

LCB File No. R160-09

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 Chapters 360A.020, 366.220, and 366.260

Regulations relating to the Department of Motor Vehicles - Motor Carrier Division

Section 1. Chapter 360A of NAC is hereby amended by adding thereto the provisions set forth in section 2 of this regulation.

Sec. 2. *For the purposes of NRS 360A.150(2), “Claim for Additional Amount” means any tax due as a result of fuel determined to be omitted from the original and/or amended tax return(s) filed with the Department by the taxpayer, which was discovered during the course of an ordinary audit conducted pursuant to NRS 360A.150(1).*

Sec. 3. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth in sections 4 through 6 of this regulation.

Sec. 4. *Special fuel manufacturers may file annually on a calendar year period, providing the volume of special fuel manufactured does not exceed 1,000 gallons per calendar year.*

Sec.5. *Regardless of the outcome of any other penalty imposed pursuant to this chapter, an administrative fine shall be assessed.*

Sec. 6. *All recycled oil ~~including motor oil~~, waste oil product and/or food based products sold as raw materials rendered or used for the propulsion of a motor vehicle shall be reported to the Department.*

Sec. 7. NAC 366.005 is hereby amended to read as follows: 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]~~ 3. “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]~~ 4. “Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.

~~[6]~~ 5. “Habitually delinquent” means the commission by a special fuel user, *special fuel manufacturer*, 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 manufacturer*, special fuel supplier or special fuel dealer and occurred notwithstanding the exercise of ordinary care; and

(2) The special fuel user, *special fuel manufacturer*, 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. “Motor vehicle fuel” has the meaning ascribed to it in NRS 365.060.]~~

~~[8]~~ 6. “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]~~ 7. “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. “Special fuel” has the meaning ascribed to it in NRS 366.060.~~

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

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

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

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

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

~~16]~~ 8. “Tribal member” includes an enrolled member of a tribe.

~~17]~~ 9. “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. 8. NAC 366.009 is hereby amended to read as follows:

1. A special fuel manufacturer, special fuel supplier or special fuel dealer who has been informed by the Department that another *special fuel manufacturer*, 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.

2. Any fuel placed in the tank of a motor vehicle for the propulsion of the vehicle is considered a taxable transaction. This includes, but is not limited to, the sale of special fuel which is transacted between licensed suppliers for the purposes of propelling a vehicle.

Sec. 9. NAC 366.010 is hereby amended to read as follows:

1. Except as otherwise provided in NAC 366.030 and 366.040, the Department will fix the amount of security required pursuant to NRS 366.235 for an applicant for, or the holder of:

(a) A special fuel supplier’s *and special fuel manufacturer’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 , *special fuel manufacturer*, or special fuel dealer operates ~~his~~ *their* business, the Department will review ~~his~~ *the* 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 , *special fuel manufacturer*, or special fuel dealer shall increase ~~[his]~~ *the* security as required by the Department within 60 days after notification of the increase.

Sec. 10. NAC 366.020 is hereby amended to read as follows: The Department will review annually the estimated maximum monthly tax for each special fuel supplier , *special fuel manufacturer*, or special fuel dealer who has operated ~~[his]~~ *their* business for at least 2 years before the review is conducted. The Department will review the monthly tax returns of the special fuel supplier , *special fuel manufacturer*, 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 , *special fuel manufacturer*, 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 special fuel manufacturer* or \$100 for a special fuel dealer, as appropriate.

Sec. 11. NAC 366.030 is hereby amended to read as follows: 1. A special fuel supplier, *special fuel manufacturer*, 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]~~ *them* 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 , *manufacturer*, 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 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~~

~~3.1~~ A special fuel supplier , *special fuel manufacturer*, 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~~ 3. For the purposes of subsection ~~3~~ 2, a special fuel supplier , *special fuel manufacturer*, or special fuel dealer who~~is~~

~~(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 12. NAC 366.040 is hereby amended to read as follows: 1. If the Department determines that a special fuel supplier , *special fuel manufacturer*, or special fuel dealer is habitually delinquent, the Department will increase the amount of security required from that special fuel supplier , *special fuel manufacturer*, 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 , *special fuel manufacturer*, or special fuel dealer shall increase ~~his~~ *the* security as required by the Department within 60 days after notification of the increase.

Sec 13 NAC 366.050 is hereby amended to read as follows: 1. If the Department is notified that a surety bond of a special fuel supplier , *special fuel manufacturers* or special fuel dealer has been or may be cancelled, the Department will review the monthly tax returns of that special fuel supplier , *special fuel manufacturer*, or special fuel dealer:

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

(b) If ~~he has~~ *they have* been in business less than 24 months, for the period ~~he has~~ *they have* operated ~~his~~ *the* business,

to determine the amount of security ~~he~~ *they* will be required to provide.

2. Within 15 days after the Department receives notice that the bond has been or may be cancelled, the Department will notify the special fuel supplier , *special fuel manufacturer*, or special fuel dealer of the amount of security required to retain ~~his~~ *their* license. If the special fuel supplier , *special fuel manufacturer*, or special fuel dealer does not provide the security required by the Department within 15 days after ~~he receives~~ *they receive* notice of the amount of security required, the Department *shall* revoke the license of the special fuel supplier , *special fuel manufacturer*, or special fuel dealer.

Sec 14. NAC 366.0067 is hereby amended to read as follows: 1. An application for a license to operate as a special fuel dealer, *special fuel manufacturer*, 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) Any other identification number issued by the Internal Revenue Service.