

Chapter 590 of NAC

LCB File No. T011-09

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

Filed with the Secretary of State on February 25, 2009

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).

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T011-09**

The Nevada Board of Agriculture adopted regulations assigned LCB File No. T011-09, 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.

This action was undertaken as a result of Section 2 of SB 324, from the 2007 Legislative Session. It was precipitated by an ongoing situation between Western States Petroleum Association (WSPA), which represents the major petroleum distributors, and other groups, including the Petroleum Marketers Association (PMA), which represents smaller distributors. Section 2 called for the adoption of procedures for allowing variances from the specifications of motor vehicle fuel, by petition, in times of supply disruption.

As such, public comment, other than that of the various interests involved in the crafting of the variance procedure, was not solicited. In the instance that this procedure would be employed, the public would not be inconvenienced by a lack of motor vehicle fuel, but rather helped by the short term availability of out-of-specification fuel.

The procedure used to develop the variance language was as follows: an initial workshop was held in Reno with interested parties. The language that was discussed at this workshop was then amended and corrected through a series of broadcasted e-mails, leading to a second workshop in Las Vegas, with the same interested parties, as well as others. Concerns were heard, and the language adjusted further. By e-mail, more minor adjustments were made prior to the hearing, which was held in Reno (and teleconferenced to Las Vegas), which was held in October. Notice of the hearing was publicly posted as mandated by the NRS.

Copies of all e-mail correspondence and minutes of workshops and hearings are available from

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2. The number of persons who:

(a) Attended each hearing:

A total of six, including the Senior Petroleum Chemist from the Department of Agriculture, who organized the hearing. In contrast to the two workshops, which were attended by a larger number of people representing the various interests, the hearing was attended by single representatives of the interests. Held in Reno and teleconferenced to Las Vegas (where an employee of the Clark County Department of Air Quality and Environmental Management participated), the hearing was attended by a representative of WSPA, a legal representative of WSPA, a representative of PMA, and an employee of the Nevada DMV Motor Carrier Division.

(b) Testified at each hearing:

Direct testimony was not taken during the hearing, because, as stated above, after two workshops, the variance language was essentially finalized prior to the hearing, and at the hearing, only small corrections and changes were made – almost entirely typographical in nature. However, all those present at the hearing, made suggestions towards the final document.

(c) Submitted written comments:

Over the course of development of the variance language, a significant number of comments were made via e-mail, as stated in Section 2(a) above. Versions of variance language were submitted, broadcast to the stakeholders, and commented on, leading to further developments in the language. Although several individuals were more active in submitting comments, there were a fair number of comments made.

No one submitted written comments at, or for the hearing, however.

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.

The Senior Petroleum Chemist with the Department of Agriculture was the central conduit for information as the variance language was developed. This individual maintains a list of suppliers, retailers, representatives of petroleum marketers, and government officials. All drafts of the variance language, as well as comments for and against sections of the language, were distributed to the entire mailing list described above. Because businesses and their representatives, both large and small, played such a key role in the development of the variance language, there was significant input from business owners.

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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.

I don't believe that this applicable to this situation, as this is a unique document arising from previous legislation, as described above. This is also the first time that this language is reaching the LCB.

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. Small business representatives were part of the group that created the language of the variance, and the variance is a mechanism that may allow them to sell fuel in times of supply shortage, therefore having a benefit to businesses.
- b. As such, this variance provision is not meant to inhibit the ability of businesses to sell fuel, but to make fuel available. As a result, there should be no inherent negative effect on businesses. On the contrary, this is meant to alleviate a negative situation.

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**

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 don't anticipate that there will be any additional costs to the Department for enforcement of the regulation.

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.

This regulation does 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 any federal regulation with the same activity.

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 regulation has no fees attached to it.

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?

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? **No**
2. Does this proposed regulation restrict the formation, operation or expansion of a small business? **No**

No direct methods were used, but based on the intent of the regulation and the principals involved in shaping the language, there is no burden or restriction for small businesses. At worst, the request for a variance may be denied by the state, in which case a business would not be able to sell fuel. However, this is the situation they would have to be in to request a variance in the first place.