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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

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**PROPOSED REGULATION OF THE
NEVADA DEPARTMENT OF AGRICULTURE**

LCB File Nos. R027-21 and R037-21
DIVISION OF MEASUREMENT STANDARDS

NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATION

The Nevada Department of Agriculture, 405 South 21st Street, Sparks, Nevada, 89431, is proposing the Amendment of regulations pertaining to Nevada Administrative Code (NAC) Chapter 590. A workshop has been set for:

Date: Tuesday, March 15, 2022
Time: 2 p. m. PDT
Location: This meeting will be held virtually via Zoom

Remote Meeting Information*:

To join the meeting virtually, click on the URL and enter the meeting number and password when prompted:

<https://us02web.zoom.us/j/82490909357?pwd=MGNDWXhlUGJOU2Z6WldXVEdnZTV3UT09>

Meeting ID: 824 9090 9357
Passcode: 600945

To join by telephone, call one of the phone-in numbers below and enter the passcode when prompted.

Dial by your location

+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)

Meeting ID: 824 9090 9357
Passcode: 600945

ALL PERSONS WISHING TO ATTEND THE MEETING MUST ATTEND VIA THE IDENTIFIED VIRTUAL MEETING PLATFORM OR TELEPHONICALLY.

Nevada Revised Statutes Chapter 287 has been amended through [2021 AB 253](#) to allow public meetings to be completed by use of remote technology and without a physical location.

This workshop will be conducted in accordance with the Open Meeting Law ([NRS 241.020](#)).

The purpose of the workshop is to solicit comments from interested persons on changes to NAC Chapter 590 pertaining to diesel emission fluid, petroleum products, and civil penalties for certain violations of the Nevada Petroleum Inspection Act. NAC 590 revisions are in response to passage of Assembly Bill 31 of the 81st Session of the Nevada Legislature. Proposed regulation changes are contained within LCB File # R027-21P (<https://www.leg.state.nv.us/Register/2021Register/R027-21P.pdf>) and LCB File # R037-21P (<https://www.leg.state.nv.us/Register/2021Register/R037-21P.pdf>).

A copy of all materials relating to the proposal may be obtained by visiting the Department's website at agri.nv.gov or by contacting the Division of Measurement Standards at 775-353-3783 or ce@agri.nv.gov. Copies may also be requested or inspected by visiting the NDA offices located in Elko, Las Vegas or Sparks or the Nevada State Library and Archives at 100 Stewart Street, Carson City, NV 89701. A reasonable fee for copying or postage may be charged for those requesting a print copy. Members of the public who would like additional information about a proposed regulation may contact the Division of Measurement Standards by 775-353-3783 and ce@agri.nv.gov.

Persons wishing to make oral comment upon the regulation draft of the Nevada Department of Agriculture may participate at the scheduled workshop. Persons wishing to submit written testimony or documentary evidence may submit the material by emailing ce@agri.nv.gov or by mailing to the following address: Nevada Department of Agriculture, Attn: William Striejewske, 405 S. 21st ST, Sparks, NV 89431.

Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Please contact the Department at 775-353-3783 or ce@agri.nv.gov prior to the meeting.

Notice of this meeting was sent to all persons on the Department's mailing list for administrative regulations and posted on or before 9 a.m. fifteen days before the meeting at the following locations: the Nevada Department of Agriculture website at agri.nv.gov, Nevada Public Notice website at <https://notice.nv.gov/> and Nevada Legislature Administrative Regulation Notices at <https://www.leg.state.nv.us/App/Notice/A/>.

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AGENDA

March 15, 2022

2 p. m. PST

Note: Items on the agenda may be taken out of the posted order, items may be combined for consideration, and items may be pulled or removed from the agenda.

I. Call to Order

II. Public Comment: In consideration of others who may wish to provide public comment, please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.

III. Overview of Proposed Changes to NAC Chapter 590: The Nevada Department of Agriculture (NDA) will hold a workshop to solicit comments from interested persons on the following general topics that may be addressed in proposed regulations (LCB File Nos. R027-21 and R037-21):

LCB File No. R027-21 establishes a schedule of civil penalties for certain violations of the Nevada Petroleum Inspection Act (NRS 590.010 to 590.150, inclusive)

- Monetary penalties are established for a first offense of the Nevada Petroleum Inspection Act, for a second offense, and for a third and subsequent offense
- An additional provision allows for a notice of warning without imposing a civil penalty for a first offense, under certain conditions

LCB File No. R037-21 establishes new sections within NAC Chapter 590 adopting by regulation certain specification standards for diesel emission fluid and for petroleum heating products, and also includes changes to the following sections of NAC Chapter 590:

- A new section adopts by regulation certain specification standards for diesel emission fluid (DEF) available from the International Organization for Standardization
- A new section adopts by regulation certain specification standards for petroleum heating products available from ASTM, International
- NAC 590.050 - updates the purchase price (from ASTM, International) for the standard specification for diesel fuel adopted by reference
- NAC 590.051 - updates the purchase prices (from ASTM, International) for the standard specifications for biodiesel fuel blend stock, biodiesel blends (B6 to B20), and diesel fuel adopted by reference
- NAC 590.052 - updates the purchase price (from ASTM, International) for the standard specification for Methanol Fuel Blends adopted by reference
- NAC 590.053 - updates the purchase price (from ASTM, International) for the standard specification for Ethanol Fuel Blends adopted by reference
- NAC 590.054 - updates the purchase price (from ASTM, International) for the standard specification for Chemical Composition of Gases adopted by reference

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- NAC 590.055 – adopts by reference certain specification standards for the regulation of Aviation Gasoline and Aviation Turbine Fuels (Jet Fuel) following the passage of Assembly Bill 31 of the 81st Session of the Nevada Legislature, which transferred authority for this section of NAC Chapter 590 from the State Sealer of Consumer Equitability to the State Board of Agriculture
- NAC 590.065 - updates the purchase price (from ASTM, International) for the standard specification for Spark-Ignition Engine Fuel adopted by reference
- NAC 590.070 – amends the text to reflect passage of Assembly Bill 31 by the 81st Session of the Nevada Legislature

IV. Public Comment: In consideration of others who may wish to provide public comment please avoid repetition and limit your comment to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.

V. Adjourn

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SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY NRS 223B.0608

LCB FILE No. R027-21
February 24, 2022

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 440 individual petroleum product distributors, wholesalers, and retailers. Three notices were returned as undeliverable. In addition, notice and a link to the text of the proposed regulations were sent via email to 7,026 interested parties. The notice included the website address for an electronic survey and a request that the recipient participate in the survey to assist the Nevada Department of Agriculture (NDA) 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 also 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 December 14, 2021, through January 14, 2022.

In total, the survey received 22 responses, though not all respondents answered every survey question. Persons interested in obtaining the survey results and summary may do so by contacting the NDA's Division of Measurement Standards at 775-353-3783 or ce@agri.nv.gov.

Summary of survey responses:

- There were 10 respondents to the question as to whether the changes proposed in LCB R027-21 would impact their ability to do business; 20% responded "Yes," 60% responded "No," and 20% responded "Maybe."
- Of the 10 respondents above, 20% of the survey respondents stated the proposed changes will have a major impact on their business, 30% stated that there would be a minor or moderate impact, and 50% stated that there would be insignificant or no impact.
- There were 9 respondents to the question of estimated annual financial impact. 55% indicated that there would be no financial impact to their operations, 22% indicated an annual financial impact of less than \$5,000, 11% indicated an annual financial impact of greater than \$5,000, but less than \$10,000, and 11% indicated an annual financial impact of greater than

\$10,000.

- Responses to the open-ended questions were limited and included:
 - “How would the proposed changes to NAC 590 in LCB R027-21 impact your ability to do business?” Respondents answered, “Unnecessary fees” and “Additional costs.”
 - “Would you need to make operational changes to your business as a result of the financial impact of the proposed changes LCB R027-21? If so, what would those changes be?” The lone respondent answered, “Price increases to consumers.”
 - “How could the proposed section in LCB R027-21 be adjusted to mitigate their level of negative financial impact?” The lone respondent answered, “We would have to alter our operations and explore alternative sources.”
 - “Please feel free to provide any feedback you would like us to consider in relation to the proposed changes in LCB R027-21.” Respondents answered, “Keep asking for feedback,” and “Continue providing information publicly so citizens understand the issue and can weigh in based on their perspective.”

2. The manner in which the analysis was conducted.

A statistical analysis of the survey results was compiled and considered. Survey respondents were asked whether the proposed changes in R027-21 would impact their ability to do business, and how they would be impacted; the estimated amount of annual economic impact on their business and the level of impact, ranging from “no impact” to “severe impact” that these changes would cause; and if these changes would require the business to make operational changes. Finally, participants were invited to offer suggestions on how negative financial impacts might be mitigated.

3. The estimated indirect and direct economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation.

The proposed regulation adds a new section to NAC Chapter 590 establishing a schedule of civil penalties for certain violations of the Nevada Petroleum Products Inspection Act (Act). Only violators of the Act will be subject to the monetary penalties outlined in the proposed regulation, and Subsection 2 allows for a warning rather than a monetary penalty on a first violation. For the majority of small businesses, it is expected that there will be no economic effect. To summarize the potential economic impact to those who violate the Act, the penalty for a first offense will be between \$25 and \$100, between \$50 and \$500 for a second offense, and between \$100 and \$1,000 for a third offense and subsequent offenses.

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.

The proposed regulation adds a new section to NAC Chapter 590 establishing a schedule of civil penalties for certain violations of the Act. Only violators of the Act will be subject to the monetary penalties outlined in File R027-21, and Subsection 2 allows for a warning rather than a monetary penalty on a first violation. There is no method the NDA can use to reduce the impact on small businesses if they are found to be in violation of the Act.

5. **The estimated cost to the agency for enforcement of the proposed regulation.**
The NDA does not anticipate increased costs to enforce the proposed revised provisions of NAC 590.

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 implement a new fee or increase to an existing fee. It adds a new section establishing a schedule of civil penalties for certain violations of the Act. As such, only violators of the Act will be subject to the monetary penalties outlined in File R027-21, and Subsection 2 allows for a warning rather than a monetary penalty on a first violation. It is difficult to estimate the amount that the agency may collect annually. Historically speaking, most violations of the Act identified by the NDA are determined to be unintentional and, therefore, would not have resulted in the assessment of monetary penalties. Fifty percent of any monies collected for the civil penalties authorized by the proposed regulation will be used to fund a program selected by the Director of the NDA that provides loans to persons who are engaged in agriculture and who are 21 years of age or younger, and the remaining 50 percent of the money will be deposited in the Account for the Control of Weeds established by NRS 555.035.

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**
Because the proposed regulation establishes a schedule of civil penalties for certain violations of the Act, the NDA concludes that the majority of small businesses will see no impact or a minor impact, both financially and to the operation of the business. While a few respondents expected more significant impacts, we believe that they may have misinterpreted what the proposed legislation is meant to do. The NDA will attempt to correct these misinterpretations during the public workshop(s) to be held for this proposed regulation.

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

Jennifer Ott

Digitally signed by Jennifer Ott
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c=US
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SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY NRS 223B.0608

**LCB FILE No. R037-21
February 24, 2022**

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 440 individual petroleum product distributors, wholesalers, and retailers. Three notices were returned as undeliverable. In addition, notice and a link to the text of the proposed regulations were sent via email to 7,026 interested parties. The notice included the website address for an electronic survey and a request that the recipient participate in the survey to assist the Nevada Department of Agriculture (NDA) 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. Additionally, 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 December 14, 2021, through January 14, 2022.

A total of 22 responses were received, though not all respondents answered every survey question. Persons interested in obtaining the survey results and summary may do so by contacting the NDA's Division of Measurement Standards at 775-353-3783 or ce@agri.nv.gov.

Summary of survey responses:

- There were 13 respondents to the question as to whether the changes proposed in LCB R037-21 would impact their ability to do business, and responses were split, with 46% responding "Yes," 46% responding "No," and 8% responding "Maybe."
- There were 11 respondents to the question indicating the level on impact. 18% of the survey respondents stated the proposed changes will have a major impact on their business, 45% stated that there would be a minor or moderate impact, and 36% stated that there would be insignificant or no impact. However, 45% of survey respondents indicated that there would be no financial impact to their operations, 45% indicated an annual financial impact of less than \$5,000, and 1 respondent indicated an annual financial impact of greater than \$5,000, but less than \$10,000.
- Three survey participants answered question 8, which asked the respondent to identify the sections which would have the highest financial impact on their business. While every section of the file

was cited, Section 4 (which updates the purchase price for the ASTM specification for diesel fuel adopted by the State Board of Agriculture) and Section 10 (which updates the purchase price for the ASTM specification for gasoline adopted by the State Board of Agriculture) all were cited by the participants.

- Survey participants also cited other sections of the file in which the prices for the purchase of the above noted reference documents available from ASTM, International and the International Organization for Standardization were updated as having a financial impact on their business. Purchase of these documents is not required, and the NDA does not set the prices for outside organizational documents. The documents are available, upon request, to be inspected at any of the NDA's offices.
- Responses to the open-ended questions included:
 - "How would the proposed changes to NAC 590 in LCB R037-21 impact your ability to do business?" Respondents answered, "As a gas station owner, these are costly regulations to adhere to when equipment is already very expensive and its (sic) used by the general public who do not give a second thought before damaging property. Upkeep is extremely expensive, the state should provide signs and materials the first round to ensure that everyone has resources to begin with," "Increased cost and complexity for compliance with required standards," "Extra expenses erode profit," "Cost of operations," and "Cost of replacement equipment."
 - "Would you need to make operational changes to your business as a result of the financial impact of the proposed changes LCB R037-21? If so, what would those changes be?" Three respondents answered, "No Changes," "Price increase passed on to the consumers," and "Additional costs, and expenses."
 - "How could the proposed section(s) in LCB R037-21 be adjusted to mitigate their level of negative financial impact?" Three respondents answered, "Delay the changes. Stations have barely been able to catch up with the EMV regulations. Added on with almost 2 years of covid-19 limiting business, it is too much, too soon," "Educate the benefit," and "Leave it as is."
 - "Please feel free to provide any feedback you would like us to consider in relation to the proposed changes in LCB R037-21." There were no comments from respondents.

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

A statistical analysis of the survey results was compiled and considered. Survey respondents were asked whether the proposed changes in R037-21 would impact their ability to do business, and how they would be impacted; the estimated amount of annual economic impact on their business and the level of impact, ranging from "no impact" to "severe impact," that these changes would cause; and if these changes would require the business to make operational changes. Finally, participants were invited to offer suggestions on how negative financial impacts might be mitigated.

3. **The estimated indirect and direct economic effect of the proposed regulation on the small businesses it is to regulate, including, without limitation.**

Sections 2 and 3 adopt new specifications for diesel emission fluid and petroleum heating products

after the Nevada Legislature granted the NDA authority over these products during the 81st Legislative Session. Included in these sections is information on the prices and method by which copies of these specifications may be obtained by regulated members of the industry or by the public. Because these are products that have not previously been regulated by the NDA, there may be industry interest in ensuring proper storage and quality of these products, and a desire to acquire these specifications. In the case of documents related to diesel emission fluid (Section 2), there are five specifications available for purchase, with the prices for each ranging from \$48 to \$200. Purchase of all five would cost \$543. In the case of documents related to petroleum heating products (Section 3), there are two specifications available for purchase, with a cost of \$60 for the heating oil specification and a cost of \$54 for the kerosine specification. Purchase of both would cost \$114. It should be noted that interested parties may inspect these documents at any of the NDA's office upon request.

Sections 4 through 8 inclusive, and Section 10 update the prices to purchase documents published by ASTM International. Again, there is no requirement for businesses to purchase any of these publications and interested parties may request to inspect any of the documents referenced in NAC Chapter 590 at any of the NDA's offices. Therefore, the agency estimates the economic effect of these Sections to be \$0.

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 prices of documents available from other organizations and the prices of those documents are outside of the NDA's control. Similarly, Sections 2 and 3 are related to new authority granted to the State Board of Agriculture and additional documents to be adopted by reference by the State Board of Agriculture. As stated above, purchase of these documents by affected businesses is not required.

As the NDA 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.

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

The NDA does not anticipate increased costs to enforce the provisions of NAC 590.

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 organization, and with the new specifications adopted by reference there are additional publications that affected businesses may wish to purchase. The NDA does not receive any of the proceeds for the sale of these publications, and information is provided in NAC Chapter 590 for purchase directly from the publishing organizations. It is also possible for those publications to be viewed at any of the NDA's offices, so purchase of the publications is unnecessary.

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**

The NDA concludes that the updates and additional authority will have a minor impact, both financially and to the operation of small businesses. While a few respondents anticipated more significant impacts, we believe that they misinterpreted the price updates that make up the bulk of the file as being costs that will be required of their businesses, when in fact they are not. The NDA will attempt to correct these misinterpretations during the public workshop(s) to be held for this proposed regulation.

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

Jennifer Ott

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**PROPOSED REGULATION OF THE
STATE SEALER OF MEASUREMENT STANDARDS**

LCB File No. R027-21

October 1, 2021

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

AUTHORITY: § 1, section 4 of Senate Bill No. 400, chapter 217, Statutes of Nevada 2021, at page 1012.

A REGULATION relating to petroleum products; establishing a schedule of civil penalties for certain violations of the Nevada Petroleum Products Inspection Act; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Sealer of Measurement Standards of the State Department of Agriculture to adopt regulations establishing a schedule of civil penalties for certain violations of the Nevada Petroleum Products Inspection Act. (Section 4 of Senate Bill No. 400, chapter 217, Statutes of Nevada 2021, at page 1012) This regulation: (1) sets forth such a schedule of civil penalties; and (2) provides for the issuance of a warning if the Division of Measurement Standards of the Department determines that a first offense was unintentional.

Section 1. Chapter 590 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A person who violates any of the provisions of NRS 590.010 to 590.150, inclusive, shall be subject to the following civil penalties:

(a) Except as otherwise provided in subsection 2, for a first offense, not less than \$25 and not more than \$100.

(b) For a second offense, not less than \$50 and not more than \$500.

(c) For a third or subsequent offense, not less than \$100 and not more than \$1,000.

2. If the Division of Measurement Standards of the State Department of Agriculture determines that a first offense was unintentional, the Division shall issue a notice of warning to the person without imposing a civil penalty pursuant to subsection 1 if the person takes action to remedy the violation. The notice of warning must be in writing and set forth:

(a) The statute that was violated;

(b) The action necessary to remedy the violation; and

(c) The date by which the person must take action to remedy the violation before a civil penalty will be imposed. The failure of a person to take action by the prescribed date constitutes a second offense subject to a civil penalty set forth in subsection 1.

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

LCB File No. R037-21

November 12, 2021

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

AUTHORITY: § 1, NRS 561.105 and 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, and section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072); § 2, section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072); § 3, NRS 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140; § 4, NRS 561.105, 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219, and 590.100, as amended by section 8 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 141; §§ 5-8, NRS 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219, and 590.100, as amended by section 8 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 141; § 9, NRS 590.073, as amended by section 6 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, and 590.100, as amended by section 8 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 141; § 10, NRS 561.105 and 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219; § 11, NRS 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219, 590.071, as amended by section 5 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 139, 590.073, as amended by section 6 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, and 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, and section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072).

A REGULATION relating to substances regulated by the State Board of Agriculture; adopting by reference certain specification standards for diesel exhaust fluid; adopting by reference certain specification standards for petroleum heating products; updating information regarding fuel standards adopted by the Board; transferring the duty to adopt standards for aviation fuel from the State Sealer of Consumer Equitability to the Board; revising provisions governing civil penalties for certain violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Agriculture to adopt by regulation specification standards for diesel exhaust fluid and authorizes the Board to follow the specification standards set forth by the International Organization for Standardization or by ASTM International. (Section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072)) **Section 2** of this regulation adopts by reference the most recent version of the ISO 22241 standard for diesel exhaust fluid and provides information regarding the cost of acquiring and the availability of the adopted standards.

Existing law requires the Board to adopt specification standards for petroleum heating products and requires the standards to conform to the specification standards set forth by ASTM International. (NRS 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140) **Section 3** of this regulation adopts by reference the most recent specifications for petroleum heating products set forth by ASTM International and provides information regarding the cost of acquiring and the availability of the adopted standards.

Existing regulations adopt by reference certain published standards for diesel fuel oils, biodiesel and diesel fuel, fuel methanol, ethanol fuel blends and gasoline and standards for testing methods of the chemical composition of gases by mass spectrometry. (NAC 590.050-590.054, 590.065) **Sections 4-8 and 10** of this regulation update the costs for which the printed standards are available from the publisher and certain other information relating to acquiring the standards.

Existing law requires the Board to adopt specification standards for aviation fuel sold or offered for sale. (NRS 590.073, as amended by section 6 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140) Existing regulations adopt by reference certain published standards for aviation fuel. (NAC 590.055) **Section 9** of this regulation transfers the duty of adopting specification standards for aviation fuel from the State Sealer of Consumer Equitability to the Board to conform with existing law. **Section 9** also updates information regarding the cost of the adopted standards.

Existing law provides that it is unlawful for a person to engage in certain commercial activities regarding diesel exhaust fluid unless the diesel exhaust fluid conforms to the specification standards prescribed by the Board. (Section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072)) Existing law further provides that it is unlawful for a person to engage in certain commercial activities regarding any aviation fuel unless the aviation fuel conforms to the specification standards prescribed by regulation of the Board. (NRS 590.073, as amended by section 6 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140) Existing law makes it unlawful to engage in certain commercial activities regarding any petroleum heating, not including liquefied petroleum gas or natural gas, unless the petroleum heating product conforms to specification standards prescribed by regulation of the Board. (NRS 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140) **Section 11** of this regulation adds such violations to the existing schedule of administrative fines the Board may impose.

Section 1. Chapter 590 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation:

Sec. 2. 1. The State Board of Agriculture hereby adopts by reference the most recent version of ISO 22241, “Diesel engines-NOx reduction agent AUS 32,” published by the International Organization for Standardization. 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 the International Organization for Standardization.

2. The standard is available for inspection pursuant to NAC 590.045 and may be purchased from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036, or at the Internet address <http://www.webstore.ansi.org>.

(a) “Part 1: Quality requirements” may be purchased for the price of \$48;

(b) “Part 2: Test methods” may be purchased for the price of \$200;

(c) “Part 3: Handling, transportation, and storage” may be purchased for the price of \$73;

(d) “Part 4: Refilling interface” may be purchased for the price of \$111; and

(e) “Part 5: Refilling interface for passenger cars” may be purchased for the price of \$111.

3. Any other test method may be used if the State Sealer of Measurement Standards determines that another method produces results equivalent to the results of the specified method. A method approved by the International Organization for Standardization or ASTM International that has not yet been published shall be deemed to meet the appropriate criteria.

Sec. 3. 1. The State Board of Agriculture hereby adopts by reference the most recent specifications for petroleum heating products contained in Volume 05.01, “Petroleum Products and Lubricants (I),” of the [Annual Book of ASTM Standards](#), ASTM D396, “Standard Specification for Fuel Oils,” and ASTM D3699, “Standard Specification for Kerosine.” Each new revision of those standards 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. A copy of 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 \$60 for ASTM D396 and \$54 for ASTM D3699.

2. Any other test method may be used if the State Sealer of 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.

Sec. 4. NAC 590.050 is hereby amended to read as follows:

590.050 1. Except as otherwise provided in subsection 2, the State Board of Agriculture hereby adopts by reference the most recent version of ASTM D975, “Standard Specification for Diesel 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. A copy of 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.]~~ \$78.

2. The flash point for No. 2 diesel fuel must not be lower than 37.8 degrees Celsius (100 degrees Fahrenheit) when the No. 2 diesel fuel has been treated to prevent gelling and the No. 2 diesel fuel has been labeled “winterized.”

3. The grade assigned by ASTM International for diesel fuel:

(a) Dispensed from a pump or other device for dispensing the diesel fuel must be posted on that pump or device, except that such posting does not need to include the term “Ultra Low Sulfur Diesel” or “ULSD.”

(b) Transported or stored in a vehicle which is used for the delivery of diesel fuel must be posted on the label of that vehicle as required pursuant to NRS 590.040.

4. Any other test method may be used if the State Sealer of 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.

Sec. 5. NAC 590.051 is hereby amended to read as follows:

590.051 1. Except as otherwise provided in this section, the State Board of Agriculture hereby adopts by reference the most recent version of the following standards for biodiesel and diesel fuel set forth in the *Annual Book of ASTM Standards* published by ASTM International:

(a) ASTM D6751, “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels”;

(b) ASTM D7467, “Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)”; and

(c) ASTM D975, “Standard Specification for Diesel Fuel.”

↪ Each new revision of those standards 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. Each 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>. The price of ASTM D6751 is ~~[\$58.]~~ \$60, the price of ASTM D7467 is ~~[\$72.]~~ \$78 and the price of ASTM D975 is ~~[\$75.]~~ \$78.

2. The ratio for biodiesel fuel blended in accordance with ASTM D7467 must be not less than 6 percent but not more than 20 percent by volume of biodiesel fuel which complies with the specifications for feedstock and composition set forth in ASTM D6751. The remainder of the biodiesel blend which contains not less than 6 percent but not more than 20 percent by volume of biodiesel fuel must comply with the requirements for diesel fuel set forth in NAC 590.050.

3. Biodiesel fuel blends which contain not more than 5 percent by volume of biodiesel fuel must comply with the requirements for diesel fuel set forth in NAC 590.050.

Sec. 6. NAC 590.052 is hereby amended to read as follows:

590.052 1. The State Board of Agriculture hereby adopts by reference the most recent version of ASTM D5797, "Standard Specification for Methanol Fuel Blends (M51-M85) for Methanol-Capable Automotive Spark-Ignition Engines," as set forth 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.

2. 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 ~~[\$58.]~~ \$60.

Sec. 7. NAC 590.053 is hereby amended to read as follows:

590.053 1. The State Board of Agriculture hereby adopts by reference the most recent version of ASTM D5798, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines,” set forth 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.

2. 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 ~~[\$52.]~~ \$54.

Sec. 8. NAC 590.054 is hereby amended to read as follows:

590.054 1. The State Board of Agriculture hereby adopts by reference the most recent version of ASTM D2650, “Standard Test Method for Chemical Composition of Gases By Mass Spectrometry,” set forth 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 ~~[\$52.]~~ \$54.

2. A person shall not sell, offer for sale, supply or offer to supply in this State any hydrogen that is intended for use in a vehicle if the hydrogen, after it is analyzed in accordance with ASTM D2650, contains:

- (a) Less than 98 percent per mole of hydrogen;
- (b) Less than 99.9 percent per mole of any combination of hydrogen, water and oxygen; or
- (c) More than 0.01 percent per mole of total hydrocarbons.

3. Any hydrogen specified in subsection 2 must not contain any dust, sand, dirt, gum, oil or other substance in an amount which may damage any equipment located at a fueling station or a vehicle being fueled at that station. If the hydrogen is introduced in gaseous form into a vehicle's system for storing fuel, the hydrogen under ambient conditions must have a distinctive odor which may be detected in a concentration in air of not more than one-fifth of the lower limit of flammability.

Sec. 9. NAC 590.055 is hereby amended to read as follows:

590.055 1. The State ~~{Sealer}~~ **Board** of ~~{Consumer Equitability}~~ **Agriculture** hereby adopts by reference the most recent version of the following standards contained in the *Annual Book of ASTM Standards*:

- (a) ASTM D910, "Standard Specification for Leaded Aviation Gasolines "; and
- (b) ASTM D1655, "Standard Specification for Aviation Turbine Fuels."

↪ Each new revision of these standards shall be deemed approved by the ~~{State Sealer of Consumer Equitability}~~ **Board** unless the revision is disapproved by the ~~{State Sealer of Consumer Equitability or his or her}~~ **Board or its** designee within 120 days after the date of publication of the revision by ASTM International. A copy of the standards are 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 \$54 for ASTM D910 and \$60 for ASTM D1655.

2. Any other test method may be used if the State Sealer of 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.

Sec. 10. 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.]~~ \$78.

2. 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. Except as otherwise provided in subsection 4, 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 percent ethanol by volume must not exceed the limits specified in ASTM D4814 by more than 1 pound per square inch.

4. 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. 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 than 0.05 gram of lead per gallon;
- (b) It contains more than 0.005 gram of phosphorus per gallon;
- (c) It contains more than 10 percent ethanol by volume; or
- (d) It contains more than 95 parts per million of sulfur.

6. Any other test method may be used if the State Sealer of 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.

Sec. 11. NAC 590.070 is hereby amended to read as follows:

590.070 For any violation of the provisions of NRS 590.070, *as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219, NRS 590.073, as*

amended by section 6 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, NRS 590.090, as amended by section 7 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 140, or section 1 of Assembly Bill No. 31, chapter 32, Statutes of Nevada 2021, at page 136 (NRS 590.072), including any violation of standards relating to diesel fuel, the State Board of Agriculture may:

1. For the first violation, issue a written warning, impose a fine of not more than \$2,000 for each day the violation continues, or issue a warning and impose a fine.
2. For the second violation, impose a fine of not more than \$3,500 for each day the violation continues.
3. For the third or subsequent violation, impose a fine of not more than \$5,000 for each day the violation continues.