

**ADOPTED REGULATION OF THE DIRECTOR OF  
THE STATE DEPARTMENT OF AGRICULTURE**

**LCB File No. R242-03**

Effective November 13, 2006

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

AUTHORITY: §§1-8, NRS 588.164.

A REGULATION relating to commercial fertilizers and agricultural minerals; classifying ammonium nitrate and anhydrous ammonia as restricted-use commercial fertilizers or agricultural minerals under certain circumstances; requiring a person who has a duty to keep a record of his sales of restricted-use commercial fertilizers or agricultural minerals to include in that record a unique number that provides positive identification of the person to whom the restricted-use commercial fertilizer or agricultural mineral was sold or delivered and to make that record available to the Director of the State Department of Agriculture upon request; prohibiting any person from selling, offering to sell or distributing a restricted-use commercial fertilizer or agricultural mineral if it is adulterated; excepting from certain requirements a commercial fertilizer or agricultural mineral that contains additional plant nutrients if it is offered for sale, sold or distributed as a ready-to-use or similar product; and providing other matters properly relating thereto.

**Section 1.** Chapter 588 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

**Sec. 2.** *The following commercial fertilizers or agricultural minerals, if sold, offered for sale or distributed as single nutrients, not in combination with any other commercial fertilizer or agricultural mineral, are classified, pursuant to NRS 588.164, as restricted-use commercial fertilizers or agricultural minerals:*

- 1. Ammonium nitrate if the nitrogen content is 23 percent or greater.*
- 2. Anhydrous ammonia.*

**Sec. 3. 1.** *A person required by NRS 588.295 to maintain a record of the sale of restricted-use commercial fertilizers or agricultural minerals shall include in that record a unique number that provides positive identification of the buyer.*

*2. The unique number must be obtained from an identification document that:*

*(a) Is issued by a governmental authority; and*

*(b) Includes a photograph of the buyer.*

*3. The person maintaining the record shall visually inspect the original or a photostatic or other copy of the identification document:*

*(a) Before the first sale or delivery to a buyer; and*

*(b) If subsequent sales or deliveries are made to that buyer, not less than annually thereafter.*

*4. As used in this section, "buyer" means the person to whom the restricted-use commercial fertilizer or agricultural mineral is sold or delivered.*

**Sec. 4.** *A person required by NRS 588.295 to maintain a record of the sale of restricted-use commercial fertilizers or agricultural minerals shall make the record available to the Director upon request.*

**Sec. 5. 1.** *A person shall not sell, offer for sale or distribute a commercial fertilizer or agricultural mineral if it is adulterated.*

*2. For the purposes of this section, and except as otherwise provided in subsection 3, a commercial fertilizer or agricultural mineral is adulterated if:*

*(a) It contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when:*

*(1) It is applied in accordance with the directions for use on the label or tag; or*

*(2) Adequate warning statements or directions for use which may be necessary to protect beneficial plant life, animals, humans, aquatic life, soil or water are not shown on the label or tag;*

*(b) Its actual composition differs from that set forth on the label or tag; or*

*(c) It contains unwanted crop seed or weed seed.*

*3. A commercial fertilizer or agricultural mineral is not adulterated solely because it contains one or more additional plant nutrients as set forth in NAC 588.050.*

*Sec. 6. 1. Except as otherwise provided in subsection 2, the Director hereby adopts by reference “Statement of Uniform Interpretation and Policy No. 25” in the form most recently published by the Association of American Plant Food Control Officials in its Official Publication, unless the Director gives notice pursuant to this section that the most recent revision is not suitable for this State.*

*2. Any reference in “Statement of Uniform Interpretation and Policy No. 25” to “section 13(a) of the Uniform State Fertilizer Bill” shall be deemed to be a reference to “section 5 of this regulation.”*

*3. If “Statement of Uniform Interpretation and Policy No. 25” is revised, the Director will, not later than 6 months after the date of the publication of the revision, determine, after notice and hearing, whether the revision is suitable for this State. Not less than 30 days after the Director makes his determination, he will:*

*(a) If the Director determines the revision is suitable, file one copy of the revision with the Secretary of State and one copy with the State Library and Archives Administrator, and make at least one copy available for public inspection with his regulations; or*

*(b) If the Director determines that the revision is not suitable, file one copy of the determination with the Secretary of State, the State Library and Archives Administrator and the Legislative Counsel, and make at least one copy available for public inspection with his regulations.*

*4. The Official Publication, which contains “Statement of Uniform Interpretation and Policy No. 25,” is available from the Association of American Plant Food Control Officials, P.O. Box 33508, Raleigh, North Carolina 27636-3508 for the price of \$30.*

**Sec. 7. 1.** *For the purpose of exempting commercial fertilizers and agricultural minerals that are not used for agricultural purposes from the license fees and reporting requirements of NRS 588.210, the Director interprets “agricultural” as used in NRS 588.215 to include “horticultural.”*

*2. As used in this section, “horticultural” includes, without limitation:*

*(a) The cultivation of plants for ornamental or decorative purposes; and*

*(b) The maintenance of lawns or turf.*

**Sec. 8.** NAC 588.050 is hereby amended to read as follows:

588.050 1. Additional plant nutrients, besides *the primary nutrients*, nitrogen, phosphorus and potassium, when mentioned or claimed on the label or container, must be registered and guaranteed. Guarantees must be made on the elemental basis. Sources of the elements guaranteed must be shown on the application for registration. ~~[When]~~ *Except as otherwise provided in subsection 3, when* claims for such nutrients are made on the label, container or application for registration, the minimum percentages which will be accepted for registration are as follows:

Element

Percentage

Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

2. Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer must be furnished with the application for registration. Warning or caution statements are required on the label for any product which contains 0.03 percent or more of boron in a water-soluble form or 0.001 percent or more of molybdenum. Any of the above-listed elements which are guaranteed must appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium.

*3. The provision set forth in subsection 1, which establishes the minimum percentages of additional plant nutrients which will be accepted for registration of a brand and grade of*

*commercial fertilizer or agricultural mineral, does not apply to a commercial fertilizer or agricultural mineral that is sold, offered for sale or distributed as a ready-to-use or similar product, including, without limitation, a foliar fertilizer, horticultural growing medium or hydroponic fertilizer.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R242-03**

The Director of the State Department of Agriculture adopted regulations assigned LCB File No. R242-03 which pertain to chapter 588 of the Nevada Administrative Code on December 10, 2004.

**Notice date:** 11/2/2004  
**Hearing date:** 12/2/2004

**Date of adoption by agency:** 12/10/2004  
**Filing date:** 11/13/2006

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

A workshop on draft regulations was held on January 29, 2004 at the Department offices in Reno with video conference access from the Department office in Las Vegas. This workshop was noticed at all department office locations, Public Libraries and the State Library on December 22, 2003. The Las Vegas Review Journal, Nevada Board of Agriculture and Legislative Counsel Bureau (LCB) were also informed. Industry organizations were also notified (See section 3 below) A summary of the workshop is attached.

Following submission of draft regulations to LCB, the regulation was split into two parts according to Fee collection authority, LCB R242-03 and LCB R035-04 (see separate filing and attached notice from LCB)

Subsequent hearings were held on April 8, 2004 and December 2, 2004 at the above locations with the same posting and mailing list. Summaries of the hearings are attached.

A copy of the written comments may be obtained by calling the Nevada Department of Agriculture at (775) 688-1180 or by writing to the Department at 350 Capitol Hill Avenue, Reno NV 89502

**2. The number persons who:**

**(a) Attended each hearing:** 8 (Workshop), 4 (1<sup>st</sup> Hearing), 6 (2<sup>nd</sup> Hearing)

**(b) Testified at each hearing:** 7 (Workshop), 4 (1<sup>st</sup> Hearing), 5 (2<sup>nd</sup> Hearing)

**(c) Submitted to the agency written comments:** Comments were submitted to the workshop by mail, phone and email from 2 fertilizer manufacturers, 2 trade associations representing fertilizer manufacturers & distributors and 2 additional agricultural dealers.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses by the notices as described in outlined in #1, by postings on the Nevada Department of Agriculture and Legislative Council Bureau Web sites and by email to interested persons law enforcement and the trade associations including Nevada Restricted Use Pesticide Dealers, Nevada Nurseries, Nevada Fertilizer Registrants, The Fertilizer

Institute, Federal Bureau of Investigation (FBI), US Bureau of Alcohol Tobacco & Firearms (ATF), State & Local Law Enforcement agencies. Comments from interested businesses are outlined in the attached workshop and hearing summaries. A copy of the written comments may be obtained by calling the Nevada Department of Agriculture at (775) 688-1180 or by writing to the Department at 350 Capitol Hill Avenue, Reno NV 89502

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted at the Nevada Board of Agriculture meeting on December 10, 2004. Meeting in Reno, NV on September 30, 2005. The petition was adopted without changes to the Revised LCB Draft of September 21, 2004. As mentioned in the final hearing report, changes requested regarding penalties will require additional authority via legislative action.

**5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:**

**(a) Both adverse and beneficial effects; and**

**(b) Both immediate and long-term effects.**

(a) Total gross cost to the regulated industries due to fees imposed by the related regulation (R037-04) is estimated at less than \$1000.00. The effect on individual dealers was not considered significant. Fee levels and paperwork burden were not considered significant by industry representatives.

(b) Some measure (but not all) of the fee may be expected to be passed on as part of routine price increases. Relatively little of the affected fertilizer materials are currently used in Nevada. The public gains protection from reduction in the likelihood of fertilizers being used to formulate explosives and illegal drugs. Toxic metal levels in fertilizers will not exceed levels that would be expected to threaten the safety of the food supply.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

The economic cost is expected to be minimal. The system for monitoring sales of restricted fertilizers will be adapted from that already in place for restricted pesticide sales..

**7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate.

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

NA



**9. If the 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.**

This regulation does not provide for a new fee, associated regulation (R037-04) does collect a \$25.00 license fee from the new group of Restricted Fertilizer Dealers. This is the same as the current fee for Restricted Pesticide Dealers and will cover the small administrative costs of the program.

Any positions referred to in this description are already in existence. No new positions are created by these amendments.