

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

LCB File No. R098-14

July 25, 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).