

STEVE SISOLAK
Governor

Las Vegas Office:
2300 East St. Louis Ave.
Las Vegas, NV 89104
Telephone (702) 668-4590
Fax (702) 668-4567



JENNIFER OTT
Director

Elko Office:
4780 East Idaho St.
Elko, NV 89801-4672
Telephone (775) 738-8076
Fax (775) 738-2693

STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

405 South 21st St.
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
agri.nv.gov

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

INFORMATIONAL STATEMENT

Permanent Adoption Regulation for Nevada Administrative Code 555 LCB File No. R077-21

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. 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 unreasonable 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 implementing them. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. Currently, the Nevada Department of Agriculture (NDA) has authority to implement the certification program. State certification programs must be at least as stringent as the federal requirements. Through Assembly Bill (AB) 34 during the 81st Legislative Session, the NDA revised Nevada Revised Statutes (NRS) Chapter 555 to meet the new federal requirements. Due to the changes in NRS 555, the NDA is proposing changes to certain sections of Nevada Administrative Code (NAC) Chapter 555.

In addition, through Senate Bill (SB) 34 of the 81st Legislative Session, language was updated in NRS 555 to include clarifying language to weed free and seed certification, voluntary services that allow for specific marketing and assistance with mitigating the spread of noxious weeds. The NDA offers voluntary plant pathology and entomology diagnostics services to Nevada businesses and the public to assist with identifying plant pests and diseases. The proposed service fees in NAC 555 would be used to cover program costs associated with offering these diagnostic services.

2. 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.

The NDA released a digital survey along with the proposed NAC changes to RUP dealerships, certified applicators, and pest control licensees to assess the potential impacts of proposed changes to NAC 555 on businesses. 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. Concern was expressed on entities having to secure new licensure, however, clarification was provided that existing licensees would have the opportunity to participate in a course to update their licensure or they can opt to take the exam to become a RUP applicator.

Survey respondents:

- No impact – 15 respondents (38.46%)
- Insignificant impact – 8 respondents (20.51%)
- Minor impact – 5 respondents (12.82%)
- Moderate impact – 6 respondents (15.38%)
- Major impact – 3 respondents (7.69%)
- Severe impact – 2 respondents (5.13%)

An estimate of the total annual impact the proposal change to NAC 555 will have on pest control business.

- Over \$10,000 – 3 respondents
- \$5,001-\$10,000 – 3 respondents
- \$1,001-\$5,000 – 5 respondents
- \$100-\$1000 – 9 respondents
- \$1-\$99 – 3 respondents
- \$0 – 23

Respondent concern was expressed from some, on how changes to NAC 555 would impact their ability to do business (12 respondents answered, 72 skipped the question). Many of these comments pertained to regulations already in place based on federal requirements or were cleared up through misinterpretation during public meetings and are further detailed under question number 6. Comments from the survey included the following:

- “Additional expense would have to be passed on to consumers.”
- “I am a rancher not a commercial applicator. I need to be able to purchase and use these restricted use products.”
- “With today’s current job market any changes will impact small business.”
- “I don’t understand the changes.”
- “Put us out of business.”
- “Fewer Customers due to stringent regs and insurance costs.”
- “This may impact end users not the overall function of the operation.”
- “Perhaps an unmanned aerial pesticide vehicle could spray out of bounds. My business depends on non-toxic regenerative methods of growing pollinator plants. Pollinators depend on non-toxic plants.”
- “Cost increase.”
- “How can this be enforced for a small 5 to 10 ac Farm?”
- “Cost of doing business. The Scope of work varies widely for applicators. The program should be tailored to the scope of work business/agencies perform.”

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

- “Increased prices, increased wages, change of chemical to cover expense.”
- “I would have to hire professionals to do jobs I am able to do.”

- “Will have to see final bill.”
- “The changes are super difficult to read in the bill. Can’t we have an abstract of changes, so we don’t have the read the legalize of the Bill?”
- “Yes, lay everyone off.”
- “Customers may have some fiscal impact and regulatory training that may impact procurement.”

In reference to proposed fees for plant pathology and entomology diagnostic services, this is a voluntary service. To assess the direct and indirect impact to small businesses, four surveys were conducted with an emphasis on recipients that have historically participated in these services. In addition, two workshops were held to allow for public comment. The economic impact reported by most survey respondents indicated that the financial impact would range from \$100-\$1,000 for those that participate in the voluntary diagnostic service. The proposed fee is less than private labs and is aimed at covering the supply and personnel costs for preparing and reporting samples.

In reference to changes on noxious weeds and seed certification, no economic effects on businesses or the public were expressed in the survey or during the workshop. A summary of public response can be located by contacting Sylvia Jones at 775-353-3601 or s.jones@agri.nv.gov

Workshops were held on August 4, 2021, and 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 amendment which are 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 August 4, 2021
 - Number in attendance: 4
 - Number testifying: 0 members of the public and 1 NDA employee
 - Written statements submitted: 1
- Workshop held on September 22, 2021
 - Number in attendance: 13
 - Number testifying: 3 members of the public and 2 NDA employee
 - 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
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	mjones@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		702-540-1881	amanda@snhba.com

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4780 East Idaho St.
Elko, NV 89801
Telephone (775) 738-8076
Fax (775) 738-2693

comment only did not attend meetings	for the Southern Nevada Home Builders Association			
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.

In reference to changes proposed to pesticide control applicators, a survey was conducted of small businesses that would potentially be affected by the regulation. The electronic survey was emailed to the NDA’s customer list, those requesting notice, and posted on the NDA website at agri.nv.gov. The NDA released a digital survey along with the proposed NAC changes to RUP dealerships, certified applicators and pest control licensees to assess the potential impacts of proposed changes to NAC 555 on businesses. 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.

In reference to changes to proposed fees for plant pathology and entomology diagnostics, to assess the impact to small businesses and the public, four surveys were conducted with an emphasis on recipients that have historically participated in these services.

Survey respondents:

- No impact – 15 respondents (38.46%)
- Insignificant impact – 8 respondents (20.51%)
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An estimate of the total annual impact the proposal change to NAC 555 will have on pest control business.

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- \$100-\$1000 – 9 respondents
- \$1-\$99 – 3 respondents
- \$0 – 23

In reference to changes to proposed fees for plant pathology and entomology diagnostics, this is a voluntary service. To assess the direct and indirect impact to small businesses, four surveys were conducted with an emphasis on recipients that have historically participated in these services. The economic impact reported by most survey respondents indicated that the financial impact would range from \$100-\$1,000 for those that participate in the

voluntary diagnostic service. The proposed fee is less than private labs and is aimed at covering the supply and personnel costs for preparing and reporting samples.

In reference to changes on noxious weeds and seed certification, no economic effects on businesses or the public were expressed in the survey or during the workshop. 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.

Two workshops were held on August 4, 2021, and September 22, 2021, along with an adoption hearing on December 8, 2022. During this process, businesses requested information on the relicensing process, along with education accommodations pertaining to the pesticide applicator changes proposed. The NDA provided clarification that the EPA allows courses for existing licensees that would allow licensure to be updated to the new standards and that the NDA would be providing these courses to assist industry in meeting compliance. Additional feedback was provided on the structure of courses and continuing education unit criteria. Though these were not specific to the language in the regulations, the discussion was beneficial, and feedback was taken that will be applied to future NDA courses. A written comment was received requesting clarification on some of the proposed language along with the intent and origin. The NDA coordinated with the respondent and following this clarification, no additional feedback or concerns were received.

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.

In reference to changes proposed to pesticide control applicators, most of the feedback provided was specific to existing regulations, statutes, federal requirements or were procedural. As a result, few changes were made to the proposed language, however, feedback will be applied to future trainings. Based on additional feedback provided, the NDA will coordinate with the pest control industry and certified applicators to reduce the impact of the proposed regulation on small businesses:

- Since the proposed changes to NAC 555 do not impose new fees, it is unlikely that additional expenses would have to be passed on to consumers. The NDA performed an assessment of fees and is proposing to reduce Agent testing fees from \$350 to \$50.
- NDA trainings will have to occur to inform the pest control industry and certificated applicators on EPA's testing competency standards. These trainings would count toward existing continuing education unit requirements for renewal.
- Ranchers and farmers wanting to purchase and use RUPs must become certified or work under the supervision of the certified applicator, which is the current regulation.
- Concern was expressed that the revisions were difficult to understand. For more explanation on these changes, individuals were encouraged to contact Bret Allen at (775) 353-3715 or bret.allen@agri.nv.gov. These were also discussed during the workshops and hearing.
- Concern was expressed about increased insurance costs. Limited liability insurance requirements, found in NAC 555.370, are already established by the NDA, and will not be revised as part of the proposed changes.
- Under existing authority, the NDA has the authority to enter any public or private premises at reasonable times to inspect, audit, sample or monitor any aircraft, ground equipment, records, storage, pesticides, pesticide sprays, disposal operations or other operations. This includes smaller 5–10-acre farms and pesticides being applied by unmanned aerial vehicles.

Most of the comments received were specific to inquiring about the intent of the pesticide applicator and dealer language and the NDA's compliance implementation plan. Reassurance was provided that the NDA would be implementing an education program throughout Nevada that would facilitate re-licensure per the new federal requirement standards and proposed regulations.

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) Adverse and beneficial economic effect on regulated business

- Adverse effects:
 - Changes proposed to pesticide control applicators
 - The reported cost of the proposed changes to NAC 555 on businesses would be between \$49,708 and \$87,099 based upon the ranges reported by respondents. However, the median cost to individual businesses indicates there would be no additional cost to operations. How the \$49,708-\$87,099 costs were estimated was not provided to the NDA and is not clearly understood since most of the changes pertained to competency standards must already be demonstrated through testing and securing educational courses, often provided by the NDA. In total, 18 respondents (50%) reported that there would be no operation changes due to NAC 555 because of the proposed regulation changes, while 18 respondents (50%) reported they would incur costs. Of those reporting an increase, 10 reported costs between \$100 and \$5,000. These changes are being implemented based on federal requirements.
 - Changes to proposed fees for plant pathology and entomology diagnostic services
 - No adverse economic effects on the public are anticipated since training, licensing, and record keeping requirements are already established in federal and state law.
- Beneficial effects:
 - Changes proposed to pesticide control applicators
 - Since the proposed changes to NAC 555 do not impose new fees, it is unlikely that additional expenses would have to be passed on to consumers. The NDA performed an assessment of fees and is proposing to reduce Agent testing fees from \$350 to \$50. A savings of \$300.
 - Entities will be provided the opportunity to attend courses that will help them meet the new competency standards which are aimed at protecting the public and environment. Staff will receive education resources that can assist them with federal and state compliance.
 - Changes to proposed fees for plant pathology and entomology diagnostic services
 - The proposed fee is less than private labs and is aimed at covering the supply and personnel costs for prepping and reporting samples.
 - Businesses in Nevada will benefit from the service provided and the laboratory will be able to help support the new staff member for plant health secured through the 80th Legislative Session to assist with these services.

(b) Immediate and long-term effects

- Immediate effects
 - Changes to pest control applicators
 - Existing applicators will need to participate in a course to update their licensure or retest. Course work is an existing requirement per the continuing education criteria established in state and federal law. Although, operations will need to allocate time to completing courses, this is not anticipated to be an increase from existing time that must be allocated to completing continuing education units or testing.
 - Changes to fees for plant pathology and entomology diagnostic services
 - The economic impact reported by most survey respondents indicated that the financial impact would range from \$100-\$1,000 for those that participate in the service. The proposed fee is less than private labs and is aimed at covering supply and personnel costs for prepping and reporting samples.
- Long-term effects
 - Changes to pest control applicators
 - Existing applicators will need to participate in a course to update their licensure or retest. Course work is an existing requirement per the continuing education unit criteria established in state and federal law. Although, operations will need to allocate time to completing courses, this is not anticipated to be an increase from existing time that must be allocated to completing continuing education units. Though some respondents reported an estimated cost of \$49,708-\$87,099, how this number was reached was not provided. These changes are being implemented based on federal requirements. These changes are being implemented based on federal requirements.
 - Changes to proposed fees for plant pathology and entomology diagnostics
 - Long-term economic effects on regulated businesses are not anticipated based on the survey results and public response provided during workshops and hearings. The economic impact reported by most survey respondents indicated that the financial impact would range from \$100-\$1,000 for those that participate in the service. The proposed fee is less than private labs and is aimed at covering supply and personnel costs for prepping and reporting the sample.
 - Imposing a minimum fee will prioritize the NDA's limited resources on critical pests that create food production issues or to those with economic impacts pertaining to businesses and farms. This will increase the NDA's capacity to respond to harmful pest detections that impact Nevada's food supply, ultimately impacting the public.

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

In reference to changes proposed to pesticide control applicators, federal funds are available through EPA to assist with the costs of increasing education and outreach, modifying exams and examination processes. NDA staff will need to conduct additional trainings to inform industry members of EPA's revisions. In addition, NDA staff would be required to edit the Nevada Pesticide Applicator's Certification Workbook at (<https://extension.unr.edu/publication.aspx?PubID=2790>), and corresponding certification exams. Pest control operating exams would have to be thoroughly reviewed and possibly revised. Funding for these activities would be covered under the ongoing NDA and EPA Cooperative Agreement.

In reference to changes to proposed fees for plant pathology and entomology diagnostics, there is no cost as it is not a regulation that requires enforcement.

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.

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.

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.

In reference to changes proposed to pesticide control applicators, the proposed revisions do not provide a new fee or increase an existing fee.

In reference to changes to proposed fees for plant pathology and entomology diagnostics, the total fee collected depends on the number of clients or samples. Based on the samples processed in SFY19 and 20 (SFY20 impacted by COVID-19), approximately \$23,136 may be collected for plant pathogen diagnostics and \$12,360 for insect identification annually under the proposed fee schedule. The fees received through this service would partially cover a lab technician's salary and laboratory supply costs and expand the NDA service capability and capacity to attract service contracts from federal agencies.

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.

Jennifer Ott
Director

2300 East St. Louis Ave.
Las Vegas, NV 89104
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