

**OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
REVIEW REGULATIONS**

APRIL 19, 2010

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Chair Marcus L. Conklin at 2:17 p.m. on April 19, 2010, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and at the Great Basin College, Chilton Circle Modular Office Conference Room, 1500 College Parkway, Elko, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman Marcus L. Conklin, Chair, Assembly District No. 37
Senator Maggie Carlton, Clark County Senate District No. 2
Senator Steven A. Horsford, Clark County Senate District No. 4
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1
Senator Randolph J. Townsend, Washoe County Senate District No. 4
Senator Joyce L. Woodhouse, Clark County Senate District No. 5

COMMISSION MEMBERS PRESENT (CARSON CITY):

Senator Maurice E. Washington, Washoe County Senate District No. 2

COMMISSION MEMBERS PRESENT (ELKO):

Assemblyman John C. Carpenter, Assembly District No. 33

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Karen Stoll, Revenue Officer, Department of Motor Vehicles
Rhonda Bavaro, Administrator, Motor Carrier Division, Department of Motor Vehicles

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Carmen Shipman, Tax Program Supervisor, Motor Carrier Division,
Department of Motor Vehicles

Ward O'Shea

Peter Gibbons

Juanita Clark, Charleston Neighborhood Preservation

Martha Barnes, Administrator for Central Services, Department of Motor
Vehicles

Shelley D. Blotter, Division Administrator, Employee and Management
Services, Department of Personnel

Dan Hickey

Glenn V. Greener, ALC Insurance

Rebecca Gasca, American Civil Liberties Union of Nevada (ACLU)

Ramona Morrison, State Department of Agriculture

William Striejewske, Petroleum Chemist, State Department of Agriculture

Jeff J. Jetter, Honda Research and Development Americas, Inc.

Marlene Lockhard, Afton Chemical Company

John Sande, III, Jones Vargas

Edgar Roberts, Director, Department of Motor Vehicles

Barbara Muchow

Jim Sallee

Unidentified Speaker

Harold Reynard

Bob Ruckman, Chair, Clark County Republican Party

Brian Ramsey

John Wagner, Chair, Independent American Party of Nevada

Robert Ruppert

April Tatro-Medlin

Cathie Lynn Profant

Craig Schank

Jim DeGraffenreid, Nevada Republican Party

Juanita Cox, Chair, Storey County Republican Party; Chair, Citizens in Action

Delilah De La O

Islena Giron, Giron Driving School

Herald Giron, Giron Driving School

Thomas W. Cornell

Chair Conklin called the meeting of the Legislative Commission's Subcommittee to Review Regulations to order at 2:17 p.m. He asked Ms. Clark to call the roll of members present.

Ms. Angela Clark called the roll. All the members were present.

Chair Conklin requested a motion to approve the minutes from the meeting held on November 24, 2009.

SENATOR TOWNSEND MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 24, 2009, MEETING OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW REGULATIONS.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMIOUSLY.

Chair Conklin listed the regulations submitted for consideration by the Subcommittee, (Exhibit C). The regulations included R108-08, R143-08, R090-09, R091-09, R107-09, R114-09, R128-09, R138-09, R140-09, R141-09, R155-09, R157-09, R159-09, R172-09, R173-09, R176-09, R184-09, R185-09, R186-09, R189-09, R191-09, R193-09, R196-09, R210-09, R001-10, R004-10, and R072-09.

Chair Conklin requested a motion to adopt by consent all the regulations not pulled or held by the Subcommittee. Mr. Carpenter requested R153-09, R158-09, R160-09, and R171-09 be held for further discussion. R111-09 was held by the Subcommittee, and Senator Carlton requested R194-09 and R195-09 be held for discussion. Senator Townsend requested R032-10 be held for further discussion.

Senator Washington stated R157-09 was withdrawn by the Department of Motor Vehicles (DMV).

Chair Conklin reiterated R157-09 was pulled by the DMV.

Senator Townsend stated for the record, under Regulation R108-08, Commission for Common-Interest Communities and Condominium Hotels, his wife was a broker, a licensed property manager and a certified real estate agent.

SENATOR TOWNSEND MOVED TO ACCEPT BY CONSENT ALL THE REGULATIONS NOT HELD BY THE SUBCOMMITTEE.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin mentioned regulation R153-09, The State Board of Equalization Regulation, was held for discussion as requested by Mr. Carpenter.

Mr. Carpenter said he understood there was a letter from Ms. Erdoes that they did not have the authority to implement this regulation.

Chair Conklin said the letter did not come from legal counsel; it came from a private citizen. He said Ms. Erdoes believed they did have the authority to implement the regulation.

Brenda Erdoes, Legislative Counsel, said the opinion of her office was that the regulation complied with the statutory authority under which it was enacted. She said it was up to the Subcommittee to determine if it met the legislative intent. She added that the packets contained some information and a letter about the regulation.

Mr. Carpenter said if the letter was not from the Legislative Counsel Bureau, he was satisfied and prepared to move forward on the regulation.

SENATOR CARLTON MOVED TO ADOPT R153-09.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R158-09, the Department of Motor Vehicles.

Mr. Carpenter stated that he asked for the regulation to be held because he questioned the means by which people could pay. He wondered why certain interstate carriers could not use a bank card, debit card, or credit card.

Chair Conklin asked for a representative from DMV to testify concerning the question.

Karen Stoll, Revenue Officer, Department of Motor Vehicles, said the DMV put the word "may" in the regulation requiring cash, cashier's check, money orders, or traveler's checks because some carriers have given the DMV nonsufficient fund checks (NSF) or funds that were returned by the bank. She said the DMV wanted the right to require cash so the DMV and the State did not end up with monies owed to them.

Mr. Conklin asked Ms. Stoll if she meant they could use a bank card or credit card unless the DMV believed there was an issue with the card. He said the DMV could demand a cash payment so that the DMV did not lose money. He asked her if the regulation only applied to fleet operators.

Ms. Stoll said the regulation pertained to internationally registered jurisdictions throughout the nation and Canada. She said the DMV was obligated to remit money to the other jurisdictions, and they wanted to be sure Nevada was not acting as a lender in forwarding money to the other jurisdictions. She said a guaranteed fund meant the State did not have a loss.

Chair Conklin asked who would be subjected to the regulations. He asked if the average person going to the DMV would be required to remit in cash only.

Ms. Stoll said it pertained to the customers registered for Motor Carrier Operations; it did not apply to the customer registering their personal vehicle.

Mr. Carpenter said he did not see in the regulation where they could use a bank card, debit card or credit card. He said the equipment available today guaranteed the funds were available.

Ms. Stoll said the definition for guaranteed funds did not include bank cards. She said people could contest the charge and have the charge removed and reversed to the State of Nevada's account.

Rhonda Bavaro, Administrator, Motor Carrier Division, Department of Motor Vehicles, said the regulation stated the DMV "may" require guaranteed funds. She said it gave them the option to accept credit or debit cards. She said the cash requirement would only apply to people who were habitually delinquent and had a history of payments withheld or NSF checks.

Chair Conklin said the concern was the regulation did not say specifically the DMV could accept the cards. He said there was nothing the Subcommittee could do to stop the DMV from requiring everybody to pay in cash only; however, specifying certain conditions where they may require cash would be of assistance to the Subcommittee and the public.

Mr. Carpenter said he still had concerns with the wording. He said when the regulations were written, sometimes people were put off by the manner in which they were written and he would vote against the regulation.

SENATOR TOWNSEND MOVED TO ADOPT R158-09.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (MR. CARPENTER VOTED NO.)

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Chair Conklin opened the discussion on R160-09, the Department of Motor Vehicles.

Mr. Carpenter asked why the DMV wanted to know what biodiesel was made of and why they needed the information. He said biodiesel was made from many things and it was regulated by the federal government.

Carmen Shipman, Tax Program Supervisor, Motor Carrier Division, Department of Motor Vehicles, said they wanted the regulation because many people were making their own biodiesel when diesel fuel cost over \$5 a gallon. She said they used the vehicles and the biodiesel fuel on public highways and they needed to pay the fuel taxes. They asked for the regulations so the average person manufacturing biodiesel would have a mechanism for reporting to the DMV and paying the appropriate excise taxes. She said they could pay semi-annually or annually.

Mr. Carpenter asked who in Nevada was making biodiesel.

Ms. Shipman said a number of people were making biodiesel. A company in Ely was reporting and paying the DMV. She said they had several calls from people making biodiesel who asked what their tax liabilities were to the State. The majority of callers chose not to give the DMV information. The regulation would give them a better ability to track biodiesel information.

Mr. Carpenter asked if they knew how much in taxes they were losing.

Ms. Shipman said because the price of diesel fuel was relatively stable, she did not think it was cost-effective for the general public to be making biodiesel. She said as fuel prices increased, more people would make it.

Ms. Kirkpatrick asked what other states were tracking biodiesel manufacturers and why it was an issue now.

Ms. Shipman said she did not know what other states tracked biodiesel. She said the problem was not making small quantities for their own use, but the ones who made it in mass quantities and resold it. She said some truckers were adding a number of different components to their fuel, adding that the commercial people were the ones the regulation targeted.

Ms. Kirkpatrick asked where the definition for special fuel manufacturers was located in the regulation. She asked how the regulation did not encompass the smaller provider.

Ms. Shipman referenced page 3 of the regulation where the definition for special fuel manufacturer was located. She said those were the people who made their own biodiesel. They had their own classification as opposed to other entities such as fuel suppliers and dealers.

Senator Carlton asked if the regulation required self-reporting.

Ms. Shipman replied at this point they were interested in self-regulation.

Senator Carlton said she was not as concerned about the tax issue as the danger of manufacturing biodiesel at home. She asked if there were any inspection components in the regulation to ensure safety.

Ms. Shipman said Motor Carrier did not have the authority to regulate safety inspections. She said it was probably under the jurisdiction of the cities where the biofuel was being manufactured.

Senator Carlton said tax stamps on gasoline pumps and inspections on the pumps were done through the Department of Agriculture.

Ms. Shipman said the Department of Agriculture, Weights and Measures, did the inspections of the pumps. She did not know about an actual tax stamp.

Senator Carlton said she had concerns on the safety issues involved.

Ward O'Shea said he had studied the regulation. He said biodiesel was part diesel and part vegetable oil, normally used vegetable oil, which was a waste product. Mixing the two diluted the diesel with the waste oil. He said it was not gas, but diesel and vegetable oil. He added that it was more dangerous to take a gas can and fill it with gas for the lawn mower than it was to create biodiesel. He said all the impurities had to be washed out of the vegetable oil. A lot of motor carriers that opted for utilizing biodiesel did so because they were struggling to survive in this economy. Imposing a tax only imposed further hardship on them. He said it seemed inappropriate to impose another tax on utilizing alternative fuel options. They had already paid tax on the diesel, and using waste oil should not be subject to tax.

Senator Carlton said a farmer or rancher making biodiesel to use on their own property should not be penalized because they were not on the roads. She said it was a good point about the diesel already being taxed; it would be like taxing the fuel twice.

Chair Conklin said he saw it as a double tax on vegetable oil because sales tax was paid on the oil. He asked if anyone was interested in making an adoption motion on R160-09.

Peter Gibbons commented on the safety issue of biodiesel. He said diesel was non-explosive and could take high temperatures before it ignited. The process to refine the vegetable oil required a large investment. There would be no credit for taking toxic waste and turning it into a useable product. He said it was counter-productive in fostering environmentally friendly fuel usage. It punished people who were exploring the technology. Bentley Biofuels in the Carson Valley was manufacturing on a commercial scale and paying all the appropriate taxes.

Chair Conklin asked Mr. Gibbons if he was in support of the regulation.

Mr. Gibbons said he understood the regulation was a scheme by the DMV to collect taxes on biodiesel. He was not in support of the regulation.

Juanita Clark, Charleston Neighborhood Preservation, offered a point of information. She asked what the amount of state tax was on a gallon of diesel fuel. She said her organization was against the tax.

Chair Conklin replied no one knew the answer, but the tax had not been raised in 30 years.

SENATOR CARLTON MOVED TO REJECT REGULATION 160-09.

MR. CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R171-09, the Department of Motor Vehicles. He said his concern with the regulation was he had heard from people in the industry who thought the regulation required that all the criteria listed on page 1, section 2, had to be met. He said, for example, having an automobile registered to one person, such as a student, and the insurance listed with the parent would cause a mismatch, and they would be denied. The DMV could use the information, but it was up to the insurer to decide if the vehicle was insured.

Martha Barnes, Administrator for Central Services Division, Department of Motor Vehicles, said they had problems with the program earlier concerning proof of insurance. She said they changed the program to make the confirmation electronic so the insurance companies were taking on the responsibility for the person having insurance. They turned the program around to allow the insurance company to make the decision themselves and provide the DMV with a confirmation that the vehicle was insured. She said the DMV provided the insurance company with the criteria for the list in the regulations. The insurance company determined what they were going to match for confirmation of insurance.

Chair Conklin said if he was an insurer and he used the VIN number supplied by the DMV and matched it on a policy without ever looking at someone's name, the insurer could confirm it was a policy with the insurance company.

SENATOR TOWNSEND MOVED TO ADOPT R171-09.

MS. KIRKPATRICK SECONDED THE MOTION.

Mr. Carpenter said the insurance companies seemed to think the regulation would cause a great many problems due to the request for the name. The

regulation said the full, legal name of the owner of the motor vehicle was required. He did not know how that could be changed.

Chair Conklin said he understood the regulation to mean the DMV would supply information to the insurance company, and the company may use whatever information they have in their database for confirmation that it was a match and the vehicle was insured.

Ms. Barnes said Chair Conklin was correct. She said there were different groups. She referenced Group A, which were Web Services. Those were the ones who received all the information and responded with a confirmation to the DMV. She said there were several other groups who sent their information by secure means and others that sent the information in a different format. Eighty percent of the companies that write liability policies in Nevada were Group A companies.

Mr. Carpenter said NRS 485.317 stated the DMV may not use the name of the owner of a motor vehicle as a primary means of verifying that the vehicle was covered by a policy of liability insurance.

Ms. Erdoes stated that pursuant to page 2, subsection 4, of the regulation, a statement that the insurance was confirmed must be provided if the information transmitted by the DMV matched the information maintained by the insurer. She said it indicated the insurer had issued or amended a motor vehicle liability policy that covered the vehicle which was the subject of the query. The information had to be a match to the vehicle and did not mention the owner of the vehicle. The name was not one of the main things they looked at, but rather the vehicle had to match up and be insured.

Chair Conklin asked if there were any additional questions. As there were none, he called for the vote.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R194-09, a regulation relating to the State Personnel System.

Senator Carlton said under R194-09 and R195-09 she needed a definition of the term "controlled substance." She needed to know when they used the term "controlled substance" what was actually being discussed.

Shelley D. Blotter, Division Administrator, Employee Management Services, Department of Personnel, said the pre-employment testing was usually screened against a five panel. She did not have the schedule of drugs, but typically opiates, marijuana, and amphetamines were included. When something appeared in the drug test and there was a question, there was a medical review officer from the drug company who could confirm the appropriate use of a substance with the applicant. She said if a drug was prescribed and taken as it was supposed to be taken, it would not show up as a positive test.

Senator Carlton said if something happened and an employee was tested and informed them of the prescription drugs they were taking, the information should be available beforehand so they could be cleared without having to do it later.

Ms. Blotter said the information was provided when they gave the sample. She said if it appeared on a screening test, then the medical review officer contacted the person to verify they were taking that drug, and it would not appear as a positive test. She said the Department did not become involved until it showed up as a positive test.

Senator Carlton said concerning R195-09, the discussion was about a current employee. She stated if the same definition of controlled substances was in effect, if it was a prescribed drug, then it was not a problem.

Ms. Blotter replied if it was taken in accordance with a prescription, then it would not appear as a positive test.

Dan Hickey said he prescribed drugs and controlled substances. He was licensed by the Federal Drug Administration to do so. He said the regulation was backwards, and he had insufficient information concerning the drugs and the controlled substances.

Senator Carlton understood the explanation to be that if it was a prescribed drug, there would not be a problem. Upon employment, the employee would list the prescriptions they were taking and take the drug test. If the test came back positive for the drugs listed, then there was follow-up. She said during employment the same rules applied. If the employee had a legal and valid prescription, they should be protected and not have to worry about appearing before a review board.

Mr. Hickey said if there was a dispute, it was reviewed by a medical review officer.

Ms. Blotter replied Mr. Hickey was correct, and it was the federal Department of Health and Human Services that established the lists of various drugs and controlled substances.

SENATOR CARLTON MOVED TO ADOPT R194-09 AND R195-09.

SENATOR TOWNSEND SECONDED THE MOTION.

Chair Conklin opened discussion of the regulations.

Mr. Gibbons said if there was vagueness in the regulation concerning the controlled substances list, it would be advisable to revise the regulation to specifically cite where the list could be found prior to adoption of the regulation.

Ms. Blotter said in NAC 284.882 the standards were discussed and that is where the lists are located.

Chair Conklin said the Subcommittee had been informed of where the definitions of controlled substances were in statute. He asked if there were any further questions or comments.

Glenn V. Greener, ALC Insurance, said he frequently dealt with controlled substance problems because he was involved in commercial insurance. He said when they drafted and created the drug substance and alcohol abuse policies in order to comply with OSHA regulations, there were certain combinations that had actual levels set that determined whether someone tested positive. He said definite levels that would constitute whether or not someone tested positive would be beneficial.

Senator Carlton said she would address levels at a future date. She did not want to derail the current regulations.

Chair Conklin said the subject matter of the regulations was policy matter, not controlled substance, and was not the subject of the regulation itself. He said many of the legislators had concerns about the definitions.

Rebecca Gasca, American Civil Liberties Union of Nevada (ACLU), said the regulation dealt with testing positive for controlled substances. She wanted to be sure the Subcommittee was aware Nevada allowed for the use of medical marijuana and it was on the federal controlled substance list.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R032-10, a regulation relating to gasoline.

Senator Townsend said he received a considerable amount of input from automobile manufactures and dealers concerning the removal of substances that go in gasoline. He said if an automobile dealer did anything outside of the recommendation of the manufacturer, the dealer was financially responsible for anything that happened to the vehicle. The discussion of this regulation had gone on for a long time. There were dueling scientific experts concerning the additives. He said if the consumer purchased a new vehicle and something went wrong due to the type of additive that went into the fuel, the first responsibility was the dealer's, adding that the automobile dealerships were the second hardest hit industry due to the economy. He said the additives were worthy of debate, but he could not support the regulation.

Senator Washington said there were people testifying on the issue in Carson City.

Chair Conklin requested that members of the Board of Agriculture testify first. He asked what criteria the Board used to move forward with the proposal.

Ramona Morrison, Vice Chair, State Board of Agriculture, said they had extensive hearings and workshops concerning the regulation. She added the Board had hearings both from the proponents and opponents regarding the regulatory change. She said the regulation conformed to the federal EPA standards existing today. It was allowed in 48 states and provided Nevadans with the same access to cost-efficient fuels and additives that exist in other states. She said methylcyclopentadienyl manganese tricarbonyl (MMT) was sold over the counter in bottled fuel additives. Ms. Morrison said it would position Nevada to benefit when the proposed new petroleum pipeline from

Salt Lake City, Utah, to Las Vegas was built. It offered competitive opportunity for terminal operators and blenders to enhance octane in gasoline, and the state regulatory agencies did not object to the regulation. She said several studies were presented and were not conclusive in the opinion of the Board. They also heard from automobile people, and they did not convince the Board that there were serious concerns regarding MMT. She said they understood there had never been litigation or a successful case of an automobile being impacted by MMT. She added the Western States Petroleum Association (WSPA) did not oppose the regulation and had changed their position to neutral after the December meeting.

Chair Conklin asked what the other states' policy standards were, or if there was a standard.

Ms. Morrison said she did not know their policies, but they had provisions allowing for MMT additives into fuel.

Chair Conklin asked which states allowed MMT.

Ms. Morrison said all 48 states allowed MMT, and California had a waiver process.

Senator Townsend said they had a letter from the Association of International Automobile Manufacturers (AIAM), Exhibit C, which included BMW, Chrysler, Ford, GM, Jaguar, Land Rover, Mercedes, Mitsubishi, Mazda, Porsche, Toyota, and Volkswagen outlining why they wanted the regulation rejected. He asked Ms. Morrison to address the question of why the Board found no objections.

Ms. Morrison said the Board asked why MMT was allowed in the other states and by EPA. She said the arguments were not persuasive to the Board members concerning the passage of the regulations.

Senator Townsend read portions of the letter from John Cabaniss in Exhibit C. He said because of the emissions and performance problems associated with MMT, all major manufacturers selling vehicles in the United States recommended in the owner's manuals that any fuel containing MMT should not be used in today's vehicles. Senator Townsend said it was substantive if it was in the owner's manual.

Ms. Morrison said she was aware of that statement. She asked if the other 48 states had removed the ban on MMT, why was there such an effort to prevent the removal of the ban in Nevada. She said if MMT was as serious as indicated by the automobile industry, they would have been able to prevail in the other 48 states.

Senator Carlton said initially she did not understand the problem, but now she was concerned about the environmental issues. There were many questions about manganese in the environment and the air. She wanted a better definition of where the EPA was concerning MMT.

Ms. Morrison said she had a quotation from the EPA website. "In its decision on the use of MMT in the U.S., the agency determined that MMT added at 1.32 gallons GPG MN will not cause or contribute to regulated emission failures in vehicles." The argument had to do with the alleged impact of MMT on catalytic convertors. She added that Canada also allowed MMT. She said it was a battle of the studies and they looked at several different studies. MMT could be purchased in a store and added to the gasoline by the owner of the vehicle. She said as the regulation was currently written, MMT could not be mixed in the fuel, but could be added by the owner. The Board of Agriculture approached it as a common-sense decision. Ms. Morrison said automobile manufacturers were required to build vehicles which comply with commercially accepted fuels. A fuel with MMT, according to EPA, was a commercially accepted fuel.

Senator Carlton said the environmental part of MMT was a concern to her. She said toxins left in the ground caused many problems. She referred to a study from the Environmental Defense Fund. The U.S. Environmental Protection Agency and environmentalists and public health advocates shared concerns about three undisputed facts concerning MMT. The first was manganese in gasoline meant it came from the tailpipe and increased levels in the air resulting in manganese accumulations over time in dust. She said it is an element and cannot biodegrade. The second item was airborne manganese, which unlike manganese in the diet can harm the human brain and nervous systems. Workers with high exposure to airborne manganese develop symptoms similar to Parkinson's disease. Workers with moderate exposure suffer from impairments in hand-eye coordination, reaction time, and lung function. Finally, few studies had been done on either humans or animals on the effects of long-term exposure to the levels of airborne manganese that MMT use would cause. Senator Carlton said she had difficulty supporting the regulation.

Chair Conklin asked Ms. Morrison if individual jurisdictions, such as Clark and Washoe Counties, had standards that were higher than the regulation and, if so, had the ability to ban it in their jurisdictions.

Ms. Morrison referred the questions to Mr. Striejewski.

William (Bill) Striejewski, Petroleum Chemist, Department of Agriculture, said none of the counties had any regulations referring to MMT. He said he did not know all the rules for jurisdictions, but he imagined they could make rules stricter than the regulation.

Chair Conklin asked for further comment from the public.

Jeff J. Jetter, Honda Research and Development Americas, Inc., said his organization strongly believed that repealing the existing ban on the use of MMT was not in the interest of the State's consumers or in promoting clean air in Nevada, Exhibit D. He said MMT was allowed in federal conventional gasoline but not for use in reformulated gasoline, which was used in most major cities. MMT had been banned in California. MMT was a neurotoxin when it came out of the tailpipe of a vehicle. He said most gasoline in the U.S., approximately 99 percent, did not have MMT added. He said it was also highly restricted in Europe and other countries.

Mr. Jetter referenced catalytic converters and how they worked by exposing exhaust gases to a honeycomb structure inside the catalyst, Exhibit D. He referenced Canadian studies performed by the CVMA and AIAM, Exhibit E. The study demonstrated how the use of MMT adversely impacted 85% of Canadian light-duty vehicles. He said the main problem was the plugging of the catalytic surface, Exhibit D.

Ms. Kirkpatrick asked if Mr. Jetter was working in other states to repeal the law allowing MMT.

Mr. Jetter said at this time, no one was using MMT in gasoline. He said the last time it occurred in Nevada was in the Four Corners Area. He was concerned about making it appear it was an approved additive.

Ms. Kirkpatrick asked if other Honda dealerships across the nation were working to repeal the use of MMT, so it never becomes an issue.

Mr. Jetter said the discussion had been ongoing for the past 30 years. He said it was not a top issue at this time because no one was using it and it was still banned in most reformulated gasoline across the country. Mr. Jetter said it could only be used in conventional gasoline areas away from big cities.

Ms. Kirkpatrick asked Mr. Jetter if he was more concerned that the regulation did not specify where it could or could not be used.

Mr. Jetter said the concern was the regulation would set a precedent that would imply MMT was an innocuous additive that might save a fraction of a penny per gallon of gas.

Ms. Kirkpatrick said owner's manuals had numerous items listed that could not be used in the car. She asked if the manual could specify MMT was not to be used in the vehicle.

Mr. Jetter said Honda rarely denied warranty claims, especially on this issue. He said it was in the warranty manuals, but Honda gave the customer the benefit of the doubt. Mr. Jetter said there were various programs, including one named Top Tier Gasoline that had proper detergent additives and no metallic additives such as MMT. Higher octane gasoline did not hurt the car, but MMT made a mess throughout the vehicle.

Chair Conklin said he understood people could put it in their cars now because it was like other fuel additives, such as STP, on the market.

Mr. Jetter said all car companies strongly recommended against putting additives in the gasoline.

Senator Townsend said Mr. Jetter's testimony stated MMT was allowed in federal conventional gasoline which was sold in areas where there were no air attainment environmental problems. He reiterated the use in reformulated gasoline was not approved in areas with larger populations. He said it was banned in the state of California, and California sold more vehicles than any other state or country in the world. It had the highest level of environmental regulations and banned the use of MMT. Other states allowed MMT but were not using it in the conventional sense.

Chair Conklin said there was a question about the rule in California regarding a waiver process versus a ban.

Mr. Jetter said it was true MMT was banned in California. A waiver could possibly be applied if appropriate information was provided.

Senator Washington said there were six testifiers on the issue in Carson City.

Marlene Lockhard, Afton Chemical Company, said the opponents of MMT had fought the addition of MMT for over 20 years on the national level. She said MMT was approved by the federal EPA. She had provided the State Board of Agriculture with studies from the EPA that approved the addition of MMT to conventional gasoline. The EPA also did numerous health studies and MMT was an approved regulation. She said the origin of prohibition of MMT was from the 1970s when Nevada adopted California's regulations. She mentioned the warranty issue and said there had never been a lawsuit by anyone where there was a warranty issue problem. Federal law required automakers to warrant approved gasoline in their cars. Ms. Lockhard said big oil companies were now neutral on MMT. She presented several letters from fuel suppliers in support of MMT, Exhibit F. She said car dealers were now the only ones opposed to the addition of MMT.

Senator Townsend said she made specific reference regarding consumers benefitting from the addition of MMT. He asked for specific information concerning the benefits, whether it was a penny a gallon or a nickel a gallon.

Ms. Lockhard said the initial review was approximately two cents per gallon. She said Nevada experienced higher gasoline prices because it had no refineries within the State. She offered a point of clarification concerning Washoe County and Clark County Air authorities who could go further than the federal EPA as dictated by their own air quality issues.

Senator Townsend said if the regulation was adopted, consumers could look forward to a two cent per gallon reduction in the cost of their gasoline.

Ms. Lockhard replied no. She said there was a pipeline being built from Utah. She said Washoe County increased their taxes on diesel last year and she did not know if the consumer would ever realize the savings.

Senator Carlton said she had discussed the regulation with Ms. Lockhard a month ago. At that time she did not consider the health issues involved. She said her research showed the EPA tried to become involved, but there was a court case that barred the EPA from considering health issues in deciding

whether to allow the marketing of MMT. She asked Ms. Lockhard if that had changed since she spoke with her earlier.

Ms. Lockhard said there were two separate issues: the issue to allow MMT in gasoline and the health studies. She said the federal EPA granted a waiver in 1995 for MMT to be used in gasoline. The health studies were ongoing.

Senator Carlton asked Ms. Lockhard if the litigation that stated the EPA could not get involved in the health studies was overturned.

Ms. Lockhard said there were two different tracks.

Senator Carlton said the EPA had no choice but to allow MMT to be added after the court case. She asked what had transpired since the court case. She said there was a significant difference between endorsing something and being forced to allow it to go on because of a lack of standing.

Ms. Lockhard said the proponents said they were forced. She said there was a letter on the health studies issue from May or June of last year that she would provide to Senator Carlton.

Senator Washington suggested the agency pull the regulation and revamp and re-present it at a later date. The agency decided to proceed with the regulation.

Chair Conklin said he was informed if the regulation was pulled, it did not kill it. It allowed additional time to answer questions, and they could bring the same regulation back before the Legislative Commission meeting on May 7, 2010. He said they did not need to have a hearing unless they changed the regulation.

Marlene Lockhard said on behalf of her client, they wanted to pull the regulation before the Subcommittee.

Senator Washington said there was a consensus to hold the regulation until a later date.

Chair Conklin requested that someone from the Department of Agriculture testify that they wished to pull the regulation.

Ms. Morrison stated the Department of Agriculture would pull the regulation.

John Sande, III, Jones Vargas, said he was satisfied with pulling the regulation at this time.

Chair Conklin opened discussion on R111-09. He said Mr. Roberts had a different regulation that might be more acceptable to the public. He polled the members of the Subcommittee, and they had agreed to meet on April 28, 2010, at 1:00 p.m. in a public forum to consider an altered regulation. He said he expected the DMV to pull the current regulation and work from a new regulation.

Edgar Roberts, Director, Department of Motor Vehicles, said he provided a revised regulation to several members of the Subcommittee. The new regulation would continue to offer the existing driver's license for people who wanted the current driver's license, and also offer the advanced security card. He said as of today, approximately 46,000 individuals had asked for the advanced security card. If the revised regulation did not go into effect, the Department was looking at a cost of \$400,010 to revert back to the programming and contract costs done to issue the advanced security guidelines.

Chair Conklin said many people were present to testify in opposition of R111-09. He wanted to be sure another hearing would be held and a three-day notice would be given on the regulation in order for people to provide input to the DMV.

Mr. Roberts said he understood and they would provide a three-day notice and allow for public input.

Chair Conklin said the current provision required the advanced secure license. He said under the proposed regulation, the option to have the regular, standard driver's license was available.

Mr. Roberts replied Chair Conklin was correct. The revised regulations allowed all Nevada citizens who wanted to continue with the older driver's license to be able to do so. Those residents who wanted an advanced secure issuance driver's license may apply for that sort of license.

Chair Conklin said time was needed to improve the regulation. He said the DMV needed to deal with the public and also the members of the Subcommittee because they had concerns regarding the regulation.

Senator Horsford said it was important that an option was in the regulation. He said in the event someone changed a name or an address, they should still be able to keep their existing license if that was what they chose.

Mr. Roberts replied if a name was changed and someone wanted to continue with the older Nevada driver's license, it was allowed.

Senator Horsford said it was important that the language reflected that position. He said there was a lot of misinformation concerning what the regulation did and did not do, and it was important to explain the revised regulation.

Mr. Carpenter asked if the DMV was holding a hearing or was the hearing in the Subcommittee the only one.

Chair Conklin said the DMV was obligated to hold a hearing. They would post a three-day notice of the public hearing to adopt the revised regulation. Chair Conklin opened the meeting for public comment.

Barbara Muchow said in the Agenda Item Number 3, in the list of regulations, R111-09 was adopted as an emergency regulation.

Chair Conklin said the Subcommittee had not adopted the regulation. The regulation was put in as an emergency regulation by the Governor. The Governor had the authority to put it in as an emergency regulation without the Subcommittee's approval, but the emergency regulation had now expired.

Ms. Muchow said it appeared the State believed the drivers' licenses were required in order to continue receiving money from the federal government. The Department of Homeland Security had changed the regulations and issued what was entitled final rules. She said the first item stated if a person was under 50 years of age, the new driver's license was not required until the year 2014. If a person was over 50 years of age, the driver's license was not required until 2017. She added Janet Napolitano gave a speech last year where she said this regulation was no longer valid and it was going to be dropped.

Jim Sallee said he has lived in Las Vegas for 47 years. He said the real ID Act was passed into law in 2005, and more than two dozen states passed laws denouncing the Act. He said the Act was not debated, nor was the

cost to implement the Act discussed. The Department of Homeland Security announced grant awards to assist states in implementing the Real ID Act, and the grants were insufficient.

Chair Conklin thanked Mr. Sallee for the email of his comments.

Unidentified Speaker asked if the advance service card was costing \$400,010. He recommended now was the time to stop any further expenditures. He said Nevada was in an economic crisis and did not need to spend money until an appropriate regulation was available. He said he had a lot of concerns about the existing regulation.

Chair Conklin recommended talking to the DMV people about the money and added that the regulation would not be a public document until it was adopted at the meeting. He suggested people go to the meeting to learn about the new regulations.

Unidentified Speaker said to the best of his knowledge, the existing count was 14 states that had rejected the Real ID Act. He added approximately 34 states were pending rejection on that item.

Harold Reynard said he talked to several members of the Subcommittee. He said his concern was different than other people. The system was made to be a balanced system between the power of the states and the federal government. He said he was getting desperate; he was a Christian and that was his problem with the Real ID. He said in Revelations 13, it gave five benchmarks for the Mark of the Beast. Many people said different things were the Mark of the Beast. The Real ID had all five benchmarks. He said the photograph was a digital photograph which took a picture of a face and generated a digital number assigned to the face. The five Marks of the Beast were given by the Beast, the highest form of government; it was given to the public through His agent, the Department of Homeland Security; everyone was required to take it; it was affixed to the front of the head; it was a mystery number and without the number one could not engage in commercial activity in society. He said he did not have a driver's license and he could not get a bank account or get a job in most places. He cannot do business unless it was in cash. He said it had all the hallmarks of the Beast. A Christian rejected the idea of abortion because the little fetus inside the womb had all the hallmarks of an incomplete human being, and so they would not kill that thing.

Bob Ruckman, Chair, Clark County Republican Party, said the Party wrote a resolution opposing any form of Real ID. He said the current Governor did not have all of the support of Republicans; it was legislation by regulation. He had worked on real ID projects for the U.S. government. He said the single issue of Real ID was the reason he was involved in politics. He opposed the bill and he was available to discuss the bill at any time.

Brian Ramsey said he was a law student and had testified at the workshop and the meeting on the proposed regulations. He submitted written testimony to the DMV. He said his objections were threefold. The NRS required the public be supplied with any regulations being discussed at the meeting. He requested a copy of the regulations.

Chair Conklin said Mr. Ramsey had to make his request to the DMV.

Ms. Gasca, with the ACLU of Nevada, said her concerns were that the new regulations would prohibit people who opted not to get the Real ID Card from entering federal buildings if the Real ID was fully implemented. She submitted written testimony, Exhibit G. She said Utah was one of 16 states that fully rejected the Real ID and will never comply with the Real ID regulations. There were concerns about privacy issues that had not been met by the Department of Homeland Security. She said it was not prudent for Nevada to move forward with the resolution.

Chair Conklin stated Ms. Gasca's letter would be entered in the record.

John Wagner, Chair, Independent American Party of Nevada, said he was not going to speak about the bill. He addressed the process. He said the legislature voted no on the original bill. The Governor, by an Executive Order, went forward with the resolution. He said the entire process was flawed.

Mr. O'Shea said no matter how the regulation was changed, there was always going to be massive opposition to the proposal. He referenced printed testimony from the Coalition for a Secure Driver's License, Exhibit H, which supported the bill. He said the resolution was an affront to civil liberties. It will not work for what they say it will, it will not stop underage people from buying alcohol, and a Real ID was not necessary.

Robert Rupert said the new driver's license he received did not show him wearing any glasses even though he was required to wear them to drive and he was not told he had the option to opt-out of the new ID. He said former

Assemblywoman Sharron Angle testified before the committee in 2009 that she was against Real ID. He said she wished to be on the record today as in opposition to the legislation or regulation changes.

April Tatro-Medlin said the plan required a break in the chain of custody when the driver's license was mailed to the applicant. She said the ID was unfair to women. Women would not be able to fly if they chose the unsecure license option. It was unfair for women to have to prove their last names all the way back to their maiden name. She said it made her feel like the government thought she was a terrorist.

Cathie Lynn Profant said she did research on the Real ID. She said it seemed compliance was required and she did not trust the DMV.

Craig Schank said he will always rise in opposition to the Real ID in any form for a variety of reasons already mentioned. He said he understood the DMV was providing people within the State of Nevada who had a driver's license the option of keeping their license as opposed to the Real ID. He asked how the change affected new drivers, sixteen-year-olds first getting their driver's license, did they have the choice? He also inquired about out-of-state drivers having a choice when they moved to Nevada.

Chair Conklin said he believed the DMV had tentatively scheduled a meeting for the coming Friday.

Jim DeGraffenreid, Nevada Republican Party, said he was in opposition to the regulation primarily because it was an intrusion by the "Feds" into a State issue and it was also an unfunded mandate. He looked forward to the new regulation and planned to participate in the hearings.

Juanita Cox, Chair, Storey County Republican Party; Chair, Citizens in Action, said she attended most of the legislative hearings and testified against the Real ID. She said it proved unelected staff was ruling Nevada and the world, and it needed to be stopped, Exhibit O. People were elected to represent the people, and the people did not approve of staff going above what they were being told. She said her passport was her Real ID. The data would never be deleted if it was once entered into the system and from a spiritual perspective, the numbering of human flesh was a sin punishable by seven years of pestilence.

Delilah De La O said she owned a driving school and was an interpreter at the DMV. She mentioned the information statement from the hearing was orally condensed and misleading. She said the statement said nearly 28,000 drivers' licenses and identification cards were issued under the rules between January 11, 2010, and April 1, 2010. 12,700 were based on applicants wanting the new federally approved driver's license. She said if they were new to Nevada, wanted to reinstate a license, or if they lost their license, they had to get the new license. There was no choice during those dates. She doubted so many people asked for the new driver's license.

Islena Giron, Giron Driving School, spent most of her time at the DMV with her students. She said there was no choice for the driver's license. She wanted to add an endorsement for motorcycles, but would be forced to obtain the new license. She wanted an option for choosing the driver's license she wanted to have.

Harold Giron asked how the whole thing started. He wondered if it was due to panic. He asked who was spoken to before entering into this charade. The enemy was laughing and dancing right now. He said he continued to lose freedoms in order to please them. There was no need for another form of ID and he did not support the ideology of Real ID. The government created drivers' licenses for the safety of the people. He said the new phase had to do with government spying.

Thomas W. Cornell said he was retired military, and he had a passport and had traveled in twenty-five different countries in the world. He could use those identifications wherever he was in the world. He said in Bulgaria he hid the military passports. The Real IDs could cause people to kill you to get those IDs. He said people in Nevada should not be risking their lives for documents such as the ones proposed.

Several exhibits were distributed to the Subcommittee but were not discussed at the meeting. The exhibits included a presentation by the DMV concerning Advanced Secure Issuance, Exhibit I; a letter from the Alliance of Automobile Manufacturers opposing MMT, Exhibit J; a study from the Asian Vehicle Emission Control Conference regarding the impact of MMT, Exhibit K; a science and policy review from ICCT regarding MMT, Exhibit L; a fact sheet from Global Lead Network concerning MMT, Exhibit M; and an article from the Clean Air Portal entitled MMT: Courting Poison, Exhibit N.

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Chair Conklin concluded public testimony. He said there was no business left to come before the committee. He adjourned the meeting at 5:15 p.m.

Submitted by:

Olivia Lodato, Interim Secretary

APPROVED:

Marcus L. Conklin, Chair

DATE: _____

EXHIBITS

Committee Name: Subcommittee to Review Regulations

Date: April 19, 2010

Time of Meeting: 2:00 p.m.

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	John Cabaniss	Letter Against MMT
	D	Jeff Jetter	Letter Against MMT
	E	The Alliance	Letter Against MMT
	F	Marlene Lockhard	Letters in Favor of MMT
	G	Rebecca Gasca	ACLU Letter Against Real ID
	H	Coalition for a Secure Driver's License	Letter in Support of Real ID
	I	DMV	Advanced Secure Issuance
	J	Alliance of Automobile Manufactures	Letter Against MMT
	K	Asian Vehicle Emission Control Conference 2004	Letter against MMT
	L	ICCT	Policy Review of MMT
	M	Global Lead Network	MMT Fact Sheet
	N	Clean-Air Portal	MMT: Courting Poison
	O	Juanita Cox	Letter Against Real ID