

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

LCB File No. R098-14

Effective October 24, 2014

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

AUTHORITY: §1, NRS 366.203; §2, NRS 366.110 and 366.203.

A REGULATION relating to the tax on special fuels; defining the phrase “incidentally operated or moved upon a highway” for the purposes of provisions relating to the use of dyed special fuel; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a tax on the sale or use of special fuels. (NRS 366.190) Existing law also provides that certain special fuels which are exempt from the tax must be dyed, and generally a person is prohibited from operating or maintaining on any highway a motor vehicle with dyed special fuel in the fuel tank. An exception to this prohibition is provided for any person who operates or maintains special mobile equipment that is incidentally operated or moved upon a highway. For the purposes of these provisions, the Department of Motor Vehicles is required to adopt regulations defining “incidentally operated or moved upon a highway.” (NRS 366.203) **Section 1** of this regulation adopts the required definition.

Existing regulations interpret the term “federal law,” which was formerly used in NRS 366.203. (NAC 366.190) Because that term is no longer used in the statute, **section 2** of this regulation repeals the interpretive provision.

Section 1. NAC 366.0065 is hereby amended to read as follows:

366.0065 1. As used in NRS 366.085, the Department will interpret the term “incidentally operated or moved upon a highway” to mean the operation of:

(a) A motor vehicle in an emergency situation, as determined by emergency personnel, including, without limitation, a law enforcement agency or other appropriate authority;

(b) Construction equipment to patch a roadway that is operated subject to the terms of a contract for a specific project;

(c) Snow removal equipment to clear snow from highways during or immediately following inclement weather; or

(d) Special mobile equipment on a public highway that is not a controlled-access highway as defined in NRS 484A.060, if the special mobile equipment travels not more than 5 miles from the point at which the special mobile equipment initially entered the public highway.

2. As used in NRS 366.085, the term “special mobile equipment” does not include:

(a) Any truck that:

- (1) Is used as a water truck on any portion of a public highway; or
- (2) Was originally designed and manufactured as a vehicle to carry cargo;

(b) Any vehicle:

- (1) That is used to sweep any portion of a public highway;
- (2) That was originally designed and manufactured to transport persons or property;
- (3) To which machinery for sweeping is mounted or attached; or
- (4) That has the capability of traveling long distances over a controlled access highway;

(c) Any trailer; or

(d) Any farm machinery or implements of husbandry.

3. As used in NRS 366.203, the Department will interpret the term “incidentally operated or moved upon a highway” to mean the operation or movement upon a highway of special mobile equipment that is:

(a) Exempted by 26 U.S.C. § 4041 from any tax imposed by that statute; or

(b) Described in Treas. Reg. § 48.4041-8(b)(2)(i) or Treas. Reg. § 48.4041-8(b)(2)(ii).

Sec. 2. NAC 366.190 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 366.190 Use of dyed fuel: “Federal law” interpreted. The Department interprets the term “federal law” as used in NRS 366.203 to mean:

1. 26 U.S.C. § 4041(a)(1);
2. Treas. Reg. § 48.4041-8(b)(2)(i); and
3. Treas. Reg. § 48.4041-8(b)(2)(ii).

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R098-14
October 9, 2014

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 366:

- 1. A description of the need for the regulation, how public comment was solicited, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The Agency's Need for the Adopted Regulation

NRS 366.203 requires the Department of Motor Vehicles to define in regulation the phrase "incidentally operated or moved upon a highway" in the context of the operation of certain vehicles using dyed special fuel. The purpose of this regulation is to comply with statute. Whereas NAC 366.0065 currently interprets the phrase as used in NRS 366.085, this regulation amends NAC 366.0065 to include the required reference to NRS 366.203.

Solicitation of Public Comment

Copies of the proposed regulation, notices of workshop and notices of intent to act upon the regulations were sent out for posting by electronic mail to all DMV offices and county libraries. They were also made available on the Department of Motor Vehicles website at www.dmvnv.com/publicmeetings.htm.

A Public Workshop was noticed on August 18, 2014, and held on September 3, 2014 at the Nevada State Legislative Building in Carson City and video-conferenced to the Grant Sawyer Building in Las Vegas and Great Basin College in Elko. One member of the general public attended the workshop and testified.

A Notice of Intent to Act upon the Regulations was noticed on September 8, 2014, and a public hearing was held on October 9, 2014. The hearing was held at the Nevada State Legislative Building in Carson City and video-conferenced to Las Vegas and Elko. No members of the general public were in attendance.

A recording of the Public Workshop and Hearing is on file with the Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711. Copies of these minutes may be obtained by written request to Attention Pete Olson, Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711.

- 2. The number of persons who:**
 - (a) Attended the workshop; 8**
 - In attendance in Carson City – 6**
 - Jude Hurin, Department of Motor Vehicles (Workshop's Hearing Officer)

Dawn Lietz, Department of Motor Vehicles
Cindy Arnold, Department of Motor Vehicles
Bethany Musselman, Department of Motor Vehicles
Debbie Martinez, Department of Motor Vehicles
Paul Enos, Nevada Trucking Association

In attendance in Las Vegas – 1

Kevin Malone, Department of Motor Vehicles

In attendance in Elko – 1

Kathy Palangi, Department of Motor Vehicles

(b) Testified at the workshop; 1

Paul Enos, Nevada Trucking Association

(c) Submitted to the agency written statements; 0

(d) Attended the hearing; 5

In attendance in Carson City – 3

Jude Hurin, Department of Motor Vehicles (Hearings Officer)
Wayne Seidel, Department of Motor Vehicles
Cindy Arnold, Department of Motor Vehicles

In attendance in Las Vegas – 1

Kevin Malone, Department of Motor Vehicles

In attendance in Elko – 1

Kathy Palangi, Department of Motor Vehicles

(e) Testified at the hearing - 0

(f) Submitted to the agency written statements – 0

3. 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.

Comments were solicited using electronic mail and postings as described in Question 1 for both the Workshop and the Hearing. Copies of the minutes may be obtained by written request to Attention Pete Olson, Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711.

4. 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 proposed draft regulations were submitted to LCB for review on June 26, 2014. The public workshop and hearing were held with no public comment that required amendment. Therefore, the regulation was adopted without change.

- 5. 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:**

Business:

- (a) Both adverse and beneficial effects; and**

The adopted regulations do not change any current practices of the Department. There is no economic impact to business. The regulations are simply to make a correction in NAC 366.0065 in order to comply with statute.

- (b) Both immediate and long-term effects.**

Same as (a) above.

Public:

- (a) Both adverse and beneficial effects; and**

The adopted regulations do not change any current practices of the Department. There is no economic impact to the public. The regulations are simply to make a correction in NAC 366.0065 in order to comply with statute.

- (b) Both immediate and long-term effects.**

Same as (a) above.

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

There is no additional cost to the Department of Motor Vehicles for the enforcement of the adopted regulations.

- 7. 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 federal government agency regulations that are duplicated or overlapped by the adopted regulations.

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

There are no federal regulations that regulate the same activity as addressed in the adopted regulations.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

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

- 10. Small Business Impact Statement**

In compliance with Assembly Bill 408 of the 2013 Legislative Session the Department of Motor Vehicles has determined that the adopted regulation does not impose a direct and

significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small businesses. This regulation does not change any current practices of the Department.