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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

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

LCB File No. R038-21
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: Wednesday, April 6, 2022
Time: 10:30 a. 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/81160526280?pwd=Ti95dHREVlgzSFhyaWpOQysvdzFzZz09>

Meeting ID: 811 6052 6280
Passcode: 825905

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)

***Per 2021 AB253**

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 the storage and sale of E15 gasoline. NAC 590 revisions are in response to passage of Assembly Bill 411 of the 81st Session of the Nevada Legislature. Proposed regulation changes are contained within LCB File No. R038-21P (<https://www.leg.state.nv.us/Register/2021Register/R038-21P.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 the 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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**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATION
AGENDA**

**April 6, 2022
10:30 a. m. PDT**

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 No. R038-21):

LCB File No. R038-21 amends NAC Chapter 590.065 adopting regulations governing the storage and sale of E15 gasoline:

- Updates the purchase price (from ASTM, International) for the standard specification for Spark-Ignition Engine Fuel adopted by reference
- A new subsection adopts by reference certain provisions of Title 40 of the Code of Federal Regulations
- A new subsection provides guidance by which the public may inspect publications adopted by reference by the State Board of Agriculture
- Adds language clarifying regulations concerning Reid Vapor Pressure and other regulations concerning prohibited substances in gasoline
- Adds language addressing state and federal regulations concerning the storage and sale of E15 gasoline
- Amends reference to the State Sealer to reference the updated name of the division from Consumer Equitability to Measurement Standards

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. R038-21
March 7, 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 petroleum product distributors, wholesalers, and retailers. Four notices were returned as undeliverable. In addition, notice and 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, but 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 January 21, 2022, through February 11, 2022.

A total of 18 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 16 respondents to the question as to whether the changes proposed in LCB R038-21 would impact their ability to do business. Only 6% responded "Yes," while 56% responded "No," and 38% responded "Maybe."
- There were 12 respondents to the question asking the level of impact of the proposed changes. 8% of the survey respondents stated the proposed changes will have a major impact on their business, 33% stated that there would be a minor or moderate impact, and 58% stated that there would be insignificant or no impact. When asked to estimate the annual economic impact, 25% of respondents indicated an impact of more than \$20,000, 8% indicated an annual financial impact of greater than \$5,000, but less than \$10,000, 8% indicated an annual financial impact of greater than \$1,000, but less than \$5,000, and 58% indicated that there would be no financial impact to their operations.

- LCB File No. R038-21 amends NAC 590.065, amending existing subsections and adding two new subsections. Six survey participants answered question 7, which asked the respondent to identify the subsection(s) of the proposed regulations that would have the highest financial impact on their business. Respondents were able to select more than one subsection, so while not every subsection of the LCB file was cited, four subsections were selected, and the percentages do not total 100%. Subsection 1 was selected by 50% of respondents, subsections 5 and 7 were each selected by 33% of respondents, and subsection 6 was selected by 17%.
- Half of the respondents to question 7 selected subsection 1; however, subsection 1 is not being amended within LCB File No. R038-21. This subsection lists ordering information and prices for the purchase of a standard specification available from ASTM, International. Purchase of this document is not required, and the NDA does not set the prices for outside organizational documents. All standard specifications and other documents are available, upon request, to be inspected at any of the NDA's offices.
- The following are aggregated responses to the open-ended questions:
 - "How would changes to NAC 590 in LCB File No. R038-21 impact your ability to do business?" Respondents answered, "Not Sure," "Higher cost of doing business. inconsistent E blends, reduced mpg," "I think there is not much difference, need more clarity," "The changes to NAC 590, as drafted, are not expected to impact our ability to do business in Nevada," "The proposed changes would be beneficial to our ability to do business. It would offer a new product to bring to market and expand our offering," "The Washoe County Health District Regulates Underground Storage Tanks that sell/distribute fuel. There will be instances where E15 is incompatible with existing infrastructure and could cause fuel releases. This would impact the ground water and further contaminate other sources and valuable area within the Region," "No impact other than the cost of fuel," and "Have minimum to no impact."
 - "Would you need to make operational changes to your business as a result of the financial impact of the proposed changes in LCB File No. R038-21? If so, what would those changes be?" Respondents answered, "If I was required to carry this fuel I would have to update my site. If not required, I will not carry it," "no," "not all vehicles run efficiently on E15," "I haven't decide (sic) yet," "The changes to NAC 590, as drafted, are not expected to result in any financial impacts that would require operational changes," "We would have limited back office changes for a new fuel product. There are one time changes to price signs and dispenser labels. None of these are a material price impact," "Change gas supplier," and "no."
 - "How could the proposed section(s) in LCB R038-21 be adjusted to mitigate their level of negative financial impact?" Respondents answered, "not sure," "Can't say anything until it should clear in simple language (sic)," "Year round sales of E15 would eliminate the need for sign and dispenser changes" and "public awareness."
 - "Please feel free to provide any feedback you would like us to consider in relation to the proposed changes in LCB R038-21." Respondents answered, "No Comment," "No feedback," and "The sale of E15 gives the customer another choice. The retail market will

determine if the product is wanted and legislation should allow the product to be tested in cost effective and reasonable manner.”

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 R038-21 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.

Following the passage of Assembly Bill 411 during the 81st Legislative Session, which allowed for the sale of E15 gasoline in Nevada, the proposed regulation amends NAC Chapter 590.065, establishing requirements for the sale of E15. The sale of E15 is not mandatory but will be another product available in the marketplace. Retailers will have the choice whether or not to sell E15.

Because E15 can affect fueling systems (tanks, piping, dispensers, seals, etc.), it is possible that retailers will need to change one or more aspects of their infrastructure to store and sell E15 safely and responsibly. For businesses that choose not to sell E15, there will be no economic effect. Businesses that choose to sell E15 would see a range of direct costs, depending on the level of infrastructure changes that they would need to undertake.

- For a retail station with tank(s), dispensers, piping and seals that are compatible with E15, the cost would be relatively minimal, approximately \$2,000 or less for labeling and placarding, depending on the size of the station.
- A retail station needing to upgrade their dispensers to those that are compatible with E15 may retrofit at a cost of approximately \$4,000 per dispenser or replace with new dispensers at a cost of approximately \$20,000 each.
- Replacement of a 10,000-gallon underground storage tank is estimated to cost approximately \$115,000.

These approximate expenses can be used to estimate the total cost that a business will incur. Information on requirements and cost analyses will be provided on request by contacting the NDA’s Division of Measurement Standards at 775-353-3783 or ce@agri.nv.gov. It is expected that these costs would be upfront, one-time expenses.

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.

Because of Federal regulations governing many aspects of the storage, sale, and use of E15, there was little that could be done to reduce the impact of the proposed regulations. However, as mentioned above, the sale of E15 is not mandatory; it is at the discretion of the business. Prior to submitting draft language to LCB, the NDA held a listening session with stakeholders from the petroleum industry, the

renewable fuels industry, and government environmental entities. This session helped ensure that all necessary requirements were included, and that unnecessary requirements that would hinder businesses were not included.

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 regulations do not provide for a new fee or increase an existing fee collected by the agency.
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 proposed regulation establishes requirements for the storage and sale of E15. Sale of this product is not mandatory, so the decision is at the discretion of each business. There will be no impact on a business that chooses not to sell E15. For businesses that choose to sell E15, the level of impact will be dependent on the level of infrastructure changes necessary for the business to meet these requirements.

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
DN: cn=Jennifer Ott, o=Nevada
Department of Agriculture, ou=Director,
email=jott@agri.nv.gov, c=US
Date: 2022.03.07 15:56:54 -08'00'

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

LCB File No. R038-21

December 30, 2021

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

AUTHORITY: § 1, 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.

A REGULATION relating to fuels; revising requirements relating to 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. (NRS 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219) Senate Bill No. 65 of the 81st Session of the Nevada Legislature renamed the State Sealer of Consumer Equitability as the State Sealer of Measurement Standards. (NRS 561.155, as amended by section 5 of Senate Bill No. 65, chapter 24, Statutes of Nevada 2021, at page 100) Existing regulations adopt by reference certain published standards relating to gasoline. (NAC 590.065) This regulation: (1) updates the purchase price of certain standards; (2) adopts by reference certain provisions of federal law relating to fuel, fuel additives and regulated blend stocks; and (3) makes a conforming change to change the name of the State Sealer of Consumer Equitability to the State Sealer of Measurement Standards.

Assembly Bill No. 411 of the 81st Session of the Nevada Legislature provides that the regulations adopted by the Board must allow for the sale of motor vehicle fuel containing not more than 15 percent ethanol by volume. (NRS 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219) Consistent with this requirement, this regulation revises existing regulations to allow for the sale of gasoline containing not more than 15 percent ethanol by volume if the gasoline meets certain requirements.

Existing federal law prohibits gasoline from exceeding certain limits for Reid vapor pressure during the summer season between June 1 and September 15, but gasoline containing 10 percent ethanol by volume may exceed these limits by 1 pound per square inch. (40 C.F.R. §80.27(d)) The D.C. Circuit Court recently held that this 1 pound per square inch waiver does not apply to gasoline containing more than 10 percent ethanol by volume. (*Am. Fuel & Petrochemical Mfr's v. Envtl. Prot. Agency*, 3 F.4th 373 (D.C. Cir. 2021)) Consistent with federal law, this regulation requires that gasoline containing more than 10 percent ethanol by volume comply with existing federal limits for Reid vapor pressure during the summer season.

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 ~~1\$75.1~~ \$78.

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; and

(b) The provisions of 40 C.F.R. § 80.27, as it existed on June 1, 2019.

3. *A copy of the publications which contain the provisions adopted by reference in subsection 2, are available for inspection at the offices of the State Department of Agriculture located at 405 South 21st Street, Sparks, Nevada 89431, 2300 East Saint Louis Avenue, Las Vegas, Nevada 89104 and 4780 East Idaho Street, Elko, Nevada 89801 pursuant to NAC 590.045 and are available, free of charge, from the United States Government Printing Office at the Internet website <https://www.ecfr.gov>.*

4. 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.}~~ 5. Except as otherwise provided in subsection ~~{4.}~~ 6, 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 *Reid* vapor pressure set forth in ASTM D4814 by more than 1 pound per square inch ~~{}~~ *as set forth in 40 C.F.R. § 80.27(d)*.

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

(3) More than 10 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.}~~ 6. Gasoline and any blend of gasoline and ethanol sold in Clark County between October 1 and the following March 31 must not exceed a *Reid* vapor pressure of 13.5 pounds per square inch.

~~{5.}~~ 7. 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 : ~~{ff.}~~

(a) ~~{It contains more}~~ *If the gasoline contains:*

(1) More than 0.05 gram of lead per gallon;

~~{(b) It contains more}~~ *(2) More* than 0.005 gram of phosphorus per gallon;

~~{(e) It contains}~~ (3) *Except as otherwise provided in paragraph (b), more than 10 percent ethanol by volume; or*

~~{(d) It contains more}~~ (4) *More than 95 parts per million of sulfur.*

(b) That contains more than 10 percent but not more than 15 percent ethanol by volume unless:

(1) The gasoline and any additives, have been produced in compliance with 40 C.F.R. §§ 79.1 to 79.32, inclusive, and 79.50 to 79.56, inclusive;

(2) 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;

(3) 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;

(4) 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

(5) The product transfer documents for such gasoline are in compliance with the requirements set forth in 40 C.F.R. § 1090.1110.

~~{6-}~~ 8. 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.