

LCB File No. R035-04

**PROPOSED REGULATION OF THE STATE
DEPARTMENT OF AGRICULTURE**

(NOTE: This language was previously part of R242-03)

NOTICE OF HEARING

**Announcement of Hearing on Proposed Regulations for Fertilizers and
Restricted Fertilizer Dealers (NAC 588).**

Date: April 8, 2004
Time: 9:00 a – 12:00p

Location:

Nevada Dept of Agriculture Offices,
350 Capitol Hill Avenue,
Reno NV 89502

Video Conferencing will be available in Las Vegas at:
Nevada Dept of Agriculture Offices,
2300 McLeod Street
Las Vegas NV 89104

Comments will be accepted at the Reno address, by email to: **chrism@agri.state.nv.us**, phone:
775 688 1180 ext.247 or fax: 775 688-1178

Closing Date for Comments April 9, 2004.

NAC 588 is to be amended as follows

1. Annual registration fee to sell restricted fertilizers: Amount. Each person registering to sell any amount of restricted fertilizers shall pay an annual registration fee of \$25.

NOTICE OF INTENT TO ADOPT REGULATIONS

Proposed amendment of NAC 588 pertaining to the intent to adopt regulations pertaining to the proposed regulation for **Fertilizers and Restricted Fertilizer Dealers**.

Authority: NRS 588.

Need for and purpose of the proposed regulation or amendment

1. Track the sales of particular fertilizers which can be used to formulate explosive. This is to protect homeland security.
2. Establish tolerances to metals in fertilizers based on industry based risk assessments to protect human health.

Economic effect of the proposed regulation on the businesses which it is to regulate

- a. Adverse effects: None. The \$25.00 annual registration fee was not considered significant by workshop attendees.
- b. Beneficial effects: The regulation is expected to reduce the likelihood of fertilizers being used to formulate explosives.
- c. Immediate and long term effects: Same as b. above.

Economic effect of these proposed amendments on the public.

- a. Adverse effects:
None
- b. Beneficial effects:
Same as b. above.
- c. Immediate and long term economic effects:
Same as b. above.

Economic cost to the agency for enforcement of the proposed amendments

The economic cost is expected to be minimal. The system for monitoring sales of restricted fertilizers will be adopted from that already in place for restricted pesticide sales.

Description of any regulations of other state, local or federal governmental agencies which the proposed amendments overlap or duplicate

None

Fees: None

The date, time, place, and manner in which interested parties may present their views at public hearing on the proposed amendments:

DATE: April 8, 2004
TIME: 9:00 a.m.
PLACE: Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, Nevada 89502

Video Conferencing in Las Vegas:

Nevada Department of Agriculture Office
2300 McLeod Street
Las Vegas, NV 89104

Written comments and testimony may be submitted prior to the hearing date and will be included with any testimony presented at the hearing. All verbal and written testimony will be in the record of the hearing.

Addresses at which the text of the proposed regulations may be inspected and copied:

The State Library, 100 Stewart Street, Carson City, Nevada, and all Nevada county libraries. Copies may also be at the Department of Agriculture office in Reno, Sparks, Elko, Las Vegas or Winnemucca during the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday. This notice and text of the proposed regulation are also available in the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the internet at <http://www.agri.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This notice of hearing has been posted at the following locations:

Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, NV 89502

Nevada Department of Agriculture
2150 Frazer Street
Sparks, NV 89431

Nevada Department of Agriculture
1550 South Wells Avenue
Reno, NV 89502

Nevada Department of Agriculture
1200 E. Winnemucca Blvd.
Winnemucca, NV 89445

Nevada Department of Agriculture
Eyer H. Boies Building
1351 Elm Street
Elko, NV 89801

Nevada Department of Agriculture
2300 McLeod
Las Vegas, NV 89104

NOTE: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please call John O'Brien at the Nevada Department of Agriculture, 775-688-1182, as soon as possible.

NRS233B.064 Permanent regulations not to be adopted or revised by the Legislative Counsel; agency's reasons for adoption.

Upon adoption of any regulation, the agency, if requested to do so by an interested person before adoption, or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against adoption, and incorporated therein its reasons for overruling the consideration urged against its adoption.

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**PROPOSED REGULATION OF THE STATE
DEPARTMENT OF AGRICULTURE**

NAC 588 is to be amended as follows

1 Annual registration fee to sell restricted fertilizers: Amount. Each person registering to sell any amount of restricted fertilizers shall pay an annual registration fee of \$25.

Results of Workshop and Comments Received on proposed Amendments to NAC 588

The workshop was held on February 29, 2004 at the Nevada Department of Agriculture offices in Reno with a teleconference connection to our Las Vegas office. In attendance were 3 agricultural dealers and a manufacturer. NDOA Staff were also in attendance. Comments were received by mail, phone and email from 2 fertilizer manufacturers, 2 trade associations representing fertilizer manufacturers & distributors and 2 additional agricultural dealers. Contacts with FBI, Nevada Homeland Security elicited no comments. ATF (Federal Bureau of Alcohol, Tobacco & Firearms) is currently reviewing our list of potential restricted fertilizers.

The most discussed item was the issue of restricted fertilizers. Apart from one manufacturer, there was little or no objection to the concept. Industry representatives were unanimous that urea should be removed from the proposed list since it is not treated as a hazardous material by any agency (except South Carolina regulators (Clemson University)) and requires difficult additional treatment before being used as an explosive. It was generally agreed that urea should be removed from the list. NDOA representatives suggested several clarifications in the proposed language; which, while redundant, would greatly clarify the rules. These suggestions were accepted. The penalty for non-compliance was considered to be too small and a sliding scale of penalties was acceptable to the dealers present. This will be added as follows: for a first offense, \$250.00; for a second offense \$500.00 and Cancellation of Permit to Sell and a fine of up to \$1000 for a third offense. It was pointed out that NRS 588 also allows for \$1000 fines as any violation of NRS 588 is considered a misdemeanor. With the increased penalties a one time "grace period" was suggested. This would commence July 1st 2004 with the amendments coming into force and ending with the beginning of the 2005 registration year, January 1st 2005.

Most of the comments from manufacturers were on the subject of adoption of non-nutritive metals in fertilizers. The request was that the AAPFCO (Assoc. of American Plant Food Control Officials) SUIP #25 (Statement of Uniform Interpretation & Policy) standard be complete. The language had been amended in the earlier draft of the regulations and SUIP 25 was finalized at the August 2004 annual meeting of AAPFCO, including some clarification in how maximum allowable limits be calculated. In order to simplify this process, the standard will be adopted by reference in it's entirety. There was some discussion on the overlap between metals that may also be included in a plant food as nutrients. This is allowed under SUIP 25 as

they are part of a controlled application. These secondary and micro-nutrients and the allowable guarantees are already defined in NAC 588. There was concern from a dealer that he might be liable if he distributed a product that violated this new standard. This would appear to be a contractual question between the dealer and supplier although normal regulatory practice is to pursue the manufacturer. It was stated that the violative product would still be ordered removed from sale.

There was no comment on the amendment to allow “Ready-To-Use” and similar products to guarantee lower levels of secondary and micro-nutrients than currently allowed in NAC 588.

There was no comment on the amendment clarifying the definition of the term agricultural when applied to fertilizer and agricultural minerals

SMALL BUSINESS IMPACT STATEMENT

The purpose of this Small Business Impact Form is to provide a frame work pursuant to NRS 233B.0608 to determine where a small business impact statement is required for submittal of a proposed regulation before the Nevada Department of Agriculture. If questions one (1) and two (2) are answered No, then a small business impact statement is not required. If question one (1) or two (2) is answered with a YES, then a small business impact statement is required prior to conducting a public workshops by the Department. (This form must be submitted with the proposed regulation when submitted for drafting by LCB and adoption by the Nevada State Board of Agriculture.)

Proposed regulation: Tracking sales of fertilizers that can be used to create explosives

Part 1

1. Does this proposed regulation impose a direct and significant economic burden upon a small business ? No. The \$25.00 annual registration fee was not considered significant by the workshop attendees.
2. Does this proposed regulation restrict the formation, operation or expansion of a small business ? No.

Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS 233B.0382).

3. If **YES** to either of questions 1& 2, the following action must be taken:
 - a. Was a small business impact statement prepared and was it available at the public workshop ?
 - b. Attach the small business impact statement (part 2) as part of this form upon submission for drafting by LCB and adoption by the Nevada Board of Agriculture.

Part 2

1. Describe the manner in which comments were solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary.
2. The estimated economic effect of the proposed regulation on small business:
 - a. Both adverse and beneficial effects
 - b. Both direct and indirect effects

3. The description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses.
 - a. Simplification of the proposed regulation.
 - b. Establishment of different standards of compliance for a small business.
 - c. Modification of fees or other monetary interests that a small business is authorized to pay at a lower fee.

4. The estimated cost to the agency for enforcement of the proposed regulation.

5. If this regulation provides for a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards relating to the same activity, provide an explanation of why the proposed regulation is duplicative or more stringent and why it is necessary.