

**ADOPTED REGULATION OF THE DEPARTMENT OF  
MOTOR VEHICLES AND PUBLIC SAFETY**

**LCB File No. R096-00**

Effective March 1, 2001

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

AUTHORITY: §§1-5 and 7-16, NRS 366.110; §6, NRS 366.110 and 366.220; §17, NRS 366.110 and 366.740.

**Section 1.** Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *If the tax return filed by a special fuel supplier pursuant to NRS 366.383 does not include all applicable reports and statements, the department will consider the special fuel supplier to have failed to file the tax return as required by NRS 366.383 and the special fuel supplier is not entitled to the fee authorized by subsection 1 of NRS 366.390 for that month.*

**Sec. 3.** *In determining whether payment of a tax is timely received, if it is known that the postal service was inoperative at a certain time due to strikes, riots, warfare, acts of God or other reasons, the department will consider the circumstances, and if there is any evidence of timely mailing, the department will accept that evidence and consider the mailing to have been made timely.*

**Sec. 4. 1.** *An application for a waiver or reduction of a penalty or interest for a delinquent payment pursuant to NRS 366.3955 must be filed in writing with the department within 60 days after the date on which the tax is paid and must set forth the circumstances that caused the delinquent payment.*

*2. In determining whether the circumstances that caused the delinquent payment were completely beyond the control of the person or his agent required to make the payments, the department will consider evidence which shows that the delinquent payment was proximately caused by:*

*(a) Fire, earthquake, flood or other acts of God;*

*(b) Theft; or*

*(c) Other similar causes that are not directly related to the actions of the person or his agent required to make the payment, whether intentional or negligent.*

*3. If the department finds that a delinquent payment was proximately caused by fire, earthquake or other act of God and the tax was paid as soon as reasonably possible thereafter, the penalty imposed on the delinquent payment will be waived.*

*4. If the department finds that the cause of a delinquent payment was proximately caused by theft or other similar cause which was not directly related to the actions of the person or his agent required to make the payment, and that payment was made as soon as reasonably possible thereafter:*

*(a) The penalty for the delinquent payment will be:*

*(1) Not more than 2 percent of the tax or the amount of the tax if the payment is not more than 2 days late;*

*(2) Not more than 4 percent of the tax or the amount of the tax if the payment is not more than 5 days late;*

*(3) Not more than 6 percent of the tax or the amount of the tax if the payment is not more than 10 days late;*

*(4) Not more than 8 percent of the tax or the amount of the tax if the payment is less than 15 days late; and*

*(5) Not more than 10 percent of the tax or the amount of the tax if the payment is more than 15 days late.*

*(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction to the penalty applied by the department in accordance with paragraph (a).*

*(c) If the total penalty and interest after any reduction calculated pursuant to paragraphs (a) and (b) equals \$5 or less, the penalty and interest will be waived completely.*

*5. The department will not consider an application to waive or reduce a penalty or interest, or both, filed pursuant to NRS 366.3955 if the assessment of the tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax that has become final.*

**Sec. 5.** NAC 366.005 is hereby amended to read as follows:

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

1. “Department” means the department of motor vehicles and public safety.
2. “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 366.405 during the period prescribed in that section.

3. *“Special fuel dealer” has the meaning ascribed to it in NRS 366.062.*

4. *“Special fuel supplier” has the meaning ascribed to it in NRS 366.070.*

5. *“Special fuel user” has the meaning ascribed to it in NRS 366.080.*

**Sec. 6.** NAC 366.007 is hereby amended to read as follows:

366.007 In addition to the persons described in NRS 366.240, the department may refuse to issue a *special fuel user’s license*, special fuel supplier’s license ~~or~~ *or special fuel dealer’s license* to a person , *or may revoke a license issued to the special fuel user, special fuel supplier or special fuel dealer*, who:

1. Fails to provide the 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. ~~[Formerly held a license as a special fuel 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 canceled, suspended or revoked for cause; or~~

~~4. Applies as a subterfuge for the real party in interest whose license described in subsection 3 has been canceled, suspended or revoked for cause.] 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.*

**Sec. 7.** NAC 366.009 is hereby amended to read as follows:

366.009 A special fuel supplier *or special fuel dealer* who has been informed by the department that another special fuel supplier *or special fuel dealer* is not licensed pursuant to chapter 366 of NRS shall not sell special fuel to that unlicensed special fuel supplier *or special fuel dealer* without collecting the tax imposed by NRS 366.190.

**Sec. 8.** NAC 366.010 is hereby amended to read as follows:

366.010 1. Except as otherwise provided in NAC 366.030 and 366.040, the department will fix the amount of security required pursuant to NRS 366.550 for an applicant for, or the holder of ~~[, a]~~ :

*(a) A special fuel supplier's license at three times the estimated maximum monthly tax, but not less than \$1,000.*

*(b) A special fuel dealer's license at three times the estimated maximum monthly tax, but not less than \$100.*

2. During the initial 2 years that a special fuel supplier *or special fuel dealer* operates his business, the department will review his monthly tax returns filed pursuant to NRS 366.383 *or 366.386* every 6 months to determine whether the estimated maximum monthly tax is accurate. If the department determines that the estimated maximum monthly tax is not accurate, the

department will revise the amount of security required in accordance with its review. If the department increases the amount of security required, the special fuel supplier *or special fuel dealer* shall increase his security as required by the department within 60 days after notification of the increase.

**Sec. 9.** NAC 366.020 is hereby amended to read as follows:

366.020 The department will review annually the estimated maximum monthly tax for each special fuel supplier *or special fuel dealer* who has operated his business for at least 2 years before the review is conducted. The department will review the monthly tax returns of the special fuel supplier *or special fuel dealer* for the 24 months immediately preceding the review to determine whether the estimated monthly tax is sufficient. If the department determines that the estimated monthly tax is not sufficient, the department will increase the amount of security required for that special fuel supplier *or special fuel dealer* in accordance with its review. Except as otherwise provided in NAC 366.030 and 366.040, the increased amount of security must equal at least three times the increased estimated maximum monthly tax, but not less than \$1,000 ~~+~~ *for a special fuel supplier or \$100 for a special fuel dealer, as appropriate.*

**Sec. 10.** 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 or 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 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,

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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,

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shall be deemed to have paid those taxes punctually.

**Sec. 11.** NAC 366.040 is hereby amended to read as follows:

366.040 1. If the department determines that a special fuel supplier *or special fuel dealer* is habitually delinquent, the department will increase the amount of security required from that special fuel supplier *or special fuel dealer* to five times the estimated maximum monthly tax.

2. If the department increases the amount of security required, the special fuel supplier *or special fuel dealer* shall increase his security as required by the department within 60 days after notification of the increase.

**Sec. 12.** NAC 366.050 is hereby amended to read as follows:

366.050 1. If the department is notified that a surety bond of a special fuel supplier *or special fuel dealer* has been or may be canceled, the department will review the monthly tax returns of that special fuel supplier ~~or~~ *or special fuel dealer:*

(a) For the 24 months immediately preceding the review; or

(b) If he has been in business less than 24 months, for the period he has operated his business, to determine the amount of security he will be required to provide.

2. Within 15 days after the department receives notice that the bond has been or may be canceled, the department will notify the special fuel supplier *or special fuel dealer* of the amount of security required to retain his license. If the special fuel supplier *or special fuel dealer* does not provide the security required by the department within 15 days after he receives notice of the amount of security required, the department will revoke ~~[his fuel supplier's license.]~~ *the license of the special fuel supplier or special fuel dealer.*

**Sec. 13.** NAC 366.100 is hereby amended to read as follows:

366.100 ~~[1.—If the last day of the month falls upon a Saturday, Sunday or legal holiday, the tax return required to be filed with the department by a special fuel supplier pursuant to NRS 366.383 must be filed not later than the next business day after the last day of the month.]~~

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~~—2.]~~ A payment by a *special fuel user*, special fuel supplier *or special fuel dealer* of the tax imposed by NRS 366.190 shall be deemed received:

~~[(a)] 1.~~ If delivered by mail, on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any other country upon an envelope containing payment properly addressed to the department; or

~~[(b)] 2.~~ If delivered by a private postal service, on the business day preceding the date of actual delivery.

**Sec. 14.** NAC 366.200 is hereby amended to read as follows:

366.200 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 ~~[receipt]~~ *spreadsheet or copies of receipts* from the person from whom the special fuel was purchased. The ~~[receipt]~~ *spreadsheet or copies of 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; ~~and~~

~~—2.] 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.*

**Sec. 15.** NAC 366.220 is hereby amended to read as follows:

366.220 1. Except as otherwise provided in subsection 2, if a motor vehicle with auxiliary equipment consumes special fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the vehicle must, for the purposes of obtaining a refund pursuant to subsection 5 of NRS 366.207, provide to the department documentation adequate to establish

to the satisfaction of the department the amount of special fuel which was used to operate the auxiliary equipment.

2. A special fuel user may obtain a refund pursuant to subsection 5 of NRS 366.207 without providing the documentation required by subsection 1 if the motor vehicle with auxiliary equipment is a truck which mixes concrete, a garbage truck with a trash compactor or a vehicle with a pump, conveyor or other device for loading or unloading the vehicle. The operator of such a vehicle may obtain a refund of:

(a) Twenty percent of the tax paid on the special fuel consumed if the auxiliary equipment is a concrete mixer or trash compactor;

(b) The tax paid on three-fourths of a gallon of special fuel for every 1,000 gallons of liquid loaded or unloaded if the auxiliary equipment is a pump; or

(c) The tax paid on three-fourths of a gallon of special fuel for every 6,000 pounds of commodities loaded or unloaded if the auxiliary equipment is a conveyor or other device for the loading or unloading of materials other than liquids.

***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 or an operator pursuant to this section may not exceed the total amount of taxes paid by the special fuel user or operator for special fuel. For the purposes of this section, "special fuel" does not include special fuel for which a special fuel user or an operator has previously received a refund for credit.***

**Sec. 16.** NAC 366.230 is hereby amended to read as follows:

366.230 A special fuel user who uses undyed special fuel 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.

**Sec. 17.** NAC 366.400 is hereby amended to read as follows:

366.400 1. ~~[An administrative fine of not more than \$500 for each violation may be imposed by the department against a person who fails to:~~

- ~~—(a) File timely a report or tax return required by chapter 366 of NRS or this chapter;~~
- ~~—(b) Prepare a record required by chapter 366 of NRS or this chapter; or~~
- ~~—(c) Maintain a record, document or report required by chapter 366 of NRS or this chapter.~~

~~2. An administrative fine of not more than \$2,500 for each violation may be imposed by the department against:~~

- ~~—(a) A special fuel exporter who sells or distributes special fuel in this state or any other person who engages in business in this state as a special fuel supplier without a special fuel supplier's license;~~
- ~~—(b) A special fuel supplier who, after being informed by the department that a special fuel supplier is not licensed pursuant to chapter 366 of NRS, sells special fuel to the unlicensed special fuel supplier without collecting the tax imposed by NRS 366.190; or~~
- ~~—(c) A special fuel supplier, special fuel exporter or carrier of special fuel who does not make available to the department upon request the records, invoices and other pertinent papers required~~

~~to be maintained pursuant to NRS 366.140.]~~ Except as otherwise provided in subsection 2, if the department imposes an administrative fine pursuant to NRS 366.740, the department will impose that fine for violations occurring with the 3 years immediately preceding the most recent violation according to the following schedule:

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

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2. The department may impose a 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.

3. 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.

4. Upon the failure of a person to pay a 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.

**File No. R096-00**

**NOTICE OF ADOPTION OF REGULATION**

The Department of Motor Vehicles and Public Safety adopted regulations assigned LCB File No. R096-00 which pertain to chapter 366 of the Nevada Administrative Code on January 16, 2001. A copy of the regulations as adopted is attached hereto.

**INFORMATIONAL STATEMENT**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**LCB FILE R096-00**

**INFORMATIONAL STATEMENT**

Regulations under NAC 366

Subject: Special Fuels

**1. Public Comment was solicited through:**

ESMERALDA COUNTY  
GOLDFIELD PUBLIC LIBRARY  
PO BOX 430  
(FOURTH & CROOK STREET)  
GOLDFIELD NV 89013

EUREKA BRANCH LIBRARY  
PO BOX 293  
(10190 MONROE STREET)  
EUREKA, NV 89316

LANDER COUNTY  
BATTLE MOUNTAIN BRANCH LIBRARY  
625 BROAD STREET  
BATTLE MOUNTAIN, NV 89820

LINCOLN COUNTY LIBRARY  
PO BOX 330  
(93 MAIN STREET)  
PIOCHE NV 89043

MINERAL COUNTY LIBRARY  
PO BOX 1390  
(FIRST & A STREET)  
HAWTHORNE, NV 89415

PERSHING COUNTY LIBRARY  
PO BOX 781  
(1125 CENTRAL AVENUE)  
LOVELOCK, NV 89419

STOREY COUNTY LIBRARY  
PO BOX 14  
(95 SOUTH R STREET)  
VIRGINIA CITY NV 89440

NEVADA DMV & PS  
305 GALLETTI WAY  
RENO NV 89512

NEVADA DMV & PS  
8250 W. FLAMINGO  
LAS VEGAS NV 89147

NEVADA DMV & PS  
3920 EAST IDAHO STREET  
ELKO NV 89801

NEVADA DMV & PS  
PO BOX 248  
178 AVENUE F  
ELY NV 89301

NEVADA DMV & PS  
973 W WILLIAMS ST  
FALLON NV 89406

NEVADA DMV & PS  
4021 W CAREY  
NORTH LAS VEGAS NV 89030

NEVADA DMV & PS  
PO BOX 1912  
TONOPAH NV 89049

NEVADA DMV & PS  
3505 CONSTRUCTION WAY  
WINNEMUCCA NV 89445

NEVADA DMV & PS  
215 WEST BRIDGE STREET  
YERINGTON NV 89447

NEVADA DMV & PS  
1694 COUNTY ROAD  
MINDEN NV 89423

NEVADA DMV & PS  
555 WRIGHT WAY  
CARSON CITY NV 89711-0400

NEVADA STATE LIBRARY  
401 NORTH CARSON  
CARSON CITY, NV 89710

### Summary of Public Response:

Public response focused on the elimination of commodity refunding language. The comments dealt with removing the methodology for computing refunds on liquids and dry commodities, the impact from individual testing procedures and the ability to compute a refund in excess of actual purchases. A copy of the written comments may be obtained by calling the Department of Motor Vehicles and Public Safety, Motor Vehicle Branch, Management Services and Programs Division (775) 684-4612, or writing the Department, 555 Wright Way, Carson City, NV 89711.

2. **The number persons who:**
- (a) **Attended each hearing:** 1
  - (b) **Testified at each hearing:** 1
  - (c) **Submitted to the agency written comments:** Comments were submitted by Republic Services of Southern Nevada.

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 from affected businesses through the public notices, as outlined in #1, and by direct mail to Associated General Contractors, Bi-State Propane, Ms. K. Neena Laxalt, Nevada Motor Transport Association, Nevada Petroleum Marketers Association, Department of Transportation, Nevada Tax Payers Associations and the Honorable Terry J. Care. Comments from interested businesses included the Republic Services of Southern Nevada. The comments focused on opposition to the elimination of the language under Section 14, “or a vehicle with a pump, conveyor or other device for loading or unloading the vehicle” and “The tax paid on three fourths of a gallon of special fuel for every 6,000 pounds of commodities loaded or unloaded if the auxiliary equipment is a conveyor or other device for the loading or unloading of material other than liquids.” A copy of the written comments may be obtained by calling the Department of Motor Vehicles and Public Safety, Motor Vehicle Branch, Management Services and Programs Division (775) 684-4612, or writing the Department, 555 Wright Way, Carson City, NV 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 regulation is adopted with changes.

5. **The estimated economic effect of the adopted regulation on the businesses which 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 economic effect on businesses or the public created by these regulations.

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

There is no additional cost to the agency for enforcement of this regulation.

7. **A description of any regulations of other state or government agencies which 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.**

Parts of this regulation duplicate the Department of Taxation's regulations in NAC 360. NAC 360 does not affect NRS or NAC 366, therefore the department wanted to incorporate the similar language into NAC 366 to be consistent between departments.

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

This regulation does not include provisions that are more stringent than a federal regulation that regulates the same activity.

**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.**

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.