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STATE OF NEVADA  
**DEPARTMENT OF AGRICULTURE**  
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**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS  
AS REQUIRED BY NRS 233B.066**

**INFORMATIONAL STATEMENT**

**LCB File No. R038-21**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 590.

**1. A clear and concise explanation of the need for the adopted regulation.**

This regulation is necessary to:

- Update the purchase price (from ASTM, International) for the standard specification for Spark-Ignition Engine Fuel adopted by reference.
- Add a new subsection adopting by reference certain provisions of Title 40 of the Code of Federal Regulations (CFR).
- Add a new subsection providing guidance by which the public may inspect publications adopted by reference by the State Board of Agriculture.
- Add language addressing state and federal fuel standards waivers.
- Add language clarifying regulations concerning prohibited substances in gasoline.
- Add language addressing state and federal regulations concerning the storage and sale of E15 gasoline.
- Amend reference to reflect the updated name of the division from Consumer Equitability to the Division of Measurement Standards.
- Add a new subsection concerning effects if any provision of NAC 590.065 is declared invalid or unconstitutional.
- Add language to NAC 590.066 §1 concerning federal law.

**2. 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.**

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of fuels, lubricants, and petroleum products as well as any persons who had specifically requested such notice.

These documents were also posted and made available at the following locations:

- Nevada Department of Agriculture, 405 S. 21<sup>st</sup> St., Sparks, NV 89431

- Nevada Department of Agriculture, 2300 E. Saint Louis Ave., Las Vegas, NV 89104
- Nevada Department of Agriculture, 4780 E. Idaho St., Elko, NV 89801
- State Capitol Building
- Nevada State Library & Archives
- County Public Libraries, email contact available at <https://nsla.nv.gov/find-a-library-directory>
- Nevada Department of Agriculture website at [agri.nv.gov](http://agri.nv.gov)
- Nevada Public Notice website at <https://notice.nv.gov/>
- Nevada Legislature Administrative Regulation Notices at <https://www.leg.state.nv.us/App/Notice/A/>

A workshop was held on April 6, 2022, and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed amendments. A second workshop was held on November 7, 2022. Thereafter, on or about November 10, 2022, the State Sealer of Measurement Standards issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed amendments the suggestions of the parties attending both workshops and through public comment as well as any comments from the Legislative Counsel Bureau. The hearing was held on December 14, 2022. Minutes and recordings for both workshops and the hearing can be found at [https://agri.nv.gov/Protection/Weights\\_and\\_Measures/Workshop\\_and\\_Hearing\\_Meetings/WeightsandMeasuresHMW/](https://agri.nv.gov/Protection/Weights_and_Measures/Workshop_and_Hearing_Meetings/WeightsandMeasuresHMW/).

A copy of this summary of the public response to the proposed regulation may be obtained from the Nevada Department of Agriculture, Attn: William Striejewske, 405 S. 21st St., Sparks, NV 89431, 775-353-3792, or [wstriejewske@agri.nv.gov](mailto:wstriejewske@agri.nv.gov).

**3. The number persons who (a) Attended each hearing, (b) Testified at each hearing, (c) Submitted to the agency written comments.**

- Workshop held on April 6, 2022
  - Number in attendance: 23
  - Number testifying: 3
  - Written statements submitted: 1 (attached)
- Workshop held on November 7, 2022
  - Number in attendance: 26
  - Number testifying: 5
  - Written statements submitted: 0
- Hearing held on December 14, 2022
  - Number in attendance: 46
  - Number testifying: 0
  - Written statements submitted: 1 (attached)

**4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency.**

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**a) April 6, 2022 workshop attendance**

<b>Name</b>	<b>Entity/Organization</b>	<b>Address</b>	<b>Phone</b>	<b>Email</b>
Alexandria Cannito	Lewis and Roca	Not provided	Not provided	acannito@lewisroca.com
Jeff Collins	DCNR/NDEP	Not provided	Not provided	jrcollins@ndep.nv.gov
Peter Cosentino, Jr.	Oilmatic LLC	Not provided	Not provided	Not provided
Valerie Drake	Sage Petroleum	Not provided	Not provided	sagepetro@gmail.com
Roshell G	Not provided	Not provided	Not provided	Not provided
Marilyn Herman	Herman & Associates	Not provided	Not provided	mherman697@aol.com
William Horne	Strategies 360/WSPA	Not provided	Not provided	williamh@strategies360.com
Daniel Inouye	Washoe County Air Quality Management District	Not provided	Not provided	Not provided
Janie Kilgore	POET, LLC	Not provided	Not provided	janie.kilgore@POET.com
Jeffrey Kinder	DCNR/NDEP	Not provided	Not provided	jgkinder70@gmail.com
Peter Krueger	Nevada Petroleum Marketers & Convenience Store Association	Not provided	Not provided	peter@fuelingnevada.com
Jonathan McRae	DCNR/NDEP	Not provided	Not provided	jmcrac@ndep.nv.gov
Cassie Mullen	Renewable Fuels Association	Not provided	Not provided	cmullen@ethanolrfa.org
Joe Sorena	Chevron	Not provided	Not provided	jsorena@chevron.com
Francisco Vega	Washoe County Air Quality Management District	Not provided	Not provided	fvega@washoecounty.us
Marc Ventura	Phillips 66	Not provided	Not provided	marc.v.ventura@p66.com
Jim Verburg	Western States Petroleum Association	Not provided	Not provided	jverburg@wspa.org

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Sandy Young	Nevada National Security Site	Not provided	Not provided	Not provided
Not provided	Not provided	Not provided	(925) 276-3681	Not provided
Adelina Helton	Nevada Department of Agriculture	405 South 21 <sup>st</sup> Street, Sparks, NV 89431	(775) 353-3783	a.helton@agri.nv.gov
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Cadence Matijevich	Nevada Department of Agriculture	405 South 21 <sup>st</sup> Street, Sparks, NV 89431	(775) 353-3726	c.matijevich@agri.nv.gov
William Striejewske	Nevada Department of Agriculture	405 South 21 <sup>st</sup> Street, Sparks, NV 89431	(775) 353-3792	wstriejewske@agri.nv.gov

**b) November 7, 2022 workshop attendance**

Name	Entity/Organization	Address	Phone	Email
Alexandria Cannito	Lewis and Roca LLP	Not provided	Not provided	acannito@lewisroca.com
Jeff Collins	DCNR/NDEP	Not provided	Not provided	jrcollins@ndep.nv.gov
Brooke Coleman	Advanced Biofuels Council	Not provided	Not provided	bcoleman@advancedbiofuels.org
Lori Taylor	Valero	Not provided	Not provided	Not provided
Sarah Collins	Nevada Petroleum Marketers and Convenience Store Association	Not provided	Not provided	Not provided
Marilyn Herman	Herman & Associates	Not provided	Not provided	mherman697@aol.com
Janie Kilgore	POET, LLC	Not provided	Not provided	janie.kilgore@POET.com

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Jeffrey Kinder	DCNR/NDEP	Not provided	Not provided	jgkinder70@gmail.com
Peter Krueger	Nevada Petroleum Marketers & Convenience Store Association	Not provided	Not provided	peter@fuelingnevada.com
Jonathan McRae	DCNR/NDEP	Not provided	Not provided	jmcrac@ndep.nv.gov
Cassie Mullen	Renewable Fuels Association	Not provided	Not provided	cmullen@ethanolrfa.org
Joseph Sorena	Chevron	Not provided	Not provided	jsorena@chevron.com
Marc Ventura	Phillips 66	Not provided	Not provided	marc.v.ventura@p66.com
Jim Verburg	Western States Petroleum Association	Not provided	Not provided	jverburg@wspa.org
Lauren Roberts	Rebel Oil	Not provided	Not provided	Not provided
Edith Duarte	Western States Petroleum Association (Strategies 360)	Not provided	Not provided	edithd@strategies360.com
Donna Laffey	Not provided	Not provided	Not provided	Not provided
Kyle Call	Maverik	Not provided	Not provided	kyleacall@gmail.com
Kelly Davis	Renewable Fuels Association	Not provided	Not provided	kdavis@ethanolrfa.org
Tracy Brown May	Nevada Assembly Legislator District 42	Not provided	Not provided	tracy.brownmay@asm.state.nv.us
Gene Harrington	Biotechnology Innovation Organization	Not provided	Not provided	Not provided
Tyler Shaw	Ferrari Reeder Public Affairs	Not provided	Not provided	Not provided
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**c) December 14, 2022 hearing attendance**

Name	Entity/Organization	Address	Phone	Email
Woody Worthington	Nevada Board of Agriculture	405 S. 21 <sup>st</sup> Street, Sparks, NV 89436	(775) 353-3601	c/o <a href="mailto:sbellwood@agri.nv.gov">sbellwood@agri.nv.gov</a>
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Jeanette Durbin	Nevada Department of Agriculture	405 South 21 <sup>st</sup> Street, Sparks, NV 89431	(775) 353-3720	jdurbin@agri.nv.gov
Richard Yien	Nevada Attorney General's Office	100 North Carson Street, Carson City, NV 89701	(775) 657-1100	AgInfo@ag.nv.gov
Bill Payne	Not provided	Not provided	Not provided	Not provided
Leana Carey	Not provided	Not provided	Not provided	Not provided
Sarah Collins	Nevada Petroleum and Convenience Store Marketers Association	Not provided	Not provided	Not provided

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Debra Frey	Not provided	Not provided	Not provide d	Not provided
Nicole Hayes	Not provided	Not provided	Not provide d	Not provided
Brooke Coleman				
Shayda Sanjideh	Not provided	Not provided	Not provide d	Not provided
Elicha	Not provided	Not provided	Not provide d	Not provided
William Horne	Strategies 360/WSPA	Not provided	Not provide d	williamh@strategies360.c om
Kyle Call	Maverik	Not provided	Not provide d	kyleacall@gmail.com
Jim Verburg	Western States Petroleum Association	Not provided	Not provide d	jverburg@wspa.org
Joseph Sorena	Chevron	Not provided	Not provide d	jsorena@chevron.com
Joey Lynn	Not provided	Not provided	Not provide d	Not provided
Joe Frey	Not provided	Not provided	Not provide d	Not provided
Janie Kilgore	POET, LLC	Not provided	Not provide d	janie.kilgore@POET.com

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Joe Guild	Not provided	Not provided	Not provided	Not provided
Lili Wolf	Not provided	Not provided	Not provided	Not provided
Jennifer Garrett	Not provided	Not provided	Not provided	Not provided
(775) 352-0414	Not provided	Not provided	Not provided	Not provided

**5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

A survey was conducted of small businesses that would potentially be affected by the regulation. The electronic survey was emailed to the NDA’s customer list, those requesting notice, and posted on the NDA website at [agri.nv.gov](http://agri.nv.gov). The survey was open for responses from January 21, 2022 to February 11, 2022. A total of 18 survey responses were received.

Comments were solicited from affected businesses in the same manner as they were solicited from the public and are included in the workshop and hearing meeting minutes. The summary may be obtained as instructed in section 2.

**6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted on December 14, 2022. There were no changes suggested or requested at the workshop on April 6, 2022. During the November 7, 2022, workshop, it was noted that a hyperlink to a federal regulation needed to be corrected. This change was made, and the updated version of the draft file (R038-21RP2) was the version adopted at hearing.

**7. The estimated economic effect of the adopted regulation on the businesses 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.**

(a) Adverse and beneficial effects

- Adverse economic effect on regulated business
  - Because E15 can affect fueling systems (tanks, piping, dispensers, seals, etc.), it is possible that retailers will need to change one or more aspects of their infrastructure to store and sell E15 safely and responsibly. For businesses that choose not to sell E15, there will be no economic effect. Businesses that choose to sell E15 would see a range of direct costs, depending on the level of infrastructure changes that they would need to undertake.

- For a retail station with tank(s), dispensers, piping and seals that are compatible with E15, the cost would be relatively minimal, approximately \$2,000 or less for labeling and placarding, depending on the size of the station.
  - A retail station needing to upgrade their dispensers to those that are compatible with E15 may retrofit at a cost of approximately \$4,000 per dispenser or replace with new dispensers at a cost of approximately \$20,000 each.  
Replacement of a 10,000-gallon underground storage tank is estimated to cost approximately \$115,000.
  - These approximate expenses can be used to estimate the total cost that a business will incur. The sale of E15 is not mandatory but will be another product available in the marketplace. Retailers will have the choice whether to sell E15.
  - Beneficial economic effect on regulated business
    - Regulated businesses may see beneficial economic effects in the form of increased sales if there is consumer interest in E15 as an additional product choice.
  - Adverse economic effect on the public
    - The NDA does not anticipate any adverse economic effects on the public because of the proposed regulations.
  - Beneficial economic effect on the public
    - E15 is normally priced lower than conventional oxygenated gasoline (E10) and oftentimes significantly less than non-oxygenated gasoline (E0). There will be a decrease in miles per gallon with an increased amount of ethanol, however. It should be noted that use of E15 is only approved for vehicles in model year 2001 and newer. The proposed regulation includes a dispenser labeling requirement that E15 is only approved for use in those model years, and includes a requirement for the regulated business to have in place a federally approved plan for mitigation in the event of misfuelling.
- (b) Immediate and long-term economic effects
- Immediate economic effect on regulated business
    - The proposed regulations will take effect upon adoption. The NDA anticipates two possible immediate economic effects for the regulated businesses that choose to offer E15 as a product choice. For businesses that need to do little to no retrofitting of improvements before offering E15, there may be a nearly immediate beneficial impact proportionate to sales of E15. Businesses required to retrofit infrastructure prior to offering E15 for sale will incur costs proportionate to the level of retrofitting necessary and would experience an adverse economic effect as detailed above.
  - Long-term economic effect on regulated business
    - Regulated businesses may see long-term economic effects in the form of increased sales if there is consumer interest in E15 as an additional product choice.
  - Immediate economic effect on the public
    - There may be an immediate economic effect on the public if regulated businesses are able to sell E15 soon after the proposed regulations take effect, with the caveats directly above.
  - Long-term economic effect on the public
    - If more businesses offer E15 for sale, there may be continued long-term economic effect for the public.

**8. The estimated cost to the agency for enforcement of the adopted regulation.**

The NDA estimates that it will incur costs of between \$1,000 and \$2,000 to recalibrate instruments necessary to confirm compliance with the adopted standard.

**9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

While the proposed regulations do not duplicate federal, state, or local standards, they do adopt by reference regulations in CFR that have been promulgated by the U.S. Environmental Protection Agency. These regulations have been included in NAC Chapter 590 because it would be of benefit to regulated businesses and the public if the comprehensive requirements are conveniently collected in state regulation, rather than requiring interested parties to seek that information from other sources.

**10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The proposed regulation is not more stringent than federal, state, or local standards.

**11. 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.**

The proposed regulation does not provide a new fee or increase an existing fee.

I certify that to the best of my knowledge or belief a concerted effort was made to determine the impact of this proposed regulation on small businesses and that the information contained in this statement is accurate.

**Jennifer Ott**

Digitally signed by Jennifer Ott  
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Agriculture, ou=Director, email=jott@agri.nv.gov, c=US  
Date: 2022.12.16 10:48:59 -08'00'

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**HEADQUARTERS**  
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4/6/2022

Nevada Department of Agriculture  
William Striejewski  
State Board of Agriculture  
405 S. 21<sup>st</sup> St  
Sparks, NV 89431  
*Sent via e-mail: [ce@agri.nv.gov](mailto:ce@agri.nv.gov)*

**RE: Proposed Regulations Amending Chapter 590 NAC to Allow Sales of E15 in Nevada**

Dear Mr. Striejewski:

POET, LLC, the world's largest producer of biofuels, applauds the Nevada State Board of Agriculture for taking steps to approve blends of 10 to 15% ethanol in gasoline. Doing so will aid consumers and protect the environment. Assembly Bill No. 411 directs the Nevada State Board of Agriculture to enact regulations allowing for the sale of motor vehicle fuel containing not more than 15% ethanol by volume.<sup>1</sup> In this proposed regulation, the State Board of Agriculture accordingly revises existing regulations to allow for the sale of E15 in Nevada. This letter expresses POET's support for the proposed regulations.

**About POET**

[POET's](#) vision is to create a world in sync with nature. As the world's largest producer of biofuel and a global leader in sustainable bioproducts, POET creates plant-based alternatives to fossil fuels that utilize the regenerative power of agriculture and cultivate opportunities for America's farm families. Founded in 1987 and headquartered in Sioux Falls, POET operates 33 bioprocessing facilities across eight states and employs more than 2,200 team members. With a suite of bioproducts that includes Dakota Gold and NexPro feed, Voilà corn oil, purified alcohol, renewable CO<sub>2</sub> and JIVE asphalt rejuvenator, POET is committed to innovation and advancing powerful, practical solutions to some of the world's most pressing challenges. Today, POET holds more than 80 patents worldwide and continues to break new ground in biotechnology, yielding ever-cleaner and more efficient renewable energy. In 2021, POET released its inaugural [Sustainability Report](#) pledging carbon neutrality by 2050.

**POET Supports Updating the Regulations to Accommodate E15**

Under past Nevada law, regulations prevented bioethanol from being used in quantities greater than 10% in gasoline.<sup>2</sup> In June of 2021, the Nevada legislature enacted AB 411 requiring the

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<sup>1</sup> NRS 590.070, as amended by section 1 of Assembly Bill No. 411, chapter 372, Statutes of Nevada 2021, at page 2219.

<sup>2</sup> Nev. Admin Reg. § 590.065 ¶ 5(c).

Nevada State Board of Agriculture to allow the sale of fuel containing up to 15% ethanol through regulation. This proposed regulation complies with the statute's direction.

POET supports the regulatory changes proposed by the Board of Agriculture to accommodate E15 and believes the proposal makes the changes necessary to do so. As discussed in our prior comment letter (attached as Appendix A), POET does not believe it is necessary for the Board to incorporate federal regulations by reference into state regulations, as federal law applies even without being incorporated into state law. For the same reason, however, the incorporation of the federal regulations into state law should not add additional complexity as long as the Board updates its regulations to stay consistent with the most recent federal regulations. Failure to do so could lead to an inconsistent patchwork of regulatory provisions for those in the fuel supply chain.

\* \* \*

POET applauds the State Board of Agriculture's proposed regulation making E15 available to consumers in Nevada. We suggest the State Board consider not duplicating the comprehensive federal regulatory requirements that already ensure the safe sale of E15. If you have any questions, please contact me at [Matt.Haynie@POET.COM](mailto:Matt.Haynie@POET.COM) or (202) 756-5604.

Sincerely,



Matthew Haynie  
Senior Regulatory Counsel  
POET, LLC

## APPENDIX A



7 800 960 2200 200 7TH ST, NW, STE 820 WASHINGTON, D.C. 20004 POET.COM

August 12, 2021

Nevada Department of Agriculture  
Division of Consumer Equitability  
405 S. 21<sup>st</sup> St  
Sparks, NV 89431  
*Sent via e-mail: ce@agri.nv.gov*

### **RE: Proposed regulations amending Chapter 590 NAC to allow sales of E15 in Nevada**

Dear Sir or Madam:

POET, LLC, the world's largest producer of biofuels, applauds the Nevada Department of Agriculture ("NDA") for taking steps to approve blends of 10 to 15% ethanol in gasoline. Doing so is the right decision for consumers and the environment.

In the notice for the stakeholder input session on this issue, the NDA indicated that it is looking for input "on any subject related to the sale of E15 in Nevada" including registration, misfueling mitigation plans, dispenser labeling requirements, dispensing equipment specifications and compatibility, and product transfer documents. This letter provides additional information about POET, the benefits of higher ethanol blends, and the current status of E15 in Nevada, and addresses the specific areas referenced in the notice.

#### **About POET**

POET's mission is to be good stewards of the Earth by converting renewable resources to energy and other valuable goods as effectively as humanly possible. POET owns and operates an industry-leading 33 bioethanol plants, and is the world's largest producer of plant-based biofuels, with three billion gallons of annual production capacity. Started in 1987, the company today operates in eight states, and markets biofuels and renewable co-products here in the U.S. and across the globe. In 2019, Fast Company recognized POET on its annual list of "Most Innovative Companies" for transportation and FORTUNE recognized POET on its list of companies that are changing the world. While the scope of our vision has grown, POET remains focused on reducing reliance on petroleum products, revitalizing global agriculture, and providing a cleaner, affordable alternatives to fossil fuels.

We stand ready to assist Nevada and its residents by supplying bioethanol that saves consumers money at the pump, reduces greenhouse gas emissions, and replaces harmful chemicals in gasoline.

## Bioethanol

Bioethanol (ethanol derived from biological sources, which represents nearly all the ethanol produced in the United States today) has been used for decades to improve the performance of gasoline while greatly reducing its negative environmental impacts. Historically, bioethanol allowed for harmful chemicals lead like lead and methyl-tert butyl ether (“MTBE”) to be phased out of the gasoline supply. Like these less desirable chemicals, bioethanol boosts fuel octane, allowing engines to operate consistently and efficiently. Bioethanol, however, does so without the harmful impacts associated with predecessor octane additives. In fact, bioethanol has allowed both lead and MTBE to be completely phased out of the U.S. fuel supply while keeping fuel octane at the same levels.

Significantly, bioethanol has considerable environmental benefits. A peer-reviewed 2021 study in the journal *Environmental Research Letters* found that bioethanol reduces greenhouse gas emissions by 46% percent on an industry average basis compared to gasoline.<sup>3</sup> And evidence on the health benefits of ethanol is growing over time. For example, Mueller *et al.* concluded that “ethanol blending in gasoline is beneficial to human health, given that toxic/carcinogenic chemicals are significantly reduced due to displacement by ethanol.”<sup>4</sup>

Further, blending of bioethanol into fuel reduces its price. As of July 2021, the national reported retail price for a gallon of E15, for example, is currently selling at a \$0.16 discount compared to E10.<sup>5</sup>

Allowing bioethanol levels in gasoline to increase from 10 to 15% will enable fuel to take advantage of all these characteristics of ethanol. Nevada can maintain fuel performance, reduce fuel’s environmental impacts, and save consumers money through the introduction of E15.

## E15 in Nevada

Under past Nevada law, regulations prevented bioethanol from being used in quantities greater than 10% in gasoline.<sup>6</sup> Only Montana and California have state laws that prohibit sales of E15. However, California is currently in the process of evaluating the removal of its E15 restriction.

In June of this year, however, the Nevada legislature enacted AB 411, which requires the Nevada State Board of Agriculture to allow the sale of fuel containing up to 15% ethanol. The Department is now beginning the process of changing its regulations to align with the statute.

The regulatory change needed to accommodate E15 is straightforward. Paragraph 5 of Section 590.065 of the Nevada Administrative Regulations currently states:

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<sup>3</sup> Melissa J Scully *et al.*, Carbon intensity of corn ethanol in the United States: state of the science, 16 *Environ. Res. Lett.* 043001 (2021).

<sup>4</sup> Steffen Mueller *et al.*, An Assessment on Ethanol-Blended Gasoline/Diesel Fuels on Cancer Risk and Mortality, 18(13) *Int. J. Environ. Res. Public Health* 6930 (2021).

<sup>5</sup> <http://e85prices.com/>.

<sup>6</sup> Nev. Admin Reg. § 590.065 ¶ 5(c).



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 if ...  
(c) It contains more than 10 percent ethanol by volume...

Striking “10” in this provision and replacing it with “15” would be sufficient to permit E15 sales consistent with the Nevada statute. The reference to ASTM Standard D4814 earlier in Section 590.065 need not be modified, as that standard already accommodates E15.<sup>7</sup>

It is important to note that E15 is not mandated for sale by AB411. The law merely requires the Department to allow fuel retailers to sell E15. As a result, consumers who prefer lower ethanol blends will be still be able to purchase those blends at retailers across the State.

#### Issues Raised in the Meeting Notice

As discussed above, the meeting notice highlights a number of areas where the Department is seeking input with respect to E15. We address these specific areas below.

#### *Registration*

The United States Environmental Protection Agency (“EPA”) identifies three requirements related to fuel producer registration of E15 fuel:

1. Misfueling mitigation plans (discussed below),
2. Compliance survey plans, and
3. Fuel product registration under 40 C.F.R. Part 79.<sup>8</sup>

The compliance survey requirements were initially established by EPA in 2011<sup>9</sup> to ensure that E15 is sold in a manner consistent with federal law, and were updated in the 2020 EPA Fuels Regulatory Streamlining rulemaking.<sup>10</sup> In general, the compliance survey regulations require that gasoline manufacturers, oxygenate blenders, and oxygenate producers survey retailers to ensure that E15 is being sold consistent with certain labeling, ethanol content, and vapor pressure requirements.<sup>11</sup> Under the updated compliance survey regulations, these entities can satisfy these requirements by developing an EPA-approved geographically targeted survey plan aimed at the region they distribute E15 or its intended constituents, or by simply participating in the National Fuels Survey Program (“NFSP”) as administered by a third party surveyor.<sup>12</sup> EPA indicates that

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<sup>7</sup> Section 590.065 Paragraph 3 sets Nevada limits on vapor pressure for various gasoline blends that appear intended to mirror historical federal vapor pressure limits. Given that federal law adequately governs gasoline vapor pressure and is in a state of flux due to a recent federal court decision, *Am. Fuel & Petrochemical Mfrs. v. EPA*, Nos. 19-1124, 19-1159, 19-1160, 19-1162, 2021 U.S. App. LEXIS 19759 (D.C. Cir. July 2, 2021), we recommend that Nevada defer to the federal government on gasoline vapor pressure and either strike Paragraph 3 or replace it with a reference to EPA regulations on vapor pressure.

<sup>8</sup> See <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/e15-fuel-registration>.

<sup>9</sup> Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs, 76 Fed. Reg. 44,406 (Jul. 25, 2011) (“E15 Misfueling Mitigation Rule”).

<sup>10</sup> 85 Fed. Reg. 78,412, 78,444 (Dec. 4, 2020).

<sup>11</sup> 40 C.F.R. § 1090.1420; 76 Fed. Reg. at 44,420.

<sup>12</sup> 40 C.F.R. § 1090.1420.

the latter option is likely much more cost effective, and has identified the RFG Survey Association as an entity seeking to qualify to administer the NFSP.

Given the comprehensive nature of the federal compliance survey requirements, the relatively low cost of participating in the NFSP, and the fact that EPA just revisited the requirements for efficiency, POET does not believe that Nevada needs to implement any additional E15 compliance survey obligations to ensure that E15 is sold in a safe manner consistent with existing EPA regulations.

Aside from conducting E15 compliance surveys, fuel and fuel additive manufacturers must also register with EPA under 40 C.F.R. Part 79. This extensive registration process further ensures that E15 meets EPA requirements and renders additional Nevada registration requirements for fuel and fuel additive manufacturers unnecessary.

### *Misfueling Mitigation Plans*

As part of the Clean Air Act substantially similar partial waivers that originally allowed for the sale of E15 in 2010 and 2011, EPA imposed a number of waiver conditions intended to ensure the compliance of E15 with federal law and the protection of consumers. One of these conditions was that fuel and fuel additive manufacturers in the E15 supply chain had to submit misfueling mitigation plans for EPA approval that “will implement all reasonable precautions for ensuring that the fuel or fuel additive ... is only introduced into commerce for use in MY2001 and newer light-duty motor vehicles.”<sup>13</sup> The 2011 Partial Waiver further spells out three requirements of these mitigations plans: (1) labels for pumps dispensing E15 with specified label content, (2) reasonable measures for ensuring that product transfer documents reflect E15 content, and (3) the compliance survey requirement detailed above.

The Renewable Fuels Association proposed a model misfueling mitigation plan to EPA on March 2, 2012, and EPA approved the plan later that year. EPA also indicated that companies could use the model plan to satisfy the misfueling mitigation plan requirement with EPA approval. The model plan has become the standard way for those in the E15 supply chain to comply with the misfueling mitigation plan requirement.

As a result, any fuel or fuel additive manufacturers that wish to supply E15 or its components to Nevada need only notify EPA of their desire to rely on the model plan, then comply with the measures in the plan. The plan is available on EPA’s website.<sup>14</sup>

As is the case with other areas of E15 regulation, Nevada need not duplicate federal efforts with respect to misfueling mitigation plans.

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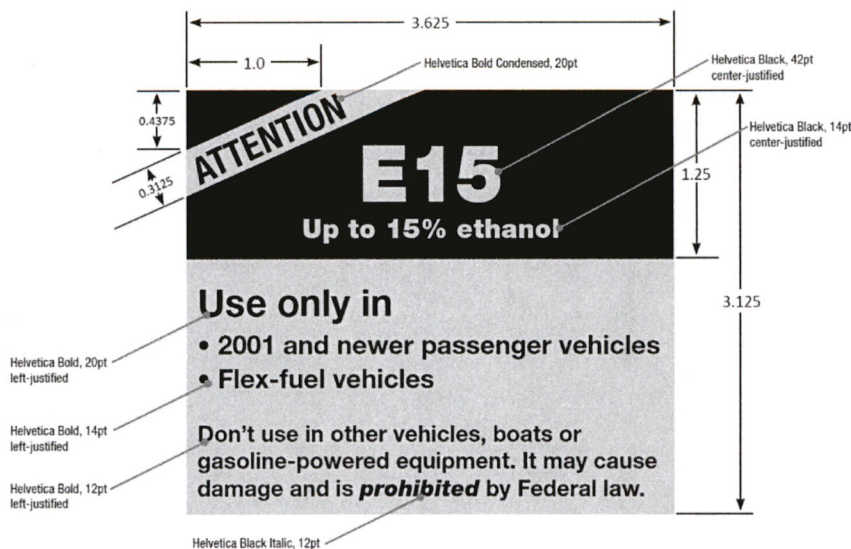
<sup>13</sup> Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator, 76 Fed. Reg. 4,662, 4,682 (Jan. 26, 2011).

<sup>14</sup> <https://www.epa.gov/sites/default/files/2015-09/documents/rfa-model-e15-misfueling-mitigation-plan.pdf>.

## Dispenser Labeling Requirements

The 2011 E15 Misfueling Mitigation Rule establishes clear requirements for labels on E15 dispensers, specifying the language, color, shape, font, and placement of the label. The labeling requirements were slightly updated in the 2020 Fuels Streamlining Rule.<sup>15</sup> The current federally required label appears as follows:

Figure 1 to paragraph (b)—E15 Label



As is evident upon examination of the label, federal law is more than adequate in providing consumers with the information necessary to assess the appropriateness of E15 for their engines.

## Dispensing Equipment Statements/Compatibility

Both Nevada and the federal government have regulatory programs in place that govern underground storage tanks (“USTs”) and their compatibility with specific fuels. The federal underground storage tank regulations were updated in 2015 to specifically address storage tank compatibility with higher ethanol blends such as E15.<sup>16</sup> Under the 2015 program, UST owners must demonstrate the compatibility of USTs intended to house E15. Compatibility can be demonstrated by either certification by an independent laboratory or equipment or component manufacturer approval.<sup>17</sup>

<sup>15</sup> 40 C.F.R. § 1090.1510.

<sup>16</sup> <https://www.epa.gov/ust/emerging-fuels-and-underground-storage-tanks-usts>.

<sup>17</sup> EPA, UST System Compatibility With Biofuels, EPA 510-K-20-001, 12 (Jul. 2020), available at [https://www.epa.gov/sites/default/files/2020-07/documents/ust\\_compatibility\\_booklet\\_formatted\\_final\\_7-13-2020\\_508.pdf](https://www.epa.gov/sites/default/files/2020-07/documents/ust_compatibility_booklet_formatted_final_7-13-2020_508.pdf).

The 2015 EPA regulations provided three years for states that implement their own UST programs, such as Nevada, to align their state programs with the EPA updates.<sup>18</sup> EPA's website is unclear as to whether Nevada has yet aligned with the 2015 regulations.<sup>19</sup> POET is still reviewing the Nevada UST program to assess its applicability to E15 blends. To the extent Nevada has not yet modified its UST program to accommodate storage of E15, POET encourages Nevada to do so, consistent with the federal UST program.

In January 2021 EPA proposed updated UST requirements that would streamline compatibility demonstrations for tanks intended to carry E15 and ensure that future UST systems can carry up to 100% ethanol blends.<sup>20</sup> These regulations have not yet been finalized. To the extent EPA does finalize the regulations, POET encourages Nevada to also streamline regulatory demonstrations for E15 tanks and ensure the flexibility of future USTs.

### *Product Transfer Documents*

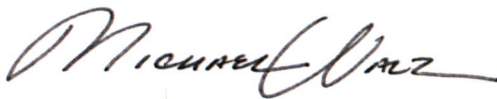
As discussed above, the waiver conditions on the initial approval of E15 required fuel and fuel additive manufacturers to develop misfueling mitigation plans to ensure that product transfer documents ("PTDs") would adequately notify those in the E15 chain of commerce of the nature of the fuel to prevent its use in engines not approved for E15. EPA further codified PTD provisions in the 2011 E15 Misfueling Mitigation Rule, which have now been reorganized pursuant to the Fuels Regulatory Streamlining Rule.<sup>21</sup> The federal PTD requirements generally require the identification of whether blendstocks are appropriate for blending into E15, and then identification of finished fuels as E15 so that downstream entities can appropriately label and market the fuel for sale.

Given that federal law creates clear and unambiguous PTD requirements for E15 blendstocks and finished fuel, it is unnecessary for Nevada to establish separate PTD requirements.

\* \* \*

POET applauds NDA's decision to make E15 available to consumers in Nevada. We believe that a relatively simple change in the Nevada regulations is all that is required to enable E15 sales, and that Nevada ought not seek to duplicate the comprehensive federal regulatory requirements that already ensures the safe sale of E15 fuel. Please do not hesitate to contact me if you need any assistance with these efforts.

Sincerely,



<sup>18</sup> <https://www.epa.gov/ust/revising-underground-storage-tank-regulation-revisions-existing-requirements-and-new>.

<sup>19</sup> *Id.* (listing indicates Nevada has aligned with 2015 EPA regulations, but map indicates that it may not yet have done so).

<sup>20</sup> E15 Fuel Dispenser Labeling and Compatibility With Underground Storage Tanks, 86 Fed. Reg. 5,094, 5,096 (Jan. 19, 2021).

<sup>21</sup> The current PTD requirements are codified at 40 C.F.R. § 1090.1110.

Michael Walz  
Director of State Policy  
POET LLC



**November 16, 2022**

William Striejewske, Ph.D.  
Senior Petroleum Chemist  
Division of Measurement Standards  
Nevada Department of Agriculture  
405 South 21<sup>st</sup> Street  
Sparks, Nevada 89431

**RE Notice of Workshop to Solicit Comments on Proposed Regulation  
LCB File No. R038-21RP1**

Dr. Striejewske

Following the Workshop to Solicit Comments on Proposed Regulation R038-21RP1 (which is revising existing regulations to allow for the sale of gasoline containing not more than 15 percent ethanol by volume if the gasoline meets certain requirements), conducted on November 7, 2022, the Nevada Division of Environmental Protection (NDEP) submits the following updated comments on the draft regulation.

***NDEP is not proposing any changes to the proposed regulation; and supports the inclusion of requirements for E15 Fuel Dispenser Labeling and E15 Compatibility with Underground Storage Tanks as detailed below.***

NDEP supports the inclusion of Section 590.065.7(b)(2) and (3) that require:

- 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; and
- The retailer or wholesale purchaser-consumer applies a label to the fuel dispenser in compliance with the requirements set forth in 40 C.F.R. § 1090.1510.

NDEP also supports the inclusion of 590.065.7(b)(4) that requires:

- The underground storage tanks used to store the gasoline are in compliance with the requirements set forth in subsection 2 of NAC 459.993.

NDEP's Bureaus of Air Pollution Control and Air Quality Planning – E15 Fuel Dispenser Labeling

Per Federal Register (FR), Vol. 86, No. 11, E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks, January 19, 2021, “EPA currently requires fuel dispenser labels for

gasoline-ethanol blends of greater than 10 volume percent (vol%) ethanol and up to 15 vol% ethanol (E15). The label was designed to alert consumers to the appropriate and lawful use of the fuel.” EPA further states in the FR “Those regulations [*see Clean Air Act 211(c) (referred to as the Misfueling Mitigation Rule)*] were needed to implement EPA’s affirmative determinations that the use of E15 in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all on- and off-highway motorcycles, and all nonroad products would cause or contribute to the impairment of these vehicles’ and engines’ emission controls and harm public health from increases in regulated emissions.”

This misfueling can result in increases in emissions of criteria air pollutants such as carbon monoxide, nitrous oxide, and particulate matter; as well as volatile organic compounds, which can result in greater production of ground-level ozone. Additionally, misfueling can result in greater emissions of air toxics.

The transportation sector is a significant contributor to air emissions, and it should be noted that:

- In Clark County, the Las Vegas Valley was designated marginal nonattainment for the 8-Hour 2015 Ozone National Ambient Air Quality Standard (NAAQS) in August 2018;
- Washoe County is currently designated in attainment for the 2015 Ozone NAAQS; however, recent ozone levels have been close to 100 percent of the NAAQS; and
- In Carson City / Douglas, ozone levels are also approaching the NAAQS.

EPA is expected to review and potentially revise the current ozone standard by the end of 2023, possibly making it more stringent.

It is NDEP’s understanding based on Department of Motor Vehicles data that there are over 280,000 pre-2000 vehicles registered in Nevada (as of April 2021); and this does not include vehicles that do not require registration.

#### NDEP’s Bureau of Corrective Actions – E15 Compatibility with Underground Storage Tanks

Per Federal Register (FR), Vol. 86, No. 11, E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks, January 19, 2021, EPA states the follow:

- It is important for USTs to be constructed, maintained, and operated in a manner so that petroleum and other regulated substances are stored safely.
- Incompatibility between fuels stored and UST system materials can result in equipment or components such as tanks, piping, gaskets, or seals becoming brittle, elongated, thinner, or swollen when compared with their condition when first installed. When this occurs, the UST system may fail to contain the regulated substance resulting in a release to the environment and possibly a failure to detect the release.
- Changes in the fuel supply have caused unintended consequences to UST systems, including equipment failure and releases to the environment. As a result, in 2015 we [EPA] revised the UST regulation and required owners and operators to provide

additional notification, demonstration, and recordkeeping when storing fuel blends such as those with more than 10 percent ethanol or more than 20 percent biodiesel.

NDEP supports the inclusion 590.065.7(b)(4) that references NAC 459.993, which is the section of the Storage Tanks regulation that addresses adoption by reference of certain provisions of federal regulations regarding underground storage tanks. This section adopts by reference 40 CFR Part 280.32 as it existed on October 13, 2015. This section requires notification and demonstration of compatibility for changes in fuel supply.

§ 280.32 Compatibility.

- (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.
- (b) Owners and operators must notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the implementing agency. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:
  - 1. Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:
    - (i) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
    - (ii) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
  - 2. Use another option determined by the implementing agency to be no less protective of human health and the environment than the options listed in paragraph (b)(1) of this section.
- (c) Owners and operators must maintain records in accordance with § 280.34(b) documenting compliance with paragraph (b) of this section for as long as the UST system is used to store the regulated substances.

NDEP estimates that a little over half the tank systems operating in the State were installed pre-1998; which is the date EPA started requiring new tank systems to have interstitial monitoring or secondary containment.

Thank you for the opportunity to provide comments on the proposed regulation. Please reach out to me at 775-687-9307 or [jkinder@ndep.nv.gov](mailto:jkinder@ndep.nv.gov) if you have any questions.

Respectfully,



Jeffrey Kinder, P.E.  
Deputy Administrator



William Striejewske, Ph.D.  
Proposed Regulation LCB File No. R038-21RP1  
November 16, 2022  
Page 4 of 4

cc: Greg Lovato, Administrator, Nevada Division of Environmental Protection  
Danilo Dragoni, Chief, NDEP Bureau of Air Quality Planning  
Jeff Collins, Chief, NDEP Bureau of Corrective Actions  
Marci Henson, Director, Clark County Department of Environment & Sustainability  
Francisco Vega, Division Director of Air Quality Management, Washoe County Health District