

## NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the

Nevada Department of Agriculture

LCB File No. R080-20

The Nevada Department of Agriculture will hold a virtual public hearing at 9:00 a.m., on the 9th of December of 2020. The meeting may be accessed using the meeting link or by telephone as follows:

Meeting link:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m1a05b750c5cf21103f41babe08c86d6f>

Meeting Number (Access Code): 126 803 3397

Password: 7rEP7MYPr8P

Join by phone: 1-408-418-9388

Phone Password: 77377697

### **COVID-19 Notice**

ALL PERSONS WISHING TO ATTEND THE HEARING MUST ATTEND VIA WEBEX OR TELEPHONICALLY.

- The open meeting law (Nevada Revised Statutes Chapter 241) requires public bodies to conduct their meetings with at least one physical location.
- Under Declaration of Emergency Directive 006, issued March 22, 2020, the physical location requirement has been suspended.

The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 590 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of [NRS 233B.0603](#):

#### **1. The need for and the purpose of the proposed regulation or amendment.**

This regulation is necessary to:

- Update the addresses of Nevada Department of Agriculture offices in Sparks and Las Vegas.
- Update the title for the adopted standard specification for diesel fuel and conform some language due to the title change.
- Update the purchase prices (from ASTM, International) for a number of adopted standard specifications, including diesel fuel, biodiesel fuel blend stock, biodiesel blends (B6 to B20), methanol fuel blends, ethanol fuel blends, the chemical

composition of gases, and spark-ignition engine fuel (gasoline and gasoline-oxygenate blends).

- Update the name of a table referenced in NAC 590.065.
- Establish allowed descriptors for each grade of gasoline and blends of gasoline and oxygenate.
- Establish a new section that adopts the most recent standards for viscosity grade classifications and the specifications for engine oil performance and engine service classification published by SAE International.
- Establish a new section that establishes certain standards for diesel fuel labeled “premier,” “premium,” “super” or “supreme” on retail dispensers, including standard test methods from ASTM, International and NACE.

**2. If the proposed regulation is a temporary regulation, the terms or the substance of the proposed regulation to be adopted, amended or repealed, or a description of the subjects and issues involved.**

This will not be a temporary regulation.

**3. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation.**

Interested persons may obtain a copy of the text of LCB File R080-20 by contacting:

Nevada Department of Agriculture  
Division of Consumer Equitability  
Attn: Dr. William Striejewske, Senior Petroleum Chemist  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: 775-353-3792 Email: wstrijewske@agri.nv.gov

**4. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

**Economic effect on business**

a) Both adverse and beneficial effects

Adverse: Retailers who have been using incorrect descriptors for gasoline grades on their dispensers will incur a one-time cost for replacement labels with the approved descriptors. The other updates and amendments will have no adverse economic effects on businesses.

Beneficial: Regulating the allowed descriptors for gasoline will place all retailers in the marketplace on equal standing, equalizing the marketplace and providing consistency for consumers. The other updates and amendments will have no beneficial economic effects on businesses.

b) Both immediate and long-term effects

Immediate: The proposed regulation is intended to be effective when adopted by the Legislative Commission. Replacement labels (as described in 4(a) above) need to be in

place 90 days after adoption. No other costs are expected for businesses.

Long-term: There should be no long-term economic effects on businesses.

### **Economic effect on the public**

#### a) Both adverse and beneficial effects

Adverse: The proposed regulation includes updating the costs to purchase certain standards and specifications published by organizations other than the agency, but adopted by the agency within NAC Chapter 590. Members of the public who wish to purchase these documents will be subject to these higher prices.

Beneficial: The agency anticipates a benefit to the public through new sections being added to NAC Chapter 590. The addition of language defining Premium Diesel will prevent consumers from purchasing, likely at a cost greater than that of conventional diesel fuel, a product that hasn't been vetted for quality claims made by the retailer. Regulating allowed descriptors for grades of gasoline will remove consumer confusion if faced with unfamiliar descriptors, or descriptors applied to a grade that are incorrect. Adoption of specifications for motor oil quality and compliance will protect the consumer from noncompliant product in the marketplace, preventing damage to their vehicles.

#### b) Both immediate and long-term effects

Immediate: Nearly the whole of the regulation will be enacted immediately upon adoption by the Legislative Commission, so public benefits are anticipated to be immediate. Retailers will be allowed 90 days to replace dispenser labels using any gasoline descriptor terms that don't conform to the regulation.

Long-term: The agency believes that the effects on the public are described above as immediate or near immediate and that continued benefit from these regulation changes will be long-term.

### **5. The methods used by the agency in determining the impact on a small business.**

A survey was conducted of small businesses that would potentially be affected by the regulation. The survey was available for completion online or in hard copy form. Notice of the survey was mailed via the United States Postal Service to 432 motor fuel and petroleum products stakeholders, requesting that those businesses meeting the definition of small business under NRS 233B.0382 complete the survey. The survey was open for response from August 6, 2020 through September 4, 2020. A total of 14 survey responses were received.

### **6. The estimated cost to the agency for enforcement of the proposed regulation.**

The agency anticipates that its only cost to enforce the proposed revised provisions of NAC 590 will be to verify that a diesel fuel sold as Premium Diesel is, in fact, that product. The agency does not currently have the analytical equipment necessary for that testing, so any samples collected would need to be sent to an outside laboratory for testing. The agency

estimates that the testing will cost approximately \$500 per sample. At the present time, Premium Diesel has not been made available for sale in Nevada.

**7. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**

The proposed regulation does not duplicate federal, state or local standards.

**8. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

The proposed regulation is not required pursuant to federal law.

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

N/A

**10. Whether the proposed regulation establishes a new fee or increases an existing fee.**

N/A

**11. If the proposed regulation is a temporary regulation, each address at which the text of the regulation may be inspected and copied.)**

N/A

Persons wishing to comment upon the proposed action of the Nevada Department of Agriculture may participate virtually at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Nevada Department of Agriculture, 405 South 21<sup>st</sup> Street, Sparks, NV 89431 or by email to [ce@agri.nv.gov](mailto:ce@agri.nv.gov). Written submissions must be received by the Nevada Department of Agriculture before 8:00 AM on December 9, 2020. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Agriculture may proceed immediately to act upon any written submissions.

Interested persons may obtain a copy of the text of this Notice of Hearing by contacting:

Nevada Department of Agriculture  
Division of Consumer Equitability  
Attn: Dr. William Striejewski, Senior Petroleum Chemist  
405 South 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: 775-353-3792 Email: [wstrijewski@agri.nv.gov](mailto:wstrijewski@agri.nv.gov)

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to [NRS 233B.0653](#), and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request.

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

Notice of this meeting was posted on or before 9 a.m. thirty working days before the meeting at the following locations: the Nevada Department of Agriculture website at [www.agri.nv.gov](http://www.agri.nv.gov) and [www.notice.nv.gov](http://www.notice.nv.gov).

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Governor

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STATE OF NEVADA  
DEPARTMENT OF AGRICULTURE

405 South 21<sup>st</sup> St.  
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Telephone (775) 353-3601 Fax (775) 353-3661  
[agri.nv.gov](http://agri.nv.gov)

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY  
NRS 233B.0608**

**LCB File No. R080-20  
September 21, 2020**

**1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

Notice and text of the proposed regulations were mailed via the United States Postal Service to 432 individual petroleum product distributors, wholesalers, and retailers. Three notices were returned as undeliverable. The notice included the website address for an electronic survey and a request that the recipient participate in the survey to assist the Department of Agriculture in determining the potential impacts of the proposed regulations on businesses in Nevada. An option was offered for recipients to request a hard copy of the survey be sent to them by mail or email, though the department did not receive any such requests. The notice and survey link were sent via email to the Nevada Petroleum Marketers and Convenience Store Association, the Western States Petroleum Association, and the Retail Association of Nevada with a request that these associations notify their respective members of the proposed changes and the survey. Notice of the proposed regulations and the survey link were posted to [www.agri.nv.gov](http://www.agri.nv.gov). The survey was open from August 10, 2020 through September 4, 2020. A total of 14 responses were received, though not all respondents answered every survey question.

- 15% of the survey respondents (2 of 13) stated the proposed changes will have a significant impact on their business. However, 100% (9 of 9) of survey respondents indicated that the level of financial impact to their operations would be low.
- Related to the proposed changes, the survey participants identified the following sections which would have the highest financial impact on their business: Section 1, which encompasses the contents of Sections 2 (addition of a section to NAC Chapter 590 setting specifications for motor oil) and Section 3 (updates prices of documents available from other organizations and establishes a definition and specifications required for a fuel to be marketed as Premium Diesel) and Section 12 (clarifies what terms are allowed to be used in labeling and advertising relative to specific gasoline grades).
- Other than what is stated in the previous bullet point, survey participants did not indicate any effects, fiscal or otherwise, as a result of the proposed changes.

Persons interested in obtaining the survey results and summary may do so by contacting the Division of Consumer Equitability at 775-353-3783 or by email [ce@agri.nv.gov](mailto:ce@agri.nv.gov).

## **2. The manner in which the analysis was conducted.**

A statistical analysis of the survey results was compiled and considered. While 2 respondents indicated the proposed changes would have a Major or Severe impact on their business, the majority of respondents (11 of 13) indicated that the level of financial impact caused would be Moderate at worst, and 8 of 13 respondents indicated a Minor impact or less. 0 respondents indicated that the level of financial impact caused would be high.

## **3. The estimated economic effect of the proposed regulation on small businesses.**

Section 2 updates the price to purchase documents published by standards ASTM International and SAE International. However, there is no requirement for businesses to purchase these publications and therefore the agency estimates the economic effect of this Section to be \$0. Section 12, which clarifies terms to be used in labeling and advertising relative to specific gasoline grades, may result in certain businesses needing to purchase new labels or other display media. The cost to purchase and install these labels and display media is estimated to total between \$100 and \$1,000, depending upon the number of fuel dispensers located at the retail motor vehicle fuel station. One respondent referenced Section 3, which establishes a definition for Premium Diesel, as potentially having an economic impact on their business. However, a small business receiving fuel purported to be Premium Diesel would be informed of this fact by the supplier and would not be required to perform their own verification.

## **4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

Many of the proposed changes are related to updating the titles and/or prices of documents available from other organizations and as such are outside of the agency's control. Several changes would update and include additional addresses of agency locations where these documents may be reviewed, thereby increasing the availability of these publications to businesses, particularly in northeastern Nevada. Section 12 carries a potential one-time expense to replace labels and/or display media to align with allowed descriptive terms for gasoline grades, but this expense will affect only a small number of businesses. However, the agency feels that the proposed regulation is aligned with the mission of ensuring a fair marketplace, and therefore reasonable and that the total expense will not be detrimental to the affected business.

As the agency continues through the regulatory adoption process required under the Nevada Administrative Procedure Act, it will consider any other methods to reduce the impact on small businesses that may be proposed.

## **5. The estimated cost to the agency for enforcement of the proposed regulation.**

2300 East St. Louis Ave.  
Las Vegas, NV 89104  
Telephone (702) 668-4590  
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405 South 21<sup>st</sup> St.  
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Fax (775) 353-3661

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

The agency does not anticipate that its ongoing costs to enforce the proposed revised provisions of NAC 590 will increase.

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

The proposed regulation does not provide for a new fee or increase to an existing fee collected by the agency. Prices for certain publications sold by other organizations have been updated to reflect the current price of the publication as determined by each of those respective organizations; the agency does not receive any of the proceeds for the sale of these publications.

**7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The proposed regulations are not duplicative or more stringent than federal, state, or local standards.

**8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

While there may be an impact on small businesses as a result of the adoption of the proposed regulation, the agency concludes that the regulations are reasonable and necessary for the Division of Consumer Equitability to perform all of its statutorily mandated duties, and that these impacts will be minor, both financially and to the operation of the business. Based on the survey responses received, the agency believes the number of small businesses that will experience a strong financial impact as a result of the proposed regulations is less than 10 percent.

I certify that to the best of my knowledge or belief a concerted effort was made to determine the impact of this proposed regulation on small businesses and that the information contained in this statement is accurate.

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Jennifer Ott  
Director  
Nevada Department of Agriculture