

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

LCB File No. R008-06

March 10, 2006

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

AUTHORITY: §1, NRS 365.110, 365.175 and 365.335; §2, NRS 365.110 and 365.600; §3, NRS 366.110; §4, NRS 366.110 and 366.735; §5, NRS 360A.030, 366.110 and 366.733; §6, NRS 366.110 and 366.380; §7, NRS 366.085 and 366.110; §8, NRS 366.110 and 366.383; §9, NRS 366.110 and 366.740.

A REGULATION relating to taxation; making the electronic submission of certain statements by a supplier of motor vehicle fuel mandatory by certain dates; authorizing the Department of Motor Vehicles to issue to a person a notice of violation and directive to cease from further violation in lieu of an administrative fine under certain circumstances; setting forth administrative fines for certain violations relating to the taxation of special fuel; requiring a special fuel user to file a quarterly or annual tax return directly with the Department under certain circumstances; making the electronic submission of certain tax returns by a special fuel supplier mandatory by certain dates; and providing other matters properly relating thereto.

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

365.197 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 ~~[-~~

~~—2.— If a supplier submits a] :~~

(a) On or after July 1, 2006, but before January 1, 2007, if the supplier:

(1) Receives 1,000,000 gallons or more of motor vehicle fuel for which taxes must be paid pursuant to subsection 2 of NRS 365.175 during a monthly period; or

(2) Receives 5,000,000 gallons or more of any type of motor vehicle fuel during a monthly period.

(b) On or after January 1, 2007, but before January 1, 2008, if the supplier:

(1) Receives 100,000 gallons or more but less than 1,000,000 gallons of motor vehicle fuel for which taxes must be paid pursuant to subsection 2 of NRS 365.175 during a monthly period; or

(2) Receives 1,000,000 gallons or more but less than 5,000,000 gallons of any type of motor vehicle fuel during a monthly period.

(c) On and after January 1, 2008, if the supplier has not electronically submitted the form pursuant to paragraph (a) or (b) before that date.

2. The statement *required* pursuant to ~~the provisions of~~ subsection 1 ~~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~~ *using an* 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:

365.300 1. Except as otherwise provided in ~~subsection 2,~~ *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, 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 or subsequent 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 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 a 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.

~~[4.]~~ 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. 3. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 4, 5 and 6 of this regulation.

Sec. 4. 1. *Except as otherwise provided in this section, if the Department imposes an administrative fine pursuant to NRS 366.735, the Department will impose that fine for violations occurring within the 4 years immediately preceding the most recent violation according to the following schedule:*

(a) For a first offense, an administrative fine of \$2,500 and will suspend any license issued to the person pursuant to chapter 366 of NRS for not more than 30 days;

(b) For a second offense, an administrative fine of \$5,000 and will suspend any license issued to the person pursuant to chapter 366 of NRS for not more than 60 days; or

(c) For a third or subsequent offense, an administrative fine of \$10,000 and will revoke any license issued to the person pursuant to chapter 366 of NRS for not more than 1 year.

2. *If the Department imposes an administrative fine specified in subsection 1 and the person against whom the fine is imposed submits evidence satisfactory to the Department establishing just cause for reducing the amount of the administrative fine, the Department may reduce the administrative fine to an amount that is equal to, if the violation is:*

(a) A first offense, \$1,000 or more but less than \$2,500;

(b) A second offense, \$2,500 or more but less than \$5,000; or

(c) A third or subsequent offense, \$5,000 or more but less than \$10,000.

3. *A person who has been fined pursuant to NRS 366.735 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 2 of NRS 366.740.*

4. *In addition to any action taken pursuant to subsection 1, upon the failure of a person to pay an administrative fine imposed pursuant to this section when it becomes due, the Department may revoke or refuse to issue a license to that person pursuant to chapter 366 of NRS.*

Sec. 5. 1. *Except as otherwise provided in this section, if the Department imposes an administrative fine pursuant to NRS 366.733, 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 administrative fine of not less than \$2,500 and not more than \$10,000.*

(b) *For a second or subsequent offense, an administrative fine of \$10,000.*

2. *A person who has been fined pursuant to NRS 366.733 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 2 of NRS 366.740.*

3. *In lieu of imposing 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. *Upon the failure of a person to pay an administrative fine imposed pursuant to this section when it becomes due, the Department may:*

(a) *Lock and seal the business of the person pursuant to NRS 360A.365; or*

(b) Revoke or refuse to issue a license to that person pursuant to chapter 366 of NRS.

Sec. 6. *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.*

Sec. 7. NAC 366.0065 is hereby amended to read as follows:

366.0065 ~~{-}~~ 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}~~ *mean “off-highway business use”* as defined in ~~{NRS 484.041, if:~~

- ~~—(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) 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.} 26 U.S.C. § 4041(b)(1)(C).~~

Sec. 8. NAC 366.090 is hereby amended to read as follows:

366.090 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 ~~{-~~

~~2. If a special fuel supplier submits a~~ :

(a) On or after July 1, 2006, but before January 1, 2007, if the special fuel supplier:

(1) Receives 1,000,000 gallons or more of special fuel for which taxes must be paid pursuant to subsection 2 of NRS 366.383 during a monthly period; or

(2) Receives 5,000,000 gallons or more of any type of special fuel during a monthly period.

(b) On or after January 1, 2007, but before January 1, 2008, if the special fuel supplier:

(1) Receives 100,000 gallons or more but less than 1,000,000 gallons of special fuel for which taxes must be paid pursuant to subsection 2 of NRS 366.383 during a monthly period; or

(2) Receives 1,000,000 gallons or more but less than 5,000,000 gallons of any type of special fuel during a monthly period.

(c) On and after January 1, 2008, if the special fuel supplier has not electronically submitted the form pursuant to paragraph (a) or (b) before that date.

2. The return *required* pursuant to ~~the provisions of~~ subsection 1 ~~the return~~ 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~~ *using an* 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. 9. NAC 366.400 is hereby amended to read as follows:

366.400 1. Except as otherwise provided in ~~[subsection 2,]~~ *this section*, if the Department imposes an administrative fine pursuant to NRS 366.740, the Department will impose that fine for violations occurring ~~[with]~~ *within* the 3 years immediately preceding the most recent violation according to the following schedule:

- (a) For the first offense, ~~[a]~~ *an administrative* fine of not ~~[less than \$100 or]~~ more than \$500.
- (b) For the second offense, ~~[a]~~ *an administrative* fine of not less than \$500 or more than \$1,000.
- (c) For the third offense, ~~[a]~~ *an administrative* fine of not less than \$1,000 or more than \$1,500.
- (d) For a fourth or subsequent offense, ~~[a]~~ *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 ~~{a}~~ *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.

~~{3.}~~ 4. *In lieu of imposing 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.*

5. 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.}~~ 6. Upon the failure of a person to pay ~~{a}~~ *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.