

NOTICE OF INTENT TO ACT UPON A REGULATION

AND

HEARING AGENDA

Notice of Hearing for the Amendment of Regulations of the

Nevada Department of Agriculture

LCB File No. R081-20

The Nevada Department of Agriculture will hold a virtual public hearing on the 9th of December of 2020. The hearing will begin at 11:00 a.m. or immediately following adjournment of the December 9, 2020 meeting of the Board of Agriculture, whichever is later. The virtual hearing may be accessed using the meeting link or by telephone as follows:

Meeting Link:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m64490cf189390ee19fe2b41a68604b5c>

Meeting Number (Access Code): 126 613 6469

Password: Huk68SFhUm2

Join by phone: 1-408-418-9388

Phone Password: 48568734

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 and add the address of the Nevada Department of Agriculture office in Elko.

- Update the titles and purchase prices (from ASTM, International) for the volume that contains standard methods for the analysis of glycol base engine coolants, and for the adopted standard specification for glycol base engine coolants contained therein.
- Update the purchase price (from ASTM, International) for the adopted ASTM standard specifications for aviation gasoline and aviation turbine (jet) fuel.
- Establish civil penalties for violations of any provision of NRS 590.160 to 590.330, inclusive (Advertisement of Motor Vehicle Fuel and Petroleum Products).

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regulation is a temporary regulation, the terms or the substance of the proposed regulation to be adopted, amended or repealed, or a description of the subjects and issues involved.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 R081-20 by contacting:

Nevada Department of Agriculture
 Division of Consumer Equitability
 Attn: Dr. William Striejewske, Senior Petroleum Chemist
 405 South 21st 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: Only those businesses that are subject to the civil penalties established during this hearing, concerning violations of advertising regulations, will suffer adverse effects.

Beneficial: The establishment of civil penalties will give more regulatory control to the Division of Consumer Equitability and is meant to lead to further compliance with NAC 590 by businesses. As fewer businesses are not in compliance, at the risk of being assessed civil penalties, the marketplace will be more balanced, and more consistency will be provided to consumers.

b) Both immediate and long-term effects

Immediate: The proposed regulation is intended to be effective when adopted by the Legislative Commission, so any effects could be experienced immediately.

Long-term: As stated above, establishment of civil penalties should lead to long-term stability and balance in the marketplace.

Economic effect on the public

a) Both adverse and beneficial effects

Adverse: The proposed changes to the regulations is not anticipated to have an adverse effect on the public.

Beneficial: The threat of civil penalties for violations of regulations concerning advertising may result in fewer violations of these regulations. Increased compliance will benefit the public as a consumer group making a purchase based on accurate advertising media.

b) Both immediate and long-term effects

Immediate: The proposed regulation is intended to be effective when adopted by the Legislative Commission, so any effects could be seen immediately. Increased compliance will benefit the public as a consumer group making a purchase based on accurate advertising media.

Long-term: The threat of civil penalties for violations of regulations concerning advertising should result in fewer violations of these regulations. Increased compliance will continue this benefit.

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 does not anticipate that its ongoing costs to enforce the proposed revised provisions of NAC 590 will increase as result of the proposed regulations.

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.

The proposed regulation does not establish a new fee or increase an existing fee.

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 21st Street, Sparks, NV 89431 or by email to 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 21st Street
Sparks, NV 89431
Phone: 775-353-3792 Email: 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 hearing was posted on or before 9 a.m. thirty days before the meeting at the following locations: the Nevada Department of Agriculture website at www.agri.nv.gov and www.notice.nv.gov.



**ADOPTION HEARING AGENDA
NEVADA DEPARTMENT OF AGRICULTURE
STATE SEALER OF CONSUMER EQUITABILITY
Wednesday, December 9, 2020
11:00 a.m. PST**

Meeting Link:

<https://nevadadepartmentofagriculture.my.webex.com/nevadadepartmentofagriculture.my/j.php?MTID=m64490cf189390ee19fe2b41a68604b5c>

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- Under Declaration of Emergency Directive 006, issued March 22, 2020, the physical location requirement has been suspended.

1. Call to Order
2. Public Comment. Comments from the public are invited at this time on matters other than regulation amendments. The agency reserves the right to limit to 3 minutes the amount of time that will be allowed for each individual to speak. The agency is precluded from action on items raised during Public Comments that are not on the agenda.
3. **For possible action:** Discussion and Adoption of Proposed Regulations
 - a. LCB File No. R081-20. Regarding the Amendment of regulations that pertain to chapter 590 of the Nevada Administrative Code.
4. Public Comment. Comments from the public are invited at this time. The agency reserves the right to limit to 3 minutes the amount of time that will be allowed for each individual to

speak. The agency is precluded from action on items raised during Public Comment that are not on the agenda.

5. Adjournment

A copy of all materials relating to the proposed regulations may be obtained at the hearing or by contacting the Nevada Department of Agriculture, 405 S. 21st Street, Sparks, NV 89431, ce@agri.nv.gov, or (775) 353-3783. In your request, please state that you are requesting materials for the adoption hearing on December 9, 2020.

Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Requests for accommodations or assistance may be submitted to the Department in writing to the address below or by calling 775-353-3783 prior to the meeting.

Nevada Department of Agriculture
Attn: Brett Fisher
405 S. 21st Street
Sparks, NV 89431
Via email: bafisher@agri.nv.gov

Action may not be taken on matters considered during public comment until specifically included on a future agenda as an action item.

Notice of this meeting has been sent to all persons on the agency's mailing list for administrative regulations, posted on the internet through the Department of Agriculture's website at www.agri.nv.gov, and on the Nevada Public Notices website at <https://notice.nv.gov/> on or before 9 a.m. thirty days (30) calendar days prior to the meeting. Additionally, notice of this meeting was sent to the Nevada Legislative Counsel Bureau for posting at: <https://leg.state.nv.us/App/Notice/A/>.

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Governor

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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

405 South 21st St.
Sparks, Nevada 89431-5557
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agri.nv.gov

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

**LCB File No. R081-20
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. 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 respondents (2 of 13) to a survey question regarding level of impact to their business stated the proposed changes will have a significant impact. However, 100% (9 of 9) of respondents to a question of financial impact indicated that the impact to their operations would be low.
- Related to the proposed changes, the survey participants expect the impacts on their business to be limited to updating existing signage or dispenser labeling and the consequences of Section 1, a new section that establishes civil penalties for violations of the advertisement and display requirements of NRS Chapter 590.
- Survey participants did not quantify 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.

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 14 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 1 of the proposed regulations provides for progressive civil penalties for violation of the provisions of NRS Chapter 590.160 to 590.330, inclusive. There would be no economic effect for businesses that comply with these laws and therefore are not subject to the penalties. The economic impact on most small businesses is estimated to be \$0, while for some it would be limited to an amount under \$1,000.

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 proposed changes update or add addresses of agency locations where publications may be accessed. As a result, availability of the publications to small businesses, particularly in northeastern Nevada, will be increased. Section 1, a new section that establishes civil penalties for violations of advertising or display statutes, is a necessary component of the agency's regulatory responsibility and would only have an impact on those persons not complying with statute or regulation. The agency received no comments from respondents directly mentioning the proposed civil penalty dollar amounts.

As the agency continues through the regulatory adoption process required under the Nevada Administrative Procedure Act, it will consider any 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.

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 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 is the potential for impact on certain 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 its statutorily mandated duties.

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

Jennifer Ott
Director
Nevada Department of Agriculture