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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

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**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

INFORMATIONAL STATEMENT

Permanent Adoption Regulation for Nevada Administrative Code 586 LCB File No. R048-21P

1. A clear and concise explanation of the need for the adopted regulation.

On January 4, 2017, the U.S. Environmental Protection Agency (EPA) published final revisions to the Certification of Pesticide Applicators rule (40 CFR Part 171) in the Federal Register. These revisions provide assurance that restricted-use pesticide (RUP) certified applicators and licensed applicators are competent to use pesticides in a manner that will not cause adverse effects on human health or the environment.

The EPA delegates the primary responsibility of implementing this rule to individual states in lieu of the EPA as long as State certification programs are at least as stringent as the federal requirements. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. Currently, the Nevada Department of Agriculture (NDA) has been granted authority to implement the certification program.

To meet federal requirements, the NDA made changes to Nevada Revised Statutes (NRS) Chapter 586 through Assembly Bill (AB) 74 adopted during the 81st Nevada Legislative Session. Due to the changes in NRS 586, the NDA is proposing changes to certain sections of Nevada Administrative Code (NAC) Chapter 586.

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

The NDA released a digital survey along with the proposed NAC changes to RUP dealerships, RUP certified applicators and pest control licensees to assess the potential impacts of proposed changes to NAC 586 on businesses. Amendments were proposed in accordance with changes to NRS 586, which were approved through AB74. The survey was posted to the NDA's social media on 7/15/2021, 7/19/2021 and 7/21/2021. It was also posted to agri.nv.gov/survey on 7/6/2021. It was additionally promoted by the Nevada Farm Bureau through their weekly newsletter on 7/16/2021.

Of the 98 survey respondents who answered the question asking if they fall under the definition of a small business as defined by NRS 233B.0382:

- 74% indicated they fall under the definition of a small business.
- 0 respondents skipped the question.

Of the 72 survey respondents who answered the question asking if changes to NAC 586 would impact their ability to do business:

- 55% maybe, 31% yes and 14% no.
- 26 respondents skipped the question.

Of the 50 survey respondents, who identified as a small business, were asked if changes to NAC 586 would impact their ability to do business:

- 40% maybe, 17% yes and 43% no.
- 23 respondents skipped the question.

Individuals interested in the survey report can contact the NDA at 775-353-3601.

Concern was expressed from some of the respondents on how the changes to NAC 586 would impact their ability to do business. Many of these comments were not specific to the proposed changes and pertained to existing statutes and regulations. Survey responses included the following comments:

- “Generating useless information when applied to private residential property.”
- “Additional restrictions.”
- “I have a very small income from my business.”
- “Could impact dealers I buy pesticide from.”
- “By locking private citizens out of their own business.”
- “Instead of government license, our applicators would need a nonprivate license. We would have to go through whatever process is set up to get a new license before continuing work.”
- The changes would be the way we deliver our business to our customers. On the outside there is not a lot of change. On the inside it would change the way staff would be required to do their jobs. We anticipate the change as good thing for us and the state. Time will tell.

Concern was expressed from some of the respondents on operational changes to their business they feel they would have to make:

- “Need to have temp gauges & wind indicators attached to each vehicle used during the day.”
- “Just time training the sales staff on what to look for and ask when a person says they are licensed vs. certified and getting folks to actually supervise when that’s what they are supposed to be doing anyways/”
- “Staff time.”
- “Go out of business.”
- “Improved record keeping.”
- “No, changes at the operational level, however changes at the ground level would be minor but still required.”
- “I don’t want to use a contractor.”

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in NAC 586, as well as any persons who had specifically requested such notice.

These documents were also posted and made available at the following locations:

- Nevada Department of Agriculture, 405 S. 21st St., Sparks, NV 89431
- Nevada Department of Agriculture website at agri.nv.gov
- Nevada Public Notice website at <https://notice.nv.gov/>
- Nevada Legislature Administrative Regulation Notices at <https://www.leg.state.nv.us/App/Notice/A/>

A workshop was held on September 22, 2021, and the minutes of those meetings are available at https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Division_of_Plant_Health_and_Compliance_Workshops_and_Hearings/). Thereafter, on or about November 8, 2022, the Administrator of the Division of Plant Health and Compliance issued a Notice of Intent to Act Upon a Regulation. The hearing was held on December 8, 2022, and the minutes of that meeting contain a summary of the discussion held regarding any proposed amendments which is available at https://agri.nv.gov/Plant/Workshop_and_Hearing_Meetings/Division_of_Plant_Health_and_Compliance_Workshops_and_Hearings/.

A copy of this summary may be obtained from the Nevada Department of Agriculture, Attn: Sylvia Jones, 405 S. 21st St., Sparks, NV 89431, 775-353-3601, or s.jones@agri.nv.gov.

3. The number persons who (a) Attended each hearing, (b) Testified at each hearing, (c) Submitted to the agency written comments.

- Workshop held on September 22, 2021
 - Number in attendance: 13
 - Number testifying: 3 members of the public and 2 NDA employees
 - Written statements submitted: 1

- Hearing held on December 8, 2022
 - Number in attendance: 8
 - Number testifying: 0 members of the public and 2 NDA employees
 - Written statements submitted: 0

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency.

Name	Entity/Organization	Address	Phone	Email
Jimmie Mckee-written comment only, did not attend meetings	S&J Lawn Services			jimmi@snjlawnservice.com
Jeff Knight	NDA-State Entomologist	405 South 21 st Street Sparks, NV 89431	775-353-3601	jknight@agri.nv.gov

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Shouhua Wang	NDA-State Plant Pathologist	405 South 21 st Street Sparks, NV 89431	775-353-3601	swang@agri.nv.gov
Ashley Jeppson	NDA-Plant Health and Compliance Division Administrator	405 South 21 st Street Sparks, NV 89431	775-353-3601	ajeppson@agri.nv.gov
Allen Whitenack	NDA-Administrative Assistant 3	405 South 21 st Street Sparks, NV 89431	775-353-3601	awhitenack@agri.nv.gov
Bret Allen	NDA-Pesticide Compliance Program Coordinator	405 South 21 st Street Sparks, NV 89431	775-353-3601	ballen@agri.nv.gov
Raymond Saliga	NDA-Agriculturist 4	405 South 21 st Street Sparks, NV 89431	775-353-3601	rsaliga@agri.nv.gov
Gary Reese				
Doug Busselman	Nevada Farm Bureau			doug@nvfb.org
Michael McCampbell	Bureau of Land Management			
Chris Bramley				
Michael Hendry	NDA-Agriculturist 2	405 South 21 st Street Sparks, NV 89431	775-353-3601	mhendry@agri.nv.gov
Mikayla Jones	NDA-Public Information Officer	405 South 21 st Street Sparks, NV 89431	775-353-3601	mjjones@agri.nv.gov
Ciara Ressel	NDA-Public Information Officer	405 South 21 st Street Sparks, NV 89431	775-353-3601	cressel@agri.nv.gov
Amanda Moss-Written	Senior Director of Government Affairs for the Southern Nevada Home Builders Association		702-540-1881	amanda@snhba.com
Sherry Bough				
Sylvia Jones	NDA-Administrative Assistant 3	405 South 21 st Street Sparks, NV 89431	775-353-3601	s.jones@agri.nv.gov
Curt Deuser				
Tarl Norman				

5. 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.

The NDA released a digital survey along with the proposed NAC changes to RUP dealerships, RUP certified applicators and pest control licensees to assess the potential impacts of proposed changes to NAC 586 on businesses. Amendments were proposed in accordance with changes to NRS 586, which were approved during the 81st Legislative Session through AB 74. The survey was posted to the NDA’s social media on 7/15/2021,

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Of the 50 survey respondents, identified as a small business, who were asked if changes to NAC 586 would impact their ability to do business:

- 40% maybe, 17% yes and 43% no.
- 23 respondents skipped the question.

Individuals interested in the outcomes of the survey can contact the NDA at 775-353-3601.

Concern was expressed from some of the respondents on how the changes to NAC 586 would impact their ability to do business. Some of the comments did not pertain to the proposed changes, but to existing statutes and regulations. Clarification was provided as detailed under question #6. Survey comments received included the following:

- “Generating useless information when applied to private residential property.”
- “Additional restrictions.”
- “I have a very small income from my business.”
- “Could impact dealers I buy pesticide from.”
- “By locking private citizens out of their own business.”
- “Instead of government license, our applicators would need a nonprivate license. We would have to go through whatever process is set up to get a new license before continuing work.”
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- “Just time training the sales staff on what to look for and ask when a person says they are licensed vs. certified and getting folks to actually supervise when that’s what they are supposed to be doing anyways/”
- “Staff time.”
- “Go out of business.”

- “Improved record keeping.”
- “No, changes at the operational level, however changes at the ground level would be minor but still required.”
- “I don’t want to use a contractor.”

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in the subject of 586 as well as any persons who had specifically requested such notice.

These documents were also posted and made available at the following locations:

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

Comments were solicited from affected businesses in the same manner as they were solicited from the public and are included in the workshop and hearing meeting minutes. The summary may be obtained as instructed in the response to question 2.

Comment was not received requesting changes to the proposed NAC 586 language.

The proposed regulations are in direct response to the EPA’s final revisions to the Certification of Pesticide Applicators Rule, which are published in the Federal Register. These revisions provide assurance that RUP certified applicators and licensed applicators are competent to use pesticides. The inclusion of the proposed language was specific to federal requirements and was a condition of ongoing compliance with the EPA’s cooperative agreement allowing the NDA to be the primary regulatory designee over RUP dealerships and retailers.

The following clarification was provided in response to survey comments received, much of which pertained to existing statutes and regulations:

- Record keeping is only required by private residences if RUPs are used (existing regulation).
- These changes are directed at RUP dealerships, where only a few additional record keeping items will be required. This information can be easily acquired by the applicator at the time of purchase. These changes also only pertain to certified applicators who supervise the non-certified applicator when RUPs are used. NDA staff is available to assist industry with these revisions.
- Revisions to NAC 586 do not include additional fees.
- Individuals converting to a nonprivate certificate from a government license will only have to be updated on the EPA's new testing competency standards and will not be required to retest. This will be done through a one-day training by NDA staff, which would count toward their continuing education unit (CEU) requirements.
- These regulation revisions do not mention pesticide record keeping requirements, which would require applicators to have access to temperature gauges and wind speed/direction indicators. These measurements are already required, for certain applicators, and are stated in NAC 555.
- NDA staff is available to assist with training RUP dealership sales staff on what to look and ask for when a person says they are licensed versus certified. In addition, the NDA will also spend time with applicators to train them on what is expected in supervision of a noncertified applicator.

7. The estimated economic effect of the adopted regulation on the businesses which 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) Estimated adverse and beneficial economic effects on regulated business,

- Adverse economic effect on regulated business:
Feedback on adverse economic effects on regulated businesses was not provided during the public meetings. Survey responses included the following:
 - 29 individuals responded to the question asking which level of negative impact the proposed changes would have on their business (skipped by 44 respondents):
 - No impact – 13 respondents (44.83%)
 - Insignificant impact – 5 respondents (17.24%)
 - Minor impact – 6 respondents (20.69%)
 - Moderate impact – 2 respondents (6.90%)
 - Major impact – 2 respondents (6.90%)
 - Severe impact – 1 respondent (3.45%)
- Adverse economic effect on the public
 - None was reported during the public process.
- Beneficial economic effect on the public.
 - Ensuring that RUP sales are controlled to those licensed and trained is critical to public safety which is the intent of these regulations.

Reported cost of the proposed changes to NAC 586 on small business would be between \$23,407 and \$39,396 per survey responses received. However, the median cost to individual small businesses indicates there would be no additional cost to operations. How these estimates were reached by businesses was not provided to the NDA. The proposed changes are specific to federal requirements and record keeping of RUP sales is a current requirement under existing NRS and NAC.

In total 18 respondents (58.06%) reported that there would be no cost due to NAC 586. While 13 respondents (41.4%) reported they would incur costs because of the proposed regulations. Of those reporting an increase 8 of 13 reported cost increases of less than \$1,000.

(b) Immediate and long-term economic effects of regulated businesses

- Immediate economic effects
 - Feedback on adverse economic effects on regulated businesses was not provided during the public meetings. Survey responses included the following:
 - 29 individuals responded to the question asking which level of negative impact the proposed changes would have on their business (skipped by 44 respondents):
 - No impact – 13 respondents (44.83%)
 - Insignificant impact – 5 respondents (17.24%)
 - Minor impact – 6 respondents (20.69%)
 - Moderate impact – 2 respondents (6.90%)
 - Major impact – 2 respondents (6.90%)
 - Severe impact – 1 respondent (3.45%)
- Immediate economic effect on the public
 - None was reported during the public process.

Reported cost of the proposed changes to NAC 586 on small business would be between \$23,407 and \$39,396 based upon the ranges reported by respondents. However, the median cost to individual small businesses indicates there would be no additional cost to operations. How these estimates were reached by businesses was not provided to the NDA. The proposed changes are specific to federal requirements and record keeping of RUP sales is a current requirement under existing NRS and NAC.

In total 18 respondents (58.06%) reported that there would be no cost due to NAC 586. While 13 respondents (41.4%) reported they would incur costs because of the proposed regulations. Of those reporting an increase, 8 of 13 reported cost increases of less than \$1,000.

- Long-term economic effects on regulated business
 - Feedback on adverse economic effects on regulated businesses was not provided during the public meetings. Survey responses included the following:
 - 29 individuals responded to the question asking which level of negative impact the proposed changes would have on their business (skipped by 44 respondents):
 - No impact – 13 respondents (44.83%)
 - Insignificant impact – 5 respondents (17.24%)

- Minor impact – 6 respondents (20.69%)
 - Moderate impact – 2 respondents (6.90%)
 - Major impact – 2 respondents (6.90%)
 - Severe impact – 1 respondent (3.45%)
- Long-term economic effect on the public
 - None was reported during the public process.

Reported cost of the proposed changes to NAC 586 on small business would be between \$23,407 and \$39,396 based upon survey responses. However, the median cost to individual small businesses indicates there would be no additional cost to operations. How these estimates were reached by businesses was not provided to the NDA. The proposed changes are specific to federal requirements and record keeping of RUP sales is a current requirement under existing NRS and NAC.

In total 18 respondents (58.06%) reported that there would be no cost due to NAC 586. While 13 respondents (41.4%) reported they would incur costs because of the proposed regulations. Of those reporting an increase 8 of 13 reported cost increases of less than \$1,000.

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

There is no estimated cost to the NDA.

9. A description of any regulations of other state or government agencies which 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.

The proposed revisions are to meet the minimum requirements listed in the EPA’s final revisions to the Certification of Pesticide Applicators rule. State authority is required to be the primary regulatory official.

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

The proposed revisions are to meet the minimum requirements listed in EPA’s final revisions to the Certification of Pesticide Applicators Rule. They are not more stringent than federal law.

11. 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.

The proposed revisions do not provide a new fee or increase an existing fee.

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.

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Director

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