

LCB File No. R010-09

**PROPOSED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

(This regulation was previously adopted as T011-09)

New section added to chapter 590 of NAC:

Gasoline: Adoption of variance and waiver procedures from compliance with motor vehicle fuel standards. (NRS 590.070)

1. Except as otherwise provided in subsection 6, any supplier, as defined in NRS 365.084 and hereafter referred to as "petitioner," may request from the Director of the Department of Agriculture, or his/her designee, hereafter referred to as "director," a variance of up to 30 days to supply motor vehicle fuel, as defined in NRS 365.060, that does not meet the standards provided in NAC 590.065 if the petitioner demonstrates that a disruption in the supply of motor vehicle fuel conforming to the standards in NAC 590.065 exists or is imminent. A disruption in supply constitutes an unusual condition, natural or man-made, that may impede the production, transportation, distribution or sale, of motor vehicle fuel conforming to the standards in NAC 590.065 in sufficient quantity to meet sustainable demand.

2. Upon requesting a variance under subsection 1 the petitioner shall provide the director, in writing:

(a) The specific supply conditions that may result in a shortage of motor vehicle fuel without disclosing petitioner proprietary information;

(b) The specific geographical area in which the variance shall apply;

(c) The time period for which the variance shall be in effect; and

(d) The type of motor vehicle fuel being proposed for distribution or sale.

3. The director shall notify the petitioner in writing within twenty-four (24) hours as to whether the request for variance is granted or denied, unless otherwise agreed upon by both parties. Variance approvals shall be based on the fact that an unusual supply condition exists and, if granted, shall be equally applicable to all suppliers within the specified geographical area for the approved time period. The Nevada DMV Motor Carrier Division and other interested parties shall be notified of any variance granted by the Department of Agriculture. A list of interested parties will be kept on file with the Department of Agriculture. Approval of a fuel variance by the Department of Agriculture does not waive the reporting requirements or applicable taxes and fees pursuant to NRS sections 360A, 365, 366, 373 and 590.

4. The director may authorize an extension of an approved variance, not to exceed thirty (30) days, if the petitioner demonstrates, in writing, that the conditions identified in the initial request continue.

5. Any petitioner-specific, proprietary or competitively sensitive information which may be acquired by the director during the process of granting or denying a variance under subsection 1 to subsection 4, inclusive, shall be kept confidential without disclosure to the public or any other state agency or entity.

6. The director is prohibited from granting a petitioner a variance under subsection 1 to subsection 4, inclusive, if the motor vehicle fuel is to be sold in an area of applicability within Nevada for an air pollutant for which air quality criteria have been issued pursuant to 42

U.S.C. § 7408, and for which fuel specifications are prescribed in a federally approved and enforceable State Implementation Plan (SIP) as defined in NAC 486A.125. In the event that a motor vehicle fuel supply disruption occurs in an area of applicability within Nevada where fuel specifications are prescribed in an approved and enforceable SIP, the director, in consultation with the local air pollution control agency, as defined in NAC 445B.091, shall request from the EPA a waiver under the Clean Air Act (CAA) in accordance with CAA § 211(c)(4)(C)(ii) and (iii), and 42 U.S.C. § 7545(c)(4)(C)(ii) and (iii).