT AS REQUIRED

### BY NRS 233B.0608

Revised LCB File# R096-15

**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 provisions of the proposed regulations change two sections in NAC. The first 581.030 simply formally adopts a national standard for fuels and lubricants, we did not solicit comment for it. The second 581.210 adds point of sale (POS) devices to NAC and raises the fees for certain services. The POS language has been vetted twice with the Retailers Association of Nevada and the Chamber of Commerce. Small businesses can opt not to use our services so the fee increases will only have an impact if the business chooses to use us for service. The regulations were available on the website of the Department of Agriculture, [www.agri.nv.gov](http://www.agri.nv.gov) and posted at the following locations:

Department of Agriculture

405 S. 21st Street

Sparks, NV 89431

Department of Agriculture

2300 McLeod Street

Las Vegas, NV 89104

Department of Agriculture

4780 E. Idaho Street

Elko, NV 89801

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

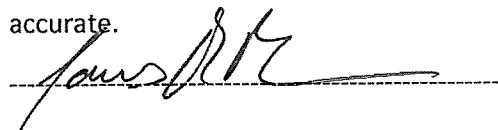
- No analyses was conducted on 581.030, it has no impact. In regard to 581.210, our analysis showed that existing fees do not cover the cost of services and a business may choose to obtain service elsewhere.

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

- The increased fee for services will have a small impact on businesses if they choose to use us.

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.**
5. We increased fees as little as possible and only for services rendered rather than an across the board annual fee increase.
6. **The estimated cost to the agency for enforcement of the proposed regulation.**
  - The proposed regulations will not increase enforcement costs.
7. **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.**
  - We anticipate increased revenue of \$12-15,000 annually. The money will offset the existing expenses to provide the services.
8. **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.**
  - Does not apply.
9. **The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**
  - Most of the language has no impact on small businesses. Businesses have the option to purchase services elsewhere if the fees are an issue. However, even with the fee increase proposed, our service fees are still lower than the surrounding states.

I certify that to the best of my knowledge or belief a concerted effort was made to determine the impact of this proposed regulation on small businesses and that the information contained in this statement is accurate.



James R. Barbee

Director

Nevada Department of Agriculture