

**ADOPTED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

LCB File No. R150-08

§§1-40 and 42-47 effective on December 17, 2008, §41 effective on January 1, 2009

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

AUTHORITY: §§1 and 4, NRS 360A.020; §2, NRS 360A.020 and 360A.110; §3, NRS 360A.020 and 360A.180; §§5, 7 and 11, NRS 365.110; §6, 12 and 16, NRS 365.110 and 365.290; §8, NRS 360A.365, 365.100, 365.110, 365.600, 365.605 and 365.610; §9, NRS 365.110, 365.304 and 365.600; §10, NRS 365.110, 365.330 and 365.600; §§13 and 14, NRS 365.110, 365.280 and 365.300; §15, NRS 365.110, 365.300, 365.302 and 365.310; §§17 and 19, NRS 365.110 and 365.380; §18, NRS 365.110, 365.370 and 365.380; §20, NRS 365.110 and 365.500; §21, NRS 365.110 and 365.600; §§22, 33 and 46, NRS 366.110; §§23, 27 and 38, NRS 366.110 and 366.235; §24, NRS 366.110 and 366.650; §25, NRS 366.110 and 366.223; §26, NRS 366.110, 366.220, 366.260 and 366.740; §28, NRS 360A.365, 366.110, 366.715 and 366.750; §29, NRS 366.110 and 366.395; §§30-32, 41 and 47, NRS 366.110, 366.200, 366.207 and 366.650; §§34 and 35, NRS 366.110, 366.220 and 366.240; §36, NRS 366.110 and 366.220; §37, NRS 366.110, 366.220, 366.240, 366.250 and 366.350; §39, NRS 366.110 and 366.390; §§40 and 42, NRS 366.110, 366.200 and 366.650; §43, NRS 366.110 and 366.200; §44, NRS 366.110 and 366.685; §45, NRS 366.110 and 366.740.

A REGULATION relating to taxation; making various changes relating to the payment of certain taxes and fees on motor vehicle fuel, aircraft fuel and special fuels; revising certain licensing procedures and establishing administrative fines for late license renewal applications for dealers, suppliers, exporters and transporters of motor vehicle fuel, aircraft fuel and special fuels; revising provisions for claiming certain refunds of taxes paid for various exempt uses of various fuels; and providing other matters properly relating thereto.

Section 1. Chapter 360A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *As used in NRS 360A.110, the term “careless reporting” includes, without limitation:*

- (a) Any alteration of the dates of fueling, types of fuel or amounts of fuel on a tax return;*
- (b) Underreporting or nonreporting of the sale of fuel; and*
- (c) Reporting a taxable event as a nontaxable event.*

2. The term does not include the filing of an amended tax return or the submission of amended data that reflects additions to or corrections of data originally submitted.

Sec. 3. *As used in NRS 360A.180, the Department will interpret the term “aggrieved by a decision of the Department” to mean affected by any decision of the Department which has an adverse impact on a petitioner including, without limitation, the assessment of monetary damages assessed by the Department and any other decision that may be appealed.*

Sec. 4. NAC 360A.050 is hereby amended to read as follows:

360A.050 “Good cause” means a circumstance that is beyond the control of a taxpayer and occurs despite his exercise of ordinary care and without willful neglect. The term includes, without limitation:

- 1. A fire, earthquake, flood or other act of God;
- 2. Theft ~~[-]~~ *that is documented by a law enforcement agency;* or
- 3. The death or serious illness of the taxpayer, a ~~member of his family~~ *great-grandparent, grandparent, parent, brother, sister, daughter, son, spouse, grandchild or great-grandchild of the taxpayer* or his agent whose job or duty it is to collect, account for or pay to the Department a tax *or fee* imposed by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840.

Sec. 5. Chapter 365 of NAC is hereby amended by adding thereto the provisions set forth as sections 6 to 11, inclusive, of this regulation.

Sec. 6. *As used in subsection 6 of NRS 365.290, the Department will interpret the term “lack of faithful performance” to mean a failure to make all payments owed pursuant to chapter 365 of NRS in a timely manner.*

Sec. 7. *For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by a dealer or supplier for its own use, and the receiving dealer or supplier shall remit the tax. The sale of aviation fuel and fuel for jet or turbine-powered aircraft by a dealer or supplier to another dealer or supplier shall not be deemed taxable. All sales of aviation fuel and fuel for jet or turbine-powered aircraft made to unlicensed parties are taxable at the time of sale.*

Sec. 8. 1. *The Department may issue an order to seal a fuel pump of a retailer or dealer, or the metered pipes and hoses of a rack of a dealer or supplier pursuant to NRS 365.605 after providing the required notice if the retailer, dealer or supplier has not shown cause why the fuel pump or metered pipes and hoses of the rack should not be sealed.*

2. *Upon issuing an order to seal a fuel pump, metered pipe or hoses pursuant to this section, the Department will deliver a copy of the order to the sheriff of the county in which the retailer, dealer or supplier is located for assistance with the enforcement of the order.*

Sec. 9. 1. *A license issued by the Department to a dealer, supplier, exporter or transporter pursuant to this chapter and chapter 365 of NRS expires on:*

(a) December 31 of the calendar year in which it was issued if the license was issued on or after January 1 and before July 1.

(b) December 31 of the calendar year following the calendar year in which it was issued if the license was issued on or after July 1 and before January 1.

2. An application to renew a license must be submitted to the Department not later than December 1 of the calendar year in which the license is set to expire. An application for renewal will be deemed submitted:

(a) If the application is sent by mail through the United States mail or a third-party delivery service in an envelope properly addressed to an office of the Department and with proper postage prepaid, on the date of the postmark or the date on which the application was deposited with the delivery service.

(b) If the application is submitted by any other means, including, without limitation, electronically or by facsimile, on the date the Department receives the application.

3. The Department will not be responsible for an application that is received late because of an error made by the applicant or the Department, including, without limitation, a system failure.

4. The Department will impose an administrative fine for an application that is received late in the following amounts:

- (a) If received 1 to 7 calendar days late.....\$100*
- (b) If received 8 to 14 calendar days late.....200*
- (c) If received 15 to 22 calendar days late.....300*
- (d) If received more than 22 calendar days late.....400*
- (e) If received after the date on which the license expired.....500*

Sec. 10. *An unlicensed dealer or supplier and any other unlicensed person who sells fuel shall not retain any amount authorized for a dealer or supplier pursuant to subsection 5 of NRS 365.330.*

Sec. 11. *The use of motor vehicle fuel to operate a motor vehicle in idle is not a use which is exempt from the taxes imposed by NRS 365.170 to 365.210, inclusive.*

Sec. 12. NAC 365.150 is hereby amended to read as follows:

365.150 *1.* The Department will consider a ~~{person}~~ *dealer or supplier* to be habitually delinquent for the purpose of NRS 365.290 if he commits any of the following violations ~~{at least twice within 12 consecutive months or both of the following violations at least once within 12 months:~~

~~—1.—~~ *two or more times within 3 years:*

(a) The failure to file a monthly tax return during the period set forth in NRS 365.170 or 365.175, unless the Department finds that ~~{~~

~~—(a)—~~ ~~The~~ *the* failure was caused by circumstances beyond the control of the ~~{person}~~ *dealer or supplier, including, without limitation, an act of God or the hospitalization or death of an immediate family member of the person responsible for preparing the tax return of the dealer or supplier,* and occurred notwithstanding the exercise of ordinary care; ~~{and~~

~~—(b)—~~ ~~The person has paid any penalty and interest imposed by the Department because of the failure to file the tax return during the period for filing the return; or~~

~~—2.—~~ *(b)* The failure to submit to the Department any tax collected by the ~~{person}~~ *dealer or supplier* pursuant to NRS 365.170 to 365.192, inclusive, during the period for the submission of the tax set forth in NRS 365.170 or 365.175 ~~{~~ ; *or*

(c) The failure to pay any penalties, interest or additional amounts imposed by the Department pursuant to NRS 360A.060, 360A.100, 360A.120, 360A.130, 360A.230 or 360A.240 within the time prescribed.

2. As used in this section, “immediate family member” means a great-grandparent, grandparent, parent, brother, sister, daughter, son, spouse, grandchild or great-grandchild of the person responsible for filing the tax return for the dealer or supplier. The term also includes a person of whom the person responsible for filing the tax return is the legal guardian.

Sec. 13. NAC 365.162 is hereby amended to read as follows:

365.162 1. An applicant for a license as an exporter issued pursuant to the provisions of NRS 365.300 must submit to the Department an application on a form provided by the Department.

2. An application submitted pursuant to this section must be accompanied by a list of the states or other jurisdictions to which the applicant wishes to export and proof satisfactory to the Department that the applicant is licensed or registered to import motor vehicle fuel or other petroleum products, other than aviation fuel, into each state ~~for~~ and other jurisdiction to which he wishes to export such fuel or products.

3. Except as otherwise provided in subsection 2 of NRS 365.300, the Department will issue a license as an exporter upon receipt and approval of:

- (a) A completed application; and
- (b) Any proof required by the Department pursuant to subsection 2.

4. If an exporter wishes to export to a state or other jurisdiction in which he was not licensed or registered to import motor vehicle fuel or other petroleum products, other than aviation fuel, when he submitted his original application pursuant to this section, he must file an addendum to his original application providing proof satisfactory to the Department of his licensure or registration to import motor vehicle fuel or other petroleum products, other than aviation fuel,

into each state or other jurisdiction to which he wishes to export such fuel or products and the date on which such licensure or registration became effective. The Department will notify the exporter of the date on which he may begin exporting to that state or other jurisdiction upon receipt and approval of any proof required by the Department pursuant to this subsection.

Sec. 14. NAC 365.164 is hereby amended to read as follows:

365.164 1. An applicant for a license as a transporter issued pursuant to the provisions of NRS 365.300 must submit to the Department an application on a form provided by the Department.

2. An application submitted pursuant to this section must be accompanied by a list of the states ~~for~~ *and* other jurisdictions to which the applicant wishes to transport and proof satisfactory to the Department of the valid registration of each vehicle which the applicant will use in the transportation of fuel, whether the vehicle is apportioned or base-plated.

3. Except as otherwise provided in subsection 2 of NRS 365.300, the Department will issue a license as a transporter upon receipt and approval of:

- (a) A completed application; and
- (b) Any proof required by the Department pursuant to subsection 2.

4. A supplier, dealer or exporter shall not conduct business with an unlicensed transporter. A supplier, dealer or exporter who violates the provisions of this subsection is subject to an administrative fine pursuant to NRS 365.600.

5. A transporter who conducts business with a supplier, dealer or exporter must provide proof of licensure pursuant to this chapter upon the request of the supplier, dealer or exporter.

6. A transporter shall, upon the expiration, suspension or revocation of his license, immediately notify his customers who are suppliers, dealers or exporters of the expiration, suspension or revocation of his license

7. A transporter, upon the expiration, suspension or revocation of his license, shall not transport aviation fuel, fuel for jet or turbine-powered aircraft, motor vehicle fuel other than aviation fuel, or a petroleum-ethanol mixture into, out of or within the State pursuant to NRS 365.570. A transporter who violates the provisions of this subsection is subject to an administrative fine pursuant to NRS 365.600 for each such transport.

8. The Department may, as necessary to administer the provisions of this chapter and chapter 365 of NRS, notify the suppliers, dealers and exporters of the expiration, suspension or revocation of the license of a transporter.

Sec. 15. NAC 365.165 is hereby amended to read as follows:

365.165 *1.* Except as otherwise provided in NRS 365.310, the Department ~~may~~ *will* refuse to issue *to or renew the license of*, or ~~may~~ *will* suspend, cancel or revoke a license issued pursuant to NRS 365.280 to , a person who:

~~1.~~ *(a)* Fails to provide complete and accurate information on the application for licensure required by the Department;

~~2.~~ *(b)* Provides false, misleading or otherwise inaccurate information on the application for licensure required by the Department;

~~3.~~ *(c)* Makes a material misstatement on the application;

~~4.~~ *(d)* Before or after applying for or obtaining the license, was issued a license or registration as a dealer, supplier, exporter or transporter that was cancelled, suspended or

revoked for cause in any state, district, territory or possession of the United States, or a foreign country;

~~[(5.)]~~ (e) Applied as a subterfuge for the real party in interest whose license described in ~~[(subsection 4.)]~~ *paragraph (d)* has been cancelled, suspended or revoked for cause;

~~[(6.)]~~ (f) Neglects or refuses to maintain a bond as required by chapter 365 of NRS; or

~~[(7.)]~~ (g) Is delinquent, without having received an extension, in the payment of a tax on motor vehicle fuel, fuel for jet or turbine-powered aircraft or any other petroleum products in any state, district, territory or possession of the United States, or a foreign country.

2. If the Department refuses to issue or renew a license, or suspends, cancels or revokes a license pursuant to this section of NRS 365.280, the licensee or applicant may request an informal review by the Department at which the licensee or applicant must demonstrate why the Department should take a different action. If, after the informal review, the Department does not revise its action to the satisfaction of the licensee or applicant, the licensee or applicant may request an administrative hearing pursuant to NRS 365.302.

Sec. 16. NAC 365.185 is hereby amended to read as follows:

365.185 1. A dealer or supplier who complies with the requirements set forth in subsection 2 may submit a written request to the Department for a reduction in the amount of security required *pursuant to NRS 365.290* if the required amount would otherwise be more than \$5,000. Upon receipt of such a request, the Department may reduce the required amount to an amount that is:

(a) Not less than *twice* the amount of the maximum monthly tax the dealer or supplier reported to the Department during the 2 years immediately preceding the date of his request for a reduction; or

(b) Equal to \$5,000,

↪ whichever is greater.

2. A dealer or supplier who has filed tax returns pursuant to chapter 365 of NRS for at least 3 calendar years may submit a request pursuant to subsection 1 if, during the 3 years immediately preceding the date of the request, he:

(a) Filed in a timely manner the tax returns required pursuant to chapter 365 of NRS;

(b) Paid in a timely manner all taxes and assessments owed to the State of Nevada pursuant to chapter 365 of NRS; and

(c) Has been audited at least once by the Department during the 2 calendar years immediately preceding the date of the request.

~~{3. For the purposes of subsection 2, a dealer or supplier who:~~

~~—(a) Because of a clerical error, underpaid taxes by not more than 5 percent; and~~

~~—(b) Within 30 days after being notified by the Department of the underpayment, paid the taxes owed and any penalty and interest imposed by the Department,~~

~~↪ shall be deemed to have paid those taxes in a timely manner.]~~

Sec. 17. NAC 365.210 is hereby amended to read as follows:

365.210 **1.** If a person applies to the Department for a refund of any tax on motor vehicle fuel or fuel for jet or turbine-powered aircraft pursuant to NRS 365.370, the person must submit with his application a receipt obtained from the person from whom the motor vehicle fuel or fuel for jet or turbine-powered aircraft was purchased. The receipt must include:

~~{1.}~~ **(a)** The date of the purchase;

~~{2.}~~ **(b)** The county in which the purchase was made;

~~[3.]~~ (c) The number of gallons purchased and used for a purpose specified in NRS 365.370;
and

~~[4.]~~ (d) A statement indicating that the tax was paid to the person from whom the motor vehicle fuel or fuel for jet or turbine-powered aircraft was purchased.

2. The Department will issue or deny a refund pursuant to this section not later than 90 days after receipt of the request.

Sec. 18. NAC 365.215 is hereby amended to read as follows:

365.215 1. A person who uses motor vehicle fuel to propel a motor vehicle off the public highways of this State may obtain a refund of any tax paid by him pursuant to NRS 365.175 to 365.192, inclusive, for that portion of the motor vehicle fuel purchased which is used off those public highways.

2. A person who requests a refund pursuant to subsection 1 shall:

(a) If the motor vehicle is equipped with a computer or other device that is capable of computing the number of gallons of motor vehicle fuel consumed off the public highways of this State, submit to the Department the information provided by the computer or other device as evidence of the amount of motor vehicle fuel consumed off the public highways of this State; or

(b) If the motor vehicle is not equipped with a computer or other device specified in paragraph (a):

(1) Compute the amount of motor vehicle fuel consumed off the public highways of this State by dividing the number of miles the vehicle was operated off those public highways by the average number of miles traveled per gallon of motor vehicle fuel consumed by the motor vehicle; and

(2) Submit to the Department the information which is required to establish to the satisfaction of the Department that the information used to make the computation required by subparagraph (1) is accurate.

3. The Department will issue or deny a refund pursuant to this section not later than 90 days after receipt of the request.

Sec. 19. NAC 365.220 is hereby amended to read as follows:

365.220 *1.* If a motor vehicle with auxiliary equipment consumes motor vehicle fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the motor vehicle must, to obtain a refund pursuant to NRS 365.370, submit evidence satisfactory to the Department to establish the amount of motor vehicle fuel used to operate the auxiliary equipment.

2. The Department will determine whether to issue such a refund pursuant to NRS 365.370 not later than 90 days after receipt of the application.

Sec. 20. NAC 365.255 is hereby amended to read as follows:

365.255 *1.* The records required to be kept pursuant to NRS 365.500 by a transporter include, without limitation, records in the form of:

- ~~{1.}~~ (a) Delivery tickets;
- ~~{2.}~~ (b) Invoices; ~~and~~
- ~~—3.}~~ (c) Bills of lading or highway transportation receipts ~~{1.}~~;
- (d) *Consortium reports;*
- (e) *Reports from an independently operated storage facility;*
- (f) *Reports from a refinery; and*

(g) Any other relevant document to confirm receipt or delivery of any item listed in subsection 1 of NRS 365.500.

2. Records and documents kept pursuant to subsection 1 must include, without limitation:

(a) An inventory for each tank used for storing fuel, including, without limitation:

- (1) The type of fuel in each tank;*
- (2) The gains and losses of fuel for each tank;*
- (3) The names of the shippers and receivers of fuel for each tank; and*
- (4) The type and amount of any additive placed into each tank, including, without limitation, transmix, ethanol, biodiesel, dye or any other additive which increases the volume of fuel in the tank.*

(b) A record of import and export activity, including, without limitation:

- (1) The actual number of barrels or gallons of fuel transported;*
- (2) The origin and destination of fuel transported;*
- (3) All exchanges and transfers of fuel;*
- (4) All transaction dates of imports, exchanges and transfers of fuel; and*
- (5) The types of fuel imported and exported.*

3. As used in this section, “consortium” means an association or combination of businesses which sell, transport, import or export aviation fuel, fuel for jet or turbine-powered aircraft or motor vehicle fuel, other than aviation fuel, and which are engaged in a joint venture or doing business under a cooperative agreement.

Sec. 21. NAC 365.300 is hereby amended to read as follows:

365.300 1. Except as otherwise provided in this section, if the Department imposes an administrative fine pursuant to NRS 365.600, the Department will impose that fine for violations

occurring within the 3 years immediately preceding the most recent violation according to the following schedule:

- (a) For a first offense, ~~[a]~~ *an administrative* fine of not *less than \$100 or* more than \$500.
- (b) For a second offense, ~~[a]~~ *an administrative* fine of not less than \$500 or more than \$1,000.
- (c) For a third offense, ~~[a]~~ *an administrative* fine of not less than \$1,000 or more than \$1,500.
- (d) For a fourth or subsequent offense, ~~[a]~~ *an administrative* fine of not less than \$1,500 or more than \$2,500.

2. The Department may impose ~~[a]~~ *an administrative* fine of not less than \$1,500 or more than \$2,500 for:

(a) Any violation of subsection 1 or 2 of NRS 365.500 or NRS 365.505 to 365.530, inclusive; or

(b) Any violation committed by:

(1) An exporter who sells or distributes motor vehicle fuel in this State or any other person who engages in business in this State as a supplier without obtaining a supplier's license; or

(2) A supplier who, after receiving a notice from the Department that a supplier is not licensed pursuant to chapter 365 of NRS, sells special fuel to the unlicensed supplier without collecting the tax imposed pursuant to NRS 365.175 to 365.192, inclusive.

3. In lieu of imposing ~~[a]~~ *an administrative* fine against a person for a first offense pursuant to paragraph (a) of subsection 1, the Department may issue to the person a notice of violation and directive to cease from any further violation.

4. ~~{A person who has been fined pursuant to NRS 365.600 shall pay the fine to the Department not later than the date specified in the notice of violation, unless he requests a hearing pursuant to subsection 1 of that section.~~

~~—5.}~~ Upon the failure of a person to pay ~~{a}~~ *an administrative* fine imposed pursuant to this section when it becomes due, the Department may suspend, revoke or refuse to issue a license to that person pursuant to this chapter.

Sec. 22. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 23 to 32, inclusive, of this regulation.

Sec. 23. *As used in subsection 6 of NRS 366.235, the Department will interpret the term “lack of faithful performance” to mean a failure to make any payment owed pursuant to this chapter or chapter 366 of NRS in a timely manner.*

Sec. 24. *1. An applicant for a refund pursuant to NRS 366.650 must submit an application to the Department. The refund must not be claimed on a tax return submitted pursuant to NRS 366.383 or on a tax return submitted to another entity. The application must contain:*

(a) A statement affirming that the tax imposed pursuant to NRS 366.190 was paid to the person from whom the special fuel was purchased; and

(b) A statement explaining why clear fuel was purchased instead of dyed fuel.

2. An applicant for a refund pursuant to NRS 366.650 must also provide to the Department evidence demonstrating that the applicant is eligible for the refund. Such evidence may include, without limitation:

(a) A spreadsheet, or copies thereof, showing the information derived from original documents, including, without limitation, invoices, receipts and vehicle logs, or receipts from

the person from whom special fuel was purchased showing the date of purchase and the number of gallons purchased for an exempt purpose;

(b) Records of each vehicle in which the special fuel was used, including, without limitation, copies of the vehicle registration, verification of vehicle fueling and a copy of the lease agreement for any leased vehicle;

(c) Inventory records for fuel storage tanks;

(d) A copy of each tax return for special fuel filed with any other entity, if any;

(e) A form for power of attorney, if the applicant is an agent of the taxpayer;

(f) Copies of or a spreadsheet showing the information derived from original driver records for each vehicle, including, without limitation, fuel receipts, the driver's log and other documents maintained by the driver of each vehicle which show the number of miles traveled by and the amount of special fuel purchased for vehicles in which the special fuel was used, including, without limitation:

(1) Beginning and ending odometer readings;

(2) The total number of miles traveled;

(3) The number of miles traveled off road; and

(4) The total amount of special fuel purchased in all jurisdictions; and

(g) Any other records, receipts, invoices and other papers required to be maintained pursuant to NRS 366.685 which the Department requests.

3. Unless the Department has given the taxpayer a waiver or the taxpayer has received a written waiver pursuant to § P540.200 of the International Fuel Tax Agreement, Procedures Manual, January 2008 revision, from the base jurisdiction of the vehicle for which a refund is sought, a refund pursuant to NRS 366.650 will not be made if:

(a) The taxpayer failed to maintain records as required by this chapter and chapter 366 of NRS; or

(b) The taxpayer based calculations on predetermined routes of travel.

Sec. 25. *A carrier who has obtained a temporary permit pursuant to NRS 706.521 to operate:*

1. A vehicle which has a declared gross weight in excess of 26,000 pounds and which is not registered pursuant to NRS 482.482; or

2. A vehicle which is registered by another entity under an agreement between the Department and the other entity pursuant to NRS 706.826,

↪ must obtain a temporary permit for special fuel pursuant to NRS 366.223 unless the carrier is licensed by another entity under an agreement between the Department and the other entity pursuant to NRS 366.175.

Sec. 26. *1. Except as otherwise provided in subsection 2, any license issued by the Department pursuant to this chapter and chapter 366 of NRS expires on:*

(a) December 31 of the calendar year in which it is issued if the license was issued on or after January 1 and before July 1.

(b) December 31 of the calendar year following the calendar year in which it is issued if the license was issued on or after July 1 and before January 1.

2. A special fuel user's license issued pursuant to NRS 366.240 expires on December 31 of the year in which it is issued.

3. An application to renew a license must be submitted to the Department not later than December 1 of the calendar year in which the license is set to expire. An application for renewal will be deemed submitted:

(a) If the application is sent by mail through the United States mail or a third-party delivery service in an envelope properly addressed to an office of the Department and with proper postage prepaid, on the date of the postmark or the date on which the application was deposited with the delivery service.

(b) If the application is submitted by any other means, including, without limitation, electronically or by facsimile, on the date the Department receives the application.

4. The Department will not be responsible for an application that is received late because of an error made by the applicant or the Department, including, without limitation, a system failure.

5. The Department will impose an administrative fine for an application that is received late in the following amounts:

- (a) If received 1 to 7 calendar days late.....\$100*
- (b) If received 8 to 14 calendar days late.....200*
- (c) If received 15 to 22 calendar days late.....300*
- (d) If received more than 22 calendar days late.....400*
- (e) If received after the date on which the license expired.....500*

Sec. 27. 1. *If a special fuel user is required to provide a bond pursuant to subsection 2 of NRS 366.235, the amount of the bond required will be the greater of:*

(a) The total taxable gallons of special fuel claimed on the most recent tax return of the special fuel user multiplied by the tax rate determined pursuant to NRS 366.190, multiplied by 3; or

(b) \$2,500.

2. The bond required pursuant to subsection 1 must be maintained by the special fuel user:

- (a) The first time a special fuel user is found to be habitually delinquent, for 12 months.*
- (b) The second time a special fuel user is found to be habitually delinquent, for 24 months.*
- (c) The third time a special fuel user is found to be habitually delinquent and for any subsequent finding of habitual delinquency, for 36 months.*

Sec. 28. *1. The Department may issue an order to seal a special fuel pump of a retailer or special fuel dealer, or the metered pipes and hoses of a rack of the special fuel dealer or special fuel supplier pursuant to NRS 366.715 after providing the required notice if the retailer, dealer or supplier has not shown cause why the fuel pump or metered pipes and hoses of the rack should not be sealed.*

2. Upon issuing an order to seal a special fuel pump, metered pipe or hoses pursuant to this section, the Department will deliver a copy of the order to the sheriff of the county in which the retailer, special fuel dealer or special fuel supplier is located for assistance with the enforcement of the order.

Sec. 29. *For the purposes of NRS 366.395:*

1. If an envelope containing a tax return is not stamped with a cancellation mark by the United States Postal Service or the postal service of any other country, the Department will consider the date of delivery to be the date on which it is received.

2. If a tax return is hand-delivered or faxed to the Department before the close of business for the day, the date of delivery is the date on which it is received, or if it is received after closure, the following business day.

3. If an amended tax return is received by the Department after the date on which the tax was due:

(a) The taxpayer will not be required to pay a delinquent filing fee if the original tax return and payment of tax owed on the original tax return was timely received by the Department.

(b) The taxpayer will be required to pay a delinquent filing fee if the original tax return indicated that:

(1) The taxpayer owed no tax, and the amended tax return indicates that tax is owed;

(2) The taxpayer did not purchase any special fuel, and the amended tax return indicates the that the taxpayer did purchase special fuel; or

(3) The taxpayer did not travel any miles in a vehicle using special fuel, and the amended tax return indicates that the taxpayer did travel in a vehicle using special fuel.

4. If additional tax is owed as the result of an amended tax return, the taxpayer will be subject to penalties and interest on the amount of the additional tax.

Sec. 30. *1. A taxpayer may request a refund of the tax paid pursuant to NRS 366.190 based on actual use of auxiliary equipment that is greater than the standard refund established pursuant to NAC 366.220.*

2. A request for a refund made pursuant to NRS 366.190 must include, without limitation, records:

(a) Of the total number of hours of operation of the vehicle;

(b) Of the total amount of special fuel which has not been dyed that was used to operate the motor vehicle;

(c) Of the total number of miles recorded on the odometer of the vehicle;

(d) Of the total number of hours of operation of the auxiliary equipment; and

(e) That are based on data produced by a device that is approved by the Department and may include, without limitation:

- (1) Data from a computer that is onboard a vehicle;*
- (2) Data from a device that receives information from one or more global positioning satellites; or*
- (3) Data from any other metering device that records the information required by this subsection.*

Sec. 31. *1. A taxpayer may request a refund of the tax paid pursuant to NRS 366.190 based on an average consumption of special fuel used to operate auxiliary equipment of a fleet of vehicles that is greater than the standard refund established pursuant NAC 366.220.*

2. A request pursuant to this section must be accompanied by data obtained by testing the vehicles with auxiliary equipment. If the data is accepted by the Department, the average fleet consumption will be allowed for refund purposes for not more than 24 months. The testing must:

- (a) Be conducted by an independent research group that is approved by the Department.*
- (b) Be conducted on each class of vehicle for which a refund is sought.*
- (c) Consist of at least three tests of fuel consumption per vehicle.*
- (d) Include the test results from:*
 - (1) For a fleet of 10 or less vehicles, at least 4 vehicles;*
 - (2) For a fleet of at least 11 but not more than 50 vehicles, at least 7 vehicles;*
 - (3) For a fleet of at least 51 but not more than 100 vehicles, at least 10 vehicles; and*
 - (4) For a fleet of more than 100 vehicles, at least 15 vehicles.*
- (e) Yield test data that:*

(1) Identifies the actual amount of fuel consumed exclusively by the vehicle and the auxiliary equipment;

(2) Does not include fuel used while the vehicle is idling or fuel used by an air-conditioning unit or other non-auxiliary peripheral devices; and

(3) Provides an average fleet consumption of special fuel for auxiliary equipment in gallons per hour, calculated by averaging the gallons of fuel consumed per hour for the auxiliary equipment on each of the vehicles tested.

Sec. 32. *1. To obtain a refund pursuant to NAC 366.220 or section 30 or 31 of this regulation, a special fuel user must establish to the satisfaction of the Department that:*

(a) The tax has been paid pursuant to NRS 366.190 on the special fuel for which the special fuel user wishes to obtain a refund; and

(b) The special fuel was used in this State to operate auxiliary equipment that is mounted on the motor vehicle.

2. A vehicle with an air-conditioning unit is not entitled to a refund pursuant to NAC 366.220 or section 30 or 31 of this regulation.

3. Notwithstanding any provision of NAC 366.220 or section 30 or 31 of this regulation to the contrary, the amount of a refund allowed for a special fuel user pursuant to this section may not exceed the total amount of taxes paid by the special fuel user for special fuel.

4. A special fuel user who wishes to obtain a refund pursuant to NAC 366.220 or section 30 or 31 of this regulation must submit a request to the Department within 12 months after the date of the payment of the tax.

5. Any request for a refund pursuant to NAC 366.220 or section 30 or 31 of this regulation that is returned to the claimant by the Department as a result of missing or incomplete information will be deemed not to have been received by the Department.

6. To be eligible for a refund pursuant to NAC 366.220 or section 30 or 31 of this regulation, a special fuel user must be licensed pursuant to NRS 366.240 or licensed by another entity under an agreement with the Department pursuant to NRS 366.175, and registered pursuant to NRS 482.482 or registered by another entity under an agreement with the Department pursuant to NRS 706.826, and in good standing with the Department.

7. Unless the claimant is notified otherwise by the Department, all refunds made pursuant to NAC 366.220 or section 30 or 31 of this regulation must be applied first to any outstanding amounts owed by the claimant to the Department.

Sec. 33. NAC 366.005 is hereby amended to read as follows:

366.005 As used in this chapter, unless the context otherwise requires:

1. “Apportioned” means that a commercial vehicle:
 - (a) Is registered in a manner that authorizes the vehicle to travel in more than one jurisdiction, as indicated by the list of jurisdictions on the certificate of registration; and
 - (b) Pays registration fees based on the percentage of operation in each jurisdiction.
2. “Base-plated” means that a vehicle is registered in the State of Nevada and displays a Nevada license plate.
3. “Department” means the Department of Motor Vehicles.
4. “Export” means to sell or distribute outside this State special fuel or other petroleum products that are received in this State. The term does not include selling or distributing special fuel or other petroleum products within a reservation.

5. *“Good standing” means that a taxpayer is in compliance with the rules and regulations of the Department and does not owe any payments or delinquent tax returns to any state, district, territory or possession of the United States, or a foreign country.*

6. “Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.

~~[6.]~~ 7. “Habitually delinquent” means the commission by a special fuel user, special fuel supplier or special fuel dealer of any of the following violations at least twice within 1 year or any two of the following violations at least once within 1 year:

(a) The failure to file a monthly tax return during the period prescribed in NRS 366.380, 366.383 or 366.386, unless the Department finds that:

(1) The failure was caused by circumstances beyond the control of the special fuel user, special fuel supplier or special fuel dealer and occurred notwithstanding the exercise of ordinary care; and

(2) The special fuel user, special fuel supplier or special fuel dealer has paid all penalties and interest imposed by the Department because of his failure to file the tax return during the prescribed period.

(b) The failure to submit to the Department payment of the tax on special fuel collected pursuant to NRS 366.540 during the period prescribed in that section.

(c) The failure to submit to the Department the payment of any additional or estimated assessments imposed by the Department pursuant to NRS 360A.060, 360A.100, 360A.120 or 360A.130 during the period prescribed in the relevant section.

~~[7.]~~ 8. “Motor vehicle fuel” has the meaning ascribed to it in NRS 365.060.

~~{8.}~~ **9.** “Other petroleum products” includes any petroleum-based substance, other than motor vehicle fuel or special fuel, that is used in the propulsion of motor vehicles, motor boats or aircraft, including, without limitation, fuel for jet or turbine-powered aircraft.

~~{9.}~~ **10.** “Reservation” means any land that:

- (a) Is located within the boundaries of this State; and
- (b) Is set aside for use by a tribe, including, without limitation:
 - (1) An Indian reservation;
 - (2) An Indian colony;
 - (3) Any land which is owned in fee by or held in trust for a tribe; and
 - (4) Any other land which is under the jurisdiction of a tribe.

11. *“Retailer” has the meaning ascribed to it in NRS 366.058.*

~~{10.}~~ **12.** “Special fuel” has the meaning ascribed to it in NRS 366.060.

~~{11.}~~ **13.** “Special fuel dealer” has the meaning ascribed to it in NRS 366.062.

~~{12.}~~ **14.** “Special fuel exporter” has the meaning ascribed to it in NRS 366.065.

~~{13.}~~ **15.** “Special fuel supplier” has the meaning ascribed to it in NRS 366.070.

~~{14.}~~ **16.** “Special fuel transporter” has the meaning ascribed to it in NRS 366.075.

~~{15.}~~ **17.** “Special fuel user” has the meaning ascribed to it in NRS 366.080.

~~{16.}~~ **18.** “Tribal member” includes an enrolled member of a tribe.

~~{17.}~~ **19.** “Tribe” means any tribe, band, nation or group of Indians that is recognized by the Federal Government as having a government-to-government relationship with the United States.

Sec. 34. NAC 366.0067 is hereby amended to read as follows:

366.0067 1. An application for a license to operate as a special fuel dealer, special fuel supplier, special fuel user, special fuel exporter or special fuel transporter must include the federal identification number of the applicant's business.

2. As used in this section, "federal identification number" means:

(a) Federal taxpayer identification number;

(b) Federal employer identification number;

~~[(c) Social security number; or~~

~~—(d)]~~ *or*

(c) Any other identification number issued by the Internal Revenue Service.

Sec. 35. NAC 366.0068 is hereby amended to read as follows:

366.0068 1. An applicant for a special fuel exporter's license issued pursuant to the provisions of NRS 366.240 must submit to the Department an application on a form provided by the Department.

2. An application submitted pursuant to this section must be accompanied by a list of the states or other jurisdictions to which the applicant wishes to export and proof satisfactory to the Department that the applicant is licensed or registered to import special fuel or other petroleum products into each state ~~for~~ *and* other jurisdiction to which he wishes to export such fuel or products.

3. Except as otherwise provided in subsection 2 of NRS 366.240, the Department will issue a special fuel exporter's license upon receipt and approval of:

(a) A completed application; and

(b) Any proof required by the Department pursuant to subsection 2.

4. If a special fuel exporter wishes to export to a state or other jurisdiction in which he was not licensed or registered to import special fuel or other petroleum products when he submitted his original application pursuant to this section, he must file an addendum to his original application providing proof satisfactory to the Department of his licensure or registration to import special fuel or other petroleum products into each state or other jurisdiction to which he wishes to export such fuel or products and the date on which such licensure or registration became effective. The Department will notify the special fuel exporter of the date on which he may begin exporting to that state or other jurisdiction upon receipt and approval of any proof required by the Department pursuant to this subsection.

Sec. 36. NAC 366.0069 is hereby amended to read as follows:

366.0069 1. An applicant for a special fuel transporter's license issued pursuant to the provisions of NRS 366.240 must submit to the Department an application on a form provided by the Department.

2. An application submitted pursuant to this section must be accompanied by a list of the states ~~for~~ and other jurisdictions to which the applicant wishes to transport and proof satisfactory to the Department of the valid registration of each vehicle which the applicant will use in the transportation of special fuel, whether the vehicle is apportioned or base-plated.

3. Except as otherwise provided in subsection 2 of NRS 366.240, the Department will issue a special fuel transporter's license upon receipt and approval of:

- (a) A completed application; and
- (b) Any proof required by the Department pursuant to subsection 2.

4. A special fuel supplier, special fuel dealer or special fuel exporter shall not conduct business with an unlicensed special fuel transporter. A special fuel supplier, special fuel

dealer or special fuel exporter who conducts business with an unlicensed special fuel transporter is subject to an administrative fine imposed by the Department pursuant to NRS 366.740.

5. A special fuel transporter who conducts business with a special fuel supplier, special fuel dealer or special fuel exporter must provide proof of licensure pursuant to this chapter upon the request of the special fuel supplier, special fuel dealer or special fuel exporter.

6. A special fuel transporter shall, upon the expiration, suspension or revocation of his license, immediately notify his customers who are special fuel suppliers, special fuel dealers or special fuel exporters of the expiration, suspension or revocation of his license.

7. A special fuel transporter, upon the expiration, suspension or revocation of his license, shall not transport special fuel into, out of or within the State pursuant to NRS 366.720. A special fuel transporter who violates the provisions of this subsection is subject to an administrative fine pursuant to NRS 366.740 for each such transport.

8. The Department may, as necessary to administer the provisions of this chapter and chapter 366 of NRS, notify the special fuel suppliers, special fuel dealers and special fuel exporters of the expiration, suspension or revocation of the license of a special fuel transporter.

Sec. 37. NAC 366.007 is hereby amended to read as follows:

366.007 ~~[In addition to the persons described in NRS 366.240,]~~

1. Except as otherwise provided in chapter 366 of NRS, the Department ~~[may]~~ will refuse to issue ~~[a special fuel user's license, special fuel supplier's license or special fuel dealer's license to a person, or may]~~ to or renew a license of, or will suspend, cancel or revoke a license issued ~~[to the special fuel user, special fuel supplier or special fuel dealer, who:~~

~~—1.] pursuant to NRS 366.240, to a person if the person:~~

(a) Fails to provide ~~[the]~~ *complete and accurate* information ~~[requested]~~ on ~~[his]~~ *the* application for ~~[the license or to indicate that the information requested is not applicable to his business;~~

~~—2. Submits an application or tax return which contains inaccurate information;~~

~~—3. Fails to provide the information requested on a tax return or to indicate that the information requested is not applicable to his business; or~~

~~—4. Owes the Department fees or taxes imposed against the person under chapter 371, 482 or 706 of NRS.] licensure as required by the Department;~~

(b) *Provides false or misleading information on the application for licensure required by the Department;*

(c) *Makes a material misstatement of fact on the application; or*

(d) *Is delinquent, without having received an extension, in the payment of a tax on special fuel or any other petroleum products in any state, district, territory or possession of the United States, or a foreign country.*

2. If the Department refuses to issue or renew a license or suspends, cancels or revokes a license pursuant to this section or NRS 366.240, the applicant or licensee may request an informal review by the Department at which the applicant or licensee must demonstrate why the Department should take a different action. If, after the informal review, the Department does not revise its action to the satisfaction of the applicant or licensee, the applicant or licensee may request a hearing before the Department pursuant to NRS 366.250.

Sec. 38. NAC 366.030 is hereby amended to read as follows:

366.030 1. A special fuel supplier or special fuel dealer who complies with the requirements set forth in subsection 2 ~~for 3~~ may submit a written request to the Department for a reduction in the amount of security required ~~from him~~ *pursuant to NRS 366.235* if the required amount would otherwise be more than \$5,000. Upon receipt of such a request, the Department may reduce the required amount to an amount which is:

(a) Not less than *twice* the amount of the maximum monthly tax the supplier or dealer reported to the Department during the 2 years immediately preceding his request for a reduction; or

(b) Equal to \$5,000,

↪ whichever is greater.

2. ~~[To qualify to submit a request pursuant to subsection 1, a special fuel supplier or special fuel dealer who has filed tax returns with the Department pursuant to chapter 366 of NRS for less than 3 calendar years must submit to the Department a letter from the Department of Taxation which verifies that the special fuel supplier or special fuel dealer has, in his capacity as a dealer licensed pursuant to chapter 365 of NRS, paid punctually the taxes required pursuant to chapters 365 and 373 of NRS during the 3 calendar years preceding his request.~~

~~—3.]~~ A special fuel supplier or special fuel dealer who has filed tax returns with the Department pursuant to chapter 366 of NRS for 3 or more calendar years may submit a request pursuant to subsection 1 if he:

(a) Has filed punctually the tax returns required by NRS 366.383 or 366.386 for the 3 preceding calendar years;

(b) Has paid punctually all taxes and assessments due the State of Nevada for the 3 preceding calendar years;

- (c) Has not been deemed habitually delinquent within the 3 preceding calendar years; and
- (d) Has been audited by the Department within the 2 preceding calendar years.

~~[4. For the purposes of subsection 3, a special fuel supplier or special fuel dealer who:~~
~~—(a) Through clerical error, underpaid taxes by not more than 5 percent; and~~
~~—(b) Within 30 days after being notified by the Department of the underpayment, paid the~~
~~taxes owed and any penalty and interest imposed by the Department,~~
~~↪ shall be deemed to have paid those taxes punctually.]~~

Sec. 39. NAC 366.108 is hereby amended to read as follows:

366.108 *1.* If a special fuel supplier fails to submit a tax return pursuant to NRS 366.383, the special fuel supplier is not entitled to retain any fee for collecting the tax pursuant to NRS 366.390 if:

~~[1.]~~ *(a)* The tax return:

~~[(a)]~~ *(1)* Became accessible to the Department pursuant to the provisions of NAC 366.090;

or

~~[(b)]~~ *(2)* Was mailed,

↪ after the last day of the month in which the return was required to be submitted to the Department; or

~~[2.]~~ *(b)* The tax for which the tax return was prepared was not included in the tax return or was filed after the last day of the month specified in ~~[subsection 1.]~~ *paragraph (a).*

2. A person or entity who is not licensed as a special fuel supplier pursuant to NRS 366.240 shall not retain any of the tax collected for special fuel as authorized pursuant to NRS 366.390 for licensed suppliers.

Sec. 40. NAC 366.210 is hereby amended to read as follows:

366.210 1. A special fuel user who consumes special fuel in the propulsion of a motor vehicle off the public highways of this State may obtain a refund of the tax paid pursuant to NRS 366.190 for that portion of the special fuel purchased which is consumed off the public highways of this State.

2. A special fuel user who requests a refund pursuant to subsection 1 must:

(a) If the motor vehicle is equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State, submit to the Department the information provided by the computer or other device as evidence of the amount of special fuel consumed off the public highways of this State; or

(b) If the motor vehicle is not equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State:

(1) Compute the amount of special fuel consumed off the public highways of this State by dividing the number of miles the vehicle was operated off the public highways of this State by the average number of miles traveled per gallon of special fuel consumed by the vehicle; and

(2) Submit to the Department the information necessary to establish to the satisfaction of the Department that the information used to make the computation required by subparagraph (1) is accurate.

3. A special fuel user who wishes to obtain a refund pursuant to this section must submit a request to the Department within 12 months after the date of the payment of the tax.

4. A special fuel user must be licensed and in good standing with the Department to be eligible for a refund pursuant to this section.

5. Any request for a refund pursuant to this section which is returned to the claimant by the Department because information is missing or incomplete will be deemed not to have been received by the Department.

6. Unless the claimant is notified otherwise by the Department, all refunds made pursuant to this section must be applied first to any outstanding amounts owed by the claimant to the Department.

Sec. 41. NAC 366.220 is hereby amended to read as follows:

366.220 1. A special fuel user who is the operator of a motor vehicle with auxiliary equipment set forth in this subsection may obtain a refund of the tax paid *pursuant to NRS 366.190* on the refundable fuel that is used by the motor vehicle on the public highways of this State in the following amounts:

—(a) Boom truck with a block boom.....	10 percent
—(b) Car carrier with a hydraulic winch.....	10 percent
—(c) Dump truck.....	23 percent
—(d) Garbage truck with a compactor.....	20 percent
—(e) Line truck with a digger or derrick.....	20 percent
—(f) Mobile crane.....	42 percent
—(g) Refrigeration truck.....	15 percent
—(h) Sanitation truck.....	15 percent
—(i) Semi wrecker truck.....	35 percent
—(j) Service truck with a jackhammer or pneumatic drill.....	15 percent
—(k) Snow plow.....	10 percent
—(l) Sweeper truck.....	20 percent

~~| | |
|---|-------------|
| (m) Tank truck other than a truck with a milk or pneumatic tank. | 24 percent |
| (n) Truck for distributing hot asphalt. | 10 percent |
| (o) Truck with a cement mixer. | 30 percent |
| (p) Truck with a dump trailer. | 15 percent |
| (q) Truck with a milk tank. | 30 percent |
| (r) Truck with a pneumatic tank. | 15 percent |
| (s) Truck with a pump for cleaning a sewer or cesspool. | 90 percent |
| (t) Truck with an aerial lift. | 20 percent |
| (u) Truck with equipment to move a dumpster or cargo container. | 23 percent] |~~

(a) Thirty percent for a:

- (1) Cement mixer;*
- (2) Concrete pumper;*
- (3) Mobile crane; or*
- (4) Drill rig.*

(b) Twenty percent for a:

- (1) Commercial garbage, sanitation or refuse truck;*
- (2) Truck with an auxiliary pump for cleaning sewers, cesspools or septic tanks; or*
- (3) Sweeper truck.*

(c) Ten percent for any other motor vehicle with auxiliary equipment used for a specific function when the vehicle is not traveling on the highways of this State, including, without limitation, a dump truck, a boom truck, a car carrier, a semi-truck wrecker, a refrigeration truck, a line truck with a digger, a derrick or an aerial lift, a carpet cleaning truck, a document shredding truck or a tank truck with a pneumatic tank.

2. ~~[To obtain a refund pursuant to this section, a special fuel user must establish to the satisfaction of the Department that:~~

~~—(a) The tax has been paid on the special fuel for which the special fuel user wishes to obtain a refund; and~~

~~—(b) The special fuel was used in this State to operate auxiliary equipment that is mounted on the motor vehicle.]~~ *A special fuel user who is the operator of a motor vehicle with auxiliary equipment may, pursuant to section 30, 31 or 32, inclusive, of this regulation, request a refund greater than the percentage provided for in this section.*

3. ~~[Except as otherwise provided in NAC 366.230, a vehicle with an air conditioning unit is not entitled to a refund pursuant to this section.~~

~~—4. Notwithstanding any provision of this section to the contrary, the amount of a refund allowed for a special fuel user pursuant to this section may not exceed the total amount of taxes paid by the special fuel user for special fuel.~~

~~—5.]~~ As used in this section, “refundable fuel”:

(a) Means the total amount of special fuel purchased by a person during the period specified in subsection 5 of NRS 366.207 for which taxes have been paid pursuant to chapter 366 of NRS, less any amount of that special fuel:

- (1) That is claimed by the person for another exempt use;
- (2) For which any taxes are remitted to another jurisdiction on behalf of the person; and
- (3) That is used during that period for any other taxable use.

(b) Does not include special fuel for which a special fuel user has previously received a refund for credit.

~~{6.—A special fuel user who wishes to obtain a refund pursuant to this section must submit a request to the Department within 12 months after the date of the payment of the tax.}~~

Sec. 42. NAC 366.230 is hereby amended to read as follows:

366.230 *1.* A special fuel user who uses ~~undyed~~ special fuel *which has not been dyed* to operate a vehicle with a refrigeration unit ~~[for an air conditioning unit]~~ which is equipped with an auxiliary motor and separate fuel tank may obtain a refund of the tax paid pursuant to NRS 366.190 for the special fuel used to operate the refrigeration unit ~~[for air conditioning unit]~~ only if the special fuel user provides to the Department a copy of the receipt obtained from the person from whom the special fuel was purchased which states that the fuel was placed in the fuel supply tank for the auxiliary motor and which indicates that the tax was paid.

2. A special fuel user who purchases special fuel which has not been dyed outside this State is not eligible for a refund pursuant to NRS 366.190 for such fuel. A place of purchase within this State must be reflected on every receipt provided pursuant to subsection 1.

3. Any request for a refund of tax paid on 45 gallons or more of special fuel which has not been dyed must be accompanied by proof of the capacity of the fuel supply tank.

4. Unless the claimant is notified otherwise by the Department, all refunds made pursuant to this section must be applied first to any outstanding amounts owed by the claimant to the Department.

Sec. 43. NAC 366.240 is hereby amended to read as follows:

366.240 The use of special fuel to operate a motor vehicle in idle ~~[on the public highways of this State]~~ is not a use which is exempt from the tax imposed by NRS 366.190.

Sec. 44. NAC 366.320 is hereby amended to read as follows:

366.320 *1.* The records required to be kept pursuant to NRS ~~[366.140]~~ 366.685 by a special fuel transporter include, without limitation, records in the form of:

- ~~[1.]~~ (a) Delivery tickets;
- ~~[2.]~~ (b) Invoices; ~~and~~
- ~~—3.]~~ (c) Bills of lading or highway transportation receipts ~~[.]~~;
- (d) *Consortium reports;*
- (e) *Reports from an independently operated storage facility;*
- (f) *Reports from a refinery; and*
- (g) *Any other relevant documents used to confirm receipt or delivery of any product listed in subsection 1 of NRS 366.685.*

2. Records and documents kept pursuant to subsection 1 must include, without limitation:

(a) An inventory for each storage tank used for storing special fuel, including, without limitation:

- (1) The type of special fuel in each tank;*
- (2) The gains and losses of special fuel for each tank; and*
- (3) The names of the shippers and receivers of special fuel for each tank.*

(b) A record of import and export activity, including, without limitation:

- (1) The actual number of barrels or gallons of special fuel transported;*
- (2) The origin and destination of special fuel transported;*
- (3) All exchanges and transfers of special fuel;*
- (4) All transaction dates of imports, exchanges and transfers of special fuel; and*
- (5) The types of special fuel imported and exported.*

3. As used in this section, “consortium” means an association or combination of businesses which sell, transport, import or export special fuel and which are engaged in a joint venture or doing business under a cooperative agreement.

Sec. 45. NAC 366.400 is hereby amended to read as follows:

366.400 1. Except as otherwise provided in this section, if the Department imposes an administrative fine pursuant to NRS 366.740, the Department will impose that fine for violations occurring within the 3 years immediately preceding the most recent violation according to the following schedule:

- (a) For the first offense, an administrative fine of not *less than \$100 or* more than \$500.
- (b) For the second offense, an administrative fine of not less than \$500 or more than \$1,000.
- (c) For the third offense, an administrative fine of not less than \$1,000 or more than \$1,500.
- (d) For a fourth or subsequent offense, an administrative fine of not less than \$1,500 or more than \$2,500.

➡ For the purposes of paragraphs (b), (c) and (d), a notice of violation and directive to cease from further violation issued by the Department shall be deemed to be a first offense.

2. If the Department imposes an administrative fine pursuant to NRS 366.740 for a violation of NRS 366.223 or 366.265, the Department will, if the violation is:

- (a) A first offense, impose an administrative fine of \$500;
- (b) A second offense, impose an administrative fine of \$1,500;
- (c) A third offense, impose an administrative fine of \$2,000; or
- (d) A fourth or subsequent offense, impose an administrative fine of \$2,500.

3. The Department may impose an administrative fine of not less than \$1,500 or more than \$2,500 for any violation of ~~[subsection 3 of NRS 366.140,]~~ NRS 366.207 or 366.220, ~~[or]~~ subsection 2 of NRS 366.395 ~~[.]~~ *or subsection 3 of NRS 366.685.*

4. ~~[Unless a person who has been fined pursuant to the provisions of NRS 366.740 requests a hearing pursuant to subsection 2 of that section, the person shall pay the fine to the Department not later than the date specified in the notice of violation.~~

~~—5.]~~ Upon the failure of a person to pay an administrative fine imposed pursuant to this section when the fine becomes due, the Department may suspend, revoke or refuse to issue a license to that person pursuant to the provisions of this chapter.

Sec. 46. NAC 366.096, 366.110, 366.120, 366.130, 366.140, 366.150, 366.155, 366.160 and 366.200 are hereby repealed.

Sec. 47. 1. This section, sections 1 to 40, inclusive, and 42 to 46, inclusive, of this regulation become effective on December 17, 2008.

2. Section 41 of this regulation becomes effective on January 1, 2009.

TEXT OF REPEALED SECTIONS

366.096 Special fuel users: Filing of quarterly or annual tax return directly with Department. (NRS 366.110, 366.380) A special fuel user who is the holder of a special fuel user's license issued by the Department and who operates solely in this State shall file the quarterly or annual tax return required pursuant to NRS 366.380 directly with the Department.

366.110 Deduction of amount due but not paid by purchaser authorized to defer payment. (NRS 366.110, 366.540)

1. Except as otherwise provided in subsection 2, if a special fuel supplier who is authorized to claim a deduction pursuant to subsection 2 of NRS 366.540 is unable to claim the deduction on his tax return for the month in which the special fuel was purchased, he may claim the deduction when he submits a subsequent tax return if, on the subsequent tax return, he states:

(a) That he is claiming a deduction for special fuel which was not sold during the month for which the return is filed; and

(b) The reason for his failure to claim the deduction on the tax return for the month during which the special fuel was sold.

2. A special fuel supplier may not claim a deduction pursuant to subsection 2 of NRS 366.540 more than 90 days after delivery to the purchaser of the special fuel for which the deduction is claimed.

366.120 Permit to defer payment: Issuance; application; bond; estimate of fuel to be purchased each month. (NRS 366.110, 366.397)

1. An applicant for a permit issued pursuant to NRS 366.397 to defer payment of the tax on special fuel must file with the Department:

(a) An application on a form prescribed by the Department; and

(b) A bond which satisfies the requirements of subsection 2 of NRS 366.397.

2. The applicant must include in his application an estimate of the number of gallons of special fuel he will purchase each month. The Department will use this information to determine the purchaser's estimated maximum monthly tax.

3. The Department will fix the amount of the bond required pursuant to this section for an applicant for, or the holder of, a permit to defer payment of the special fuel tax at three times the purchaser's estimated maximum monthly tax, but not less than \$1,000.

366.130 Permit to defer payment: Grounds for denial. (NRS 366.110, 366.397) The Department may refuse to issue a permit pursuant to NRS 366.397 to a person:

1. Who fails to answer each question on the application for the permit or to indicate that the questions he does not answer are not applicable to his business;

2. Who submits an application which contains inaccurate information;

3. Who formerly held a license as a special fuel supplier, dealer, wholesale distributor, exporter or importer in this or any other state, the District of Columbia, the United States, its territories or possessions, or any foreign country which, before the time of filing the application, has been cancelled, suspended or revoked for cause;

4. Who applies as a subterfuge for the real party in interest whose license described in subsection 3 has been cancelled, suspended or revoked for cause;

5. Who fails to file a bond pursuant to NAC 366.120;

6. Who is in default in the payment of a tax on special fuel in this or any other state, the District of Columbia, the United States, its territories or possessions, or any foreign country; or

7. Upon other sufficient cause being shown.

366.140 Permit to defer payment: Revocation. (NRS 366.110, 366.397)

1. The Department may revoke a permit issued pursuant to NRS 366.397 to a purchaser of special fuel if:

(a) The Department takes action to recover on the purchaser's bond pursuant to NAC 366.150; or

(b) The Department is notified more than once during an 18-month period that the purchaser has failed to pay the tax on special fuel within the time prescribed in NRS 366.397.

2. Before revoking a permit issued pursuant to NRS 366.397, the Department will send a notice by registered or certified mail to the purchaser at his last known address ordering him to appear before the Department at a time not less than 10 days after the mailing of the notice and show cause why the permit should not be revoked.

366.150 Failure of purchaser to pay deferred payment: Notice; hearing; action to recover on bond. (NRS 366.110, 366.397)

1. Upon notification from a special fuel supplier that a purchaser who has been issued a permit pursuant to NRS 366.397 has failed to pay the tax on special fuel within the time prescribed in that section, the Department will send a notice by registered or certified mail to the purchaser at his last known address ordering him to appear at a hearing conducted by the Department not less than 10 days after the mailing of the notice and show cause why the Department should not take action to recover on the purchaser's bond. The Department will notify the special fuel supplier of the time and place of the hearing conducted pursuant to this subsection.

2. If a purchaser who has been determined to be delinquent in the payment of the tax on special fuel at a hearing conducted pursuant to subsection 1 does not pay the tax and any penalty or interest imposed by the Department within 10 days after the hearing, the Department may take action to recover on the purchaser's bond.

366.155 Supplier to require certain proof from purchaser before selling fuel without collecting taxes. (NRS 366.110, 366.207) For the purposes of NRS 366.207, every special fuel supplier shall require proof that a purchaser is either eligible to defer the payment of or exempt

from the payment of taxes imposed pursuant to the provisions of NRS 366.190 before selling to that purchaser any special fuel without collecting the taxes.

366.160 Liability of supplier who sells fuel to purchaser whose permit has been revoked. (NRS 366.110, 366.397) If, after receiving a notice from the Department pursuant to subsection 5 of NRS 366.397, a special fuel supplier sells special fuel to a purchaser whose permit to defer payment of the tax on special fuel has been revoked, the special fuel supplier is liable to the Department for the tax on the special fuel sold to the purchaser.

366.200 Submission of spreadsheet or copies of receipts. (NRS 366.110, 366.207, 366.650) A person who wishes to obtain, pursuant to subsection 5 of NRS 366.207, a refund of the tax paid on special fuel which was used for an exempt purpose must submit with his application a spreadsheet or copies of receipts from the person from whom the special fuel was purchased. The spreadsheet or copies or receipts must include:

1. The date on which the special fuel was purchased;
2. The number of gallons of special fuel purchased for an exempt purpose;
3. A statement that the tax imposed by NRS 366.190 was paid to the person from whom the special fuel was purchased; and
4. An explanation as to why clear fuel and not dyed fuel was purchased and used.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R150-08

The Department of Motor Vehicles adopted regulations assigned LCB File No. R150-08 which pertain to chapters 360A, 365 and 366 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

I. A description of how public comment was solicited, a summary of their 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 email to persons who were known to have an interest in the subject of the establishment of provisions relating to:

The Department of Motor Vehicles, Motor Carrier Division amending Chapters 360A, 365, and 366 of the Nevada Administrative Code (NAC) to comply with Legislation passed during the 2007 Legislative Session. The amendments proposed in this regulation make various changes relating to the payment of certain taxes and fees imposed on motor vehicle fuel, aircraft fuel, and special fuels. The proposed amendments revise certain licensing procedures and establish administrative fines for late license renewal applications submitted to the Department by dealers, suppliers, exporters and transporters. In addition, the proposed amendments also revise provisions when claiming certain tax refunds on exempt uses of various types of fuels.

These documents were also made available on the website of the Nevada Department of Motor Vehicles (DMV), **www.dmvnv.com**, emailed with posting instructions to all county libraries in Nevada, and posted at the following locations:

Nevada Department of Motor Vehicles Branch Offices:

Office of the Director
(Carson City DMV – Customer Lobby)
555 Wright Way
Carson City, NV 89711

1085 Highway 95
Hawthorne, NV 89415

8250 West Flamingo Rd.
Las Vegas, NV 89147

3030 S. Needles Highway, Ste. 900
Laughlin, NV 89028

3920 E. Idaho St.
Elko, NV 89801

1780 E. Basin Ave.
Pahrump, NV 89060

178 No. Avenue F
Ely, NV 89301

330 N. Sandhill Rd., Ste. H
Mesquite, NV 89027

973 W. Williams Ave.
Fallon, NV 89406

7170 N. Decatur Blvd.
Las Vegas, NV 89131

4110 Donovan Way
N. Las Vegas, NV 89030

1137 S. Main St., #C-8
Tonopah, NV 89049

3505 Construction Way
Winnemucca, NV 89445

215 West Bridge St. No. 9
Yerington, NV 89447

1352 Highway 395 Suite #109
Gardnerville, NV 89410

305 Galletti Way
Reno, NV 89512

1399 American Pacific Dr.
Henderson, NV 89014

2701 E. Sahara Ave.
Las Vegas, NV 89104

A workshop was held on November 3, 2008 and a hearing was held on November 21, 2008 regarding the proposed amendments; a recording of both meetings was made and is on file at the Nevada Department of Motor Vehicles, Research and Development Division, 555 Wright Way, Carson City, Nevada 89711.

On or about October 13, 2008, the Director of the Department of Motor Vehicles issued a Notice of Intent to Act Upon a Regulation with a Notice of Public Workshop to be held November 3, 2008 at 10 a.m. and a Notice of Public Hearing to be held November 21, 2008 at 10 a.m. at the following location:

Carson City
Nevada Department of Transportation
1263 South Stewart St. Room 302
Carson City, Nevada 89712

The Workshop and the Hearing were teleconferenced to the following locations:

Las Vegas
Nevada Department of Transportation
123 E. Washington Ave., Bldg. B – Training Room,
Las Vegas, Nevada 89101

And

Elko
Nevada Department of Transportation
1951 Idaho St.
Elko, Nevada 89801

Copies of the workshop and hearing recording or hearing minutes may be obtained by contacting Sean McDonald by telephone (775) 684-4773 or email, smcdonald@dmv.nv.gov.

Workshop and Hearing Information

Workshop

II. The number of persons who:

A. Attended the workshop: 13 Total

In Attendance in Carson City: 10 Total

Rhonda Bavaro, Department of Motor Vehicles (Workshop and Hearing Officer)
Cindy Arnold, Department of Motor Vehicles
Carmen Shipman, Department of Motor Vehicles
Patti Roth, Department of Motor Vehicles
Karen Stoll, Department of Motor Vehicles
Karen Winchell, Department of Motor Vehicles
Sean McDonald, Department of Motor Vehicles
Angela Smith-Lamb, Department of Motor Vehicles
Jessica Ferrato, Griffin Crowley Group
Norma Havens, Fleet Solutions

In Attendance in Las Vegas: 2 Total

Betsy McCabe, Department of Motor Vehicles
Jason Kumpfersmid, Department of Motor Vehicles

In Attendance In Elko: 1 Total

Becky Raine, Department of Motor Vehicles

B. Testified at the workshop: 2 Total

Carson City: 2 Total

The following Testimony was presented in Carson City, and includes the Departments responses to testimony both during the Workshop and after:

Norma Havens, Consultant for the Fuel industry and representative for Fleet Solutions works with clients who are affected by Power Take-Off (PTO) refunds and requirements

of the International Fuel Tax Association (IFTA). Norma Havens suggested the changes outlined below to proposed regulation R150-08:

Question / Recommendation 1:

The following recommendation affects Section 13 (NAC Chapter 365) and Section 46 (NAC Chapter 366) of Proposed Regulation R150-08:

A. **Norma Havens** recommended looking into how certain PTO calculations are determined. She suggested amending language in the proposed regulation to include allowances for certain vehicles requiring the operation of their engines in idle as a means of operating key pieces of equipment. Some examples include major safety lighting and power inverters. These examples don't necessarily include the operation of a lift or a boom. Equipment should be specific to the function of the truck to which it is attached. Should equipment necessary to the functional purpose of the truck to which it is mounted be considered an exempt use?

Department of Motor Vehicles Clarification / Response (Post Workshop):

Idle time is not authorized under the law. Nevada Revised Statute (NRS) 366.200 and Nevada Administrative Code (NAC) 366.240 do not provide for specific idle time allowances, therefore exemptions may not be granted. This is further supported by Attorney General's Opinion (AGO) 138 (12-29-1955), and AGO 99-12 (4-16-1999).

Equipment, such as lighting, operated by a generator or separate unit, may be covered under off-road equipment exemptions.

B. Additional categories not previously included in NAC have been added such as Paper Shredders, Concrete Pumpers etc. Other Pieces of equipment not identified in this regulation may also exist and not necessarily subjected to the PTO calculations outlined in this regulation.

Department of Motor Vehicles Clarification / Response (Post Workshop):

We will amend the Regulation to include an option for other PTO equipment not specifically mentioned. However, the PTO equipment must be verifiable and will be limited to 10% unless the testing requirements are met.

All exempt fuel claims are still subject to audit. Any refund claims which are unsubstantiated, IE: no fuel receipts, wrong exemption percentage claimed, no fueling logs for the equipment, equipment does not have PTO, etc; will be reversed by the Department. Penalty and interest will be assessed on the overpayment amounts.

C. Often times vehicles must run their engines in idle in order for the equipment attached to operate. Should PTO calculations be considered for these and other vehicles

as well? Norma Havens stated she would provide the Department with documentation such as differing vehicle descriptions and examples of some types of equipment.

Department of Motor Vehicles Response Clarification / Response (Post Workshop):

As indicated above, idle time is not authorized under the law. Nevada Revised Statute (NRS) 366.200 and Nevada Administrative Code (NAC) 366.240 do not provide for specific idle time allowances, therefore exemptions may not be granted. This is further supported by Attorney General's Opinion (AGO) 138 (12-29-1955), and AGO 99-12 (4-16-1999).

Equipment, such as lighting, operated by a generator or separate unit, may be covered under off-road equipment exemptions.

D. Fire trucks, Ambulances etc. are exempt from tax, but other types of emergency response vehicles crucial to community support services, should also be considered. For example:

An emergency response vehicle equipped with special lighting is responsible for restoring power to a community at night. The special lighting equipment on this vehicle operates using the engine of the vehicle in idle. Therefore, should this vehicle be allowed an exemption?

Department of Motor Vehicles Clarification / Response (Post Workshop):

These vehicles operate under state and local authority and by statute are exempt from fuel and registration taxes. For profit businesses are not exempt from the fuel tax.

E. Questions have been raised regarding the criteria used to make these and other PTO determinations and what studies the Department has conducted. Norma Havens is requesting we clarify our basis for these changes so industry is provided with a better understanding of why these changes were needed.

Department of Motor Vehicles Clarification / Response (Post Workshop):

Eleven western states were contacted as part of a study conducted by the DMV in 2007. This study revealed the following:

- 2 jurisdictions (18.2%) have no PTO allowances.
- 4 jurisdictions (36.4%) allow PTO deductions for Cement Mixers, Garbage Trucks, and Refrigerated Units only.
- 2 jurisdictions (18.2%) allow restricted PTO deductions of the fuel purchased with 100% documentation of use only.
- 3 jurisdictions (27.3%) allow PTO deductions similar to Nevada's previous allowances.

Question / Recommendation 2:

The following recommendation affects Section 15, subsection 1(a) & 2 (NAC Chapter 365):

In addition to “immediate family” as defined in this section, should the death of a business partner who is a principle in a given business be considered as well? Should we also consider the death of a key employee? These events may negatively impact the ability of the surviving partner / employer to accomplish responsibilities in a timely manner as well.

Example:

Two business partners (unmarried, not family members, etc.) have been in business for 50 years and one of the partners dies. The deceased partner is responsible for handling all paperwork and correspondence for the business. The other partner provides the labor and managerial support. However, the surviving partner is now responsible for both segments of the business. This results in a failure to file timely.

Department of Motor Vehicles Clarification / Response (Post Workshop):

NAC 360A.160 covers this situation. It states “If the Director or his designee finds that the taxpayers’ delinquent payment was proximately caused by theft, the serious illness of **the taxpayer, a member of his family or his agent whose job or duty it is to collect, account for or pay the tax**, or other similar cause which was not directly related to the actions of the taxpayer or his agent, ...”

Question / Recommendation 3:

Norma Havens had the following question regarding Section 30 (NAC Chapter 366):

Norma Havens was confused as to why a special fuel user had to post a bond.

Workshop - Department of Motor Vehicles Response:

Karen Stoll explained the only circumstance in which a bond would have to be posted by a special fuel user is when the user has been deemed habitually late.

Department of Motor Vehicles Clarification / Response (Post Workshop):

Pursuant to NAC366.005, as amended defines habitually delinquent as follows:

7. **“Habitually delinquent” means** the commission by a **special fuel user**, special fuel supplier or special fuel dealer of any of the following violations at

least twice within 1 year or any two of the following violations at least once within 1 year:

- a) The failure to file a monthly tax return during the period prescribed in NRS 366.380, 366.383 or 366.386, unless the Department finds that:
 - 1) The failure was caused by circumstances beyond the control of the special fuel user, special fuel supplier or special fuel dealer and occurred notwithstanding the exercise of ordinary care; and
 - 2) The special fuel user, special fuel supplier or special fuel dealer has paid all penalties and interest imposed by the Department because of his failure to file the tax return during the prescribed period.
- b) The failure to submit to the Department payment of the tax on special fuel collected pursuant to NRS 366.540 during the period prescribed in that section.
- c) The failure to submit to the Department the payment of any additional or estimated assessments imposed by the Department pursuant to NRS 360.A.060, 360.A.100 360A/120 or 360A.130 during the period prescribed in the relevant section.

Question / Recommendation 4:

The following recommendation affects Section 34, Subsection 2, (a) (NAC Chapter 366):

A. **Norma Havens** requested clarification on what was meant by the verbiage “independent research group.” What independent research groups? What does an independent research group” look like?

Workshop - Department of Motor Vehicles Response:

Cindy Arnold indicated these would be University level testers and might also include any company submitting their application to be testers to the Department. All prospective qualified applicants could be interviewed.

B. **Norma Havens** indicated she would like the term “independent research group” to be further defined in the regulation.

Department of Motor Vehicles Clarification / Response (Post Workshop):

Independent Research Group means a third party vendor with no vested or financial interest in the outcome. Examples include: University or marketing studies conducted on an entire industry or class of vehicle, rather than a vendor hired by a specific company who receives payment based on the outcome,

Question / Recommendation 5:

The following recommendation affects Section 35, Subsection 2 (NAC Chapter 366):

A. **Norma Havens** was looking for clarification regarding the use of an air conditioning unit in PTO situations. Does that mean that anybody running PTO who also has an air conditioning unit is not entitled?

Workshop - Department of Motor Vehicles Response:

Cindy Arnold stated this was only for scenarios where an air conditioning unit was being operated to keep the vehicle cool and running off the same fuel system as the engine.

Norma Havens went on to say there are vehicles that require air conditioning be kept on because they have sensitive equipment although the sensitive equipment in question may be cooled using a separate auxiliary refrigerator (“reefer”) unit. Documentation could be provided that the reefer unit is provided for the sole purpose of maintaining optimum temperatures for the sensitive equipment aboard the vehicle.

Cindy Arnold asked if these vehicles powered the unit under reefer fuel. Norma Havens stated “no” they operated off the truck engine. Cindy explained as long as the unit was documented that it ran off a separate unit it would be exempt.

Department of Motor Vehicles Clarification / Response (Post Workshop):

Again, idle time is not authorized under the law. Nevada Revised Statute (NRS) 366.200 and Nevada Administrative Code (NAC) 366.240 do not provide for specific idle time allowances, therefore exemptions may not be granted. This is further supported by Attorney General’s Opinion (AGO) 138 (12-29-1955), and AGO 99-12 (4-16-1999).

Equipment, such as lighting, operated by a generator or separate unit, may be covered under off-road equipment exemptions.

If there is a refrigeration unit in the trailer for the cargo, it would be covered. However, air conditioning is specifically excluded. In the event that there is a separate cooling system that uses a separate fuel source the clear diesel or reefer fuel to power those units would be exempt from fuel taxes through the Department’s MC45 refund process; and is subject to audit.

B. **Norma Havens** asked what does “verification” look like. Does it consist of a picture of the interior of the vehicle, a diagram of the truck, manufacturer’s specifications?

Workshop - Department of Motor Vehicles Response:

Cindy Arnold confirmed all of these would be acceptable proof for the Department.

Question / Recommendation 6:

Norma Havens had the following question regarding Section 39 (NAC Chapter 366):

A. **Norma Havens** was confused as to who verifies the person going to a rack to load is licensed. How would a rack company know and be aware that somebody is licensed and that the license is current and in force?

Workshop - Department of Motor Vehicles Response:

Carmen Shipman stated an individual could be authorized to go to a rack to pull fuel for a transporter, but may not have come to the Department to get a transporters license. Transportation companies that are operating unlicensed are being addressed in this regulation. The Department has monthly reporting requirements, so it can get third party verification and track the fuel. It is the intent of the Department to require all transporters be licensed.

B. **Norma Havens** again then asked, “How would the rack know?”

Workshop - Department of Motor Vehicles Response:

Carmen Shipman stated that if a supplier hires a company to go to the rack to pick up a load of fuel the supplier would be responsible for verifying the transporter is licensed. The supplier would have the option of calling the Department or checking online when verifying a transporter license.

C. If the **supplier** owns a tank and a dealer hires an unlicensed transporter to come in and pick up a load, who would be accountable?

Workshop - Department of Motor Vehicles Response:

Carmen Shipman stated the entity who hired the trucking company would be responsible.

D. **Norma Havens recommended** that maybe additional clarification should be included. The regulation should specify the person hiring the unlicensed transporter is responsible. The way the regulation currently reads, could be misconstrued that that fuel supplier is also held responsible even though they are not directly involved in the process.

Question / Recommendation 7:

Norma Havens had the **following** question regarding Section 44 (a), (b), and (c) (NAC Chapter 366):

Noticeable changes have been made to PTO percentage refunds. For example a semi truck wrecker used to get a 35% refund, however now is only eligible for 10%. **Norma**

Havens admitted that there had been conversation previously, but again what criteria was used to make this and other changes? Were these changes based on a study performed in Indiana? **Norma Havens** stated she would provide the Department with the name and address of the individual (a resident of Sacramento California) who performed the Indiana study.

Department of Motor Vehicles Clarification / Response (Post Workshop):

No, these changes were not based on the Indiana study. That study was conducted in the early 90's. The study resulting in these changes was conducted by Nevada last year. It is based on the allowances granted by other Western US States. The Federal Government does not give PTO allowances.

Question / Recommendation 8:

Norma Havens had the following question on the repealed sections (NAC Chapter 366):

A. **Norma Havens** asked for confirmation that the Department had not removed the ability of a supplier exempting Government agencies from taxes.

Workshop - Department of Motor Vehicles Response:

Carmen Shipman stated this section was not used and dealt with deferral and payment of taxes. No companies have applied for this exemption

B. **Norma Havens** confirmed NAC 366.155, 366.160, 366.200 and 366.150 had all been repealed but that all suppliers were still eligible to sell fuel tax exempt to Government agencies.

Workshop - Department of Motor Vehicles Response:

Carmen Shipman confirmed that was correct.

Denise Felton, representing A&K Earth Movers, had the following comment regarding proposed regulation R 150-08:

Question / Recommendation 9:

Denise Felton asked for additional clarification regarding Section 33 Subsection 2, (e), 2 (NAC Chapter 366):

Global Positioning Satellite (GPS) units onboard a vehicle must be approved by the Department. Denise Felton wanted to know what units (if any) are currently acceptable. Is there a list? Where would a company find this information?

Workshop - Department of Motor Vehicles Response:

Patti Roth stated that if a business had a company in mind, the Department would investigate their equipment for compliance.

Department of Motor Vehicles Clarification / Response (Post Workshop):

The Department is creating a list of onboard equipment requirements per the International Registration Plan, International Fuel Tax Agreement, and Nevada Law. All onboard and/or GPS equipment must meet the standards to be acceptable. Handouts will be made available upon request.

The following Testimony was presented in Las Vegas:

- No one testified in favor or opposed to the proposed regulation in Las Vegas

The following Testimony was presented in Elko:

- No one testified in favor or opposed to the proposed regulation in Elko

C. Written Statements Submitted to the agency – Workshop:

Assemblyman John Carpenter representing Assembly District 33 contacted the Department (by phone) on 11/10 with the following questions regarding the proposed regulation:

Question / Recommendation 10:

The following recommendation affects Section 10 (NAC Chapter 365):

Assemblyman Carpenter was concerned that language in this section may not be clear, and he requested that we attempt to clarify the verbiage used. He also wanted to know why a Sheriff must always be involved in the sealing of a business. If a retailer complies with an order and allows the Department to seal a fuel pump, does a Sherriff need to be involved?

Workshop - Department of Motor Vehicles Response:

The Sheriff's involvement already appeared in statute, and it was our intent in this regulation to expand on the procedures used by the Department in the sealing process.

Department of Motor Vehicles Clarification / Response:

NRS 365.610 and NRS 366.750:

NRS 365.610 Enforcement by sheriffs and other peace officers. County sheriffs and all other peace officers and traffic officers of this State shall, without further compensation, assist in the enforcement of this chapter, and they shall make arrests for this purpose when requested by the Department or its duly authorized agents.

NRS 366.750 Enforcement by sheriffs and other peace officers. County sheriffs and all other peace officers and traffic officers of this State shall, without further compensation, assist in the enforcement of this chapter, and make arrests for that purpose when requested by the Department or its duly authorized agents.

Question / Recommendation 11:

The following recommendation affects Section 11, subsection 3 of (NAC Chapter 365):

If an error is caused by the Department (and not the applicant), and it is determined the Department is at fault, how can we hold the business submitting the application accountable?

The Department of Motor Vehicles Clarification / Response:

If an account encounters filing issues that make it late, each instance is reviewed on its own merits before any decision is made.

Question / Recommendation 12:

The following question affects Section 13 (NAC Chapter 365):

As indicated above in the testimony provided by Norma Havens, **Assemblyman Carpenter** expressed many of the same concerns. He believes this section is too restrictive and needs to be redefined. This section should include exemptions for vehicles powering onboard equipment. If a vehicle is operating in idle as a means of powering a piece of equipment, shouldn't the owner of the vehicle be allowed to claim the tax exemption?

The Department of Motor Vehicles Clarification / Response:

There is no existing law to allow for tax exemptions resulting from idling or the operation of on-board devices.

PTO is auxiliary equipment operating while a vehicle is in motion, such as the barrel of a cement mixer; or while stationary, a hydraulic lift of a dump truck or a trash compactor. These types of equipment are covered in the PTO section of the proposed regulation.

Fuel used to operate generators or power equipment is also exempt.

Question / Recommendation 13:

The following question affects Section 19 (NAC Chapter 365):

As a station owner himself, **Assemblyman Carpenter** had some concerns with this section. What if payment was attempted, but not received for some reason, shouldn't "good faith" be a consideration? Is it possible to exercise a "benefit of the doubt?" What constitutes a "timely manner" (subsection 2 (a) & (b))?

The Department of Motor Vehicles Clarification / Response:

Based upon the Trading Partner Agreement each licensee must sign, if a licensee encounters any filing / payment issues with the system, they must immediately contact the Motor Carrier Division for assistance. Filing in a timely manner is addressed in NRS 365.330 and 366.383, and each specifically states payment must be made by the last day of each month.

Based upon the system's capabilities, the account can file and pay at any time between the 16th and the last day of the month up and until midnight. If an account encounters filing issues that make it late, each case is reviewed on its own merits.

Good cause has been defined in NAC 360A.050 as a circumstance beyond the control of a taxpayer and includes a fire, earthquake, flood or other act of God; theft or death or serious illness of the taxpayer, a member of his family or his agent whose job or duty it is to collect, account for or pay to the Department a tax imposed by chapter 365, 366, 373 or NRS 590.120 or 590.840.

Question / Recommendation 14:

The following question affects section 44 subsection 1, (a), (b), and (c) (NAC Chapter 366):

Assemblyman Carpenter wanted to know how the percentages were determined. Why were some vehicles changed and others remained the same? How was it determined each vehicle should be categorized this way and where was the research?

The Department of Motor Vehicle's Clarification / Response:

Eleven western states were contacted as part of a study conducted by the DMV in 2007. This study revealed the following:

- 2 jurisdictions (18.2%) have no PTO allowances.
- 4 jurisdictions (36.4%) allow PTO deductions for Cement Mixers, Garbage Trucks, and Refrigerated Units only.

- 2 jurisdictions (18.2%) allow restricted PTO deductions of the fuel purchased with 100% documentation of use only.
- 3 jurisdictions (27.3%) allow PTO deductions similar to Nevada's previous allowances.

The **Western States Petroleum Association (WSPA)** submitted the following questions regarding proposed regulation R150-08. WSPA's comments were received via Fed-Ex on November 14, 2008:

These comments are provided on behalf of the members of the Western States Petroleum Association, WSPA. WSPA's members represent a wide segment of the petroleum industry, including the refining and marketing segment which is active throughout Nevada. These comments were formulated by the WSPA Excise Tax Committee whose members come from the refining and branded marketing of motor fuels and aviation fuels.

Question / Recommendation 15:

Proposed Regulations, Page 2 (NAC Chapter 360A):

A. Section 2:

Section 2. As used in NRS 360A.110, the term "careless reporting" includes, without limitation:

1. Any alteration of the dates of fueling, types of fuel or amounts of fuel on a tax return;
2. Underreporting of the sale of fuel; and
3. Reporting a taxable event as a nontaxable event.

The statutory provision contained in NRS 360A.110, referenced above, reads as follows:

Offsetting of overpayments.

1. Except as otherwise provided in subsection 2, in making a determination, the Department may offset overpayments for a period or periods, together with interest on overpayments for another period or periods or against penalties and interest on underpayments.
2. No interest is allowed on any overpayment that the Department determines has been made intentionally or by reason of careless reporting

WSPA's members are wondering how any of the three events in the proposed regulation would result in an overpayment of tax for which, speculatively speaking, interest should not be paid. Apparently, the Department has numerous examples of taxpayers who have done each of these three acts which has resulted in a material overpayment for which interest was paid by the Department. However, it would seem that the more likely outcome of "careless reporting" would be underpayments of tax, not overpayments. It

would seem, however, that taxpayers would be disinclined to commit "careless reporting" acts that would consistently result in tying up cash in overpaid taxes, with or without interest on such overpayments. Hence, the WSPA members are not clear as to the need or intention of this provision in this context.

WSPA's members are deeply concerned the proposed new language will be used to routinely deny interest on other overpayments of taxes due to the open ended language of the proposed definition of "careless reporting". The Department is well aware that in a very small percentage of reported transactions a revision to a filed return is necessary due to incorrect or late reported transactions from terminals. WSPA's members routinely update the information as timely as possible regarding any return information data errors in fuel removals from terminals. While the percentage of such data corrections is very small, the mere presence of such "late loads" could be used by the Department to deny the application of interest for most periods. This proposed treatment would be wholly inequitable.

Also, this proposed language would discourage and punish efforts by taxpayers to correct small errors rather than lose interest on overpayments. Clearly, the better approach is to encourage voluntary compliance, the filing of timely returns and to encourage amended returns or correct data submissions if additional information is received after the original return was prepared and filed. WSPA's members are always willing to sit down to discuss the Department's ongoing concerns with "late loads" and to once again explain who and why they occur and to work together to minimize the impact on the Department's current reporting processes. Furthermore, WSPA's members are willing to assist the Department in the design and implementation of any prospective revised reporting system.

In the alternative, and in the spirit of what the Department is attempting to address, (intentional disregard of actual data or fraud), WSPA proposes the following alternative wording of the proposed section:

Section 2. As used in NRS 360A.110, the term "careless reporting" includes, without limitation, for which the person preparing the return, at the time the original return was prepared, disregarded reportable data available or fabricated data at the time the return was prepared resulting in:

The Department of Motor Vehicles Clarification / Response:

The wording for this section needs to be re-worked to make the meaning clear, so it will not be used at this time.

- B.
 - 1. Any alteration of the dates of fueling, types of fuel or amounts of fuel on a tax return;
 - 2. Underreporting of the sale of fuel; and
 - 3. Reporting a taxable event a nontaxable event.

"Careless reporting" shall not include the filing of an amended return or submission of amended data to reflect additional or corrected data.

The Department of Motor Vehicles Clarification / Response:

The definition used above is satisfactory and can be inserted into the regulation.

Question / Recommendation 16:

Proposed Regulation, Page 3 (NAC Chapter 365)

A. Section 6. "Consortium" means an association or combination of business which sell, transport, import or export motor vehicle fuel, aviation fuel or fuel for jet or turbine-powered aircraft and which are engaged in a joint venture or doing business under a cooperative agreement.

The Department of Motor Vehicles Clarification / Response:

It has been decided that this section will be pulled from the proposed regulation pending a workshop planned for the first quarter of 2009 to address all concerns.

B. WSPA's members are aware there are consortiums located at major airports across the country where the members of such consortiums combine their resources to secure low cost facilities to receive and store jet fuel. In nearly all such cases the consortium hires a professional third party company to manage, operate and maintain the airport tank farm and related on-airport fuel distribution system. Since the primary business purpose of a "consortium" is to create and operate low cost airport jet fuel storage, WSPA recommends the following alternative language:

"Consortium" means an association or combination of business which receive, store, sell, transport, import or export motor vehicle fuel, aviation fuel or fuel for jet or turbine-powered aircraft and which are engaged in a joint venture or doing business under a cooperative agreement.

C. It should be noted that in most instances, airport consortiums are not intended to own or hold title to jet fuel or other fuels, other than in negligible amounts as fuel supplies to consortium vehicles or waste products generated in the operation of the facilities. In this sense consortiums are more akin to a "for hire terminal" operated by a pipeline or terminal operating company. The position holders within the terminal (or a consortium) would hold title to the product and title to the jet fuel would not come to vest with the consortium entity itself. Some WSPA members would hold title to product held in these consortium locations across the country. If there are specific issues regarding the Las Vegas or Reno consortiums, WSPA's excise tax committee is available to discuss in more detail with the Department's staff.

Question / Recommendation 17

Proposed Regulation, Page 3 (NAC Chapter 365)

A. Section 8. The Department will notify each member of a consortium of any tax payments that are owed pursuant to chapter 365 of NRS by any member of the consortium.

The Department of Motor Vehicles Clarification / Response:

It has been decided that this section will be pulled from the proposed regulation pending a workshop planned for the first quarter of 2009 to address all concerns.

B. The intention behind this proposed regulation is unclear. Why would the other members of a consortium need to know of the non-payment by another consortium member and to what end would that knowledge lead? This proposed regulation would seem to violate express statutory provisions of NRS 365.138 which requires confidentiality of taxpayer records. It is not clear how the proposed regulation falls into the exception contained in NRS 365.138 as "necessary to administer this chapter" unless the Department is making an unsupportable assumption that the non defaulting consortium members will be held joint and severally liable for the non-compliance of a consortium member. Furthermore, a consortium member could owe tax payments on matters unrelated to the activities of the consortium or other consortium members. Why would the Department need to notify the consortium members of unrelated tax liabilities of a consortium member? This could possibly place the Department's employees in a dilemma and expose the Department's own employees to criminal penalties contained in NRS 365.142 Unlawful disclosure of information penalty. WSPA recommends the deletion of the proposed section in its entirety.

Question / Recommendation 18:

Proposed Regulation, Page 3 (NAC Chapter 365)

A. Section 9. For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier who sells the fuel to the user

Department of Motor Vehicles Clarification / Response:

Section 9 of the proposed regulation will be rewritten, replacing "Who sells the fuel to the user" with "for self-use or sale to the end user."

Language will therefore appear as follows:

“Section 9. For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier for self-use or sale to the end user.”

B. This proposed language is unclear and not supported by the clear meaning of the statutory provisions. First, is the attempt by the drafter to circumvent the express statutory language of NRS 365.170 states that the tax is due by the licensed dealer or supplier in the case of aviation gasoline when "such fuel is sold, distributed or use". Such clear statutory language cannot rationally be read to impose tax upon mere first possession of the fuel by the licensed dealer or supplier. Accordingly, the proposed language should be withdrawn unless new statutory language changes the point of taxation of aviation gasoline and jet fuel.

Second, the proposed regulatory provision provides no meaningful guidance as to what the new, and statutorily unsupported, point of taxation of aviation gasoline and jet fuel would be after adoption of the regulation. Does the drafter suggest that it would be as the fuel enters the state, regardless of means or ultimate destination? Does the fuel have to come to rest within the state first? Does the drafter propose that aviation gasoline and jet fuel are taxable upon receipt in a terminal rather than the sale and withdrawal? There are constitutional issues to consider with the proposed language as well, regarding commerce clause and taxing goods in interstate commerce. The existing statutory language is clear and is focused upon the sale or title change or conversion to self use as the point of taxation. WSPA strongly recommends the proposed regulatory language be withdrawn and reconsidered in the context of what the drafter **was** attempting to accomplish and whether a statutory change would be required to alter the point of taxation for aviation gasoline and jet fuel.

If a change in the point of taxation is needed for these two products, perhaps the Department should consider a larger statutory change in the point of taxation of motor fuels as well and conform to the federal "tax at the rack" as many states have done to reduce the possibility of fuels tax evasion and to ease the administrative burdens of the state and industry.

Question / Recommendation 19:

Proposed Regulation, Page 8 (Chapter 365)

A. 4. A licensed supplier, dealer or exporter shall not conduct business with an unlicensed transporter. A licensed supplier, dealer or exporter who violates the provisions of this subsection is subject do an administrative fine pursuant to NRS 365.600.

5. A transporter who conducts business with a supplier, dealer or exporter must provide proof of licensure to this chapter upon the request of the supplier, dealer or exporter.

WSPA's excise tax committee members work in all states and have a wealth of practical experience in motor fuel reporting and taxation. Drawing upon the collective experience, they believe this proposed regulatory language creates an unavoidable assessment trap for a compliant supplier, dealer or exporter when the Department suspends or revokes the license of a transporter and fails to notify innocent dealers, suppliers and exporters. While it is possible to insure that a transporter is properly licensed at the time the transporter is hired, it is far more problematic for the dealer, supplier or exporter to know if the Department has revoked the license of a transporter. Accordingly, this language would punish an innocent party due to the lack of notice provided by the transporter of his suspension or revocation by the Department and the failure of the Department to notify dealers, suppliers and exporters that a licensed transporter has had his license suspended or revoked.

WSPA recommends the following alternative language to accomplish the objective of placing the burdens upon the parties knowledgeable of license revocations as opposed to requiring extrasensory perception by innocent customers of recently unrevoked transporters:

4. A licensed transporter shall immediately notify its customers which are licensed suppliers, dealers and exporters of the suspension or revocation of its license and shall not transport aviation fuel, fuel for jet or turbine-powered aircraft, motor vehicle fuel or petroleum-ethanol mixture into, out of or within this State without a valid license. Each such transport shall be a violation of NRS 365.570 and subject the transporter to an administrative fine pursuant to NRS 365.600. The Department may, as deemed necessary under NRS 365.138 to administer the provisions of this chapter, notify licensed suppliers, dealers and exporters of the suspension or revocation of any formerly licensed transporter.

Department of Motor Vehicles Clarification / Response:

The language above will be added into the regulation and the rest of the wording will stay as is.

Hearing

D. Attended the hearing: 12 Total

In Attendance in Carson City: 9 Total

Rhonda Bavaro, Department of Motor Vehicles, (Workshop and Hearing Officer)

Dawn Lietz, Department of Motor Vehicles

Cindy Arnold, Department of Motor Vehicles

Carmen Shipman, Department of Motor Vehicles

Karen Stoll Department of Motor Vehicles

Sean McDonald, Department of Motor Vehicles
Angela Smith-Lamb, Department of Motor Vehicles
Jessica Ferrato, Griffin Crowley Group
Norma Havens, Fleet Solutions

In Attendance in Las Vegas: 2 Total

Betsy McCabe, Department of Motor Vehicles
Robert O'Toole, Department of Motor Vehicles

In Attendance In Elko: 1 Total

Becky Raine, Department of Motor Vehicles

E. Testified at the hearing: 5 Total

The following Testimony was presented in Carson City, and includes the Departments responses to testimony both during the Hearing and after the Hearing:

Motor carrier staff addressed issues raised during and after the Workshop which included proposed changes to existing language, questions regarding the regulation and concerns about verbiage used. Each of the "Question / Recommendations" above (in the Workshop and Post-Workshop section) was read into the record.

- **Dawn Lietz** read "Question / Recommendation" 1, 4, 7, 8, 9, 12, 14, 15, 16, and 17 into the record
- **Carmen Shipman** read "Question / Recommendation" 2, 6, 11, 13, 18, and 19 into the record
- **Karen Stoll** read "Question / Recommendation" 3 and 10 into the record
- **Cindy Arnold** read "Question / Recommendation" 5 into the record

*** Additional Clarification Provided - Question / Recommendation 1, (Section E.)**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz While reading answers to Question / Recommendation 1 E. added, as a result of the study outlined in this section, a decision was made in favor of simplifying "Power Take Off (PTO)" exemption allowances. It was determined amending this section in regulation would make it easier to administer PTO exemptions and would also make it easier for taxpayers to know how their equipment would be categorized. An average of the percentages used was taken but no qualifying equipment was removed if an exemption had been previously allowed. However, Power Take Off exemption percentages were adjusted in relation to other Western States. **Dawn Lietz** also indicated the Federal Government does not allow for PTO exemptions

*** Additional Clarification Provided - Question / Recommendation 5:**

Hearing – Department of Motor Vehicles Response:

Cindy Arnold stated that the Department determined the only way an air conditioning unit would be covered under a PTO situation would be if it had a separate engine and the air conditioning unit was operating off of that engine or generator...

*** Additional Clarification Provided - Question / Recommendation 6:**

Hearing – Department of Motor Vehicles Response:

Carman Shipman reiterated for the purposes of clarification, it is up to the supplier to determine the transporter is actually licensed to conduct business in the State.

*** Additional Clarification Provided - Question / Recommendation 7:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz indicated previous PTO allowance structures were based on the Indiana study. However they have been adjusted to more uniformly fall in line with other Western Jurisdictions. Last year the Department performed a study of its own, and eleven western Jurisdictions were surveyed. Each of these Jurisdictions was used as a benchmark for determining PTO percentages. Some PTO percentages have been reduced, but the customer has the option to submit evidence to the Department and each case will be evaluated on its own merits.

*** Additional Clarification Provided - Question / Recommendation 9:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz stated a handout was made available for attendees at the Hearing outlining GPS requirements noted in the International Fuel Tax Agreement and Nevada State law. In addition, the handout has also been made available on the Department's website. If a GPS unit is used, it must meet requirements of the International Fuel Tax Association (IFTA) and International Registration Plan (IRP). Figures extracted from a GPS unit not meeting requirements of IFTA or IRP are not considered acceptable or adequate by the Department.

*** Additional Clarification Provided - Question / Recommendation 12:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz reiterated this was not a decision the Department could make through Regulation but rather, any changes to existing law have to be made through a change in law. PTO allows for fuel use in the operation of auxiliary equipment. PTO is designed to provide for the operation of equipment such as a hydraulic lift of a dump truck or a trash compactor when a vehicle is stationary or the operation of a cement mixer while a vehicle is in motion. PTO is not intended to provide exemptions for a vehicle in idle.

*** Additional Clarification Provided - Question / Recommendation 14:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz indicated she brought copies of a spreadsheet to the Hearing detailing each of the eleven western Jurisdictions PTO exemption allowances. An average was taken from the eleven jurisdictions offering PTO and an adjustment to the percentages was made for uniformity.

*** Additional Clarification Provided - Question / Recommendation 15:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz mentioned WSPA had submitted questions via the mail. In addressing the concerns outlined in question 15, Dawn Lietz expanded on what was meant by the term “overpayment,” with regards to “Careless Reporting.” Specifically interest would not be paid to an individual if overpayment occurred. Typically overpayments to the Department occurred due to inventory adjustments and weren’t true tax liabilities. Nevada does not pay interest, but NRS 360A.110 allows for an offset. Careless reporting defines when interest would be paid in an “offset” situation.

*** Additional Clarification Provided - Question / Recommendation 16:**

Hearing – Department of Motor Vehicles Response:

Dawn Lietz indicated that after discussing this section with WSPA, a determination was made that the definition of “Consortium” would not work for the industry. As a result, section 6 and section 8 will be removed from this regulation, pending review at a later date.

*** Additional Clarification Provided - Question / Recommendation 19:**

Hearing – Department of Motor Vehicles Response:

Carmen Shipman indicated WSPA had expressed concerns that a supplier may unknowingly hire the services of an unlicensed transporter and thus be held accountable. The supplier would then be sanctioned through no fault of their own. Under current annual licensing requirements, if a transporter chooses not to renew its

license through the course of a year, their license will either be canceled or suspended by the Department. It is policy of the Department to notify suppliers if this action takes place.

Norma Havens, Consultant for the Fuel industry and representative for Fleet Solutions works with clients who are affected by Power Take-Off (PTO) refunds and requirements of the International Fuel Tax Association (IFTA). Norma Havens suggested the changes outlined below to proposed regulation R150-08:

Question / Recommendation 20:

Norma Havens asked for additional information regarding the PTO survey results (as outlined in Question / Recommendation 1, 4, 5, and 7):

Norma Havens asked, if there a way to get a copy of the states used in the Western Jurisdictional Survey?

Hearing - Department of Motor Vehicles Response:

Dawn Lietz indicated she had brought a copy of the survey and would allow Norma Havens to review the results.

Question / Recommendation 21:

Norma Havens asked for additional information regarding the PTO survey results:

A. **Norma Havens** requested additional clarification on Question / Recommendation 1 A. If a vehicle has equipment attached, but requires operation of the engine, can it be considered? **Norma Havens** confirmed that the Department doesn't have the authority to change existing law regarding PTO exemptions.

Workshop - Department of Motor Vehicles Response:

Dawn Lietz stated (from Question / Recommendation 1 A) "equipment such as lighting, operated by a generator or separate unit, may be covered under off-road exemptions." However, **Dawn Lietz** also reiterated any other exemptions were beyond the scope of authority provided to the Department in this regulation. Any law changes would have to be introduced through Legislation.

B. **Norma Havens** stated in December of 1955, trucks were not equipped with these types of equipment. An AG opinion may have not been based on these types of equipment. The types of equipment we see today is unlike anything that would have existed back in 1955. Admittedly there was another AGO opinion in 1999, and the Indiana study was conducted in 1990, but things change.

Workshop - Department of Motor Vehicles Response:

Dawn Lietz understood the point **Norma Havens** was trying to make, but again stated the Department was powerless to make any law changes. The way the law is currently worded, and the fact the AG opinion had been issued in both 1955 and 1999, neither would allow the types of changes **Norma Havens** was requesting.

Dawn Lietz understood differing types of monitoring equipment now exist to account for idle time, but still any changes would require a Legislative decision. If we allowed a measuring device to monitor idle time for these vehicles, we would be required to allow all vehicles to request the same exemption.

C. **Norma Havens** understood the Department would have to conduct a study and would need additional documentation. **Norma Havens** asked when this regulation would officially be enacted

Workshop - Department of Motor Vehicles Response:

Hearing Officer **Rhonda Bavaro** stated the next step in the process was the Legislative Adoption Committee scheduled mid December. When codified the regulation would be adopted

D. **Norma Havens** stated she wanted to hold a tax seminar, she is working with a client and wanted to know when the new Regulation would be enacted so she include the information in her meeting. Norma wanted to know when all of the new information forms etc. would be available, so she could prepare.

Workshop - Department of Motor Vehicles Response:

Dawn Lietz stated these would be ready on January 01, 2009, to prevent the Department from having to incorporate a split quarter. If for some reason this was not enacted by January 01, 2009, the Department will wait until the second quarter.

Question / Recommendation 22:

The following question affects Section 33 Subsection 2. (NAC Chapter 366):

A. **Norma Havens** had questions regarding IFTA data collection requirements and onboard checklists. She wanted to know how a GPS would collect the required data. She sought clarification as to how a GPS system would collect the types of information mentioned. **Norma Havens**, wanted clarification that the onboard device must collect data relating to date of fuel purchase, sellers name and address

Workshop - Department of Motor Vehicles Response:

Dawn Lietz stated the onboard device the company was using must be in compliance with the requirements set forth in IFTA. Whatever method the company chose to use,

was up to the company but that it must capture all required data. However, this was only if an onboard device was being used to record the information. If a company is only using the onboard device to capture distance data, then they would be able to fall back on other record keeping methods.

B. **Norma Havens** asked if she needed to submit anything to the Department regarding GPS.

Workshop - Department of Motor Vehicles Response:

If you want the Department to review a particular system in use by a customer, all data collection requirements must be met. The Department will review all documentation and system specifics. As part of its review, the Department will look at the frequency of “pings,” odometer captures, etc.

When it comes to a product or a service offered by a company, the Department cannot endorse a company to a customer. The only thing the Department can do is evaluate a particular system as requested to make sure it is compliant. A notice regarding these requirements is available on the IFTA website, but a notice of requirements encompassing those of and Nevada will be made available from the Department.

The following Testimony was presented in Las Vegas:

- No one testified in favor or opposed to the proposed regulation in Las Vegas

The following Testimony was presented in Elko

- No one testified in favor or opposed to the proposed regulation in Elko

F. Written Statements / Comments Received - Hearing:

David Retz and **Michael Wang** of **Western States Petroleum (WSPA)** submitted additional proposed language changes to Section 9. Comments were received via e-mail on 11/21 and regular mail 11/30:

The comments were formulated by the WSPA Excise Tax Committee whose members come from the refining and branded marketing of motor fuels and aviation fuels.

Question / Recommendation 23:

Proposed Regulation, Page 3 (NAC Chapter 365):

After discussing changes with Carmen Shipman from the Department of Motor Vehicles, it was decided language in Section 9 of the Regulation should be rewritten as follows:

Section 9. For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier for self use or sale to the user.

WSPA proposes, for certainty and clarity, this section is re-written to address the Department's concerns specifically, but clearly provide what transactions are taxable, when and who the taxpayer would be in the regulations. WSPA offers this alternative language for Section 9:

Section 9. For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier for self use and the tax shall be remitted by the receiving licensed dealer or supplier. The sale by a licensed dealer or supplier to another licensed supplier or dealer shall not be deemed taxable. All sales made to unlicensed parties are taxable at the time of sale.

The Department of Motor Vehicles Clarification / Response:

It has been decided that section nine will be rewritten as requested above. The verbiage used in this section has been approved by the Department, and will replace existing language in the proposed regulation.

Note: This change amends the proposed language change addressed above in Question / Recommendation 18.

Quarles & Brady LLP. submitted the following questions regarding proposed regulation R150-08. Comments were received via facsimile November 25, 2008:

Daniel Muchow of Quarles & Brady LLP submitted the following comments on behalf of LASFUEL Corporation, a Nevada mutual benefit corporation (LASFUEL) and Reno Fueling Facilities Corporation, a Nevada corporation (RFFC). The shareholders and members of both of these entities are the major airlines operating at McCarran International Airport and Reno-Tahoe Airport, respectively. Both LASFUEL and RFFC lease and operate the facilities to store and distribute jet fuel from common storage facilities to the hydrant pits located at airport passenger terminal gates. Neither corporation owns or sells any jet fuel. The jet fuel transported in these storage and distribution facilities is owned by the corporate shareholders or members and others who use jet fuel at these airports.

Question / Recommendation 24:

Proposed Regulation, Page 3 (NAC Chapter 365)

Quarles and Brady LLP – **Daniel Muchow:**

Section 8 raises confidentiality concerns. Nevada bars the disclosure of information obtained through examination or investigation of taxpayers or from reports filed by taxpayers. NRS § 365.142. The sole exception to this restriction is where disclosure is necessary to administer the taxation of fuels. NRS § 365.138. The only situation imaginable where disclosure of another member's delinquent tax liability would be necessary to the administration of tax is in cases where the Department intends to hold another member of a consortium joint and severally liable for another member's delinquent tax. Joint and several liability would not arise, however, where the unpaid tax relates to activity that is unrelated to the member's participation in the consortium. Joint and several liability would not arise also where the fuel consortium is a corporation in which the members hold shares, or a limited liability company formed by its members. In such instances, the fuel consortium alone would be liable for tax arising from the consortium's transfer, sale, export, or import of taxable fuels, if any. The members would be insulated from personal liability for the consortium's tax and taxed owed by another member. Disclosure of tax information under such circumstances would not only accompany an ineffective assertion of vicarious liability but would also violate Section 365.142.

The application of Sections 6 and 8 of the proposed regulation and the imposition of joint and several liability on members of airport fuel consortiums are not consistent with Nevada's statutory scheme for taxation of fuels. These fuel consortium entities operate in major Nevada airports. Their shareholders and members have pooled resources to acquire facilities for receipt and storage of jet fuel. Because such consortiums' activity is limited to the airports where they operate, airport fuel consortiums are not engaged in interstate transportation of taxable fuel. Both LASFUEL and RFFC contract with a third party to operate, manage, and maintain the consortium's airport storage and related airport fuel distribution facilities. As noted above, these entities do not own or hold title to jet fuel. Rather, title to the fuel is retained by their shareholders and members, and any other users of the fuel storage and distribution system. In effect, the consortium members are merely using the same storage and airport distribution facilities managed and operated by a third party. These airport fuel consortiums are thus not engaged in the export, import, transport or sale of taxable fuels, and their shareholders and members are thereby not engaged in a joint venture or business association engaged in such taxable activities. To prevent the erroneous application of joint and several liability in such circumstances, the proposed regulation's Section 6 definition for the term "Consortium" should exclude "an association, corporation and/or joint venture formed solely to operate one or more airport fuel storage and/or distribution systems for the benefit of its members."

The Department of Motor Vehicles Clarification / Response:

It has been decided that both of these sections (section 6 and section 8) will be pulled from the proposed regulation pending a workshop planned for the first quarter of 2009 to address all concerns.

III. 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.

There is no estimated adverse or beneficial economic effect on businesses. However, public comment was solicited as explained in response to question I.

IV. 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 statement should also explain the reasons for making any changes to the regulation as proposed.

The permanent regulation was adopted by the Department on December 1, 2008, and included the changes suggested at the workshop held on November 3, 2008 and read into the record during the hearing conducted on November 21, 2008. The proposed changes to Regulation are as follows:

Revision to Section 2:

Subsection 4 was added to the regulation for additional clarification, should an amended return or amended data be submitted to the Department. These circumstances would not constitute "Careless Reporting."

Sec. 2. As used in NRS 360A.110, the term "careless reporting" includes, without limitation:

1. Any alteration of the dates of fueling, types of fuel or amounts of fuel on a tax return;
2. Underreporting or nonreporting of the sale of fuel; and
3. Reporting a taxable event as a nontaxable event.
4. "Careless reporting" shall not include the filing of an amended return or submission of amended data to reflect additional or corrected data.

Revision to Section 6:

It was decided that Section 6 of this regulation would have unforeseen consequences on the fuel Industry. The Department has decided to remove this section from Regulation and revisit this definition in a workshop planned for the first quarter of 2009.

~~**Sec. 6.** "Consortium" means an association or combination of businesses which sell, transport, import or export motor vehicle fuel, aviation fuel or fuel for jet or turbine-powered aircraft and which are engaged in a joint venture or doing business under a cooperative agreement.~~

Revision to Section 8:

In connection with the removal of Section 6, Section 8 will also be removed from this regulation.

~~**Sec. 8.** The Department will notify each member of a consortium of any tax payments that are owed pursuant to chapter 365 of NRS by any member of the consortium.~~

Revision to Section 9:

After discussion with Industry Representatives, language in Section 9 was deemed to be unclear. The Department favors the following language (highlighted in yellow) be added to Regulation.

~~**Sec. 9.** For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier who sells the fuel to the user.~~ ***For the purposes of this chapter, aviation fuel and fuel for jet or turbine-powered aircraft is deemed distributed and taxable when the fuel is received by the licensed dealer or supplier for self use and the tax shall be remitted by the receiving licensed dealer or supplier. The sale by a licensed dealer or supplier to another licensed supplier or dealer shall not be deemed taxable. All sales made to unlicensed parties are taxable at the time of sale***

Revision to Section 17:

The following subsections (5 and 7) have been added to Section 17 to further clarify the responsibilities of the transporter when his license is suspended or revoked. The additions made to this section provide the authority needed by the Department in the notification of customers who formerly patronized the services of the licensed transporter.

Sec. 17. NAC 365.164 is hereby amended to read as follows:

365.164 1. An applicant for a license as a transporter issued pursuant to the provisions of NRS 365.300 must submit to the Department an application on a form provided by the Department.

2. An application submitted pursuant to this section must be accompanied by a list of the states or other jurisdictions to which the applicant wishes to transport and proof satisfactory to the Department of the valid registration of each vehicle which the applicant will use in the transportation of fuel, whether the vehicle is apportioned or base-plated.

3. Except as otherwise provided in subsection 2 of NRS 365.300, the Department will issue a license as a transporter upon receipt and approval of:

- (a) A completed application; and
- (b) Any proof required by the Department pursuant to subsection 2.

4. A licensed supplier, dealer or exporter shall not conduct business with an unlicensed transporter. A licensed supplier, dealer or exporter who violates the provisions of this subsection is subject to an administrative fine pursuant to NRS 365.600.

5. A licensed transporter shall immediately notify its customers which are licensed suppliers, dealers and exporters of the suspension or revocation of its license and shall not transport aviation fuel, fuel for jet or turbine-powered aircraft, motor vehicle fuel or petroleum-ethanol mixture into, out of or within this State without a valid license. Each such transport shall be a violation of NRS 365.570 and subject the transporter to an administrative fine pursuant to NRS 365.600.

6.5. A transporter who conducts business with a supplier, dealer or exporter must provide proof of licensure pursuant to this chapter upon the request of the supplier, dealer or exporter.

7. The Department may, as necessary under NRS 365.138 to administer the provisions of this chapter, notify licensed suppliers, dealers and exporters of the suspension or revocation of any formerly licensed transporter.

Revision to Section 18:

In an attempt to address qualifying tax refunds of undefined auxiliary equipment, subsection d was added to the proposed regulation.

Sec. 44. NAC 366.220 is hereby amended to read as follows:

366.220 1. A special fuel user who is the operator of a motor vehicle with auxiliary equipment set forth in this subsection may obtain a refund of the tax paid pursuant to NRS

366.190 on the refundable fuel that is used by the motor vehicle on the public highways of this State in the following amounts:

(a) Boom truck with a block boom.....	10 percent
(b) Car carrier with a hydraulic winch.....	10 percent
(c) Dump truck.....	23 percent
(d) Garbage truck with a compactor.....	20 percent
(e) Line truck with a digger or derrick.....	20 percent
(f) Mobile crane.....	42 percent
(g) Refrigeration truck.....	15 percent
(h) Sanitation truck.....	15 percent
(i) Semi-wrecker truck.....	35 percent
(j) Service truck with a jackhammer or pneumatic drill.....	15 percent
(k) Snow plow.....	10 percent
(l) Sweeper truck.....	20 percent
(m) Tank truck other than a truck with a milk or pneumatic tank.....	24 percent
(n) Truck for distributing hot asphalt.....	10 percent
(o) Truck with a cement mixer.....	30 percent
(p) Truck with a dump trailer.....	15 percent
(q) Truck with a milk tank.....	30 percent
(r) Truck with a pneumatic tank.....	15 percent
(s) Truck with a pump for cleaning a sewer or cesspool.....	90 percent
(t) Truck with an aerial lift.....	20 percent
(u) Truck with equipment to move a dumpster or cargo container.....	23 percent

- (a) **Thirty percent for a:**
 - (1) **Cement mixer;**
 - (2) **Concrete pumper;**
 - (3) **Mobile crane; or**
 - (4) **Drill rig.**
 - (b) **Twenty percent for a:**
 - (1) **Commercial garbage, sanitation or refuse truck;**
 - (2) **Truck with an auxiliary pump for cleaning sewers, cesspools or septic tanks; or**
 - (3) **Sweeper truck.**
 - (c) **Ten percent for any other motor vehicle with auxiliary equipment used for a specific function when the vehicle is not traveling on the highways of this State, including, without limitation, a dump truck, a boom truck, a car carrier, a semi-truck wrecker, a refrigeration truck, a line truck with a digger, a derrick or an aerial lift, a carpet cleaning truck, a document shredding truck or a tank truck with a pneumatic tank.**
 - (d) **All other equipment not specifically mentioned in Nevada Administrative Code, whose function is verifiable by the Department will be limited to ten percent unless testing requirements as determined by the Department are met**
- ~~2. [To obtain a refund pursuant to this section, a special fuel user must establish to the satisfaction of the Department that:~~
- ~~(a) The tax has been paid on the special fuel for which the special fuel user wishes to obtain a refund; and~~
 - ~~(b) The special fuel was used in this State to operate auxiliary equipment that is mounted on the motor vehicle.~~
- ~~3. Except as otherwise provided in NAC 366.230, a vehicle with an air conditioning unit is not entitled to a refund pursuant to this section.~~
- ~~4. Notwithstanding any provision of this section to the contrary, the amount of a refund allowed for a special fuel user pursuant to this section may not exceed the total amount of taxes paid by the special fuel user for special fuel.~~
- ~~5.]~~ As used in this section, “refundable fuel”:
- (a) Means the total amount of special fuel purchased by a person during the period specified in subsection 5 of NRS 366.207 for which taxes have been paid pursuant to chapter 366 of NRS, less any amount of that special fuel:
 - (1) That is claimed by the person for another exempt use;
 - (2) For which any taxes are remitted to another jurisdiction on behalf of the person; and
 - (3) That is used during that period for any other taxable use.
 - (b) Does not include special fuel for which a special fuel user has previously received a refund for credit.
- ~~[6. A special fuel user who wishes to obtain a refund pursuant to this section must submit a request to the Department within 12 months after the date of the payment of the tax.]~~

The regulation has been adopted by the Department of Motor Vehicles with these changes as outlined above in this section.

- V. The estimated economic effect of the adopted regulation on the businesses that 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.**

There is no estimated adverse or beneficial economic effect on businesses.

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

There should be no extra cost to enforce this regulation.

- VII. A description of any regulations of other state or government agencies that 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.**

There are no other state or government agency regulations that the proposed amendments duplicate.

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

N/A.

- IV. 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.**

N/A.

- X. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation, or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Director has determined that the proposed regulation does not impose a direct or significant economic burden upon a small business or restrict the formation, operation, or expansion of a small business.