

LCB File No. R008-06

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

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

AUTHORITY: NRS 365.110, NRS 366.110, Assembly Bill 255 of the 73rd Session of the Nevada Legislature

Section 1 NAC 365.197 is hereby amended to read as follows:

NAC 365.197 Electronic submission of statement of certain fuel sold: Authority; requirements; receipt. (NRS 365.110, 365.175)

1. Except as otherwise provided in NAC 365.198, a supplier ~~may~~ *shall* electronically submit to the Department the statement required pursuant to the provisions of NRS 365.175 *according to the following schedule:*

(a) July 1, 2006 if the supplier receives 1,000,000 gallons or more of taxable fuel or if the supplier receives 5,000,000 gallons or more of all fuel types in a monthly period.

(b) January 1, 2007 if the supplier receives 100,000 to 999,999 gallons or more of taxable fuel or if the supplier receives 1,000,000 to 4,999,999 gallons of all fuel types in a monthly period.

(c) January 1, 2008 for all suppliers.

2. ~~[If a supplier submits a statement pursuant to the provisions of subsection 1, the]~~ *The* statement must be:

(a) Submitted in a format prescribed by the Department; and

(b) Accompanied by the payment of any tax that the supplier is required to remit with the statement.

3. The payment of any tax that the supplier is required to remit with the statement must be made through the ~~use of a credit card, a debit card or the~~ electronic transfer of money.

4. A statement filed pursuant to the provisions of subsection 1 shall be deemed received by the Department after:

(a) The statement is accessible to the Department; and

(b) The Department has received the payment of any tax that the supplier was required to remit with the statement.

Sec. 2. NAC 365.300 is hereby amended to read as follows:

NAC 365.300 Imposition and amount; payment; failure to pay. (NRS 365.110, 365.600)

1. Except as otherwise provided in subsection 2, if the Department imposes an administrative fine pursuant to NRS 365.600, the Department will impose that fine for violations occurring within the 3 years immediately preceding the most recent violation according to the following schedule:

(a) For a first offense, a *notice of violation and directive to cease from further violations and/or a* fine of not ~~less than \$100 or~~ more than \$500.

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

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

(d) For a fourth offense, a 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 the State or any other person who engages in business in the 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. 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.

4. 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. 3. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 4 to 7, inclusive, of this regulation.

Sec. 4. *“Controls the access” means the ability to dispense dyed special fuel is limited to the retailer, his employees, or purchasers who have been approved to purchase dyed special fuel.*

Sec. 5. *If the Department imposes an administrative fine pursuant to NRS 366.735 subsection 1, the Department will impose that fine according to the following schedule:*

1. If the violation is a first offense, impose an administrative fine of \$2,500 and may suspend the license issued to that person pursuant to this chapter for 30 days;

2. If the violation is a second offense within a period of 4 years, impose an administrative fine of \$5,000 and may suspend the license issued to that person pursuant to this chapter for 60 days; and

3. If the violation is a third offense within a period of 4 years, impose an administrative fine of \$10,000 and may revoke any license issued to that person pursuant to this chapter.

Sec. 6. *1. Except as otherwise provided in subsection 2, if the Department imposes an administrative fine pursuant to Subsection 4 of Sec. 7 of Assembly Bill 255 of the 73rd Session of the Nevada Legislature, the Department will impose that fine for violations occurring within the 3 years immediately preceding the most recent violation according to the following schedule:*

(a) For a first offense, a notice of violation and directive to cease from further violations and/or a fine of not less than \$2,500.

(b) For a second offense, a fine of not less than \$10,000.

2. A person who has been fined pursuant to Subsection 4 of Sec. 7 of Assembly Bill 255 of the 73rd Session of the Nevada Legislature 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 NRS 233B.121.

3. Upon the failure of a person to pay a fine imposed, or any taxes or fees due to the Department pursuant to this section when it becomes due, the Department may lock and seal the business or suspend, revoke or refuse to issue a license to that person pursuant to this chapter.

Sec. 7. *A special fuel user registered and operating solely within the State of Nevada shall file the required quarterly or annual return directly to the Department.*

Sec. 8. NAC 366.0065 is hereby amended to read as follows:

NAC 366.0065 Special mobile equipment: “Incidentally operated or moved upon a highway” interpreted.

1. As used in NRS 366.085, the Department will interpret the term “incidentally operated or moved upon a highway” to ~~include any travel by any special mobile equipment on a public highway, other than a controlled access highway as defined in NRS 484.041, if:]~~ *mean off-highway business use as defined in 26 U.S.C. § 4041(b) (1) (C).*

~~(a) The transportation of persons or property is not the primary purpose of the travel; and~~

~~(b) The travel:~~

~~(1) Is required to complete a task for which the special mobile equipment is assigned;~~

~~(2) Is limited to a specific project; and~~

~~(3) Except as otherwise provided in subsection 2, does not exceed 10 miles from the point at which the special mobile equipment first entered the public highway.~~

~~2. The provisions of subparagraph (3) of paragraph (b) of subsection 1 do not apply to any special mobile equipment that is used:]~~ *A copy of the publication which contains the provisions described in subsection 1 may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, for the price of \$89.50. The publication is also available at the Internet address <<http://uscode.house.gov/search/criteria.shtml>>.*

~~(a) To maintain or clean a public highway;~~

~~(b) To remove snow or debris from a public highway; or~~

~~(c) To facilitate the movement of traffic on a public highway.]~~

Sec. 9. NAC 366.090 is hereby amended to read as follows:

NAC 366.090 Electronic submission of tax return; Authority; requirements; receipt.

(NRS 366.110, 366.383)

1. Except as otherwise provided in NAC 366.093, a special fuel supplier ~~may~~ *shall* electronically submit the tax return required pursuant to the provisions of NRS 366.383 *according to the following schedule:*

(a) July 1, 2006 if the supplier receives 1,000,000 gallons or more of taxable fuel or if the supplier receives 5,000,000 gallons or more of all fuel types in a monthly period.

(b) January 1, 2007 if the supplier receives 100,000 to 999,999 gallons or more of taxable fuel or if the supplier receives 1,000,000 to 4,999,999 gallons of all fuel types in a monthly period.

(c) January 1, 2008 for all suppliers.

2. ~~If a supplier submits a statement pursuant to the provisions of subsection 1, the~~ *The* statement must be:

(a) Submitted in a format prescribed by the Department; and

(b) Accompanied by the payment of any tax that the special fuel supplier is required to remit with the return.

3. The payment of any tax that the special fuel supplier is required to remit with the return must be made through the ~~use of a credit card, a debit card or the~~ electronic transfer of money.

4. A return filed pursuant to the provisions of subsection 1 shall be deemed received by the Department after:

(a) The return is accessible to the Department; and

(b) The Department has received the payment of any tax that the special fuel supplier was required to remit with the return.

Sec. 10. NAC 366.400 is hereby amended to read as follows:

NAC 366.400 Imposition and amount; payment; failure to pay. (NRS 366.110, 366.740)

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

(a) For a first offense, a *notice of violation and directive to cease from further violations and/or a* fine of not ~~less than \$100 or~~ more than \$500.

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

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

(d) For a fourth offense, a 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. 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 NRS 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.