

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

LCB File No. R111-08

Effective January 28, 2010

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

AUTHORITY: §1, NRS 561.105 and 590.070.

A REGULATION relating to fuel; adopting by reference a certain standard for gasoline published by ASTM International; providing exceptions; and providing other matters properly relating thereto.

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 specification guides for gasoline]~~ *ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,”* contained in Volume 05.02, “Petroleum Products and Lubricants,” of the ~~[2002]~~ *2009 Annual Book of ASTM Standards*, ~~[ASTM designation D 4814-01a.]~~ *as that standard existed on July 1, 2009, and any subsequent revision of that standard published by ASTM International that is approved by the State Board of Agriculture pursuant to this section for use in this State.* The ~~[publication]~~ *standard* may be purchased from ~~[the American Society for Testing and Materials.]~~ *ASTM International*, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, *or at the Internet address <http://www.astm.org>*, for the price of ~~[\$43.]~~ *\$53.*

2. *The State Board of Agriculture will review each revision of ASTM D4814 that is published after July 1, 2009, to ensure its suitability for use in this State. If the State Board of Agriculture fails to approve or disapprove such a revision within 120 days after its date of*

publication, the revision shall be deemed approved by the State Board of Agriculture for use in this State. The State Board of Agriculture will file a copy of each revision which it approves or which is deemed approved pursuant to this section with the Secretary of State and the State Library and Archives Administrator. The most recent revision that is approved by the State Board of Agriculture will be available for inspection at the State Department of Agriculture, 405 South 21st Street, Sparks, Nevada 89431.

3. Notwithstanding the provisions of Table 4 (“Schedule of Seasonal and Geographical Volatility Classes”) of ASTM ~~[designation D-4814-01a]~~ *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.]~~ 6, gasoline :

(a) *Sold between June 1 and September 15 of each calendar year* containing ~~[9.0]~~ :

(1) *Not less than 9* percent ethanol by volume ~~[or more is permitted an additional 1.0 pound per square inch on the vapor pressure specification.~~

~~—4.]~~ *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.*

5. *Until May 1, 2012, or until ASTM D4814 is amended to incorporate changes to the minimum temperature for vapor lock for the following classes to include the effects of volatility of not more than 10 percent of ethanol by volume, whichever occurs first, the minimum temperature for a vapor-liquid ratio of 20 for the applicable class of vapor lock protection for a blend of gasoline and ethanol is:*

- (a) For class 1, 54 degrees Centigrade (129 degrees Fahrenheit).*
- (b) For class 2, 50 degrees Centigrade (122 degrees Fahrenheit).*
- (c) For class 3, 47 degrees Centigrade (116 degrees Fahrenheit).*
- (d) For class 4, 41.5 degrees Centigrade (107 degrees Fahrenheit).*
- (e) For class 5, 39 degrees Centigrade (102 degrees Fahrenheit).*
- (f) For class 6, 35 degrees Centigrade (95 degrees Fahrenheit).*

↪ *Gasoline and any blend of gasoline and ethanol that is sold in the area of this State which is east of the 117th degree of west longitude and north of the 38th degree of north latitude must meet the minimum temperatures for vapor lock protection set forth in ASTM D4814.*

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 vapor pressure of ~~[9.0]~~ 13.5 pounds per square inch. ~~[and must meet the specifications relating to distillation set forth for volatility class A, B or C in ASTM designation D-4814-01a.~~

~~—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 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) Manganese or any compound of manganese has been added to the gasoline; ~~[or]~~

(d) It contains more than 10 percent ethanol by volume ~~[-~~

~~—6.— A person shall not sell, offer for sale, supply or offer to supply in:~~

~~—(a) The area of this State which is east of the 118th degree of west longitude and north of the 38th degree of north latitude, any gasoline which contains more than 800 parts per million of sulfur.~~

~~—(b) Any other area of this State which is not described in paragraph (a), any gasoline which] ;~~
or

(e) *It* contains more than ~~[300]~~ 95 parts per million of sulfur.

~~[7.]~~ 8. Any other test method may be used if the State Sealer of Weights and Measures 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R111-08

The Nevada Board of Agriculture adopted regulations assigned LCB File No. R111-08 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.

In addition to the public posting (as required) of workshop and hearing notices, information about this regulation change was sent via e-mail to an extensive list of potentially interested parties, including state and federal government entities, fuel suppliers (including representatives of pipelines), and organizations representing both large and small retailers. The individuals on this list were then kept abreast of comments and progress of the proposed action.

Much of this was undertaken to update the NAC Chapter 590, in the light of changes to the fuel supply (increased use of ethanol in conventional gasoline), changes to Clark County's working agreement with the US EPA (change to Clark County's maximum allowed wintertime vapor pressure) and to bring NAC Chapter 590 in line with the US EPA's maximum allowed sulfur level in gasoline. These three issues were met with support from all sides of the industry; therefore there were not a great deal of comments submitted, and many of those dealt with editorial changes. However, the workshop was attended by a cross section of the interested parties, both in person as well as by teleconferencing. The hearing was less well-attended, but I think that the interested parties were satisfied with the file and proposed changes to it.

Because these regulation changes were being brought about to update existing regulations, there was little in the way of comments, outside of those concerning editorial content. All of the stakeholders were in favor of these updates.

2. The number of persons who:

(a) Attended each hearing:

The workshop was attended by nine other people and me in the conference room at the Department of Agriculture, as well as two others who were videoconferenced from the Department of Agriculture office in Las Vegas, and five others who were teleconferenced.

The hearing was attended by eight other people and me in the conference room at the Department of Agriculture, as well as two others who were teleconferenced.

(b) Testified at each hearing:

No one attending the hearing wished to present formal testimony. I reviewed the changes suggested at the workshop, and stated that I had spoken with LCB about them, and felt that LCB was comfortable with the changes. This was satisfactory to the attendees.

(c) Submitted written comments:

At the workshop, an interested party read an e-mail statement of support for our sulfur change with an additional comment; this was forwarded to me after the workshop. Similarly, the Western States Petroleum Association (WSPA) also sent comments of support for the changes, as well as several editorial suggestions. Both of these comments were shared with attendees as well as the broadcast mailing list I mentioned in question 1. At the hearing, there were no additional comments addressed to these proposed changes.

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.

In addition to the public posting (as required) of workshop and hearing notices, information about this regulation change was sent via e-mail to an extensive list of potentially interested parties, including state and federal government entities, fuel suppliers (including representatives of pipelines), and organizations representing both large and small retailers. A number of these interested parties submitted information and comments before the workshop, at the workshop, between the time of the workshop and the hearing, and at the hearing.

A summary of the comments received via e-mail and CD and/or written copies of the hearing minutes are available from

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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.

Not applicable, as changes were made to the proposed regulation.

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.**

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: **NONE**
- c. Immediate and long-term effects: **NONE EXPECTED**

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: **NONE**
- c. Immediate and long-term effects: **NONE**

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

We anticipate that there will be no additional costs to the Department for enforcement of the proposed amendments, as these changes will exist within the established framework of regulatory analysis.

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.**

The amendments fitting this category would likely be the change to Clark County's wintertime vapor pressure (which the county requested as part of an update of an air quality maintenance plan in conjunction with the US EPA) and the change to the allowed sulfur maximum, which is set by the US EPA. These were included in NAC 590.065 because even though they can be found either in Clark County Air Quality or EPA documents, the state adheres to these rules as well.

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 federal regulations.

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.**

None of these proposed regulation changes will establish a new fee; nor will it increase an existing fee.

- 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?**

There should be no economic effect on businesses at all, nor would it restrict the formation, operation, or expansion of a small business.