

**PROPOSED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

LCB File No. R150-08

October 13, 2008

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, 6, 9, 13 and 14, NRS 365.110; §§7, 15 and 19, NRS 365.110 and 365.290; §8, NRS 365.110 and 365.351; §10, NRS 360A.365, 365.100, 365.110, 365.600, 365.605 and 365.610; §11, NRS 365.110, 365.304 and 365.600; §12, NRS 365.110, 365.330 and 365.600; §16 and 17, NRS 365.110, 365.280 and 365.300; §18, NRS 365.110, 365.300, 365.302 and 365.310; §§20 and 22, NRS 365.110 and 365.380; §21, NRS 365.110, 365.370 and 365.380; §23, NRS 365.110 and 365.500; §24, NRS 365.110 and 365.600; §§25, 36 and 49, NRS 366.110; §§26, 30 and 41, NRS 366.110 and 366.235; §27, NRS 366.110 and 366.650; §28, NRS 366.110 and 366.223; §29, NRS 366.110, 366.220, 366.260 and 366.740; §31, NRS 360A.365, 366.110, 366.715 and 366.750; §32, NRS 366.110 and 366.395; §§33-35, 44 and 50, NRS 366.110, 366.200, 366.207 and 366.650; §37 and 38, NRS 366.110, 366.220 and 366.240; §39, NRS 366.110 and 366.220; §40, NRS 366.110, 366.220, 366.240, 366.250 and 366.350; §42, NRS 366.110 and 366.390; §§43 and 45, NRS 366.110, 366.200 and 366.650; §46, NRS 366.110 and 366.200; §47, NRS 366.110 and 366.685; §48, 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. *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.*

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~~ *a 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 13, inclusive, of this regulation.

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.

Sec. 7. 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. 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.

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.

Sec. 10. 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 fuel 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. 11. 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. 12. *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. 13. *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. 14. NAC 365.100 is hereby amended to read as follows:

365.100 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 365.101 to 365.145, inclusive, *and section 6 of this regulation* have the meanings ascribed to them in those sections.

Sec. 15. 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. 16. 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. 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 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.

Sec. 18. 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 *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, 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. 19. 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 *two times* 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. 20. 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. 21. 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. 22. 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. 23. 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 ~~[.]~~;*
- (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.

Sec. 24. 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, ~~an~~ *an administrative* fine of not *less than \$100 or* more than \$500.

(b) For a second offense, ~~an~~ *an administrative* fine of not less than \$500 or more than \$1,000.

(c) For a third offense, ~~an~~ *an administrative* fine of not less than \$1,000 or more than \$1,500.

(d) For a fourth or subsequent offense, ~~an~~ *an administrative* fine of not less than \$1,500 or more than \$2,500.

2. The Department may impose a 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 ~~an~~ *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 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. 25. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 26 to 35, inclusive, of this regulation.

Sec. 26. *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. 27. 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) Copies of or a spreadsheet 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 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. 28. *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. 29. *1. Except as otherwise provided in subsections 2 and 3, 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 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. 30. 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. 31. 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, dealer or supplier is located for assistance with the enforcement of the order.*

Sec. 32. *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 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. 33. 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. 34. 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. 35. 1. *To obtain a refund pursuant to NAC 366.220 or sections 33 or 34 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 sections 33 or 34 of this regulation.*

3. Notwithstanding any provision of NAC 366.220 or sections 33 or 34 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 sections 33 or 34 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 sections 33 or 34 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 sections 33 or 34 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 sections 33 or 34 of this regulation must be applied first to any outstanding amounts owed by the claimant to the Department.

Sec. 36. 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.

~~{10}~~ 11. “Special fuel” has the meaning ascribed to it in NRS 366.060.

~~{11}~~ 12. “Special fuel dealer” has the meaning ascribed to it in NRS 366.062.

~~{12}~~ 13. “Special fuel exporter” has the meaning ascribed to it in NRS 366.065.

~~{13}~~ 14. “Special fuel supplier” has the meaning ascribed to it in NRS 366.070.

~~{14}~~ 15. “Special fuel transporter” has the meaning ascribed to it in NRS 366.075.

~~{15}~~ 16. “Special fuel user” has the meaning ascribed to it in NRS 366.080.

~~{16}~~ 17. “Tribal member” includes an enrolled member of a tribe.

~~17.] 18.~~ “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. 37. 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. 38. 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 ~~or]~~ *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. 39. 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 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 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 licensed special fuel supplier, special fuel dealer or special fuel exporter shall not conduct business with an unlicensed transporter. A licensed special fuel supplier, special fuel dealer or special fuel exporter who conducts business with an unlicensed transporter is subject to an administrative fine imposed by the Department pursuant to NRS 366.740.

5. A 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.

Sec. 40. 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]~~ or renew a license 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 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 a license;

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

(d) Is delinquent 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 in a foreign country, and has not received an extension of the time in which to make the payment.

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. 41. 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 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. 42. 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. 43. 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. 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.

- ~~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.]~~

Sec. 45. 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 ~~[or 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 ~~[or 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. 46. 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. 47. 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 ~~1.~~;
- (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 fuel, including, without limitation:

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

(b) 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 special fuel and which are engaged in a joint venture or doing business under a cooperative agreement.

Sec. 48. 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. 49. NAC 366.096, 366.110, 366.120, 366.130, 366.140, 366.150, 366.155, 366.160 and 366.200 are hereby repealed.

Sec. 50. 1. This section, sections 1 to 38, inclusive, and 40 to 47, inclusive, of this regulation become effective upon filing with the Secretary of State.

2. Section 39 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.