

# PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R022-10

P2010-01

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

AUTHORITY: NRS 445B.210, NRS 486A.150

A REGULATION relating to ...

**Section 1.** Chapter 486A of NAC is hereby amended by adding by adding thereto the provisions set forth as sections 2 through 4 of this regulation.

**Sec. 2.** *“Clean vehicle” means any vehicle which has received a SmartWay or SmartWay Elite designation from the U.S. Environmental Protection Agency for vehicles intended for sale in the State of Nevada that are listed as Federal All Altitude under the Certification Sales Region, as presented in the U.S. Environmental Protection Agency’s annual Green Vehicle Guide. A clean vehicle must have the correct manufacturer, model, model year, engine, fuel type and transmission associated with the SmartWay or SmartWay Elite designation.*

**Sec. 3.** *“Hybrid electric vehicle” means a motor vehicle that meets the definition contained in 40 C.F.R. § 86.1702-99.*

**Sec. 4.** *“Motor vehicle” has the meaning ascribed to it in NRS 486A.110.*

**Sec. 5.** NAC 486A.010 is hereby amended to read as follows:

NAC 486A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 486A.015 to 486A.125, inclusive, *and sections 2 to 4 of this regulation, inclusive*, have the meanings ascribed to them in those sections.

**Sec. 6.** NAC 486A.015 is hereby amended to read as follows:

NAC 486A.015 “Alternative fuel” means:

1. ~~[Any fuel which is listed in NRS 486A.030 ;]~~ *M-85 fuel methanol that meets the requirements of NAC 590.052;*
  2. ~~[Any fuel which is usable in an alternative fuel retrofit system for motor vehicles that complies with the provisions of NAC 486A.150;]~~ *E-85 fuel ethanol that meets the requirements of NAC 590.053;*
  3. ~~[Methanol, ethanol or other alcohol, or any mixture thereof containing 85 percent or more by volume of such an alcohol with gasoline or other fuels;]~~
- ~~[4.]~~ Natural gas;
- ~~[5.]~~ 4. Liquefied petroleum gas;
- ~~[6.]~~ 5. Hydrogen *that meets the requirements of NAC 590.054;*

~~[7. Liquid fuels derived from coal; or another source of power, including, but not limited to, electricity; and]~~

6. *Electricity;*

7. *Biodiesel fuel that contains diesel fuel meeting the requirements of NAC 590.050 and includes at least 5 percent by volume biodiesel fuel blend stock for distillate fuels;*

8. *Ethanol-diesel fuel blends that contain diesel fuel meeting the requirements of NAC 590.050 and include 5 percent by volume or more ethanol and may include a proprietary additive;*

9. *Reformulated gasoline that meets one of the following definitions:*

*(a) Phase 3 California Reformulated Gasoline as specified in the California Code of Regulations, Title 13, Division 3, Chapter 5, Standards for Motor Vehicle Fuels, Article 1, Standards for Gasoline; or*

*(b) Arizona Cleaner Burning Gasoline as specified in the Arizona Administrative Code, Title 20, Chapter 2, Article 7, Motor Fuels and Petroleum Products; and*

~~[8.]~~ 10. Any other fuel designated as an alternative fuel by the Administrator of the Division of Environmental Protection of the Department pursuant to NAC 486A.140.

↪ *The term does not include a fuel that is required for use in this State pursuant to a state implementation plan adopted by this State pursuant to 42 U.S.C. § 7410.*

**Sec. 7.** NAC 486A.135 is hereby amended to read as follows:

NAC 486A.135 The provisions of this chapter do not apply to:

1. The operator of a fleet that operates only in a county whose population is less than 100,000.

2. Any governmental agency exempted by federal statute or regulation.

3. *Any state agency or local governing body subject to the alternative fuel provisions of the federal Energy Policy Act as provided for in Public Law 102-486 and 10 C.F.R. Part 490.*

4. *Vehicles that are used for purposes of law enforcement, emergency response, and fire protection and suppression.*

5. *Military vehicles that are used for national defense or in support of domestic emergency missions.*

6. Any person ~~[exempted]~~ *granted a variance* by the Commission.

**Sec. 8.** NAC 486A.140 is hereby amended to read as follows:

NAC 486A.140 1. Except as otherwise provided in subsection 4, the Administrator of the Division of Environmental Protection of the Department may designate a fuel as an alternative fuel. A person who wishes to have a fuel designated as an alternative fuel must submit to the Administrator a written request which includes evidence that the fuel complies with the requirements set forth in subsection 2.

2. A fuel designated as an alternative fuel by the Administrator must:

(a) If used to operate a motor vehicle:

(1) Reduce the emissions of one or more regulated pollutants to a level below the level of emissions generated if the fuel for which the designated fuel serves as an alternative is used to operate a motor vehicle;

(2) Generate emissions which are within the limits established pursuant to NAC 445B.596 for all regulated pollutants; and

(3) Generate emissions which are measurable using testing procedures approved by the Division; and

(b) Be capable of being safely transported in bulk, handled during fueling and used to operate motor vehicles which are converted or manufactured to use the fuel.

3. Not less than 30 days before a fuel is designated as an alternative fuel pursuant to subsection 1, the Administrator shall provide a notice of intent to designate the fuel as an alternative fuel to each person who has requested that his name be placed on a mailing list maintained by the Division for the purpose of providing that notice. The Administrator shall cause the notice to be published at least once in newspapers of general circulation throughout this State.

4. The Administrator shall not designate a fuel as an alternative fuel if he determines that such a designation would have a significant adverse effect on a control measure or contingency measure.

***5. The Director shall maintain a list of all designated alternative fuels and make that list available at the Nevada Division of Environmental Protection, 901 South Stewart Street, Suite 4001 Carson City, Nevada 89701-5249.***

**Sec. 9.** NAC 486A.160 is hereby amended to read as follows:

NAC 486A.160 1. ~~[The operator of a fleet, including, but not limited to, the operator of a fleet with buses and heavy-duty trucks, must obtain alternative fuel vehicles in the following percentages of vehicles acquired or replaced, in compliance with the following schedule:~~

-		
Fiscal Year		
1995.....	.....	10 percent
Fiscal Year		
1996.....	.....	15 percent
Fiscal Year		
1997.....	.....	25 percent
Fiscal Year		
1998.....	.....	50 percent
Fiscal Year		
1999.....	.....	75 percent
Fiscal Year 2000 and each year		
thereafter.....	.....	90 percent
-		

~~—2. If the number of vehicles purchased, leased or otherwise acquired by the operator of a fleet in any 1 year when multiplied by the percentage specified in subsection 1 contains a fraction, the number of vehicles required to be alternative fuel vehicles must be rounded off to the nearest whole number.~~

~~—3. The operator of a fleet may meet the requirements of this section by converting existing or newly acquired vehicles to alternative fuel vehicles.]~~ ***Ninety percent of all motor vehicles acquired or replaced by the operator of a fleet during each fiscal year must be capable of using alternative fuels, or must be hybrid electric vehicles or clean vehicles. With the prior approval of the Director, this provision may be waived for motor vehicles transferred from one location to another within the same state agency or local governing body.***

**Sec. 10.** NAC 486A.180 is hereby amended to read as follows:

NAC 486A.180 1. An alternative fuel vehicle acquired in compliance with NAC 486A.160 must be operated solely on an alternative fuel except when operating in an area where the appropriate alternative fuel is unavailable. The provisions of this subsection do not apply to a hybrid electric vehicle ~~[as defined in 40 C.F.R. § 86.1702-99]~~ *or a clean vehicle.*

2. ~~[The operator of a fleet shall compile records of all fuel used to operate alternative fuel vehicles on a monthly basis. The records must be:~~

~~—(a) Available for inspection not later than 30 days after the end of the month for which the records were compiled; and~~

~~—(b) Maintained for a period of 2 years after the end of the month for which the records were compiled.~~

~~—3.]~~ Not later than ~~[30]~~ *60* days after the end of each fiscal year, the operator of a fleet shall file a written report with the Director, *on a form provided by the Director*, which specifies for that immediately preceding fiscal year:

(a) The *total* number of *motor* vehicles ~~[purchased, leased or otherwise acquired]~~ *in the regulated fleet at the end of the year;*

(b) The *total* number of *motor* vehicles *in the regulated fleet* purchased, leased or otherwise acquired ~~[that are alternative fuel vehicles];~~

(c) ~~[The number of existing vehicles that were converted to alternative fuel vehicles; and]~~ *For the vehicles included in paragraph (a), the number of vehicles that are alternative fuel vehicles, hybrid electric vehicles and clean vehicles;*

(d) *For the vehicles included in paragraph (b), the number of vehicles intended to be run on alternative fuel, hybrid electric vehicles and clean vehicles;*

(e) For each vehicle included in paragraph ~~[(a);]~~ (b) ~~[or (e)];~~

(1) The vehicle identification number;

(2) The make, model and year of manufacture; ~~[and]~~

(3) The type of fuel used by the vehicle ~~[ ]~~ *if it will be operated on an alternative fuel;*

(4) *An indication if it is a hybrid electric vehicle; and*

(5) *If it is a clean vehicle, the SmartWay or SmartWay Elite designation; and*

(f) *By vehicle type:*

(1) *The number of vehicles in the regulated fleet using each respective alternative fuel and each respective conventional fuel;*

(2) *The total volume of each respective alternative fuel and the total volume of each respective conventional fuel used; and*

(3) *The total annual mileage accumulated by all those vehicles in the fleet that use alternative fuel.*

3. *In addition to the information required in subsection 2, the operator of a fleet shall provide to the Director:*

(a) *For those fleets that utilize biodiesel fuel that was not blended according to the requirements of NAC 590.051, copies of the Bill of Lading or a statement from the fuel supplier indicating that the biodiesel fuel used by the fleet meets the definition of biodiesel in 486A.015; and*

(b) *On a form provided by the Director, a statement outlining the policies, procedures and internal controls the fleet institutes to ensure that the provisions of this subsection are being implemented. This may include administrative controls, which only permit fuel to be used from the fleet's own storage tanks that are supplied exclusively with alternative fuels;*

*administrative limitations, which prevent purchasing conventional fuels from retailers; vehicle labeling pertaining to alternative fuel use; or operator training related to alternative fuel use, the locations of alternative fuel dispensers that may be used to fuel fleet vehicles, and the geographic areas where the appropriate alternative fuel is unavailable.*

*4. For all information submitted pursuant to this section, the fleet manager or a higher authority within the agency shall:*

*(a) Certify that, based on information and belief formed after a reasonable inquiry, the statements submitted are true, accurate and complete;*

*(b) Submit supplementary facts or corrected information upon discovery; and*

*(c) Provide any additional information, in writing, that the Director requests within the time specified in the Director's request.*

**Sec. 11.** NAC 486A.200 is hereby amended to read as follows:

NAC 486A.200 1. Except as otherwise provided in subsection 3, the ~~Director~~ *Commission* may ~~exempt~~ *approve a variance requested by* the operator of a fleet from the requirements of any provision of this chapter if the ~~Director~~ *Commission* determines that *compliance with the requirements of this chapter* :

~~(a) Alternative fuel vehicles meeting the requirements of this chapter are not available for purchase, lease or acquisition by other means; or~~ *Would void or reduce the coverage under a manufacturer's warranty for any vehicle or vehicle component;*

~~(b) A commercial facility which sells alternative fuel is not available in the area in which the fleet is operated, and providing a facility to dispense alternative fuel would be economically impracticable for the operator of the fleet.~~ *Would result in financial hardship to the owner or operator of a fleet;*

*(c) Is impractical because of the lack of availability of clean vehicles, alternative fuel or motor vehicles that use alternative fuel; or*

*(d) Any other reason which the Commission determines is appropriate.*

2. ~~An exemption~~ *A variance* granted by the ~~Director~~ *Commission* pursuant to subsection 1 must be for an initial period of not more than ~~12~~ *36* months and may be renewed for additional periods of not more than ~~12~~ *36* months.

3. The ~~Director~~ *Commission* shall not ~~exempt~~ *issue a variance to* the operator of a fleet from the requirements of any provision of this chapter if ~~he~~ *it* determines that such ~~an exemption~~ *a variance* would have a significant adverse effect on a control measure or contingency measure.

*4. The operator of a fleet requesting a variance shall submit the following information to the Commission, which it may consider in reviewing a variance request:*

*(a) A statement of the reason a variance is being requested; and*

*(b) Supplemental information, data and documentation that supports the request.*

**Sec. 12.** NAC 486A.220 is hereby amended to read as follows:

NAC 486A.220 1. Except as otherwise provided in subsection 3, any violation of the provisions of chapter 486A of NRS or this chapter is a major violation. The Commission may impose a fine of up to \$5,000 for each violation.

2. In determining the amount of a penalty to be imposed for a major violation, the Commission will consider:

(a) The size of the fleet;

- (b) The economic impact of the penalty on the fleet;
  - (c) The violator’s good faith efforts to comply;
  - (d) The duration of the violation as established by any credible evidence;
  - (e) The prior record of violations by the operator of the fleet;
  - (f) The economic benefits of noncompliance; and
  - (g) The seriousness of the violation.
3. Except as otherwise provided by subsection 4, the following offenses are minor violations:
- (a) Failure to operate a vehicle on an alternative fuel without justification, *unless that vehicle meets the definition of a hybrid electric vehicle or a clean vehicle*;
  - (b) Failure to file a report in a timely manner as required by NAC 486A.180; or
  - (c) Failure to file a report required by the Director pursuant to NAC 486A.190.
4. All minor violations become major violations upon the fourth occurrence of the same offense by the fleet within a period of 60 consecutive months.
5. The ~~Commission~~ *Department* will assess fines for minor violations consistent with the following schedule:

	First Offense	Second Offense	Third Offense
Failure to operate a vehicle on an alternative fuel without justification, <i>unless that vehicle meets the definition of a hybrid electric vehicle or clean vehicle</i> .....	\$250	\$500	\$750
Failure to file a report in a timely manner as required by NAC 486A.180.....	\$250	\$500	\$750
Failure to file a report required by the Director pursuant to NAC 486A.190.....	\$250	\$500	\$750

**Sec. 13.** NAC 486A.230 is hereby amended to read as follows:

NAC 486A.230 1. The amount of the fine imposed for any violation of the provisions of this chapter or chapter 486A of NRS must be submitted not later than 10 days after the notice required by NAC 486A.210 is served upon the violator.

2. Payment of the fine imposed:

(a) Must be made *payable* to the ~~[Bureau of Air Quality, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851]~~ *State of Nevada and must be sent to the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249*; and

(b) May be made by cashier’s check, certified check, money order ~~[ ]~~ *or* personal check ~~[or cash]~~.

**Sec. 14.** NAC 486A.250 is hereby amended to read as follows:

NAC 486A.250 1. Any person who requests a hearing before the Commission concerning a final decision of the Department pursuant to chapter 486A of NRS may do so by filing a request, within 10 days after notice of the action of the Department, on Form 3 with the State

Environmental Commission, ~~[333 West Nye Lane, Room 138]~~ **901 South Stewart Street, Suite 4001**, Carson City, Nevada ~~[89706-0851]~~ **89701-5249**. A copy of the form may be obtained *online at <http://sec.nv.gov/> or* from the Commission.

2. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the Commission requested pursuant to subsection 1.

**Sec. 15.** NAC 486A.020 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**NAC 486A.020 “Bus” defined.** (NRS 445B.210, 486A.150) “Bus” means any vehicle which is designed to carry more than 15 passengers.