

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

LCB File No. R209-08

Effective January 28, 2010

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

AUTHORITY: §1, NRS 590.070.

A REGULATION relating to motor vehicle fuel; adopting by reference certain standards concerning biodiesel fuel; revising certain requirements for blended biodiesel fuel; and providing other matters properly relating thereto.

Section 1. 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 ~~[specifications]~~ *following standards* for biodiesel *and diesel* fuel set forth in ~~[Volume]~~ *Volumes 05.01 and* 05.04, “Petroleum Products and Lubricants,” of the ~~[2000] Annual Book of [the American Society for Testing and Materials (ASTM)]~~ ASTM Standards, *as those standards existed on July 1, 2009, and any subsequent revision to those standards published by ASTM International that has been approved by the Board pursuant to this section for use in this State:*

(a) ASTM ~~[Provisional Specification PS 121-99. The publication]~~ *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 Oils.”*

↪ *Each standard* may be purchased from ~~[the American Society for Testing and Materials,]~~ *ASTM International*, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, *or at the Internet address <http://www.astm.org>. ASTM D6751 and D7467 may be purchased* for the price of ~~[\$30.]~~ *\$43 each and ASTM D975 for the price of \$51.*

2. *The Board will review each revision of the standards adopted pursuant to subsection 1 that is published after July 1, 2009, to ensure its suitability for use in this State. If the Board fails to approve or disapprove such a revision within 120 days after its date of publication, the revision shall be deemed approved by the Board for use in this State. The Board 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 has been approved or deemed approved by the Board will be available for inspection at the State Department of Agriculture, 405 South 21st Street, Sparks, Nevada 89431.*

3. The ratio for ~~[B-20 blended]~~ biodiesel fuel *blended in accordance with ASTM D7467* must be not less than ~~[20]~~ *6* percent but not more than ~~[21]~~ *20* percent by volume of biodiesel fuel which complies with the specifications for feedstock and composition set forth in ~~[Provisional Specification PS-121-99]~~ *ASTM D6751* adopted by reference pursuant to subsection 1. 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.—Except as otherwise provided in this subsection, any biodiesel fuel that is used as biodiesel fuel or as blended biodiesel fuel consisting of more than 21 percent by volume of biodiesel fuel must not have a density of more than .880 grams per liter as determined by using~~

~~Provisional Specification PS 121-99 adopted by reference pursuant to subsection 1. In lieu of complying with the requirement for density, a producer or supplier of fuel may, if approved by the Director of the State Department of Agriculture in consultation with the Administrator of the Division of Environmental Protection of the State Department of Conservation and Natural Resources, demonstrate that emissions of nitrogen oxides do not exceed the standards for certifying heavy duty highway engines set forth in 40 C.F.R. Part 86.]~~

4. 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R209-08

The Nevada Board of Agriculture adopted regulations assigned LCB File No. R209-08 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. In addition, information was sent to a list of additional contacts who represent users of biodiesel (i.e. Clark County School District), who would be interested in the legislative action. The individuals on this list were then kept abreast of the proposed action and comments about that action.

This action was primarily meant to update specifications, and add new standard specifications to the regulation, and likely because of this, there was not a great deal of comments submitted. 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 only by myself and by nine other people, five of whom were teleconferenced. The other four and myself were in the conference room at the Department of Agriculture.

The hearing was attended only by myself and four other people, with three of those teleconferenced and the other present with me in the conference room of the Department of Agriculture.

(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 they would be accommodated. This was satisfactory to the attendees.

(c) Submitted written comments:

Prior to the workshop, I received (via e-mail) a statement of support for our regulation changes and updating from the national Biodiesel Board. 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 lists I mentioned in question 1.

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. I also put together a list of additional contacts who might be interested in the legislative action, such as Biodiesel users with the city of Las Vegas, Clark County, and Clark County School District.

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.**

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

- a. The original document submitted to Legislative Council Bureau (File No. R209-08) served only to change the citation for pure biodiesel (B100) from an outdated Provisional Specification to the current Specification.
- b. The addition of text relating to biodiesel blends from 6 to 20 % likewise would not impact small businesses, since biodiesel blends of 5 % and below need only to be labeled and treated as diesel, and the specification for blends to be adopted is accepted by manufacturers, blenders, retailers, and regulatory bodies.

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

- a. Adverse effects: **NONE, outside of the cost of labeling pumps dispensing biodiesel blends between 6 and 20 %**
- 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.

These amendments do 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 federal regulations for biodiesel and biodiesel blends.

- 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 proposed regulation will NOT 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?**

Outside of correctly labeling dispensers for this fuel, and having correct signs advertising the availability and price of this fuel, there should be no economic effect on businesses at all, nor would it restrict the formation, operation, or expansion of a small business.