

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

LCB File No. R146-08

Effective February 11, 2009

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

AUTHORITY: §1, NRS 555.355 and 555.400.

A REGULATION relating to applicators of pesticides; adopting provisions concerning the use of an unauthorized aid during an examination for the issuance or renewal of certain certificates to apply restricted-use pesticides; and providing other matters properly relating thereto.

Section 1. NAC 555.670 is hereby amended to read as follows:

555.670 1. The examination for the issuance or renewal of a certificate pursuant to NAC 555.655 will consist of a general examination which will be required of each applicant and a specific examination for each category in which the applicant has requested to be examined.

2. The Director may require the applicant to meet special qualifications of competency which relate to the special needs of a given locality regarding the use or application of a specific restricted-use pesticide. The special qualifications of competency may include written examinations as required by the Director.

3. In addition to the written examination, the applicant for a certificate for private applicator may be given an oral examination. The examining officer may add to or subtract from the score on the written test a maximum of 5 grade points based on the oral examination.

4. A private applicator may request an oral examination in lieu of a written examination. If the examining officer determines that the request is justified, he may give the applicant an oral

examination. No grade points may be added to or subtracted from an applicant's score on the oral examination.

5. Any applicant may be required to perform a practical demonstration, at a time and in a manner specified by the examining officer, to show his ability to apply or supervise the application of restricted-use pesticides.

6. The passing score for each examination is 60 percent.

7. Any applicant who fails to pass the general examination or any specific examination may be retested upon expiration of a waiting period of 5 working days, unless the examining officer waives the waiting period.

8. Any applicant who uses an unauthorized aid during an examination:

(a) Must be excluded from the remainder of the examination; and

(b) Must not be allowed to take another examination for at least 6 months.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R146-08

The Director of the State Department of Agriculture adopted regulations assigned LCB File No. R146-08 which pertain to chapter 555 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

Summary of Workshop and Hearings on Certification Regulation Changes:

R146-08: 6 month waiting period for re-testing for use of an unauthorized aid during the certification examination

R147-08: revising monthly restricted use pesticide reporting requirements for non-agricultural applicators

R148-08: \$25 penalty/fine for duplicate certification credential

Workshop Date and Time: Thursday, July 10, 2008, 3:00 P.M.

Hearing Date and Time: Friday, July 11, 2008, 3:00 P.M.

The workshop and hearing were held in the NDOA Las Vegas Office and teleconferenced to the NDOA Reno Office.

In attendance for the workshop: NDOA staff members in Reno and Las Vegas along with Mr. Dave Barton of Pro-Tech Pest Control (Las Vegas).

Only NDOA staff were in attendance for the hearing.

LCB R148-08: NAC 555.690:

Workshop: A question was raised whether we could print on the new card that there would be a re-issue fee on the credential, but it was determined that there would be no room for the statement. Also, a question was raised on the number of credentials which were re-issued this year. It was stated that there were approximately 8 thus far. It was also pointed out that applicators are not required to carry credentials and certification numbers could be checked on-line. Therefore, if an applicator did not want to pay for the duplicate certificate, he would not have to. No objections were raised.

Hearing: No objections to the penalty/fee were voiced. Discussion centered around why the term "penalty" was changed to "fee" by LCB and no answer was given thus far by LCB. It was suggested that many credentials are re-issued because an applicant will give an incomplete, incorrect, or non-legible addresses. It was suggested that this language be added to the regulation. LCB is working on this change.

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

1. Adverse effect: Businesses will pay a replacement fee of duplicate certificates.

2. Beneficial effects: This change will help offset the cost to the Department of manufacturing duplicate credentials.
3. Immediate and long term effect: Same as #1 and #2 above.

Economic effects of the proposed amendments on the public:

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

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.

The proposed amendments do not include any provisions more stringent than any federal regulation with the same activity

LCB R147.08: NAC 555.410:

Workshop: It was suggested that new language be added for clarification and this was agreed to by Mr. Dave Barton.

Hearing: Copies of the LCB draft were reviewed more closely and it was determined that LCB had already incorporated equivalent language and made other changes to the regulation that would be consistent with our proposed revision. LCB also updated the address for the HUD website related to the wood destroying pest inspection form.

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

1. Adverse effect: None
2. Beneficial effects: Relief of paperwork burden; reduction in monetary penalties to pest control companies for non-reporting.
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: None

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

This regulation does not overlap or duplicate any other state, local or federal regulation. No

The proposed amendments do not include any provisions more stringent than any federal regulation with the same activity.

LCB R146-08: NAC 555.670:

Workshop: The discussion was supportive and none were opposed. It was made clear that the applicant does not have an opportunity to contest the office manager's final decision if it is determined that an unauthorized testing aid was used to take the certification test.

Hearing: LCB changes were reviewed and there was no opposition to this revision.

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

1. Adverse effect: Some applicators are required to pass an examination to qualify for certain employment and to get pay upgrades. This may affect an applicant who is caught with an unauthorized testing aid.
2. Beneficial effects: This change will deter cheating on certification exams administered by the Department.
3. Immediate and long term effect: Same as #1 and #2 above.

Economic effects of the proposed amendments on the public:

1. Adverse effects: None
2. Beneficial effects: This provision will help assure that certified applicators are competent when applying chemicals.
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. The proposed amendments do not include any provisions more stringent than any federal regulation with the same activity. Federal regulations authorize the Department to give certification examinations. It is left up to us on how testing will be administered and testing procedures enforced.

**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 555.690 & NAC 555.410 & NAC 555.670

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).