

PROPOSED REGULATION OF THE DIRECTOR OF THE STATE

DEPARTMENT OF AGRICULTURE

LCB File No. R081-99

August 20, 1999

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

AUTHORITY: §§1, 3-19, NRS 555.400; §2, NRS 555.320 and 555.400; §20, NRS 555.290 and 555.400.

**Section 1.** Chapter 555 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

**Sec. 2. 1.** *Except as otherwise provided in subsection 3, a person licensed to engage in the business of pest control may not renew his license unless he certifies that he has, within the immediately preceding 12 months, completed at least six units of continuing education in courses accredited by the director. Each unit of continuing education must be completed in a course that relates to a category of pest control in which the licensee is licensed and at least one unit must be in a course regarding safety in handling and dispensing pesticides and the laws and regulations of this state governing the use of pesticides. A licensee designated as a principal may complete not more than three units of continuing education in business management.*

**2.** *To receive credit for the completion of a unit of continuing education, a licensee must attend a course accredited by the director and receive:*

(a) A passing score on a final examination that is administered as part of the course which demonstrates his knowledge of the subject matter of the course; or

(b) A passing grade in a course that is sponsored by an educational institution approved by the director.

3. The provisions of subsection 1 do not apply to a licensee who:

(a) Obtained his license for the first time less than 12 months before the expiration of his license; or

(b) Passes the general and specific examinations given pursuant to NAC 555.340 in each category of pest control in which he is currently licensed on or after October 1 of the year in which his license expires.

4. For each course for which a licensee claims one or more units of continuing education, he shall retain for at least 2 years:

*(a) A certificate of completion issued by the sponsor of the course; or*

*(b) Another document or record that in the judgment of the director adequately establishes that the licensee successfully completed the course.*

*5. The department may inspect a document retained pursuant to subsection 4 by:*

*(a) Requiring the licensee to submit a copy of the document to the department; or*

*(b) Inspecting the original document at the licensee's primary place of business.*

**Sec. 3. 1. To obtain accreditation from the director for a course of continuing education, the sponsor of the course must submit to the department, before the first day of the course:**

*(a) A detailed outline of the subject matter to be presented;*

*(b) A description of the method of presentation;*

*(c) The qualifications of the instructor; and*

*(d) Any other information required by the director.*

*2. The information required by subsection 1 must be submitted on an application prescribed by the director.*

*3. The sponsor of a course accredited by the director shall submit to the department, within 30 days after the completion of the course:*

*(a) A list of all persons who successfully completed the course; and*

*(b) The results of all examinations given during or at the conclusion of the course.*

*4. Courses of continuing education that may be accredited by the director include, without limitation, a:*

*(a) Seminar;*

*(b) Meeting;*

*(c) Adult education class;*

*(d) Correspondence class;*

*(e) College or university class; and*

*(f) Video or other media presentation.*

**Sec. 4. 1.** *The director will, within 30 days after receipt of a completed application for accreditation of a course of continuing education, notify the sponsor of the course whether the course has been accredited or denied accreditation.*

*2. If the director approves a course for accreditation, the notice of accreditation will include the:*

*(a) Course number assigned by the director; and*

*(b) Number of units of continuing education for which the course is accredited. If a course is divided into sections, the notice will identify the number of units of continuing education allocated to each section.*

**Sec. 5. 1. *The director will accredit a course of continuing education sponsored by the department if the department complies with section 3 of this regulation. Such a course may be in the form of:***

***(a) A meeting;***

***(b) Training for a certificate to use a restricted-use pesticide; or***

***(c) A video, slide or other media presentation. The video, slide or other media presentation will be available for review, by appointment, at the offices of the department and of the agricultural extension department of the public service division of the University and Community College System of Nevada.***

***2. The director will accredit training for a certificate to use a restricted-use pesticide sponsored by the agricultural extension department of the public service division of the University and Community College System of Nevada upon compliance with section 3 of this regulation.***

**Sec. 6. 1. *The accreditation of a course of continuing education expires on the last day of the 12th month after the course is accredited unless the director:***

***(a) Specifies an earlier date in the notice of accreditation; or***

***(b) Withdraws accreditation upon a finding of sufficient cause. Sufficient cause exists if the course as conducted does not conform to the course as described in the information provided pursuant to section 3 of this regulation.***

***2. Before the director withdraws accreditation from a course, he will give the sponsor:***

***(a) Notice in writing of his intention to withdraw accreditation and his reasons for taking this action; and***

***(b) An opportunity to respond.***

*Sec. 7. As used in sections 8 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 8 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

*Sec. 8. “Administrative complaint” means a formal notice in writing of a violation of a provision of NRS 555.2605 to 555.460, inclusive, or a regulation adopted pursuant thereto, prepared by the department after an investigation.*

*Sec. 9. “Committee” means a case review committee of the department appointed pursuant to section 15 of this regulation.*

*Sec. 10. “Enforcement action” means a remedy or penalty that the department is authorized by statute in order to punish, deter or correct a violation of any provision of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto. The term includes:*

- 1. A fine imposed pursuant to the provisions of NAC 555.530;*
- 2. A notice of warning;*
- 3. An order to take appropriate action to correct a violation issued pursuant to paragraph (a) of subsection 2 of NRS 555.470;*
- 4. A request to the district attorney of a county to initiate a criminal investigation or complaint against a person pursuant to paragraph (b) of subsection 2 of NRS 555.470; and*
- 5. The suspension, revocation or modification of a license or certificate issued pursuant to chapter 555 of NRS.*

*Sec. 11. “Informal case review” means the process by which a committee attempts to redress a violation of any provision of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto, without a hearing.*

*Sec. 12. “Informal disposition” means an action described in NAC 561.400.*

**Sec. 13.** *“Notice of warning” means an enforcement action that imposes no immediate penalty for a violation of any provision of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto, but notifies a person that the department will pursue a more stringent enforcement action for a subsequent violation.*

**Sec. 14. 1.** *If the department has reason to believe that a person has violated any provision of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto, it will serve upon that person an administrative complaint that contains:*

*(a) The name of the person alleged to have committed the violation;*

*(b) A short and plain statement of the acts or omissions alleged to have been committed in violation of those provisions and the citation of the provisions allegedly violated; and*

*(c) The enforcement action that the department intends to pursue.*

**2.** *At the time of serving an administrative complaint on a person, the department will notify him that he may:*

*(a) Agree to an informal disposition;*

*(b) Request an informal case review; or*

*(c) Demand a hearing pursuant to NRS 555.470.*

**3.** Except as otherwise provided in subsection 4, the department will notify the person named in the administrative complaint that if he does not exercise one of the options set forth in subsection 2, the department will proceed to a hearing on the violation pursuant to the provisions of NAC 561.300 to 561.580, inclusive.

**4.** *The department will not proceed to a hearing, but will issue a notice of warning if:*

*(a) The administrative complaint is the first to allege a violation of any provision of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto, by the person named in the administrative complaint; and*

*(b) The violation alleged in the administrative complaint is a nonserious violation.*

**Sec. 15.** *1. If a person named in an administrative complaint requests an informal case review, the department will appoint a committee consisting of the:*

*(a) Deputy director of the department;*

*(b) Chief of the bureau of plant industry of the department; and*

*(c) Regional manager of the region where the violation is alleged to have occurred.*

*2. The committee shall consider any pertinent documents, exhibits, oral or written statements or other information, including mitigating circumstances, offered by the person named in the administrative complaint, his representative or the investigator who originated the administrative complaint.*

*3. After the committee has considered all the information offered pursuant to subsection 2, it shall:*

*(a) Dismiss the administrative complaint in its entirety; or*

*(b) Adopt, amend or replace the administrative complaint, including the statutes or regulations alleged to have been violated and the intended enforcement action, and:*

*(1) Issue a notice of warning to the person named in the complaint;*

*(2) Provide for an informal disposition of the complaint; or*

*(3) Recommend to the department that it commence a hearing on the administrative complaint pursuant to the provisions of NAC 561.300 to 561.580, inclusive.*

**Sec. 16.** *After a committee has issued its decision, the department will:*

1. *Serve a copy of the decision on the person named in the administrative complaint; and*

2. *Unless the decision resulted in a dismissal or informal disposition of the administrative complaint or a notice of warning, notify the person that the department will commence a hearing on the administrative complaint pursuant to the provisions of NAC 561.300 to 561.580, inclusive, unless before a date stated in the notice, the person:*

*(a) Enters into an informal disposition; or*

*(b) Demands a hearing pursuant to the provisions of NRS 555.470.*

**Sec. 17.** Any administrative complaint, decision, notice of warning, or other document issued by the department or a committee pursuant to sections 7 to 16, inclusive, of this regulation may be served:

1. In person; or

2. By certified or registered mail to the person's last known business address.

**Sec. 18.** NAC 555.250 is hereby amended to read as follows:

555.250 As used in NAC 555.250 to 555.530, inclusive, *and sections 1 to 17, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 555.2505 to 555.258, inclusive, have the meanings ascribed to them in those sections.

**Sec. 19.** NAC 555.2567 is hereby amended to read as follows:

555.2567 “Serious violation” means a :

1. A violation of NRS 555.2605 to 555.460, inclusive, or any regulation adopted pursuant thereto, which results in actual damage to the health of persons, wildlife, property or the environment ~~§~~; *or*

2. *Conducting pest control without an appropriate license in violation of NRS 555.280.*

**Sec. 20.** NAC 555.340 is hereby amended to read as follows:



555.340 1. Each applicant must pass a written examination to demonstrate his knowledge of:

- (a) Operations for pest control;
- (b) Pertinent laws and regulations;
- (c) Safety in handling and dispensing pesticides;
- (d) Pests;
- (e) Operation and maintenance of equipment; and
- (f) Recommended practices for controlling pests.

2. The examination consists of a general examination required for all applicants and a specific examination for each category of pest control in which the applicant has requested to be examined.

3. An applicant for a license as an agent or operator who receives a score on the written examination of 64 to 68 percent, inclusive, may be given an oral examination by the examining officer. If the applicant receives a score of 70 percent or more on the oral examination, the examining officer shall increase the score on the written examination to the minimum passing score.

4. Any applicant may be required to perform a practical demonstration at a time and in a manner to be specified to show his ability properly to use and apply pesticides.

5. The passing score is 70 percent for each examination.

6. Applicants who fail to pass a section of the examination may be retested upon the expiration of the following minimum waiting periods:

- (a) For an operator's license, 7 days.
- (b) For a principal's license, ~~30~~ 10 days.

7. Any applicant who uses an unauthorized aid during an examination may be excluded from the remainder of the examination and may not be allowed to take another examination for at least 6 months.

8. If an applicant passes the examination, a certified letter of eligibility to be licensed will be issued to him at his request. The letter remains valid for 2 calendar years, unless technological changes warrant issuance for a shorter period.