

**ADOPTED REGULATION OF THE  
STATE BOARD OF AGRICULTURE**

**LCB File No. R010-09**

Effective October 27, 2009

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

AUTHORITY: §§1 and 2, NRS 590.070.

A REGULATION relating to motor vehicle fuel; setting forth the procedure for granting a variance to supply motor vehicle fuel which does not meet certain standards in certain circumstances; revising the definition of “gallon” for certain purposes; and providing other matters properly relating thereto.

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

*1. Except as otherwise provided in subsection 6, 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.*

**Sec. 2.** NAC 590.041 is hereby amended to read as follows:

590.041 As used in NAC 590.041 to 590.070, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, “gallon” means ~~128 ounces.~~ *231 cubic inches.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R010-09**

The State Board of Agriculture adopted regulations assigned LCB File No. R010-09, which pertain to chapter 590 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

This action was undertaken as a result of Section 2 of SB 324, from the 2007 Legislative Session. It was precipitated by an ongoing situation between Western States Petroleum Association (WSPA), which represents the major petroleum distributors, and other groups, including the Petroleum Marketers Association (PMA), which represents smaller distributors. Section 2 called for the adoption of procedures for allowing variances from the specifications of motor vehicle fuel, by petition, in times of supply disruption.

As such, public comment, other than that of the various interests involved in the crafting of the variance procedure, was not solicited. In the instance that this procedure would be employed, the public would not be inconvenienced by a lack of motor vehicle fuel, but rather helped by the short term availability of out-of-specification fuel.

A series of workshops and a hearing led to the document that was approved as a temporary regulation in February, 2009, and filed as LCB File No. T011-09. This document was then used as a draft, submitted to LCB and ultimately returned as File No. R010-09. The procedure used to make any changes to R010-09 was as follows: a workshop was held in Reno, with other parties joining by teleconference. There were two instances of language for which changes were discussed and corrected. By e-mail, comments were received from another party prior to holding a hearing. These comments were discussed, both by broadcast e-mail, as well as at the hearing, which was held in Reno (and again, teleconferenced) in September. Notice of the hearing was publicly posted as mandated by the NRS. All of the proposed changes were also discussed with staff from LCB, so that the changes remained within allowable bounds.

Copies of all e-mail correspondence and minutes of workshops and hearings are available from

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**2. The number of persons who:**

**(a) Attended each hearing:**

A total of five, including the Senior Petroleum Chemist from the Department of Agriculture, who organized the hearing. Held in Reno and available for teleconferencing, the hearing was also attended by a representative of WSPA (by teleconference), a legal representative of WSPA, an interested party from the petroleum industry, and the Nevada Board of Agriculture member who represents Petroleum.

When the request to approve this Variance Procedure was presented to the Nevada Board of Agriculture on September 30, 2009, among those in attendance were: a representative of PMA, a legal representative of WSPA, and the same interested party from the petroleum industry.

**(b) Testified at each hearing:**

Direct testimony was not taken during the hearing, because, as stated above, after development of a temporary regulation, as well as a workshop, the variance language was essentially finalized prior to the hearing, and at the hearing, only small corrections and changes were made – almost entirely typographical in nature.

At the Board of Agriculture Meeting on September 30, none of those in attendance testified or commented.

**(c) Submitted written comments:**

Over the course of development of the variance language, a significant number of comments were made via e-mail, as stated in Section 2(a) above. LCB File No. R010-09 was broadcast to the stakeholders and other interested parties, and commented on, leading to the minor changes suggested for the final document.

No one submitted written comments at, or prior to the hearing, however.

**3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The Senior Petroleum Chemist with the Department of Agriculture was the central conduit for information as the variance language was developed. This individual maintains a list of suppliers, retailers, representatives of petroleum marketers, and government officials. All drafts of the variance language, as well as comments for and against sections of the language, were distributed to the entire mailing list described above. Because businesses and their representatives, both large and small, played such a key role in the development of the variance language, there was significant input from business owners.

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**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

I don't believe that this is applicable to this situation, as this is a unique document arising from previous legislation, as described above.

**5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**  
**(a) Both adverse and beneficial effects; and**  
**(b) Both immediate and long-term effects.**

No direct methods were used by the Department to determine the impact on a small business for the following reasons:

- a. Small business representatives were part of the group that created the language of the variance, and the variance is a mechanism that may allow them to sell fuel in times of supply shortage, therefore providing a benefit to businesses.
- b. As such, this variance provision is not meant to inhibit the ability of businesses to sell fuel, but to make fuel more readily available, in times of supply disruption. As a result, there should be no inherent negative effect on businesses. On the contrary, this is meant to alleviate a negative situation.

The following addresses the estimated economic effect of the proposed amendments on the **business** which it is to regulate:

- a. Adverse effects: NONE
- b. Beneficial effects: GASOLINE WILL BE AVAILABLE DURING TIMES OF SUPPLY DISRUPTION
- c. Immediate and long-term effects: NONE

The following addresses the estimated economic effect of the proposed amendments on the **public** which it is to regulate:

- a. Adverse effects: NONE
- b. Beneficial effects: GASOLINE WILL BE AVAILABLE DURING TIMES OF SUPPLY DISRUPTION
- c. Immediate and long-term effects: NONE

**6. The estimated cost to the agency for enforcement of the adopted regulation:**

We don't anticipate that there will be any additional costs to the Department for enforcement of the regulation.

**7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation does not overlap or duplicate any other state, local or federal regulation.

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

The proposed amendments do not include any provisions more stringent than any federal regulation with the same activity.

**9. If the 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.**

This regulation has no fees attached to it.

**10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

- 1. Does this proposed regulation impose a direct and significant economic burden upon a small business? No
- 2. Does this proposed regulation restrict the formation, operation or expansion of a small business? No

No direct methods were used, but based on the intent of the regulation and the principals involved in shaping the language, there is no burden or restriction for small businesses. At worst, the request for a variance may be denied by the state, in which case a business would not be able to sell fuel. However, this is the situation they would have to be in to request a variance in the first place.