

**LCB File No. R125-05**

**PROPOSED REGULATION OF THE STATE  
DEPARTMENT OF AGRICULTURE**

(This regulation was previously proposed as T019-04)

**Notice of Workshop and Hearings  
OF INTENT TO ADOPT PERMANENT REGULATIONS**

PROPOSED PERMANENT AMENDMENTS TO NAC 576.300 THROUGH 576.440,  
PERTAINING TO CERTIFIED PRODUCERS CERTIFICATES.

Authority: NRS 576.128

Need and Purpose of the proposed amendments: To amend the requirements for application and inspection prior to obtaining a producer certificate, to increase the fees associated with new and re-certifying applications to recover department costs related to initial certification and inspection, and to clarify the use of producer certificates at the point of sale.

The proposed amendments follow. The proposed changes are in *bold italics*. The text to be deleted is ~~crossed-out~~.

Economic effect of these proposed amendments on the businesses which it is to regulate:

1. Adverse effect: The fee to obtain a certificate will increase.
2. Beneficial effects: The fee increase necessary to allow the Department to recover the costs associated with the program will be spread among program participants.
3. Immediate and long term effect: Same.

Economic effects of the proposed amendments on the public:

1. Adverse effects: None
2. Beneficial effects: None
3. Immediate and long-term effects: Same

There will be no additional costs to the Department for enforcement of the amendments.

This regulation does not overlap or duplicate any other state, local or federal regulation.

Fees: An increase in fees for both new and re-certifying producers is being proposed.

**Details of the workshops and hearings are on the next page**

## WORKSHOPS AND HEARINGS

**Times:**        **Workshops 9:00 a.m.**        **Hearings 11:00 a.m.**

**Date:**        **Tuesday, September 27, 2005**

**Locations:**   **Nevada Department of Agriculture Office, Reno**  
**350 Capitol Hill Avenue**  
**Reno NV 89502**

**Nevada Department of Agriculture Office, Las Vegas**  
**2300 McLeod**  
**Las Vegas NV 89104**

Written comments and testimony may be submitted prior to the hearing date and will be included with any testimony presented at the hearing. All oral and written testimony will be in the record of the hearing.

Addresses at which the text of the proposed regulations may be inspected and copied:

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

Nevada Department of Agriculture  
350 Capitol Hill Avenue  
Reno, NV 89502

Nevada Department of Agriculture  
2150 Frazer Street  
Sparks, NV 89431

Nevada Department of Agriculture  
1550 S. Wells Avenue  
Reno, NV 89502

Nevada Department of Agriculture  
1200 E. Winnemucca Blvd.  
Winnemucca, NV 89445

Nevada Department of Agriculture  
Eyer H Boies Building  
Elko, NV 809801

Nevada Department of Agriculture  
2300 McLeod  
Las Vegas, NV 89104

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, call John O'Brien at the Nevada Department of Agriculture, (775)688-1182 Ext. 241 as soon as possible.

NRS 233B.064 Permanent regulations not to be adopted or revised by the Legislative Counsel; agency's reasons for adoption.

Upon adoption of any regulation, the agency, if requested to do so by an interested person before adoption, or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against adoption, and incorporate therein its reasons for overruling the consideration urged against its adoption.

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Don Henderson, Director

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Date

NEVADA DEPARTMENT OF AGRICULTURE  
**SMALL BUSINESS IMPACT DISCLOSES PROCESS**  
**PURSUANT TO 233B “Nevada Administrative Procedures Act”**

The purpose of this Small Business Impact Form is to provide a framework pursuant to NRS 233B.0608 to determine where a small business impact statement is required for submittal of a proposed regulation before the Nevada Department of Agriculture. If questions one (1) and two (2) are answered *No*, then a small business impact statement is not required. If question one (1) or question two (2) is answered with a *Yes*, then a small business impact statement is required prior to conducting a public workshop(s) by the Department. (This form must be submitted with the proposed regulation when submitted for drafting by LCB and adoption by the Nevada State Board of Agriculture.)

Proposed regulation: NAC 578, pertaining to producer certificates.

Part 1

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? No.
2. Does this proposed regulation restrict the formation, operation or expansion of a small business? No.

**Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS 233B.0382).**

3. If YES to either of questions 1 & 2, the following action must be taken:
  - a. Was a small business impact statement prepared and was it available at the public workshop?
  - b. Attach the small business impact statement (part 2) as part of this form upon submission for drafting by LCB and adoption by the Nevada Board of Agriculture.

## Part 2

1. Describe the manner in which comments were solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary.
2. The estimated economic effect of the proposed regulation on small business:
  - a. Both adverse and beneficial effects
  - b. Both direct and indirect effects
3. The description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses.
  - a. Simplification of the proposed regulation.
  - b. Establishment of different standards of compliance for a small business.
  - c. Modification of fees or other monetary interests that a small business is authorized to pay at a lower fee.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. If this regulation provides for 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.
6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards relating to the same activity, provide an explanation of why the proposed regulation is duplicative or more stringent and why it is necessary.

LCB File No. R125-05

PROPOSED REGULATION OF THE STATE  
DEPARTMENT OF AGRICULTURE

Request to Adopt Regulation

NAC 576.300 through 576.440

CERTIFIED PRODUCER'S CERTIFICATE

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

**NAC 576.300 Definitions.** (NRS 561.301, 576.128) As used in NAC 576.300 to 576.440, inclusive, unless the context otherwise requires, the words and terms defined in NAC 576.310 and 576.320 have the meanings ascribed to them in those sections.

**NAC 576.310 “Agricultural product of the soil” defined.** (NRS 561.301, 576.128) “Agricultural product of the soil” means a crop grown in soil or any other medium.

**NAC 576.320 “Certified producer’s certificate” defined.** (NRS 561.301, 576.128) “Certified producer’s certificate” means a written document issued by the department pursuant to NAC 576.330, 576.340 and 576.350 which indicates that the holder of the certificate has obtained certification that he is ~~[an]~~ *the* actual producer of an agricultural product of the soil *listed on the certificate*.

**NAC 576.330 Application: Contents; submission, fee.** (NRS 561.301, 576.128)

1. To obtain a certified producer’s certificate, a person must submit to the department an application, *for each non-contiguous production site*, on a form prescribed by the department.

2. The application must include, without limitation:

(a) *The name, mailing address, and telephone number of the applicant;*

(b) *The address of the physical location of the property on which the agricultural product of the soil will be produced;*

~~[(a)]~~ (c) A list of any agricultural product of the soil that the applicant ~~[anticipates that he]~~ will grow *and offer for sale* during the 12 months for which the certificate is valid;

(d) *The estimated yield of each agricultural product of the soil shown on the application;*

(e) *The harvest season of each agricultural product of the soil shown on the application and if crops are to be stored or processed for sale at a later date, the length of time the product will be stored;*

(f) *The total area under cultivation listed in acres or square feet as applicable;*

(g) *If any agricultural products of the soil are in storage at the time of the application, the location of the storage facility and the amount in storage of each product;*

~~[(b)]~~ (h) A detailed map that indicates the location of each property at which the agricultural product of the soil listed pursuant to paragraph (a) will be grown; and

~~[(e)]~~ (i) The fee for the ~~[inspection of the property]~~ *application* required pursuant to ~~[NAC 576.340.]~~ *subsection 5*.

3. A person may obtain an application for a certified producer's certificate by submitting a request to the State Department of Agriculture, 350 Capitol Hill Avenue, Reno, Nevada 89502, or by calling the department at (775) 688-1180.

4. An application must be submitted to the department at least 30 days before the harvest of an agricultural product of the soil that is listed on the application. *The 30 day requirement may be waived at the discretion of the department.*

*5. The department will charge a non-refundable fee of:*

*(a) \$50.00 for the initial application and inspection required under 576.340 subsection 1;*

*(b) \$30.00 for annual recertification.*

**NAC 576.340 Approval of application: Inspection of property; ~~[fee]~~; waiver.** (NRS 561.301, 576.128)

1. Except as otherwise provided in subsection 2, before approving an application for a certified producer's certificate, *or an amended certificate*, the department, or an authorized representative of the department, will inspect each property that is indicated on the application to verify the production of each agricultural product of the soil that is listed on the application or the existence in storage of each agricultural product of the soil that is listed on the application which has been harvested, or both. ~~[The department will charge a nonrefundable fee of \$20 for such an inspection, regardless of the number of properties indicated on the application].~~

2. If only organic agricultural products of the soil certified by the department are listed on the application, the department will waive the inspection and related fee required pursuant to this section.

*3. For applicants renewing an application previously issued by the department and to which no substantial changes have occurred from the previously issued certificate, the department may waive the inspection required in subsection 1.*

**NAC 576.350 Issuance; ~~[contents];~~ period of validity; renewal; additional agricultural products of soil.** (NRS 561.301, 576.128)

1. Upon approval of an application, the department will issue a certified producer's certificate to the applicant.

~~[2. A certified producer's certificate must list each agricultural product of the soil that is produced by the holder of the certificate.]~~

~~[3.]~~ 2. A certified producer's certificate is valid for 12 months after the date on which the ~~[application]~~ *certificate* is ~~[approved]~~ *issued*. ~~[A holder of a certified producer's certificate may renew the certificate by submitting the form for renewal furnished by the department within 30 days before his certificate expires.]~~

~~[4.]~~ 3. If the holder of a certified producer's certificate wishes to have an additional agricultural product of the soil listed on his certificate he must ~~[apply to the department, in writing,]~~ *submit an application form for each non-contiguous production site to the department* at least 30 days before the harvest of the additional agricultural product of the soil. *The 30 day requirement may be waived at the discretion of the department.* The application must include, without limitation:

*(a) The information required under NAC 576.330 subsection 2; and*

~~[(a)]~~ An identification of the additional agricultural product of the soil that will be grown; and

~~[(b)]~~ A detailed map that indicates the location of each property at which the additional agricultural product of the soil will be grown.

*(c) Upon approval of the application, the department will issue an amended certificate listing the additional crops. The expiration date will remain the same as for the original certificate.*

*4. If the agricultural products listed on the application for amended certificate are substantially different from those on the original certificate, the Department may require an additional inspection to verify the production of each agricultural product of the soil.*

~~[NAC 576.360 Annual inspection of property; fee; waiver. (NRS 561.301, 576.128)~~

~~—1. Except as otherwise provided in subsection 2, the department, or an authorized representative of the department, will, at least annually, inspect each property indicated on the application of a holder of a certified producer's certificate to verify the production of each agricultural product of the soil that is listed on the certificate or the existence in storage of each agricultural product of the soil that is listed on the certificate which has been harvested, or both. The department will charge a nonrefundable fee of \$20 for such an inspection, regardless of the number of properties indicated on the application.~~

~~—2. If only organic agricultural products of the soil are listed on the certificate, the department will waive the inspection and related fee required pursuant to this section.]~~

~~[NAC 576.370 Recognition of certificates issued by other entities. (NRS 561.301, 576.128) The department will recognize a certified producer's certificate, or the equivalent thereof, that is issued by a governmental agency or private organization in another state if:~~

~~—1. The procedures used by the agency or organization are substantially similar to the procedures set forth in NAC 576.300 to 576.440, inclusive;~~

~~—2. The information that appears on the certificate is essentially the same as the information that appears on a certified producer's certificate issued by the department; and~~

~~—3. The holder of the certificate prominently displays the certificate at each location at which the holder of the certificate is selling an agricultural product of the soil that is listed on the certificate.]~~

**NAC 576.380 Maintenance of list of certificate holders.** (NRS 561.301, 576.128) The department will maintain a list of each person to whom the department has issued a certified producer's certificate.

~~[NAC 576.390 Sale of agricultural products of soil at farmers' market. (NRS 561.301, 576.128)~~

~~—1. A holder of a certified producer's certificate may sell at a farmers' market agricultural products of the soil for which he and no more than two other persons hold certified producer's certificates. The products must be displayed separately from other products which are not agricultural products of the soil and which are available for sale.~~

~~—2. The certified producer's certificate on which an agricultural product of the soil that is available for sale at a farmers' market is listed must be displayed prominently at each location at which the product is available for sale.~~

~~—3. The department, or an authorized representative of the department, will, at least once every 6 months, inspect each farmers' market at which a holder of a certified producer's certificate~~

~~sells an agricultural product of the soil to verify compliance with NAC 576.300 to 576.440, inclusive.~~

~~—4. “Farmers’ market” has the meaning ascribed to it in NRS 244.336.]~~

**NAC 576.400 Representation of agricultural product of soil as certified.** (NRS 561.301, 576.128) A person shall not claim or imply in the advertising, selling or labeling of an agricultural product of the soil or otherwise represent that the product is “certified” unless the department has issued to that person a certified producer’s certificate for that product. *If certification is claimed or implied, the certificate must be prominently displayed at the point of sale.*

**NAC 576.410 Order to stop sale of agricultural product of soil that is misrepresented.** (NRS 561.295, 561.301, 576.128) The director may issue a written order to stop the sale of an agricultural product of the soil if that product is advertised, sold, labeled or otherwise represented as certified in violation of NAC 576.300 to 576.440, inclusive. A person shall not sell an agricultural product of the soil for which the director has issued a written order to stop the sale pursuant to this section until the department determines that the advertising, selling, labeling or other representation of the product complies with NAC 576.300 to 576.440, inclusive.

**NAC 576.420 Suspension or revocation of certificate.** (NRS 561.295, 561.301, 576.128) The department may suspend or revoke a certified producer’s certificate issued to a person pursuant to NAC 576.300 to 576.440, inclusive, if the department determines that the person violated the provisions of NAC 576.300 to 576.440, inclusive.

~~[NAC 576.430 Civil penalty. (NRS 561.301, 576.128, 576.150) In addition to any other penalty, the director may, pursuant to NRS 576.150, impose a civil penalty of \$100 against a person for each:~~

~~—1. Violation of NAC 576.300 to 576.440, inclusive; or~~

~~—2. Failure to comply with a notice, order or rule of the department adopted pursuant to NAC 576.300 to 576.440, inclusive.]~~

**NAC 576.440 Request for hearing.** (NRS 561.295, 561.301, 576.128) A person:

1. Who is issued a written order to stop the sale of an agricultural product of the soil pursuant to NAC 576.410;

2. Whose certified producer’s certificate has been suspended or revoked pursuant to NAC 576.420 ~~;~~ or

~~—3. Against whom the director has imposed a civil penalty pursuant to NAC 576.430],~~

may request a hearing pursuant to subsection 2 of NRS 561.295.