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STATE OF NEVADA
DEPARTMENT OF AGRICULTURE

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PROPOSED REGULATION OF THE NEVADA DEPARTMENT OF AGRICULTURE

**NOTICE OF INTENT TO ACT UPON A REGULATION
AND
HEARING AGENDA**

Notice of Hearing for the Adoption of Permanent Regulations Nevada Administrative Code chapter 590.

LCB File No. R038-21RP2

The Nevada Department of Agriculture (NDA) will hold a public hearing at 9:00 a.m. on December 14, 2022. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations pertaining to chapter 590 of the Nevada Administrative Code (NAC).

Date: Wednesday, December 14, 2022
Time: 9:00 a.m. PST
Location: This meeting will be held both in-person and virtually via Zoom

Location: Nevada Department of Agriculture
2300 E. St. Louis Avenue
Las Vegas, NV 89104
Phone: (702) 668-4590

Video conference to:

Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431
Phone: (775) 353-3601

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89445
Phone: (775) 738-8076

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/86255572080>

Meeting Number: 862 5557 2080

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

Dial by your location

+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 669 900 9128 US (San Jose)
+1 719 359 4580 US
+1 301 715 8592 US (Washington DC)
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 360 209 5623 US
+1 386 347 5053 US
+1 564 217 2000 US
+1 646 558 8656 US (New York)
+1 646 931 3860 US

Meeting Number: 862 5557 2080

INFORMATIONAL STATEMENTS

Pursuant to [NRS 233B.0603](#), the NDA is providing the following statements pertaining to the public hearing on proposed changes to Chapter 590 of NAC.

1. The need for and the purpose of the proposed regulation or amendment.

This regulation is necessary to:

- Update the purchase price (from ASTM, International) for the standard specification for Spark-Ignition Engine Fuel adopted by reference
- Add a new subsection adopting by reference certain provisions of Title 40 of the Code of Federal Regulations
- Add a new subsection providing guidance by which the public may inspect publications adopted by reference by the State Board of Agriculture
- Add language addressing state and federal fuel standards waivers
- Add language clarifying regulations concerning prohibited substances in gasoline

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- Add language addressing state and federal regulations concerning the storage and sale of E15 gasoline
- Amend reference to reflect the updated name of the division from Consumer Equitability to Measurement Standards
- Add a new subsection concerning effects if any provision of NAC 590.065 is declared invalid or unconstitutional.
- Add language to NAC 590.066 §1 concerning federal law

2. If the regulation is a permanent one, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

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.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

- Adverse economic effect on regulated business
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. 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.

- **Beneficial economic effect on regulated business**
Regulated businesses may see beneficial economic effects in the form of increased sales, if there is consumer interest in E15 as an additional product choice.
- **Immediate economic effect on regulated business**
The proposed regulations will take effect upon adoption. The NDA anticipates two possible immediate economic effects for the regulated businesses that choose to offer E15 as a product choice. For businesses that need to do little to no retrofitting of improvements before offering E15, there may be a nearly immediate beneficial impact proportionate to sales of E15. Businesses required to retrofit infrastructure prior to offering E15 for sale will incur costs proportionate to the level of retrofitting necessary and would be an adverse economic effect as detailed above.
- **Long-term economic effect on regulated business**
Regulated businesses may see long-term economic effects in the form of increased sales if there is consumer interest in E15 as an additional product choice.
- **Adverse economic effect on the public**
The NDA does not anticipate any adverse economic effects on the public because of the proposed regulations.
- **Beneficial economic effect on the public**
E15 is normally priced lower than conventional oxygenated gasoline (E10) and oftentimes significantly less than non-oxygenated gasoline (E0). There will be a decrease in miles per gallon with an increased amount of ethanol, however. It should be noted that use of E15 is only approved for vehicles in model year 2001 and newer. The proposed regulation includes a labeling requirement that E15 is only approved for use in those model years, and also includes a dispenser requirement for the regulated business to have in place a federally approved plan for mitigation in the event of misfuelling.
- **Immediate economic effect on the public**
There may be an immediate economic effect on the public if regulated businesses are able to sell E15 soon after the proposed regulations take effect, with the caveats directly above.
- **Long-term economic effect on the public**
If more businesses offer E15 for sale, there may be continued long-term economic effect for the public.

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

The NDA estimates that it will incur costs of between \$1,000 and \$2,000 to recalibrate instruments necessary to confirm compliance with the adopted standard.

5. The methods used by the agency in determining the impact on a small business.

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.

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.

6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

While the proposed regulations do not duplicate federal, state, or local standards, they do adopt by reference regulations in the Code of Federal Regulations that have been promulgated by the U.S. Environmental Protection Agency. These regulations have been included in NAC Chapter 590 for the following reasons: codifying these regulations gives the NDA authority to take action when violations are encountered, and in addition, it will be of benefit to the regulated businesses and the public if the comprehensive requirements are conveniently collected in state regulation, rather than requiring interested parties to seek that information from other sources.

7. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulation is not required pursuant to federal law.

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

The proposed regulation is not more stringent than federal, state, or local standards.

9. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not provide a new fee or increase an existing fee.

Copies of this notice and proposed regulations will be mailed to members of the public upon request. 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 may be charged for copies or postage if it is deemed necessary. Requests for mailed copies may be directed to

Nevada Department of Agriculture
Division of Measurement Standards
405 South 21st Street
Sparks, NV 89431
Phone: 775-353-3783; Email: ce@agri.nv.gov

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. thirty days before the meeting at the following locations:

- Nevada Department of Agriculture website at agri.nv.gov
- Nevada Public Notice website at <https://notice.nv.gov/>
- Nevada Legislature Administrative Regulation Notices at <https://www.leg.state.nv.us/App/Notice/A/>

Persons wishing to make oral comment upon the regulation draft of the Nevada Department of Agriculture may participate at the scheduled hearing. Persons wishing to submit written testimony or documentary evidence may submit the material by emailing ce@agri.nv.gov or via mail to the following address: Nevada Department of Agriculture, Attn: William Striejewske, 405 S. 21st St, Sparks, NV 89431. Written submissions must be received by the NDA on or before December 14, 2022.

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 at least three (3) business days prior to the meeting.

If no person who is directly affected by the proposed action appears to request time to make and oral presentation, the NDA may proceed immediately to act upon any written submissions.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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ADOPTION HEARING AGENDA
NEVADA DEPARTMENT OF AGRICULTURE
December 14, 2022
9:00 a.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. The agency is precluded from action on items raised during Public Comments that are not on the agenda.

III. For possible action: Discussion and Adoption of Proposed Permanent Regulations
a. Amendment of regulations that pertain to Chapter 590 of the Nevada Administrative Code, as contained in LCB File Number R038-21RP2.

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. The agency is precluded from action on items raised during Public Comments that are not on the agenda.

V. Adjourn