

**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. Env’tl. 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 ~~+\$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.

~~13.1~~ 5. Except as otherwise provided in subsection ~~14.1~~ 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 ~~1.1~~ *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 ~~11.0~~ 15 percent ethanol by volume must not exceed the limits specified in ASTM D4814 by more than 1 pound per square inch.

~~14.1~~ 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.

~~15.1~~ 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 : ~~16.1~~

(a) ~~17.1 contains more~~ *If the gasoline contains:*

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

~~18.1 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.