

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

LCB File No. R160-09

January 11, 2010

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

AUTHORITY: §§1 and 2, NRS 360A.020; §§3-14, NRS 366.110 and section 26 of Senate Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2632; §15, NRS 366.110 and 366.740.

A REGULATION relating to motor vehicles; making special fuel manufacturers subject to provisions relating to the licensing, reporting requirements and tax obligations applicable to special fuel users, special fuel suppliers and special fuel dealers; making the imposition of administrative fines for violations of law mandatory; and providing other matters properly relating thereto.

Section 1. Chapter 360A of NAC is hereby amended by adding thereto a new section to read as follows:

As used in NRS 360A.150, “claim for an additional amount” means any amount the Department determines is due pursuant to NRS 360A.100.

Sec. 2. NAC 360A.010 is hereby amended to read as follows:

360A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 360A.020 to 360A.070, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this regulation.

Sec. 4. *In addition to the information required to be included in the monthly report submitted to the Department by a special fuel manufacturer pursuant to section 26 of Senate*

Bill No. 332, chapter 464, Statutes of Nevada 2009, at page 2632, a special fuel manufacturer shall include in the monthly report information concerning all raw materials acquired by the special fuel manufacturer to produce biodiesel or biodiesel blend, including, without limitation, recycled oil, waste oil and food-based products. Such information must include, without limitation:

- 1. Each type of raw material acquired;*
- 2. The amount of each type of raw material acquired;*
- 3. The source of each type of raw material acquired; and*
- 4. The date on which the raw material was acquired.*

Sec. 5. *The sale of special fuel between licensed suppliers to propel a vehicle is a taxable transaction.*

Sec. 6. NAC 366.005 is hereby amended to read as follows:

366.005 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.]~~ “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. “Good standing” means that a taxpayer is in compliance with the rules and regulations of the Department and does not owe any payments or delinquent tax returns to any state, district, territory or possession of the United States, or a foreign country.

~~{6.}~~ 5. “Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.

~~{7.}~~ 6. “Habitually delinquent” means the commission by a special fuel user, special fuel supplier, *special fuel manufacturer* 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, *special fuel manufacturer* or special fuel dealer and occurred notwithstanding the exercise of ordinary care; and

(2) The special fuel user, special fuel supplier, *special fuel manufacturer* 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.

~~{8.}—“Motor vehicle fuel” has the meaning ascribed to it in NRS 365.060.~~

~~—9.]~~ 7. “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.

~~{10.]~~ 8. “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.

~~{11. “Retailer” has the meaning ascribed to it in NRS 366.058.~~

~~—12. “Special fuel” has the meaning ascribed to it in NRS 366.060.~~

~~—13. “Special fuel dealer” has the meaning ascribed to it in NRS 366.062.~~

~~—14. “Special fuel exporter” has the meaning ascribed to it in NRS 366.065.~~

~~—15. “Special fuel supplier” has the meaning ascribed to it in NRS 366.070.~~

~~—16. “Special fuel transporter” has the meaning ascribed to it in NRS 366.075.~~

~~—17. “Special fuel user” has the meaning ascribed to it in NRS 366.080.~~

~~—18.]~~ 9. “Tribal member” includes an enrolled member of a tribe.

~~{19.]~~ 10. “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. 7. NAC 366.0067 is hereby amended to read as follows:

366.0067 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; or
- (c) Any other identification number issued by the Internal Revenue Service.

Sec. 8. NAC 366.009 is hereby amended to read as follows:

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

Sec. 9. 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 366.235 for an applicant for, or the holder of:

(a) A *license as a* special fuel ~~[supplier's license]~~ *supplier or a special fuel manufacturer* 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 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 , *special fuel manufacturer* or special fuel dealer shall increase his 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:

366.020 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 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:

366.030 1. A special fuel supplier , *special fuel manufacturer* or special fuel dealer who complies with the requirements set forth in subsection 2 may submit a written request to the Department for a reduction in the amount of security required pursuant to NRS 366.235 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 twice 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. 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.

Sec. 12. NAC 366.040 is hereby amended to read as follows:

366.040 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 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:

366.050 1. If the Department is notified that a surety bond of a special fuel supplier , *special fuel manufacturer* 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 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 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 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 notice of the amount of security required, the Department will revoke the license of the special fuel supplier , *special fuel manufacturer* or special fuel dealer.

Sec. 14. NAC 366.100 is hereby amended to read as follows:

366.100 Except as otherwise provided in NAC 366.090, a payment by a special fuel user, special fuel supplier , *special fuel manufacturer* or special fuel dealer of the tax imposed by NRS 366.190 shall be deemed received:

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

2. If delivered by a private postal service, on the business day preceding the date of actual delivery.

Sec. 15. NAC 366.400 is hereby amended to read as follows:

366.400 1. *The Department will assess an administrative fine pursuant to NRS 366.740 against a person who violates any provision of this chapter, chapter 366 of NRS or any order adopted or issued by the Department pursuant thereto.*

2. Except as otherwise provided in this section, ~~if~~ *when* 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 the first offense, an administrative fine of not less than \$100 or more than \$500.

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

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

(d) For a fourth or subsequent offense, 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.~~ 3. 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.}~~ 4. The Department ~~{may}~~ *will* impose an administrative fine of not less than \$1,500 or more than \$2,500 for any violation of NRS 366.207 or 366.220, subsection 2 of NRS 366.395 or subsection 3 of NRS 366.685.

~~{4.}~~ 5. Upon the failure of a person to pay 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.