

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R022-10

March 16, 2010

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

AUTHORITY: §§1, 3-6, 8-12, 15 and 16, NRS 445B.210 and 486A.150, as amended by section 8 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2627; §2, NRS 445B.210, 486A.150, as amended by section 8 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2627, and section 1 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2626; §7, NRS 445B.210, NRS 486A.030, as amended by section 4 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2627, and 486A.150, as amended by section 8 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2627; §§13 and 14, NRS 445B.210, 486A.150, as amended by section 8 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2627, and 486A.180, as amended by section 11 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2629.

A REGULATION relating to vehicles; adopting by reference certain regulations relating to the use of gasoline as an alternative fuel; revising certain provisions governing the applicability of provisions governing the use of alternative fuels; requiring the Administrator of the Division of Environmental Protection of the State Department of Conservation and Natural Resources to maintain a list of each fuel designated as an alternative fuel and to make the list available for public inspection under certain circumstances; requiring a fleet of motor vehicles to consist of a certain percentage of clean vehicles, hybrid electric vehicles or other motor vehicles capable of using an alternative fuel; requiring the operator of a fleet to file a written report concerning the motor vehicles included in the fleet; requiring the report and any information included in the report to be certified; authorizing the State Environmental Commission to approve a variance from certain provisions governing the use of alternative fuels; revising provisions governing certain minor violations and the payment of fines to the State of Nevada relating to alternative fuels; and providing other matters properly relating thereto.

Section 1. Chapter 486A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Clean vehicle” means any motor vehicle which, based upon the manufacturer, model, model year, engine, type of fuel and transmission of the motor vehicle, has received a SmartWay or SmartWay Elite designation by the United States Environmental Protection Agency for motor vehicles which are intended for sale in this State and are listed as federal All Altitude vehicles under the applicable Certification Sales Region set forth in the Green Vehicle Guide published annually by the United States Environmental Protection Agency.*

Sec. 3. *“Hybrid electric vehicle” has the meaning ascribed to it in 40 C.F.R. § 86.1702-99.*

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

Sec. 5. 1. *The provisions of the Arizona Administrative Code and the California Code of Regulations specified in subsection 9 of NAC 486A.015 are hereby adopted by reference as those provisions existed on the effective date of this regulation.*

2. *A copy of the provisions of:*

(a) The Arizona Administrative Code specified in subsection 9 of NAC 486A.015 may be obtained from the Secretary of State, Public Services Division, 1700 West Washington Street, Phoenix, Arizona 85007, for the price of \$84, or free of charge at the Internet address www.azsos.gov.

(b) The California Code of Regulations specified in subsection 9 of NAC 486A.015 may be obtained by mail at the Thomson-West Group, Post Office Box 95767, Chicago, Illinois 60694, for the price of \$173, or free of charge at the Internet address <http://www.oal.ca.gov>.

Sec. 6. NAC 486A.010 is hereby amended to read as follows:

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, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 486A.015 is hereby amended to read as follows:

486A.015 “Alternative fuel” means:

1. Any *M-85* fuel ~~[which is listed in NRS 486A.030;]~~ *methanol that meets the requirements of NAC 590.052;*
2. Any *E-85* fuel ~~[which is usable in an alternative fuel retrofit system for motor vehicles that complies with the provisions]~~ *ethanol that meets the requirements* of NAC ~~[486A.150;]~~ *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.— Hydrogen;~~
- ~~—7.— Liquid fuels derived from coal or another source of power, including, but not limited to, electricity; and~~
- ~~—8.]~~ 5. Any *hydrogen that meets the requirements of NAC 590.054;*
6. *Electricity;*
7. *Any biodiesel fuel that:*
 - (a) *Contains diesel meeting the requirements of NAC 590.050; and*
 - (b) *Includes at least 5 percent by volume of biodiesel fuel blend stock for distillate fuels;*
8. *Any blend of ethanol and diesel fuel:*

(a) Which contains:

(1) Any amount of diesel fuel meeting the requirements of NAC 590.050; and

(2) At least 5 percent by volume of ethanol; and

(b) Which may include a proprietary additive;

9. Any reformulated gasoline that meets the requirements for:

(a) Arizona Cleaner Burning Gasoline set forth in the provisions of 20 A.A.C. §§ R20-2-701 to R20-2-762, inclusive, of the Arizona Administrative Code and adopted by reference pursuant to section 5 of this regulation; or

(b) California Phase 3 reformulated gasoline set forth in the provisions of 13 C.C.R. §§ 2260 to 2276, inclusive, of the California Code of Regulations and adopted by reference pursuant to section 5 of this regulation; and

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.

Sec. 8. NAC 486A.135 is hereby amended to read as follows:

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 Energy Policy Act of 1992, Public Law 102-486, and 10 C.F.R. Part 490.*

4. *The operator of a vehicle that is used for law enforcement, emergency response or fire protection and suppression.*

5. The operator of a military vehicle that is used for national defense or in support of a domestic emergency.

6. Any person exempted or granted a variance by the Commission.

Sec. 9. NAC 486A.140 is hereby amended to read as follows:

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 Administrator shall:*

(a) Maintain a list of each fuel designated as an alternative fuel pursuant to subsection 1; and

(b) Make that list available for public inspection at the offices of the Division, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

Sec. 10. NAC 486A.160 is hereby amended to read as follows:

486A.160 1. ~~[The]~~ ***Except as otherwise provided in subsection 2, at least 90 percent of all motor vehicles acquired or replaced by the*** operator of a fleet ~~[, including, but not limited to, the operator of a fleet with buses and heavy duty trucks,]~~ ***during each fiscal year*** must ~~[obtain]~~ ***consist of clean vehicles, hybrid electric vehicles or any other motor vehicles that are capable of using*** 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 Director may, upon prior approval by him, waive the requirements of [this section by converting existing or newly acquired] subsection 1 for motor vehicles [to alternative fuel vehicles.] that are transferred from one location to another location within the same state agency or local governing body.*

Sec. 11. NAC 486A.180 is hereby amended to read as follows:

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 *clean vehicle* **or** hybrid electric vehicle . ~~[as defined in 40 C.F.R. § 86.1702-99.]~~

~~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]~~ *the* immediately preceding fiscal year:

(a) The *total* number of *motor* vehicles ~~[purchased, leased or otherwise acquired;]~~ *included in the fleet of the operator, including, without limitation, the number of alternative fuel vehicles, clean vehicles and hybrid electric vehicles in that fleet;*

(b) The *total* number of *motor* vehicles *in the fleet of the operator that are* purchased, leased or otherwise acquired, *including, without limitation, the number of motor vehicles that are intended to be operated using an* alternative fuel; ~~[vehicles;]~~

~~(c) [The number of existing vehicles that were converted to alternative fuel vehicles; and~~

~~—(d)]~~ For each *motor* 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 the motor vehicle is intended to be operated using an alternative fuel; and*

(4) A statement indicating whether the motor vehicle is a clean vehicle or hybrid electric vehicle and, if the motor vehicle is a clean vehicle, the SmartWay or SmartWay Elite designation for the clean vehicle; and

(d) By type of motor vehicle:

(1) The total number of motor vehicles in the fleet of the operator that operate using an alternative fuel specified in NAC 486A.015 or a conventional fuel;

(2) The total amount by volume of each alternative fuel specified in NAC 486A.015 and each conventional fuel used in the fleet of the operator; and

(3) The total annual mileage accumulated by all motor vehicles in the fleet of the operator that operate using an alternative fuel.

3. In addition to the provisions of subsection 2, the operator of a fleet shall provide to the Director:

(a) If the operator uses biodiesel fuel that is not blended in accordance with NAC 590.051 for the fleet, a copy of a bill of lading or other statement from the supplier of the biodiesel fuel indicating that the biodiesel fuel used for the fleet meets the requirements for biodiesel fuel set forth in NAC 486A.015; and

(b) On a form provided for that purpose by the Director, a statement setting forth the policies, procedures and internal controls established by the operator of the fleet to ensure compliance with the provisions of this subsection, including, without limitation, each policy, procedure or internal control which:

(1) Authorizes the use of fuel for the fleet solely from any storage tanks of the fleet which are supplied with alternative fuels;

(2) Prohibits the purchase of conventional fuels from a retailer for the fleet;

(3) Sets forth the requirements for labeling motor vehicles for the use of alternative fuels or for training the operator in the use of alternative fuels;

(4) Sets forth the location of each dispenser for an alternative fuel that is available for use by the fleet; and

(5) Sets forth each geographic area in which an alternative fuel used by the fleet is not available.

4. *For each report and any other information submitted pursuant to this section, the operator of the fleet or other appropriate person in the state agency or local governing body shall:*

(a) *Certify that, based upon all available information and a belief formed after a reasonable inquiry, the report or other information is true, accurate and complete;*

(b) *As soon as practicable after discovering any supplementary fact or corrected information required to comply with the provisions of this section, submit the fact or information to the Director; and*

(c) *Submit, in writing and within the period specified by the Director, any additional information required by the Director to carry out the provisions of this section.*

Sec. 12. NAC 486A.200 is hereby amended to read as follows:

486A.200 1. Except as otherwise provided in subsection 3, the ~~Director~~ *Commission* may ~~exempt the operator of a fleet~~, *for any reason specified in subsection 5 of NRS 486A.150, approve a variance* from the requirements of any provision of this chapter ~~if the Director determines that:~~

~~—(a) Alternative fuel vehicles meeting the requirements of this chapter are not available for purchase, lease or acquisition by other means; or~~

~~—(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~~ *that is requested by* the operator of ~~the~~ *a* fleet.

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 shall]~~ *Commission will* not ~~[exempt the operator of a fleet]~~ *approve a variance* from the requirements of any provision of this chapter if ~~[he]~~ *the Commission* determines that ~~[such an exemption]~~ *the variance* would have a significant adverse effect on a control measure or contingency measure.

4. If an operator of a fleet submits a request to the Commission for a variance pursuant to this section, the operator shall submit the following information, which the Commission may consider in reviewing the request:

(a) A statement setting forth the reason for the request; and

(b) Any supplemental information, data or documentation supporting the request.

Sec. 13. NAC 486A.220 is hereby amended to read as follows:

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~~ *in* subsection 4, the following offenses are minor violations:

(a) Failure to operate a vehicle , *other than a clean vehicle or hybrid electric vehicle*, on an alternative fuel without justification;

(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	Second	Third
	Offense	Offense	Offense

Failure to operate a vehicle , <i>other than a clean vehicle or hybrid electric vehicle</i> , on an alternative fuel without justification.	\$250	\$500	\$750
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Failure to file a report in a timely manner as required by NAC 486A.180.	\$250	\$500	\$750
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Failure to file a report required by the Director pursuant to NAC 486A.190.	\$250	\$500	\$750
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Sec. 14. NAC 486A.230 is hereby amended to read as follows:

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 ~~is~~:

~~—(a) Must~~ *must* be ~~made~~ :

(a) Made by cashier’s check, certified check, money order or personal check payable to the [Bureau of Air Quality,] State of Nevada; and

(b) Submitted to the 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, personal check or cash.]~~

Sec. 15. NAC 486A.250 is hereby amended to read as follows:

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, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. A copy of the form may be obtained from the Commission ~~[-]~~ *or at the Internet address <http://www.sec.nv.gov>.*

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

Sec. 16. NAC 486A.020 is hereby repealed.

TEXT OF REPEALED SECTION

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