

**ADOPTED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R156-07

Effective January 30, 2008

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

AUTHORITY: §1, NRS 555.355, 555.357 and 555.400; §§2 and 3, NRS 555.400; §§4 and 5, NRS 555.355 and 555.400.

A REGULATION relating to agriculture; authorizing a nonprimary principal commercial applicator or private applicator to renew a certificate to apply or supervise the application of a restricted-use pesticide upon the completion of at least 12 units of continuing education; and providing other matters properly relating thereto.

Section 1. Chapter 555 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A nonprimary principal commercial applicator or private applicator may renew a certificate issued pursuant to NAC 555.655 if:

(a) Within the 3 months immediately preceding the expiration of the certificate, he obtains a passing score on the examinations described in NAC 555.670; or

(b) He provides proof satisfactory to the Director that he has completed at least 12 units of continuing education in courses approved by the Director within the 4 years immediately preceding the expiration of the certificate. At least 2 units of continuing education must be completed in a course relating to laws and regulations governing the use of pesticides.

2. A nonprimary principal commercial applicator or private applicator may receive credit for the completion of a course of continuing education offered in another state if:

(a) The course is approved for continuing education by the appropriate agency of that state; and

(b) Upon completion of the course, the sponsor of the course or a nonprimary principal commercial applicator or private applicator who completed the course submits to the Department:

(1) An agenda or outline for the course setting forth:

(I) The location, date and time of the course;

(II) The topics discussed during the course; and

(III) The name of each speaker at the course;

(2) A copy of a letter or other form indicating that the appropriate agency of that state has approved the course for continuing education and the number of units of continuing education approved for the course;

(3) The name of each nonprimary principal commercial applicator or private applicator from this State who attended the course as indicated by the attendance sheet for the course; and

(4) A request to receive credit for attending the course.

3. For each course for which a nonprimary principal commercial applicator or private applicator claims one or more units of continuing education, he may request from the sponsor of the course:

(a) A certificate of completion issued by the sponsor of the course; or

(b) Any other document or record that in the judgment of the Director establishes that the nonprimary principal commercial applicator or private applicator successfully completed the course.

4. A nonprimary principal commercial applicator or private applicator who wishes to renew his certificate may not apply for renewal of his certificate before October 1 of the year in which the certificate expires.

Sec. 2. NAC 555.374 is hereby amended to read as follows:

555.374 1. To obtain accreditation from the Director for a course of continuing education, the sponsor of the course must submit to the Department, at least 1 day before the first day of the course:

- (a) A detailed outline of the subject matter to be presented;
- (b) A description of the method of presentation;
- (c) A curriculum vitae or other biographical statement of the instructor; and
- (d) Any other information required in the application for accreditation.

2. To equal one unit of continuing education, the course for which the application is submitted must consist of at least 50 minutes of instruction and be directly related to:

- (a) The control or management of pests;
- (b) The classification or usage of pesticides;
- (c) The safe handling or dispensing of pesticides; or
- (d) A law or regulation concerning the use of pesticides.

3. The information required by subsection 1 must be submitted on an application prescribed by the Director.

4. The sponsor of a course accredited by the Director shall submit to the Department, within 30 days after the completion of the course, a list that includes:

- (a) The name of the course;
- (b) The course number assigned by the Director pursuant to NAC 555.375;

(c) The number of units of continuing education that a person who successfully completes the course may receive;

(d) The name of each person who attended the course;

(e) The identification number assigned by the Department to the licensee, *nonprimary principal commercial applicator or private applicator* wishing to receive credit for completing the course;

(f) The name of the ~~[pest control]~~ business *or governmental agency* that employs the licensee ~~[]~~, *nonprimary principal commercial applicator or private applicator*;

(g) The signature of the licensee ~~[]~~, *nonprimary principal commercial applicator or private applicator*; and

(h) A statement prepared by the sponsor of the course indicating that ~~[the]~~ :

(1) The licensee presented to the sponsor the licensee's license as a primary principal, principal, operator or agent or any other form of identification issued by a governmental agency that includes a photograph of the licensee ~~[]~~; or

(2) The nonprimary principal commercial applicator or private applicator presented to the sponsor a form of identification issued by a governmental agency that includes a photograph of the nonprimary principal commercial applicator or private applicator.

5. The sponsor of a course shall maintain a record of the information set forth in subsection 4 for at least 4 years after the completion of the course. The records must be made available to the Director upon request.

6. Except as otherwise provided in subsection ~~[6.]~~ 7, courses of continuing education that may be accredited by the Director include, without limitation:

(a) A seminar;

- (b) A meeting;
- (c) An adult education class;
- (d) A correspondence class;
- (e) An Internet class;
- (f) A college or university class;
- (g) A video or other media presentation; and
- (h) Any equivalent activity approved by the Director.

~~6.~~ 7. A person who attends a meeting of the Nevada Pest Control Association may receive credit for attending the meeting without obtaining approval for the meeting pursuant to this section.

~~7.~~ 8. A person who successfully completes a course of continuing education is not entitled to receive credit for attending the course unless, at the time the sponsor of the course recorded the attendance of the person at the course, the person presented to the sponsor the identification specified in paragraph (h) of subsection 4.

Sec. 3. NAC 555.600 is hereby amended to read as follows:

555.600 As used in NAC 555.600 to 555.700, inclusive, *and section 1 of this regulation*, unless the context otherwise requires:

1. “Browsing” means the consumption of leaf and twig growth of shrubs, woody vines and trees by an animal.
2. “Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

3. “Container” means any package, can, bottle, bag, barrel, drum, tank or other containing device, excluding spray applicator tanks, used to enclose a pesticide or waste related to pesticide.

4. “Control” means to prevent, destroy, repel or mitigate any undesirable organism.

5. “Direct supervision” means that a person who is certified in the use of a restricted-use pesticide is responsible for and provides guidance to a person applying the restricted-use pesticide who is not certified in the use of the restricted-use pesticide. The physical presence of the person who is certified in the use of the restricted-use pesticide at the site of application is not required unless the label on the pesticide requires the presence of such a person.

6. “Ectoparasite” means any organism that occurs externally on, or whose life cycle involves development within, an organism of another species (host) and derives its nutriment from it.

7. “Food handling establishment” means a place other than a private residence in which exposed food is held, processed, prepared or served.

8. “Forage” means any herbaceous plant or plant part normally grazed on by, or fed to, animals.

9. “Forest” means any concentration of trees and related vegetation in a nonurban area sparsely inhabited by and infrequently used by humans, characterized by natural terrain and drainage patterns.

10. “Fumigation”:

(a) Means the destruction of plant or animal life within an enclosed area by using:

(1) A substance which has a vapor pressure of more than 5 millimeters of mercury at 25° centigrade; or

(2) Any other substance that the Director determines is a fumigant, including, without limitation:

- (I) Chloropicrin;
- (II) Methyl bromide;
- (III) Sulfur dioxide;
- (IV) Propylene oxide;
- (V) Sulfuryl fluoride;
- (VI) Aluminum phosphide;
- (VII) Magnesium phosphide; and
- (VIII) Dichloropropene.

(b) May include any of the following substances if the intended use of the substance is to destroy plant or animal life within an enclosed area:

- (1) Liquid nitrogen;
- (2) Carbon dioxide; or
- (3) Metam sodium.

- 11. "Grain" means any of the grasses that produce cereals which are used for food.
- 12. "Grazing" means the partial defoliation of forage growth by animal consumption.
- 13. "Habitat" means that specific locality where an organism exists.
- 14. "Licensed primary principal commercial applicator" means a person who:

(a) Is designated the primary principal of a business of pest control pursuant to NAC 555.395; and

(b) Is authorized to use or supervise the use of a restricted-use pesticide as a part of a business of pest control.

15. “Microorganism” means any animal or plant that is so small as to be invisible or obscure except through a microscope.

16. “Mollusk” means any of the phylum of soft-bodied animals usually partially or wholly enclosed within a calcium carbonate shell and having a muscular “foot” for locomotion.

17. “Nonprimary principal commercial applicator” means a person who:

(a) Except as a part of a business of pest control, applies or supervises the application of a restricted-use pesticide; and

(b) Does not qualify as a private applicator.

18. “Nonvascular plant” means a plant without flowers, roots, stems or leaves.

19. “Operational site” means that location belonging to a person where an integral function of the business is performed, and includes the person’s land, structures and any other environs and equipment.

20. “Pasture” means any fenced area of domesticated forage on which animals are grazed.

21. “Plant disease” means any exhibition of some malfunction or abnormality in a plant’s development or growth caused by a microorganism as, for example, fungi, bacteria, viruses, mycoplasmas and nematodes.

22. “Predator” means any animal of the class Mammalia of the subphylum Vertebrata that kills and consumes other animals.

23. “Private applicator” has the meaning ascribed to it in NRS 555.2681.

24. “Range” means any land with native vegetation (climax or natural potential) that is predominantly grasses, grasslike plants, forbs or shrubs suitable for grazing or browsing.

25. “Row crop” means any fiber crop, melon crop, vegetable crop or similar crop that is grown in continual lines.

26. “Seed crop” means any plant that is grown for the purpose of utilizing the propagative portion of the plant.

27. “Vertebrate” means any animal of the subphylum Vertebrata of the phylum Chordata, which has an enlarged brain enclosed in a cranium, or brain case, a segmented vertebral column which supports the body, a head, neck, trunk and usually a tail present.

28. “Wildlife” means all living things that are neither human, domesticated nor pests, including, but not limited to, mammals, birds and aquatic life.

29. “Wood-destroying pest” means any organism which infests or infects and destroys cellulose.

Sec. 4. NAC 555.670 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

~~[8. Every person to whom a certificate has been issued by the Director must requalify by examination every 4 years, unless the Director determines that a shorter interval is justified because of a change in the technology of pesticides.]~~

Sec. 5. NAC 555.690 is hereby amended to read as follows:

555.690 The Director will collect a ~~[testing]~~ fee of \$25 for each examination period or ~~[reexamination]~~ *renewal* period for the issuance of a certificate pursuant to NAC 555.655, before the applicant is examined.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R156-07**

The State Board of Agriculture adopted regulations assigned LCB File No. R156-07 which pertain to chapter 555 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

Permission was granted at the last Nevada Board of Agriculture Meeting to hold a workshop and hearing for the adoption of proposed revisions to NAC Chapter 555. This revision will add an additional option for certified (non-primary principal commercial and private) applicators to renew their restricted use pesticide certificate through the acquisition of continuing education units (CEU's).

Notice of workshop was posted at all six Department offices, the Nevada State Library in Carson City, Nevada, and all Nevada county libraries. Copies could be requested from the Nevada Department of Agriculture, Division of Plant Industry by writing to 350 Capitol Hill Avenue, Reno, Nevada 89502, calling 775-688-1182, contacting all other Department offices, the Nevada State Library in Carson City, and all Nevada county libraries.

Workshop, Thursday, November 1, 2007, 1:30 pm:

The workshop was held at the Nevada Department of Agriculture in Reno and tele-conferenced to the Nevada Department of Agriculture, Las Vegas Office, at the same time. In Reno, no persons other than Charles Moses of the NDOA, were present. In Las Vegas, the following individuals were in attendance from the NDOA Las Vegas Office: Russ Dapsauski, Scott Cichowlaz, Greg Hymas, and Jay Steele. From the industry, four individuals from Clark County Vector Control were present: Chris Bramley, Brett Ramsey, Michael Gregory, and Carl Carlson. No objections were raised. Comments were supportive of the regulation. It was stated that 2 hours of laws and regulations is the minimum continuing education a person should have; that in reality, a person should get more. Some comments were made about how class registration should take place. It was stated that a second sign in sheet should be available for licensees. However, the current sheet developed by NDOA has a column where a person can indicate whether he/she is licensed or not. It was mentioned that it would be beneficial if an attendee indicated the different categories of license or certification he/she holds on the class registration sheet. There was some discussion which suggested that the department (NDOA) should be more strict when enforcing the CEU renewal period. In other words, under the new guidelines, applicators should obtain their 12 CEU's prior to the expiration of their certificate at the end of the 4 year period (December 31, of the calendar year). If they fail to do so, then the comment was we should make them re-test. The current policy allows applicators to meet their renewal requirements prior to the time they are scheduled to do any work (applications). Finally, it was mentioned that the certification credential should have an applicators picture on it, similar to our custom applicator license. I have authorized a purchase of the machine to do this. However, at the current time, I do not know where this purchase is in the budget process.

Hearing, Friday, December 7, 2007, 10:00 am:

The hearing for LCB File No. R156-07 was held at the Nevada Department of Agriculture in Reno and tele-conferenced to the Nevada Department of Agriculture, Las Vegas Office, at the same time. In Reno, the following individuals were in attendance from the NDOA Reno Office: Jon Carpenter & Steve Marty. In Las Vegas, the following individuals were in attendance from the NDOA Las Vegas Office: Russ Dapsauski & Scott Cichowlaz. From the industry, two individuals were in attendance: Dave Barton, Pro-Tech Pest Services and George Botta, J.S. Pest Control. The hearing was opened with a review of LCB changes that were made to LCB File No. R156-07 after the workshop on November 1, 2007. Background information was presented on why the NDOA drafted regulations offering CEU's for certification renewal. No objections to the changes were raised. All comments made with regards to the changes were supportive of the regulation. The hearing was closed.

The Nevada Board of Agriculture at their December 12, 2007 meeting, adopted the amendments LCB File #R156-07 without changes.

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

1. Adverse effect: None
2. Beneficial effects: Businesses will have another option besides testing to become recertified every 4 years.
3. Immediate and long term effect: Beneficial effects same as #2 above.

Economic effects of the proposed amendments on the public:

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

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

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

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