

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R036-97

September 9, 1997

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

AUTHORITY: NRS 439.200, 444.070, 444.100, 444.650, 445A.855, 445A.860, 445A.863, 445A.880, 457.065, 459.201, 584.017, 584.210, 652.125 and 652.130.

Section 1. NAC 278.020 is hereby amended to read as follows:

278.020 “Bureau” means the bureau of [consumer] health protection services of the health division [.] *or its successor.*

Sec. 2. NAC 278.500 is hereby amended to read as follows:

278.500 1. Any developer who has reason to believe that an action taken by [one or more staff members of the bureau] *the health division* pursuant to this chapter was incorrect [(whether the error resulted from] *or based on* inadequate knowledge [or otherwise) *may seek relief under the procedures set forth in this section.*

2. *The developer may discuss the action informally with the chief of the bureau and the staff member or members who took part in the action.*

3. *If that] may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. *If the informal* discussion does not lead to a resolution of the developer's problem, he may, *[by letter, request a conference with the state health officer. The conference must be held at a place and time agreed upon by the developer and the state health officer. At least two senior staff members of the health division must be present, and one member of the staff of the division of environmental protection must be invited to participate. The state health officer shall issue his decision on the problem and have a summary of the conference prepared within 14 days after it has taken place. The summary must include a brief resume of the matters discussed and the recommendations of the staff member or members of the health division.*

4. If the conference with the state health officer does not result in a resolution satisfactory to the developer, he may request that the problem be considered by the state board of health. Such a request must be made by letter, and the letter must justify having the board consider the problem. The original and 10 copies of the letter must be submitted to the secretary of the board within 10 days after the date on which the developer receives the state health officer's decision. The secretary of the board shall, within 10 days thereafter, send to each member of the board a copy of:

- (a) The state health officer's decision;
- (b) The summary of the conference with him; and
- (c) The developer's letter requesting the board's consideration of the problem.

The secretary shall also place the matter on the agenda for the next regular or special meeting of the board.] *within 10 business days after the date scheduled for the informal*

discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the developer and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. The determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the developer.

4. The bureau may waive the informal procedures by giving written notice to the developer.

5. Local agencies shall adopt a parallel procedure for handling similar situations.

Sec. 3. Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 4 to 7, inclusive, of this regulation.

Sec. 4. *As used in NAC 444.001 to 444.980, inclusive, unless the context otherwise requires, “health division” means the health division of the department of human resources.*

Sec. 5. *1. A person who has reason to believe that an action taken by the health division pursuant to NAC 444.010 to 444.306, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a

written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit or license issued pursuant to NAC 444.010 to 444.306, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a permit or license or the suspension or revocation of such a permit or license may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 6. *1. A person who has reason to believe that an action taken by the health division pursuant to NAC 444.310 to 444.546, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. *If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.*

3. *Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.*

4. *An applicant for or holder of a permit or license issued pursuant to NAC 444.310 to 444.546, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a permit or license or the suspension or revocation of such a permit or license may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.*

5. *As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.*

Sec. 7. *1. A person who has reason to believe that an action taken by the health division pursuant to NAC 444.550 to 444.566, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action,*

request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit or license issued pursuant to NAC 444.550 to 444.566, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or the renewal of such a permit or license or the suspension or revocation of such a permit or license may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 8. NAC 444.010 is hereby amended to read as follows:

444.010 As used in NAC 444.010 to 444.306, inclusive, *and section 5 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 444.020 to 444.096, inclusive, have the meanings ascribed to them in those sections.

Sec. 9. NAC 444.302 is hereby amended to read as follows:

444.302 1. The health authority may order a suspension of an operating permit and may order the owner or operator of a public bathing or swimming facility or natural bathing place to prohibit any person from using it if he finds:

(a) A failure of the equipment, structure, area or enclosure of the facility or bathing place which jeopardizes the health or safety of the persons using or operating it.

(b) That the facility or bathing place lacks properly functioning equipment or proper material for recirculating, treating, or testing the water used for swimming or bathing.

(c) A lack of required supervisory personnel or required lifeguards.

(d) That the operator of the facility or bathing place is not maintaining the required water quality.

(e) That the operator does not possess a valid operating permit.

2. [If an operating permit is revoked pursuant to subsection 4 of NAC 444.304, an administrative hearing on the propriety of the revocation must be conducted by the health authority if, within 10 days after the revocation, the operator serves upon the health authority a written request for the hearing.]

The health authority may deny an application for an operating permit if the applicant fails to:

- (a) Notify the health authority before construction and completion of the facility;*
- (b) Allow inspection of the facility during or after its construction; or*
- (c) Follow any of the requirements set forth in NRS 444.065 to 444.120, inclusive, and NAC 444.010 to 444.306, inclusive.*

Sec. 10. NAC 444.304 is hereby amended to read as follows:

444.304 1. If the health authority orders the closing of a public bathing or swimming facility or natural bathing place, he shall issue a written order to the owner or operator of the facility or bathing place, or his representative, stating with particularity the reason for the order of closure along with his finding that the condition giving rise to the order represents a serious threat to the public health and safety.

2. The order must state that the facility or bathing place is to be closed immediately and must specify the corrective action necessary [**for the reinstatement of the operating permit.**] *before the facility or bathing place may be reopened for use.*

3. The order must be served upon the owner, operator, representative or a person in charge of the facility or bathing place. The person on whom the order is served shall close the facility or bathing place immediately and shall prohibit any person from using it.

4. If the order is served upon a person whose operating permit is suspended, the [**permit may be revoked**] *health authority may take appropriate action to revoke the operating permit* unless the operator:

- (a) Closes the facility or bathing place immediately; and
- (b) Takes any corrective action required by the order within the time therein specified.

Sec. 11. NAC 444.310 is hereby amended to read as follows:

444.310 As used in NAC 444.310 to 444.546, inclusive, *and section 6 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 444.315 to 444.416, inclusive, have the meanings ascribed to them in those sections.

Sec. 12. NAC 444.542 is hereby amended to read as follows:

444.542 *1.* The health authority may order a suspension of an operating permit, and order the owner or operator of a public spa to prohibit persons from using it if he finds:

[1.] *(a)* A failure of spa equipment, structure, area or enclosure which endangers the health or safety of the persons using or operating it.

[2.] *(b)* That the spa lacks properly functioning equipment or proper material for recirculating, treating or testing the spa water.

[3.] *(c)* That the operator of the spa is not maintaining the required water quality.

[4.] *(d)* That the operator does not have a valid operating permit.

[5.] *(e)* Serious or repeated violations of any of the requirements of NAC 444.310 to 444.546, inclusive, or interference with the health authority in the performance of his duties.

2. The health authority may deny an application for an operating permit if the applicant fails to:

(a) Notify the health authority before construction and completion of the facility or bathing place;

(b) Allow inspection of the public bathing or swimming facility or natural bathing place during or after its construction; or

(c) Follow any of the requirements set forth in NAC 444.310 to 444.546, inclusive.

Sec. 13. NAC 444.544 is hereby amended to read as follows:

444.544 1. The health authority may close public spas which are not operating according to the provisions of NAC 444.310 to 444.546, inclusive.

2. When the health authority orders the closing of a public spa, he shall issue a written order to the spa owner or operator or his representative stating the particular reason or reasons for the order of closure, along with the finding that the condition or conditions giving rise to the order represent a serious threat to the public health and safety.

3. The order must state that the spa is to be closed immediately and specify the corrective action necessary for the reinstatement of the operating permit.

4. The health authority shall serve the order upon the owner, operator, representative or a person in charge of the public spa. The person on whom the order is served shall close the spa immediately and shall prohibit any person from using it.

5. The owner, operator or representative of the person in charge of a public spa who has his permit suspended must comply with the requirements of the written notice of suspension within the time stated in the notice. If the corrections ordered in the notice are not made within the time allowed the permit to operate may be revoked. [An administrative hearing may be granted if requested in writing.]

Sec. 14. NAC 444.550 is hereby amended to read as follows:

444.550 NAC 444.550 to 444.564, inclusive, *and section 7 of this regulation* do not apply to facilities for permanent family or individual occupancy, nor to facilities or premises assigned to an employee for his exclusive use or convenience. The application of these sections is not intended to apply to temporary ranching activities, including buckarooing or the roundup and moving of sheep and cattle.

Sec. 15. NAC 444.564 is hereby amended to read as follows:

444.564 [As evidence of] *1. Before operating a labor camp, the operator must apply for a permit to operate, submit sufficient plans for review by the health division and pay the required fees.*

2. Within a reasonable period after receipt of an application for a permit to operate a labor camp, plans of the labor camp and the required fees, the health division shall review the application and plans submitted for accuracy and completeness. Upon receipt of an application that it determines to be complete, the health division shall conduct an inspection to determine whether the facility complies with NAC 444.550 to 444.566, inclusive.

3. The health division shall issue a permit to operate a labor camp if the labor camp is in compliance with NAC 444.550 to [444.564, inclusive, the health division shall issue a permit.] 444.566, inclusive.

Sec. 16. NAC 444.786 is hereby amended to read as follows:

444.786 1. The permit must be denied in writing and the reasons specified therefor if:

(a) The health authority determines that the proposed installation will not comply with NAC 444.750 to 444.820, inclusive; or

(b) Public or community sewerage systems are available within 400 feet of the nearest property line.

2. Any person who has reason to believe that an action *taken* by the health division [*or one or more staff members has been*] *pursuant to NAC 444.750 to 444.820, inclusive, is* incorrect or based on inadequate knowledge [*may seek relief by the following procedures:*

(a) *First, there must be an informal discussion with the staff member and chief of the section which is concerned with the program concerned.*

(b) *If this] may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, [an informal conference may be requested by letter to the state health officer. The conference must be held at a place and time mutually agreed upon. At least two senior staff members of the health division, as designated by the state health officer, must be present. A written summary of the conference must be prepared. This must include a brief resume of the matters discussed, conclusions and recommendations of the staff of the health division.

(c) *If the informal conference does not result in a resolution of the problem, formal consideration by the state board of health may be requested by letter to the secretary of the board. Six copies must be submitted.*

(d) The secretary of the board shall, within 10 days, forward a copy of the conference summary and the letter requesting board consideration to each member of the board. The secretary shall also place the matter on the agenda for the next regular or special meeting of the board.

3.] the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit issued pursuant to NAC 444.750 to 444.820, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or the modification, suspension or revocation of such a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. Permits are null and void after 12 months from the date of issuance if the proposed construction, alteration or extension of the sewage disposal system is not completed within this time period.

6. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 17. NAC 444.820 is hereby amended to read as follows:

444.820 1. Persons engaged in the operation of removing and disposing of the solid and liquid contents of septic tanks, holding tanks or other sewage treatment or disposal facilities must obtain an annual permit from the health authority.

2. The application for this permit should contain the following information:

(a) Area to be served.

(b) Type of waste to be hauled.

(c) Location of all discharge points and type of waste discharged at each location.

(d) License number and state of registration of each truck.

(e) Capacity of each truck.

(f) A statement signed by the applicant that all waste material collected will be disposed of in accordance with the provisions of NAC 444.750 to 444.820, inclusive, and that such waste will not be discharged to any waterway or sewer nor deposited on any land without prior approval of the health authority.

3. The name, address and phone number of the septic tank pumping contractor or his permit number or both must be legibly lettered on both sides of each vehicle used for septic tank pumping purposes.

4. Every vehicle used for septic tank pumping purposes must be equipped with a watertight tank or body and be maintained in a clean and sanitary condition. Liquid wastes

must not be transported in an open body vehicle unless contained within suitable portable receptacles. All pumps and hose lines must be maintained so as to prevent leakage.

5. All portable receptacles used for transporting liquid or solid wastes must be watertight, equipped with tight-fitting lids, and must be cleaned daily.

6. Prior approval in writing must be obtained from the health authority for every site at which a septic tank pumping contractor plans to discharge a specific volume of waste material collected and no waste material may be discharged on a site without prior approval. Waste material collected by the septic tank pumping contractor must not be discharged into ditches, watercourses, lakes, ponds or any point where it can pollute any watercourse, water supply source or bathing area. It must not be deposited within 600 feet of any highway.

7. All septic tank pumping contractor truck pumping and discharge hoses must be fitted with automatic shutoff valves.

[8. Any septic tank pumping contractor violating NAC 444.750 to 444.820, inclusive, or the terms of the permit must, for the first offense, have his permit suspended for 30 days and for the second offense have his permit suspended for a period of 1 year.]

Sec. 18. NAC 444.834 is hereby amended to read as follows:

444.834 1. The district board of health or its designated hearing board shall, after receiving evidence from all interested persons at the hearing on the request for a variance, make written findings of fact based on the evidence as to whether or not the variance, if granted, would cause human and domestic waste to be disposed of in a manner:

- (a) That would cause any drinking water supply to be contaminated;
- (b) That would give rise to a public health hazard by being accessible to insects, rodents or other possible carriers which may come in contact with food or drinking water;
- (c) That would give rise to a nuisance due to odors or unsightly appearance;
- (d) That would contaminate any body of water; and
- (e) That would violate any other laws or regulations governing sewage disposal.

2. Based on its findings of fact, the district board of health or its designated hearing board shall make a written recommendation of denial or approval of the variance to the board.

3. The record of the hearing by the district board of health or its designated hearing board must include:

- (a) Written findings of fact;
- (b) Written recommendation;
- (c) Verbatim evidence received or considered by the district board of health or its designated hearing board; and
- (d) The application for the variance.

4. The district board of health shall submit the record of the variance request hearing to the bureau [of environmental health] *of health protection services of the health division of the department of human resources or its successor* within 14 days of such hearing and simultaneously forward a copy of the findings of fact and recommendation to the applicant for a variance.

Sec. 19. NAC 444.836 is hereby amended to read as follows:

444.836 1. The bureau [of environmental health] *of health protection services of the health division of the department of human resources or its successor* shall, within 14 days of receipt of the district board of health's record of the hearing on the request for a variance, review the record, enter a written recommendation either to deny or grant the requested variance and forward the written recommendation accompanied with the district board of health's variance request hearing record to the secretary of the board. The bureau shall send a copy of its written recommendation to the applicant for a variance simultaneously with sending it to the secretary of the board.

2. The basis for the [bureau of environmental health's] written recommendation [under] *of the bureau pursuant to* subsection 1 is not limited to the record of the district board of health's variance hearing, but may include engineering and sanitation studies conducted by the bureau with regard to the criteria established in subsection 1 of NAC 444.834 as a basis for the district board of health's findings of fact and recommendation.

3. The bureau [of environmental health] shall include in its recommendation under subsection 1 any findings of fact in addition to those of the district board of health and the source of the information relied on to arrive at such additional findings of fact.

Sec. 20. NAC 444.838 is hereby amended to read as follows:

444.838 1. If the *recommendations of the* district board of [health's] *health* and the bureau [of environmental health's recommendations] *of health protection services of the health division of the department of human resources or its successor* are in conflict or a

recommended denial of a variance is concurred in by both the district and the bureau, a hearing on the request for the variance will be held by the state board of health, if requested by the applicant.

2. If the *recommendation of the* bureau [of environmental health's recommendation] is entered at least 30 days [prior to] *before* the next regularly scheduled meeting of the state board of health, the hearing referred to in subsection 1 will be held at the meeting, otherwise it will be scheduled for the following regularly scheduled meeting.

3. Evidence presented at the hearing of the state board of health referred to in subsection 1 will be limited to that evidence concerning those issues not raised at the district board of health's hearing, newly discovered evidence, additional material evidence concerning issues presented at the hearing of the district board of health or evidence in support of or in rebuttal to the findings of fact of the bureau [of environmental health] as a result of its own engineering and sanitation studies.

4. At the conclusion of the evidence referred to in subsection 3, the request for a variance stands submitted and the state board of health will enter a written decision, including findings of fact, within 2 weeks of the hearing date.

Sec. 21. NAC 444.840 is hereby amended to read as follows:

444.840 If the district board of health and the bureau [of environmental health] *of health protection services of the health division of the department of human resources or its successor* concur in their recommendations that a variance should be granted, the state

board of health will grant the variance at its next regularly scheduled meeting, upon review and approval.

Sec. 22. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

1. A person who has reason to believe that an action taken by the health division pursuant to NAC 445A.544 to 445A.590, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit issued pursuant to NAC 445A.544 to 445A.590, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a permit or the suspension or revocation of

such a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 23. NAC 445A.519 is hereby amended to read as follows:

445A.519 1. **[If a supplier of water wishes to contest a finding by the health division such as:**

- (a) The ground water he is using is under the influence of surface water; or**
- (b) His program for controlling the watershed is inadequate,**

the supplier of water may file a request for a hearing with the administrator of the health division or his designee.

2. The request for a hearing must be filed not less than 30 days after the date of notification of the finding and must specify:

- (a) The finding the supplier wishes to contest; and**
- (b) The reasons that the supplier believes the finding is incorrect.**

3. The administrator shall consider the evidence presented at the hearing and any recommendation made by his designee and, not less than 30 days after the hearing, inform the supplier of water of his decision.] *A person who has reason to believe that an action taken by the health division pursuant to NAC 445A.495 to 445A.540, inclusive, is incorrect*

or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. A person who is aggrieved by an action of the health division taken pursuant to NAC 445A.495 to 445A.540, inclusive, relating to the denial of an application for or renewal of a permit or the suspension or revocation of a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 24. NAC 445A.544 is hereby amended to read as follows:

445A.544 As used in NAC 445A.544 to 445A.590, inclusive, *and section 22 of this regulation*, unless the context otherwise requires:

1. “Bottled water” means water which may or may not be treated and is sealed in a bottle, package or other container, properly labeled and offered for sale as water for drinking. The term includes mineral water.

2. *“Health division” means the health division of the department of human resources.*

3. “Mineral water” means bottled water which is:

(a) Produced from a source which is approved by the health authority; and

(b) Tapped at one or more boreholes or natural springs.

[3.] 4. “Nontoxic material” means material which:

(a) Is used for surfaces which come in contact with the water used in the transporting, processing, storing and packaging of bottled water; and

(b) Does not contain substances which may render the water injurious to health or which may adversely affect the flavor, color, odor or bacteriological quality of the water.

[4.] 5. “Operator” means the operator of a plant.

[5.] 6. “Plant” means a facility in which water is:

(a) Processed for the market by treatment;

(b) Bottled; or

(c) Treated and bottled.

[6.] 7. “Public water system” has the meaning ascribed to it in NRS 445A.840.

Sec. 25. NAC 445A.5895 is hereby amended to read as follows:

445A.5895 1. The health authority may *deny an application for or* order the *modification, suspension or revocation* of a permit to operate a plant [for:

(a) A] *on any of the following grounds:*

(a) *The existence of a* substantial health hazard [;

(b) *A violation of the provisions of]*, *as determined by the health authority;*

(b) *The failure or refusal of the applicant for or holder of a permit to comply with any provision of chapter 445A of NRS or NAC 445A.544 to 445A.590, inclusive; [or]*

(c) *Operating a plant without a permit; or*

(d) *The interference with the health authority in the performance of his duties.*

The suspension of the permit will remain in effect until the *health authority determines that the violation is corrected* . [and the health authority revokes the suspension.]

2. *The health authority shall send written notice of the denial of an application for or the modification, suspension or revocation of a permit to operate a plant to the operator pursuant to the requirements set forth in NAC 439.300 to 439.440, inclusive.*

3. As used in this section, “substantial health hazard” means a condition in a plant that constitutes a hazard to public health, including, but not limited to:

(a) Sewage or liquid wastes that are not disposed of in a manner which is approved by the health authority.

(b) The employment of a person by an operator if the operator knows that the employee has a communicable disease and allows him to work in an area where water is treated or bottled.

Sec. 26. NAC 445A.611 is hereby amended to read as follows:

445A.611 1. If a permit to operate a water system is issued to an applicant, the health division shall notify the applicant in writing of any limitations or conditions placed on the owner or operator of the water system pursuant to subsection 4 of NAC 445A.610. A copy of the notice must be attached to the permit.

2. [If the health division denies an application for a permit to operate a water system, the applicant must be notified in writing of the denial and the reasons for the denial.

3.] All applications for permits and copies of permits issued are public records and may be inspected by any person during the regular office hours of the health division.

Sec. 27. NAC 445A.612 is hereby amended to read as follows:

445A.612 1. The health division may *deny an application for or* modify, suspend or revoke a permit to operate a water system [for cause, including:] *on any of the following grounds:*

(a) A violation of a condition or limitation placed on the permit pursuant to subsection 4 of NAC 445A.610.

(b) A misrepresentation of a relevant fact or a failure to disclose fully all relevant facts in obtaining the permit.

(c) *A failure or refusal of the applicant for or holder of a permit to comply with any provision of NAC 445A.595 to 445A.614, inclusive.*

(d) *Operating a water system without a permit.*

(e) *Interference with the health division in the performance of its duties.*

2. The health division shall [make the modification, suspension or revocation of a permit effective within 30 calendar days after the holder of the permit receives written notice by the health division of the facts or conduct warranting such action.

3. The health division shall immediately] :

(a) *Immediately* notify the local governing body when a permit is revoked.

(b) *Send written notice of the denial of an application for or the modification, suspension or revocation of a permit to operate a water system pursuant to the requirements set forth in NAC 439.300 to 439.440, inclusive.*

Sec. 28. NAC 445A.614 is hereby amended to read as follows:

445A.614 1. An applicant *for or holder of a permit* who:

(a) Has reason to believe that an action taken by the health division [or an employee of the health division] pursuant to NAC 445A.595 to 445A.614, inclusive, has been incorrect or based on inadequate knowledge; or

(b) Objects to a limitation or condition placed on his permit by the health division pursuant to subsection 4 of NAC 445A.610, may , *within 10 business days after receiving notice of the action taken*, request [a meeting] *an informal discussion* with the employee of the health division responsible for the action

and [the chief of the bureau of health protection services of the health division. The chief of the bureau of health protection services shall prepare a written summary of the meeting and a response to the meeting within 30 calendar days after the date of the meeting. A copy of the written summary must be sent to the applicant.] *his immediate supervisor.*

2. If the [meeting] *informal discussion* does not resolve the problem, [a formal conference may be requested by the applicant by submitting a written letter to the administrator of the health division requesting a conference. The formal conference must be held at a place and time mutually agreed upon by the administrator or a hearing officer designated by the administrator and the applicant. The administrator or the hearing officer designated by the administrator shall attend the formal conference with the applicant. The administrator or the hearing officer designated by the administrator shall prepare a written summary of the formal conference within 14 calendar days after the formal conference and shall include in the summary a brief statement of the matters discussed and recommendations resulting from the formal conference. A copy of the written summary must be sent to the applicant.] *the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.*

3. *Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.*

4. *An applicant for or holder of a permit issued pursuant to NAC 445A.595 to 445A.614, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a permit or the modification, suspension or revocation of such a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.*

5. *As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.*

Sec. 29. NAC 445A.647 is hereby amended to read as follows:

445A.647 [1.] The health division shall send [a] written notice [to the holder of a certificate if it is considering] *of the denial of an application for or* the suspension or revocation of [his certificate].

2. The notice must be sent by certified mail, return receipt requested and must state the reason for considering such action. The notice must also contain a statement that the operator may, no later than 15 days after the date of receipt of the notice, request an informal hearing to provide him an opportunity to be heard. If an informal hearing is requested, it must be held before a hearing officer or a panel of hearing officers appointed

by the administrator of the health division. The hearing officer or members of the panel of hearing officers appointed by the administrator of the health division must be senior members of the staff of the health division or members of the advisory board.

3. Failure to request a hearing within 15 days after the date of receipt of the notice is a waiver of the right to a hearing.] *a certificate pursuant to the requirements set forth in NAC 439.300 to 439.440, inclusive.*

Sec. 30. NAC 445A.652 is hereby amended to read as follows:

445A.652 1. Any person who has reason to believe that an action taken by the health division [or an employee of the health division] pursuant to NAC 445A.617 to 445A.652, inclusive, has been incorrect or based on inadequate knowledge may , *within 10 business days after receiving notice of the action*, request an informal discussion with the employee responsible for the action and [the supervisor of public health engineering in the bureau of health protection services of the health division.] *the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, [an informal conference may be requested by the aggrieved person by submitting a written letter to the state health officer requesting a conference. The informal conference must be held at a place and time mutually agreed upon by the aggrieved person and the state health officer. Not less than one senior staff member of the health division, as designated by the state health officer, must be present at the informal conference. The state health officer shall submit a request to not less than three members of the advisory board for their attendance at the informal

conference. A written summary of the informal conference must be prepared and must include the matters discussed and any conclusions or recommendations resulting from the informal conference. A copy of the written summary must be sent to the aggrieved person by certified mail.] *the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau receives the written request.*

3. *Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.*

4. *An applicant for or holder of a certificate issued pursuant to NAC 445A.617 to 445A.652, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a certificate or the suspension or revocation of such a certificate may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.*

5. *As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.*

Sec. 31. Chapter 446 of NAC is hereby amended by adding thereto the provisions set forth as section 32 and 33 of this regulation.

Sec. 32. *“Health division” means the health division of the department of human resources.*

Sec. 33. *1. A person who has reason to believe that an action taken by the health division pursuant to this chapter or chapter 446 of NRS is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit issued pursuant to this chapter or chapter 446 of NRS, who is aggrieved by an action of the health division relating to the denial of an application for or the renewal of such a permit or the suspension or revocation of such

a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 34. NAC 446.010 is hereby amended to read as follows:

446.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 446.0105 to 446.038, inclusive, *and section 32 of this regulation* have the meanings ascribed to them in those sections.

Sec. 35. NAC 446.395 is hereby amended to read as follows:

446.395 1. Potable water of a sufficient amount to meet the demands of a food establishment must be provided from a source that is approved by the health authority and licensed by the health division of the department of human resources.

2. A food establishment that was issued a permit pursuant to the provisions of NRS 446.875 before September 16, 1992, may provide water which is not piped directly if all potable water which is not piped directly to the food establishment from the source is transported in a system for the transportation of water in bulk and is delivered to a water system which is closed. Both of these systems must be constructed, licensed, operated and approved by the health division . [of the department of human resources.]

Sec. 36. NAC 457.293 is hereby amended to read as follows:

457.293 1. A holder of a certificate or an applicant for a certificate who has reason to believe that an action taken by the health division [concerning him] pursuant to NRS 457.200 to 457.480, inclusive, is incorrect or based on inadequate knowledge may [:

1. Discuss the problem], within 10 business days after receiving notice of the action, request an informal discussion with the employee [or other representative of the health division who took] responsible for the action and [the supervisor of the radiological health section of the health division. The supervisor may discuss the problem with the chief of the bureau of health protection services of the health division and the administrator of the health division.] the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, [request a conference with the administrator of the health division in writing.] the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be [held at a] scheduled for a date, place and time mutually agreed upon [. At least two senior members of the health division, designated by the administrator, must be present. The health division shall prepare a written summary of the conference within 14 days after the conference. The summary must include a brief description of the matters discussed and the conclusions and recommendations of the members of the staff.

3. If the conference does not result in a resolution of the problem, request consideration by the board pursuant to the provisions of chapter 439 of NAC.] by the

aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a certificate issued pursuant to NRS 457.200 to 457.480, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a certificate or the suspension or revocation of such a certificate may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 37. NAC 459.136 is hereby amended to read as follows:

459.136 *1.* Any licensee or registrant who has reason to believe that an action by the division or one or more of the division's staff members *pursuant to NAC 459.118 to 459.950, inclusive*, concerning him has been incorrect or based on inadequate knowledge **[may seek relief by the following procedures:**

1. First, reliance must be placed on informal discussion with the staff member and the supervisor of the radiological health section. The supervisor may also discuss the problem

with the bureau chief and the administrator of the division.] *within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the *informal* discussion does not resolve the problem, [an informal conference may be requested by letter to the administrator. The conference must be held at a place and time mutually agreed upon. At least two senior staff members of the division, designated by the administrator, must be present. A written summary of the conference must be prepared within 14 days. The summary must include a brief resume of the matters discussed, conclusions and recommendations of the staff members.

3. If the informal conference does not result in a resolution of the problem, formal consideration by the board may be requested in accordance with the procedures in chapter 439 of NAC, regulations governing the procedures for seeking variances from board regulations.] *the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.*

3. *Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.*

4. An applicant for or holder of a license or registration issued pursuant to NAC 459.118 to 459.950, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a license or registration or the modification, suspension or revocation of such a license or registration may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

5. As used in this section, "bureau" means the bureau of health protection services of the health division of the department of human resources or its successor.

Sec. 38. NAC 459.794 is hereby amended to read as follows:

459.794 1. If the division determines, with respect to the complaint under NAC 459.792, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the division must notify the complainant in writing of that determination.

2. The complainant may obtain a review of the determination by submitting a written statement of his position with the state health officer, who shall provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, name of the complainant. The licensee or registrant may submit an opposing written statement of position with the state health officer, who shall provide the complainant with a copy of the statement by certified mail. Upon request of the complainant, the state health officer may hold an informal conference, pursuant to

subsection 2 of NAC 459.136, in which the complainant and licensee or registrant, may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant may be made only following receipt of his written authorization. After considering all written or oral views presented, the state health officer shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

3. ~~[If the] *The* informal conference [does not result in resolution of the problem, formal consideration by the state board of health may be requested by] *cannot be appealed and is the final remedy available to* the complainant or the licensee or registrant pursuant to subsection 3 of NAC 459.136. [The board shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of its decision and the reason for it.]~~

4. If the division determines that an inspection is not warranted because the requirements of subsection 1 of NAC 459.792 have not been met, the division shall notify the complainant in writing of that determination. Such a determination is without prejudice to the filing of a new complaint meeting the requirements of that subsection.

Sec. 39. NAC 461A.050 is hereby amended to read as follows:

461A.050 The applicant must send a copy of his plans and specifications relating to the supply of water and the disposal of sewage and other refuse to:

1. The bureau of [consumer] health protection services of the health division in the department of human resources; and

2. The division of environmental protection in the state department of conservation and natural resources.

Sec. 40. NAC 461A.500 is hereby amended to read as follows:

461A.500 As used in NAC 461A.500 to 461A.620, inclusive, unless the context otherwise requires:

1. “Camping vehicle” means a travel trailer, whose overall length does not exceed 32 feet and whose body width does not exceed 8 feet, a pickup camper or similar vehicular dwelling used for travel, vacation or recreational purposes, occupied in any one place for 30 days or less.

2. “Camping vehicle space” means a plainly marked plot of ground for the placing of a camping vehicle.

3. “Health authority” means officers and agents of the health division or officers and agents of the local boards of health.

4. *“Health division” means the health division of the department of human resources.*

5. “Person” includes governmental agencies.

[5.] 6. “Sanitary station” means a facility used for removing and disposing of wastes from camping vehicle retention tanks.

[6.] 7. “Service building” means a building provided to house sanitary facilities.

Sec. 41. NAC 461A.540 is hereby amended to read as follows:

461A.540 1. All sanitation facilities for camping vehicles in Nevada which are constructed, reconstructed or extensively altered after November 21, 1970, must conform to the requirements in NAC 461A.500 to 461A.620, inclusive.

2. Approval for construction of sanitation facilities for camping vehicles must be obtained from all appropriate state and local agencies before commencing construction.

3. Any person providing camping vehicle spaces must notify the health authority at least 30 days prior to their intended use and must furnish the following information:

- (a) Names and addresses of owners or operators;
- (b) Location of facilities;
- (c) Size of camp and facilities;
- (d) Number of spaces available;
- (e) Water availability;
- (f) Sewage system and sanitation facilities;
- (g) Garbage facilities; and
- (h) Availability of open pit fires or enclosed fire facilities.

4. The health authority [**must make an inspection at least once a year of the**] *may inspect* camping facilities *annually or as often as deemed necessary* and prepare a written report on the camp. An official permit will be given only once, and again when the facilities change ownership. [**Any person who does not**] *A person must* possess an unrevoked permit for camping vehicle facilities [**as**] issued by the health authority [,] in the

name of that person [, may not operate] *before operating* sanitation facilities for camping vehicles.

Sec. 42. NAC 461A.620 is hereby amended to read as follows:

461A.620 1. Whenever the health authority finds unsanitary or other conditions or violations of NAC 461A.500 to 461A.620, inclusive, in the operation and maintenance of facilities for camping vehicles, [he] *the health authority* shall:

(a) In the case where [he] *the health authority* determines that a substantial and immediate hazard to public health or safety exists, take any of the following actions:

- (1) Revoke the permit;
- (2) Remove or abate such hazards;
- (3) Take necessary steps to protect persons from such hazards; or
- (4) Notify the permitholder or operator and any person who might be affected by such hazardous conditions, require specific corrective action and specify the time period within which such action must be taken.

(b) In all other cases , issue a notice of violation to the permitholder or operator citing such conditions, specifying the corrective action to be taken, and specifying the time period within which action must be taken.

2. If the permitholder or operator fails to comply with a notice of violation, the permit must be revoked.

3. [When a permit is] *A permit may be* revoked without notice [because of] *if the health authority determines that* a substantial and immediate hazard to public health and

safety [, the permitholder may request a hearing within 10 days after the health authority's action of revocation.

4. In all other cases, the permitholder may request a hearing at any time prior to the expiration of the time stated in the notice of violation. At least 10 days must be allowed any permitholder regardless of the time periods stated in the notice of violation.

5. The request for hearing must be directed to the health officer of the agency issuing the permit. The health officer or his designee shall provide the permitholder with an opportunity to present all facts relevant to the issue of revocation. The decision of the health officer is final.

6.] *exists.*

4. A person who has reason to believe that an action taken by the health division pursuant to NAC 461A.500 to 461A.620, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

5. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

6. *Except as otherwise provided in subsection 7, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.*

7. *An applicant for or holder of a permit issued pursuant to NAC 461A.500 to 461A.620, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or the suspension or revocation of such a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.*

8. Nothing in this section prevents the health authority from extending the time allowed for corrective action when the permitholder provides a written response within 10 days of receiving a notice of violation setting forth the nature and time needed for corrective action. The health authority shall require periodic reports as may be necessary to demonstrate reasonable progress toward final compliance.

9. *As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.*

Section 1. Chapter 584 of NAC is hereby amended by adding thereto the provisions set forth as sections 44 to 48, inclusive, of this regulation.

Sec. 44. *“Bureau” means the bureau of health protection services of the health division of the department of human resources or its successor.*

Sec. 45. *“Division” means the division of agriculture of the department of business and industry.*

Sec. 46. *“Health division” means the health division of the department of human resources.*

Sec. 47. *1. A person who has reason to believe that an action taken by the health division pursuant to NAC 584.0111 to 444.0551, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit issued pursuant to NAC 584.0111 to 444.0551, inclusive, who is aggrieved by an action of the health division relating to the denial of an application for or renewal of such a permit or the suspension or revocation of

such a permit may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

Sec. 48. *1. A person who has reason to believe that an action taken by the health division pursuant to NAC 584.1611 to 444.2881, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.*

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. Except as otherwise provided in subsection 4, the determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

4. An applicant for or holder of a permit who is aggrieved by an action of the health division taken pursuant to NRS 584.210 may appeal that action in accordance with NAC 439.300 to 439.440, inclusive, after exhausting the informal procedures set forth in this

section, except that the bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.

Sec. 49. NAC 584.005 is hereby amended to read as follows:

584.005 As used in this chapter, unless the context otherwise requires, [**“division”** means the division of agriculture of the department of business and industry.] *the words and terms defined in sections 44, 45 and 46 of this regulation have the meanings ascribed to them in those sections.*

Sec. 50. NAC 584.0121 is hereby amended to read as follows:

584.0121 “Adulterated or misbranded frozen desserts or mix” means any frozen dessert or mix which contains any unwholesome substance, or which does not conform with its definition, or which carried a grade label unless the grade label has been awarded by the health [**officer**] *division* and not revoked.

Sec. 51. NAC 584.0371 is hereby amended to read as follows:

584.0371 1. No person may deliver directly or indirectly into or receive for sale, or to produce, sell or offer for sale, or to have in storage where mix or frozen desserts are sold or served, any mix or frozen dessert, if he does not possess a permit from the health [**officer.**] *division*. Only a person who complies with the requirements of NAC 584.0111 to 584.0551, inclusive, *and section 47 of this regulation* may receive and retain a permit.

2. Permits are not transferable.

Sec. 52. NAC 584.0381 is hereby amended to read as follows:

584.0381 1. A permit may be [temporarily] *summarily* suspended by the health [officer] *division* when a condition is found which constitutes an imminent health hazard and prompt action is necessary to protect the public health . [, or for interference with the health officer in the performance of his duties.]

2. A permit may be revoked [after an opportunity for a hearing] by the health [officer upon] *division for* serious or repeated violations [.

3. If at any time a suspension of the permit is justified in any case, the health officer shall, subject to the provisions of NAC 584.0371, 584.0391, 584.0411 and 584.0431 to 584.0511, inclusive, immediately suspend the permit of the frozen desserts plant.

4.] *of chapter 584 of NRS or NAC 584.0111 to 584.0551, inclusive.*

3. Upon receipt of a satisfactory application [, in case the] *after* suspension of a permit [is the result] *because* of an unsatisfactory bacterial condition or cooling temperature, the health [officer] *division* shall take further samples at the rate of not more than two samples per week. The health [officer] *division* shall reissue the permit whenever the average of the last four sample results indicate the necessary compliance.

[5.] 4. If the suspension of a permit is [due to a] *because of a* violation of any item or items of the specifications prescribed in NAC 584.0431 to 584.0511, inclusive, other than bacterial condition or cooling temperature, the application must be accompanied by a statement signed by the applicant [to the effect] *attesting* that the violated item or items of the specifications have been [conformed with. Within one week of the] *remedied. Upon* receipt of an application and statement , the health [officer] *division* shall make a

reinspection, and thereafter as many additional reinspections as [he] *it* may deem necessary to assure [himself] that the applicant is again complying with the requirements. If the findings indicate compliance, the health [officer] *division* shall reissue the permit.

Sec. 53. NAC 584.0391 is hereby amended to read as follows:

584.0391 1. [At least once during each 6-month period the health officer] *The health division* shall inspect *as often as it deems necessary* all frozen desserts plants producing products intended for consumption. If the health [officer] *division* discovers the violation of any item of sanitation, [he] *it* shall make a second inspection after a lapse of such time as [he] *it* deems necessary for the defect to be remedied. The second inspection must be used in determining compliance with the requirements of this regulation. Generally, not until the second inspection has revealed a failure to correct the violation, is the frozen desserts manufacturer subject to suspension of his permit or court action.

2. One copy of the inspection report must be delivered to the owner of the premises inspected, or his agent, and be readily available at any time for a period of 12 months. Another copy of the inspection report must be filed with the records of the health [department.] *division*.

Sec. 54. NAC 584.0411 is hereby amended to read as follows:

584.0411 1. [During each 6-month period at least four samples of frozen desserts and pasteurized mix from each plant must be tested by the health officer.] Samples of *pasteurized* mix or frozen desserts may be taken *from any frozen desserts plant* by the health [officer] *division* at any time [prior to] *before* final delivery. Samples of ingredients

may be tested as often as the health [officer] *division* may require. Samples of frozen desserts from stores, cafes, soda fountains, restaurants and other places where frozen desserts are sold may be tested as often as the health [officer] *division* may require.

2. Bacterial plate counts and direct microscopic counts must be made in conformity with the current standard methods recommended by the American Public Health Association. Examinations may include any chemical and physical determinations as the health [officer] *division* may deem necessary for the detection of adulteration. These examinations must be made in conformity with the current standard methods of the American Public Health Association and the Association of Official Agricultural Chemists.

3. All proprietors of plants, stores, cafes, restaurants, soda fountains and other similar places must furnish the health [officer, upon his] *division, upon its* request, with the names of all persons from whom their mix or frozen desserts are obtained.

4. Whenever the average bacterial count, the average reduction time or the average cooling temperature falls beyond the limit, the health [officer] *division* shall send written notice to the plant concerned. [He] *The health division* shall take an additional sample, but not before the lapse of 3 days, for determining a new average in accordance with NAC 584.0131. A violation of the requirements by the new average or by any subsequent average during the remainder of the current grading period requires the immediate suspension of the permit, unless the last result is within the limit.

5. Frozen desserts mix and the milk, cream and milk products in fluid form used therein must be within the following standards where applicable:

- (a) For unpasteurized milk or milk products in fluid form:
 - (1) Plate count or direct microscopic clump count per milliliter must not exceed 500,000;
 - (2) Thermaduric count per milliliter must not exceed 20,000;
 - (3) Methylene blue reduction time must not be less than 4 1/2 hours; and
 - (4) Resazurin Reduction time to Munsell Color Standard SP 7/4 must not be less than 2 1/2 hours.
- (b) For unpasteurized cream the plate count or direct microscopic clump count per milliliter must not exceed 800,000.
- (c) For pasteurized milk, milk products in fluid form, frozen desserts and mix the plate count per milliliter must not exceed 50,000.
- (d) For pasteurized cream the plate count per milliliter must not exceed 100,000.
- (e) For frozen desserts and mix there must be not more than one of the last four coliform counts per milliliter exceeding 20.

Sec. 55. NAC 584.0481 is hereby amended to read as follows:

584.0481 1. The various plant operations must be located and conducted to prevent any contamination of the mix, frozen desserts or their ingredients, cleaned equipment or containers. All means necessary for the elimination of flies must be used.

2. Separate rooms must be provided for:

- (a) The pasteurizing, processing, cooling, freezing and packaging operations; and

(b) The washing and bactericidal treatment of containers. Paragraph (a) is satisfied, in frozen desserts plants which freeze and sell only at retail on the premises, if all mixing, freezing and packaging processes, but not necessarily the hardening and storage compartments, are enclosed in a tight glass or any other sanitary enclosure which is open only on the side furthest from the public, which has a dust-tight top extending over the entire freezer, and which is protected by a fan so installed and of such power as to prevent the entrance of flies.

3. Containers of frozen desserts ingredients must not be unloaded directly into the room or rooms used for pasteurization or subsequent processes. Pasteurized mix or frozen desserts are not permitted to come in contact with equipment in which unpasteurized mix, frozen desserts, milk or milk products have been in contact, or in which mix or frozen desserts from a lower grade plant have been in contact, unless the equipment has first been thoroughly cleaned and subjected to bactericidal treatment. None of the operations connected with a frozen desserts plant may be conducted in a room used for domestic purposes. In plants processing and packaging both ice cream and imitation ice cream, a separate room and equipment for the processing of imitation products are recommended. Permission for processing and packaging both products in the same plant and using the same equipment will be granted if frozen desserts made of milk and milk fat are processed and packaged in one operation. Frozen desserts made of vegetable fat must be processed and packaged after all the equipment has been clean and sanitized in the second operation. The procedure must be approved by the health [officer.] *division*.

Sec. 56. NAC 584.0541 is hereby amended to read as follows:

584.0541 Mix and frozen desserts from areas beyond the limits of a routine inspection may not be sold unless controlled under provisions equivalent to the requirements of NAC 584.0111 to 584.0551, inclusive. The health [officer may satisfy himself] *division may require assurances* that the health officer having jurisdiction over the manufacturer of such products is properly enforcing those provisions.

Sec. 57. NAC 584.1611 is hereby amended to read as follows:

584.1611 As used in NAC 584.1611 to 584.2881, inclusive, *and section 48 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 584.1621 to 584.1831, inclusive, have the meanings ascribed to them in those sections.

Sec. 58. NAC 584.2771 is hereby amended to read as follows:

584.2771 1. Each animal in a certified herd must be tested for tuberculosis and satisfactorily pass the test before any of her milk is sold and she must be retested at least once every 12 months. The tests must be performed by a licensed veterinarian who is certified to administer the tests by the bureau of animal industry of the division.

2. The tests must be performed and any infected animal must be disposed of in accordance with the requirements approved by the bureau of animal industry of the division. A certificate signed by the veterinarian or attested to by the health [officer] *division* constitutes evidence of the test.

3. A veterinarian performing a test for tuberculosis shall make a complete record of the test and the record must be kept on file at the dairy for 3 years and a summary of it must be filed with the [state health officer.] *health division*.

4. All cows which react to a tuberculosis test must be removed from the herd immediately upon discovery of the reaction and the milk must be discarded. The barn and exercise yards used by them must be cleaned and disinfected in a manner approved by the bureau of animal industry of the division.

Sec. 59. NAC 584.2831 is hereby amended to read as follows:

584.2831 1. If a disease occurs which appears to be of a serious nature, or if a number of cows become sick at about the same time, the dairyman shall withdraw such cows from the certified herd, destroy their milk and notify a veterinarian and the [state health officer] *health division* immediately.

2. The carcass of any dead cow or goat, whether diseased or not, must be disposed of in a sanitary manner.

Sec. 60. NAC 584.4551 is hereby amended to read as follows:

584.4551 1. All milk for pasteurization must be from herds which are free from communicable disease as determined in a method set down by the health [officer.] *division*.

2. Any dairy animals, which, upon sufficient laboratory findings, or upon inspection by a licensed veterinarian, are found to be carrying any type of communicable disease, must be disposed of in a method directed by the health officer. The milk from these

animals must immediately be withdrawn from sale in Nevada, and disposed of in a method established by the health [officer.] *division*.

3. Any inspection or individual laboratory testing, which the health [officer] *division* deems necessary, must be done in an approved laboratory or by a veterinarian who is licensed in Nevada. The expense of such inspection or laboratory determination is the responsibility of the owner of the particular animals inspected or tested.

Sec. 61. NAC 584.4571 is hereby amended to read as follows:

584.4571 1. A tuberculin test of all animals in a herd and any additions to the herd, must be made before any milk is sold, and at least once every 12 months thereafter.

2. This testing must be done by a licensed veterinarian duly certified to run these tests by the bureau of animal industry of the division. The tests must be made and any reactors disposed of in accordance with the requirements approved by that official.

3. A certificate signed by the veterinarian or attested to by the health [officer,] *division* is evidence of the tests. In tuberculosis free counties which used the tuberculosis free system, approved by the Bureau of Animal Industries, this annual testing is not required.

Sec. 62. Chapter 652 of NAC is hereby amended by adding thereto the provisions set forth as sections 63 and 64 of this regulation.

Sec. 63. *If a person is aggrieved by a decision of the health division relating to the denial, suspension or revocation of a license or certificate based upon any of the grounds set forth in subsections 1 to 6, inclusive, of NRS 652.220 or NAC 652.461, the aggrieved*

person may appeal the decision pursuant to the procedures set forth in NAC 439.300 to 439.440, inclusive.

Sec. 64. *1. If a report is received pursuant to subsection 5 of NRS 228.420, the report must be placed on the agenda of the next regularly scheduled meeting of the board or as soon thereafter as the schedule of the board allows.*

2. The board will consider the report and will determine whether the report should be referred to the bureau for possible disciplinary action.

Sec. 65. NAC 652.490 is hereby amended to read as follows:

652.490 *1. [Any person who considers himself] If a person is aggrieved by a decision of the bureau to deny a license or certificate based upon the failure of the aggrieved person to meet the minimum standards prescribed by the board, the aggrieved person may appeal that decision to the board.*

2. The aggrieved person must set forth in writing all pertinent information and describe to what extent the decision is unfavorable. The appeal must be mailed or delivered to the ex officio secretary of the committee at the following address:

Medical Laboratory Advisory Committee

Bureau of Licensure and Certification

[505 E. King Street, Room 202] 1550 E. College Parkway, Suite 158

Carson City, Nevada 89710

The appeal must be received by the bureau within 15 working days after receipt of the decision by the appellant.

3. The appeal will be placed on the agenda [for a hearing by the board within 6 weeks after its receipt by the bureau.] *of the next regularly scheduled meeting of the board.* The appellant may request a delay.

4. At the hearing, the staff of the health division shall present a report, any relevant information and the committee's recommendations concerning the appeal. These documents must be mailed to the appellant at least 5 days before the hearing. At the hearing, the appellant has the burden of proof.

5. The board will, within 14 days after the hearing, prepare its written formal findings of fact and its written decision and notify the appellant in writing of its decision. Within 30 days after the appellant receives the written notice of the final decision, he may seek judicial review.

Sec. 66. NAC 444.752, 445A.648, 445A.649 and 445A.650 are hereby repealed.

TEXT OF REPEALED SECTIONS

444.752 “Bureau” defined. “Bureau” means the bureau of environmental health of the health division of the department of human resources.

445A.648 Suspension or revocation of certificate: Issuance, contents and appeal of decision following hearing.

1. Upon the conclusion of an informal hearing held pursuant to NAC 445A.647, the hearing officer or panel of hearing officers shall make a written decision concerning the proposed action of the health division. The decision must be sent to the operator by certified mail, return receipt requested, no later than 30 calendar days after the date on which the hearing was held.

2. If the decision affirms the proposed action of the health division, it must state the length of the suspension or revocation and the procedures necessary to reapply for certification at the end of the specified disciplinary period.

3. An operator who is aggrieved by the decision of the hearing officer or panel of hearing officers may appeal that decision to the state board of health by filing a written request for a hearing with the executive officer of the state board of health no later than 15 days after the date of receipt of the decision. If the appeal is timely received, the executive officer shall place the matter on the agenda for the next meeting of the state board of health and provide written notice of the hearing to the aggrieved party of such action. Failure to request a hearing within 15 days after the date of receipt of the decision is a waiver of the right to a hearing.

445A.649 Denial of application for certificate: Appeal of decision. An applicant who is aggrieved by the decision of the health division denying an application for certification may appeal that decision to the state board of health by filing a written request

for a hearing with the executive officer of the state board of health no later than 15 days after the date of the applicant's receipt of the decision of the health division. Failure to request a hearing within 15 days after the date of receipt of the decision is a waiver of the right to a hearing. If the appeal is timely received, the executive officer shall place the matter on the next meeting agenda and provide written notice of the hearing to the applicant of such action.

445A.650 Denial of application for certificate or suspension or revocation of certificate: Notice of hearing on appeal of decision. If notice of a hearing before the state board of health is required pursuant to NAC 445A.648 or 445A.649, the notice must include:

1. The time, place and nature of the hearing;
2. The legal authority and jurisdiction under which the hearing is to be held;
3. Reference to the particular statute or regulation relevant to the matter; and
4. A short and plain statement of the matters asserted.