

**SECOND REVISED PROPOSED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R038-21

November 9, 2022

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

AUTHORITY: § 1, NRS 561.105 and 590.070; § 2, NRS 590.070.

A REGULATION relating to fuels; adopting by reference certain provisions of federal law relating to fuel standards; revising requirements relating to the amount of ethanol in gasoline that may be sold in this State to comply with federal law; revising certain provisions relating to a request for a variance from the specifications for motor vehicle fuel; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Agriculture to adopt by regulation specifications for motor vehicle fuel which must allow for the sale of motor vehicle fuel containing not more than 15 percent ethanol by volume. (NRS 590.070)

Existing regulations adopt by reference certain published standards relating to gasoline. (NAC 590.065) **Section 1** of this regulation: (1) updates the purchase price of such standards; (2) updates the name of certain officers; and (3) adopts by reference certain provisions of federal law relating to fuel, fuel additives and regulated blend stocks.

Existing regulations: (1) prohibit a person from selling, offering for sale, supplying or offering to supply gasoline intended for use in a vehicle which is primarily driven on a highway if it contains more than 10 percent ethanol by volume; (2) require, with certain exceptions, that gasoline must not exceed certain limits for vapor pressure depending on the time of the year in which the gasoline is sold; and (3) provides that gasoline containing not less than 9 percent and not more than 10 percent ethanol by volume may exceed the limits specified in federal law and certain standards by not more than 1 pound per square inch. (NAC 590.065) **Section 1** of this regulation authorizes the sale of gasoline containing more than 10 percent but not more than 15 percent ethanol by volume: (1) pursuant to a waiver issued by the Administrator of the United States Environmental Protection Agency; and (2) between September 16 and May 31 of each year if the gasoline meets certain requirements. **Section 1** also provides that gasoline containing more than 10 percent but not more than 15 percent ethanol by volume may not exceed the vapor pressure limits set forth in certain standards by more than 1 pound per square inch and must meet certain other requirements set forth in federal law. **Section 1** further provides that the provisions of NAC 590.065 are severable.

Existing regulations authorize a supplier to submit a request to the Director of the State Department of Agriculture or his or her designee for a variance from the specifications for motor

vehicle fuel. (NAC 590.066) **Section 2** of this regulation clarifies that such a request is authorized to the extent the request complies with federal law.

Section 1. NAC 590.065 is hereby amended to read as follows:

590.065 1. Except as otherwise provided in this section, the State Board of Agriculture hereby adopts by reference the most recent version of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” contained in the *Annual Book of ASTM Standards* published by ASTM International. Each new revision of that standard shall be deemed approved by the Board unless the revision is disapproved by the Board or its designee within 120 days after the date of publication of the revision by ASTM International. The standard is available for inspection pursuant to NAC 590.045 and may be purchased from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959, or at the Internet address <http://www.astm.org>, for the price of ~~[\$75.]~~ \$82.

2. *The State Board of Agriculture hereby adopts by reference:*

(a) The provisions of 40 C.F.R. §§ 79.1 to 79.32, inclusive, 79.50 to 79.56, inclusive, 1090.1110, 1090.1405, 1090.1420 and 1090.1510, as they existed on September 8, 2021. A copy of the publications which contain the provisions adopted by reference in this paragraph are available for inspection at the offices of the State Department of Agriculture pursuant to NAC 590.045 and may be obtained free of charge on the Internet website <https://ecfr.federalregister.gov>.

(b) The provisions of 40 C.F.R. § 80.27, as it existed on June 1, 2019. A copy of the publications which contain the provisions adopted by reference in this paragraph are available for inspection at the offices of the State Department of Agriculture pursuant to NAC 590.045 and may be obtained free of charge on the Internet website <https://ecfr.federalregister.gov/on/2019-06-01/title-40>.

3. Notwithstanding the provisions of Table 4 (“Schedule of U.S. Seasonal and Geographical Volatility Classes”) of ASTM D4814 that apply to this State, the schedule that is designated in Table 4 for the area of this State that lies north of the 38th degree of north latitude applies to the entire area of this State unless the United States Environmental Protection Agency requires a county to comply with a different requirement relating to vapor pressure.

~~[3.]~~ 4. Except as otherwise provided in subsection ~~[4.]~~ 5, *NAC 590.066 or pursuant to a waiver issued by the Administrator of the United States Environmental Protection Agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii)*, gasoline:

(a) Sold between June 1 and September 15 of each calendar year containing:

(1) Not less than 9 percent ethanol by volume and not more than 10 percent ethanol by volume must not exceed the limits for vapor pressure set forth in ASTM D4814 by more than 1 pound per square inch.

(2) Less than 9 percent ethanol by volume must not exceed the limits specified in ASTM D4814.

(b) Sold during any other period in a calendar year containing not more than ~~[10]~~ 15 percent ethanol by volume must not exceed the limits specified in ASTM D4814 by more than 1 pound per square inch.

~~[4.]~~ 5. Gasoline and any blend of gasoline and ethanol sold in Clark County between October 1 and the following March 31 must not exceed a vapor pressure of 13.5 pounds per square inch.

~~[5.]~~ 6. A person shall not sell, offer for sale, supply or offer to supply in this State any gasoline intended for use in a vehicle which is primarily driven on a highway if ~~[~~

~~(a) It contains more]~~ *the gasoline contains:*

- (a) *More* than 0.05 gram of lead per gallon;
- (b) ~~[It contains more]~~ *More* than 0.005 gram of phosphorus per gallon;
- (c) ~~[It contains more than 10 percent ethanol by volume; or~~
- (d) ~~It contains more]~~ *More* than 95 parts per million of sulfur ~~[-~~

~~6.]~~ 7. *Except as otherwise provided in subsection 8, more than 10 percent ethanol by volume.*

8. *A person may sell, offer for sale, supply or offer to supply in this State any gasoline intended for use in a vehicle which is primarily driven on a highway which contains more than 10 percent but not more than 15 percent ethanol by volume if:*

- (a) *The gasoline, including, without limitation any additives, has been produced in compliance with 40 C.F.R. §§ 79.1 to 79.32, inclusive, and 79.50 to 79.56, inclusive;*
- (b) *The gasoline manufacturer, oxygenate blender or oxygenate producer that produces, introduces into commerce, sells or offers such gasoline for sale is in compliance with the E15 misfueling mitigation survey requirement set forth in 40 C.F.R. § 1090.1420;*
- (c) *The retailer or wholesale purchaser-consumer applied a label to the fuel dispenser in compliance with the requirements set forth in 40 C.F.R. § 1090.1510;*
- (d) *The underground storage tanks used to store the gasoline are in compliance with the requirements set forth in subsection 2 of NAC 459.993; and*
- (e) *The product transfer documents for the gasoline are in compliance with the requirements set forth in 40 C.F.R. § 1090.1110.*

9. Any other test method may be used if the State Sealer of ~~[Consumer Equitability]~~ *Measurement Standards* determines that another method produces results equivalent to the

results of the specified method. A method approved by ASTM International that has not yet been published shall be deemed to meet the appropriate criteria.

10. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 2. NAC 590.066 is hereby amended to read as follows:

590.066 1. Except as otherwise provided in subsection 6 ~~6~~ *and to the extent authorized by federal law*, a supplier may submit a request to the Director of the State Department of Agriculture or the Director's designee for a variance of not more than 30 days to supply motor vehicle fuel that does not meet the standards set forth in NAC 590.065 if the supplier demonstrates that a disruption in supply exists or is imminent.

2. If a supplier requests a variance pursuant to subsection 1, the supplier shall provide the following information in writing to the Director or the Director's designee:

(a) The specific supply conditions that may result in a shortage of motor vehicle fuel, without disclosing any proprietary information of the supplier;

(b) The specific geographic area to which the variance will apply;

(c) The period for which the variance will be in effect; and

(d) The type of motor vehicle fuel proposed for distribution or sale.

3. The Director or the Director's designee shall notify:

(a) The supplier in writing within 24 hours after receipt of the request for a variance as to whether the request is granted, unless otherwise agreed upon by both parties. Approval of a variance must be based on information which demonstrates that a disruption in supply exists or is

imminent, and such approval is applicable to all suppliers within the specified geographic area for the approved period.

(b) The Motor Carrier Division of the Department of Motor Vehicles and other interested parties of any variance granted by the State Department of Agriculture. A list of interested parties must be kept on file by the State Department of Agriculture.

4. The Director or the Director's designee may authorize an extension of a variance approved pursuant to this section, not to exceed 30 days, if the supplier demonstrates in writing that the conditions identified in the initial request continue to exist.

5. Except as otherwise provided in NRS 239.010, the Director or the Director's designee shall keep confidential any proprietary or competitively sensitive information specific to the supplier which the Director or the Director's designee acquires during the process of granting or denying a variance pursuant to this section and shall not disclose the information to the public or any other state agency or entity.

6. A variance may not be granted pursuant to this section if the motor vehicle fuel is to be sold in a geographic area for which fuel specifications are prescribed in the State Implementation Plan.

7. Approval of a variance by the Director or the Director's designee does not waive the reporting requirements or any applicable taxes and fees pursuant to chapters 360A, 365, 366, 373 and 590 of NRS.

8. As used in this section:

(a) "Disruption in supply" means an unusual condition, either natural or man-made, that may impede the production, transportation, distribution or sale of motor vehicle fuel which meets the standards set forth in NAC 590.065 in sufficient quantity to meet sustainable demands.

(b) “State Implementation Plan” has the meaning ascribed to it in NAC 486A.125.

(c) “Supplier” has the meaning ascribed to it in NRS 365.084.