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ASSEMBLY BILL NO. 346—ASSEMBLYMAN CARPENTER  
(BY REQUEST)

MARCH 17, 2003

Referred to Committee on Transportation

SUMMARY—Revises provisions governing operation or maintenance of vehicles on highways in this state using dyed special fuel. (BDR 32-180)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

AN ACT relating to taxation; authorizing the operation or maintenance of heavy-duty equipment on a highway in this state using dyed special fuel under certain circumstances; revising the circumstances under which special mobile equipment may be operated or maintained on a highway in this state using dyed special fuel; authorizing the operation and maintenance of farm equipment on a controlled-access highway using dyed special fuel; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1-1 **Section 1.** Chapter 366 of NRS is hereby amended by adding  
1-2 thereto the provisions set forth as sections 2 and 3 of this act.  
1-3 **Sec. 2. 1.** *“Heavy-duty equipment” means any self-*  
1-4 *propelled machinery or motor vehicle that:*  
1-5 *(a) Is used exclusively or in part by the owner thereof in the*  
1-6 *ordinary course of his business; and*  
1-7 *(b) Has a minimum declared gross weight established by the*  
1-8 *Department.*  
1-9 **2.** *The term does not include:*  
1-10 *(a) Farm equipment as defined in NRS 366.203.*

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ASSEMBLY TRANSPORTATION E1-8  
DATE: 4/8/03 ROOM: 3143 EXHIBIT E  
SUBMITTED BY: Jonathan Brown

2-1 (b) *Special mobile equipment.*

2-2 **Sec. 3. 1.** *An owner of heavy-duty equipment may apply to*  
2-3 *the Department for a permit to operate or maintain that equipment*  
2-4 *on a highway in this state using special fuel which has been dyed.*

2-5 **2.** *The Department may charge a fee for issuing the permit in*  
2-6 *an amount not to exceed the administrative costs of issuing the permit.*

2-7 **3.** Said permit will consist of two classes:

2-8 (a) Short term; not to exceed ten days from date of issuance, and

2-9 (b) Annual; not to exceed 365 days from the date of issuance.

2-8 **4.** *In addition to any fee charged pursuant to subsection 2,*  
2-9 *the Department shall, before issuing a permit, collect an amount*  
2-10 *equal to the tax that would have been imposed pursuant to NRS*  
2-11 *366.190 had the heavy-duty equipment been operated or*  
2-12 *maintained using special fuel that had not been dyed.*

2-13 **5.** *The permit:*

2-14 (a) *Must be in a form to be determined by the Department.*

2-15 (b) *Expires at 5 p.m. on the 10<sup>th</sup> day after its issuance (for Class 1 permits, or*  
2-16 *on the 365th day (for Class 2 permit).*

2-16 (c) *Must bear the date of its expiration.*

2-17 (d) *Must indicate the starting and ending points of the distance*  
2-18 *to be traveled on or across state highways.*

2-19 (e) *Must be affixed to the heavy-duty equipment in a manner*  
2-20 *to be determined by the Department.*

2-21 (f) *Must be removed or destroyed upon its expiration.*

2-22 **Sec. 4.** *NRS 366.203 is hereby amended to read as follows:*

2-23 **1.** *Special fuel, other than compressed natural gas,*  
2-24 *liquefied petroleum gas or kerosene, which is exempt from the tax*  
2-25 *pursuant to subsection 3 or 4 of NRS 366.200 must be dyed before it*  
2-26 *is removed for distribution from a rack. The dye added to the*  
2-27 *exempt special fuel must be of the color and concentration required*  
2-28 *by the regulations adopted by the Secretary of the Treasury pursuant*  
2-29 *to 26 U.S.C. § 4082.*

2-30 **2.** *Except as otherwise provided in subsections 3 and 4, a*  
2-31 *person shall not operate or maintain on any highway in this state a*  
2-32 *motor vehicle which contains in the fuel tank of that vehicle special*  
2-33 *fuel which has been dyed.*

2-34 **3.** *A person who, pursuant to subsection 2, 3 or 4 of NRS*  
2-35 *366.200, is exempt from the tax imposed by this chapter [ ] may*  
2-36 *operate or maintain a motor vehicle on a highway in this state which*  
2-37 *contains in the fuel tank of that vehicle special fuel which has been*  
2-38 *dyed.*

2-39 **4.** *[A] To the extent permitted by federal law, a person may*  
2-40 *operate or maintain on a highway in this state any [special mobile*  
2-41 *equipment or farm] :*

2-42 (a) *Farm equipment that contains in the fuel tank of the [special*  
2-43 *mobile equipment or] farm equipment special fuel which has been*

2-44 dyed. As used in this ~~{subsection:~~

3-1 (a) ~~“Farm”~~ *paragraph, “farm equipment” means any self-*  
3-2 *propelled machinery or motor vehicle that is designed solely for*  
3-3 *tilling soil or for cultivating, harvesting or transporting crops or*  
3-4 *other agricultural products from a field or other area owned or*  
3-5 *leased by the operator of the farm equipment and in which the crops*  
3-6 *or agricultural products are grown, to a field, yard, silo, cellar, shed*  
3-7 *or other facility which is:*

3-8 (1) Owned or leased by the operator of the farm equipment;  
3-9 and

3-10 (2) Used to store or process the crops or agricultural  
3-11 products.

3-12 The term includes a tractor, baler or swather or any implement used  
3-13 to retrieve hay.

3-14 (b) ~~“Highway” does not include a controlled-access highway as~~  
3-15 ~~defined in NRS 484.041.~~ *Special mobile equipment that contains*  
3-16 *in the fuel tank of the special mobile equipment special fuel which*  
3-17 *has been dyed if the distance traveled on the highway does not*  
3-18 *exceed a maximum allowable distance established by the*  
3-19 *Department.*

3-20 (c) *Heavy-duty equipment that contains in the fuel tank of the*  
3-21 *heavy-duty equipment special fuel which has been dyed if:*

3-22 (1) *The heavy-duty equipment is being moved:*

3-23 (I) *From one location at the owner’s place of business to*  
3-24 *another location at the owner’s place of business; or*

3-25 (II) *To service or repair the heavy-duty equipment; and*

3-26 (2) *A permit has been issued by the Department pursuant to*  
3-27 *section 3 of this act for the movement of the heavy-duty*  
3-28 *equipment.*

3-29 5. There is a rebuttable presumption that all special fuel which  
3-30 has not been dyed and which is sold or distributed in this state is for  
3-31 the purpose of propelling a motor vehicle.

3-32 **Sec. 5.** This act becomes effective on July 1, 2003.

3-33 H

- The buyer buys the fuel for its own use in a nontaxable use or is a qualified dealer.
- The seller can show satisfactory evidence of the nontaxable nature of the transaction and has no reason to believe the evidence is false.

**Aviation-grade kerosene.** The excise tax on kerosene is not imposed on the removal from the terminal or refinery rack or non-bulk entry of aviation-grade kerosene if all the following conditions are met.

- 1) The person otherwise liable for tax (position holder, refiner, or enterer) is a registrant.
- 2) In the case of a removal from a terminal, the terminal is an approved terminal.
- 3) Either:
  - a) The person otherwise liable for tax delivers the kerosene into the fuel supply tank of an aircraft and this delivery is not in connection with a sale, or
  - b) The kerosene is sold for use as a fuel in an aircraft, and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described later) from the buyer and has no reason to believe any information on the certificate is false.

**Certain later sales.** The excise tax applies to kerosene sold for use as a fuel in an aircraft (item (3)(b)) if there is a later disqualifying sale. The tax is imposed at the time of the first later disqualifying sale. The seller in that sale is liable for the tax. However, a later sale is not a disqualifying sale if either of the following apply to that sale.

- The seller has, at the time of the later sale, an unexpired certificate from the buyer and has no reason to believe any information on the certificate is false.
- The seller delivers the kerosene into the fuel supply tank of an aircraft.

**Certificate.** The certificate from the buyer certifies the kerosene will be used by the buyer as a fuel in an aircraft or resold for that use. The certificate may be included as part of any business records normally used for a sale. A model certificate is shown in Appendix C as Model Certificate F. Your certificate must contain all information necessary to complete the model.

A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (not earlier than the date signed) of the certificate.
- The date the seller is provided a new certificate or notice that the current certificate is invalid.
- The date the seller is notified the buyer's right to provide a certificate has been withdrawn.

The buyer must provide a new certificate if any information on a certificate has changed.

The IRS may withdraw the buyer's right to provide a certificate if the buyer uses the

aviation-grade kerosene other than as a fuel in an aircraft or sells the kerosene without first obtaining a certificate from its buyer.

**Kerosene used for feedstock purposes.** The excise tax on kerosene is not imposed on the removal or entry of kerosene if all the following conditions are met.

- 1) The person otherwise liable for tax (position holder, refiner, or enterer) is a registrant.
- 2) In the case of a removal from a terminal, the terminal is an approved terminal.
- 3) Either:
  - a) The person otherwise liable for tax uses the kerosene for a feedstock purpose, or
  - b) The kerosene is sold for use by the buyer for a feedstock purpose and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described later) from the buyer and has no reason to believe any information on the certificate is false.

Kerosene is used for a **feedstock purpose** when it is used for nonfuel purposes in the manufacture or production of any substance other than gasoline, diesel fuel, or special fuels. For example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint, but is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced. A **feedstock user** is a person that uses kerosene for a feedstock purpose. A **registered feedstock user** is a person that has been registered by the IRS as a feedstock user. See *Registration Requirements*, earlier.

**Later sales.** The excise tax applies to kerosene sold for use by the buyer for a feedstock purpose (item (3)(b)) if the buyer in that sale later sells the kerosene. The tax is imposed at the time of the later sale and that seller is liable for the tax.

**Certificate.** The certificate from the buyer certifies the buyer is a registered feedstock user and the kerosene will be used by the buyer for a feedstock purpose. The certificate may be included as part of any business records normally used for a sale. A model certificate is shown in Appendix C as Model Certificate G. Your certificate must contain all information necessary to complete the model.

A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (not earlier than the date signed) of the certificate.
- The date the seller is provided a new certificate or notice that the current certificate is invalid.
- The date the seller is notified the buyer's registration has been revoked or suspended.

The buyer must provide a new certificate if any information on a certificate has changed.

## Credits or Refunds

A credit or refund is allowable to the ultimate purchaser or registered ultimate vendor for the tax on undyed diesel fuel or undyed kerosene used for a nontaxable use. See Publication 378.

## Dyed Diesel Fuel and Dyed Kerosene

The excise tax is not imposed on the removal, entry, or sale of diesel fuel or kerosene if all the following tests are met.

- The person otherwise liable for tax (for example, the position holder) is a registrant.
- In the case of a removal from a terminal, the terminal is an approved terminal.
- The diesel fuel or kerosene satisfies the dyeing requirements (described next).

**Dyeing requirements.** Diesel fuel or kerosene satisfies the dyeing requirements only if it satisfies one of the following requirements.

- It contains the dye Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of fuel.
- It contains any dye of a type and in a concentration that has been approved by the Commissioner.

**Notice required.** A legible and conspicuous notice stating either: **DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE** or **DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE** must be:

- 1) Provided by the terminal operator to any person that receives dyed diesel fuel or dyed kerosene at a terminal rack of that operator, and
- 2) Posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel or dyed kerosene for use by its buyer.

The notice under item (1) must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents accompanying the removal of the fuel.

Any seller that fails to post the required notice under item (2) is presumed to know that the fuel will be used for a taxable use (a use other than a nontaxable use listed later). That seller is subject to the penalty described next.

**Penalty.** A penalty is imposed on a person if any of the following situations apply.

- 1) Any dyed fuel is sold or held for sale by the person for a use the person knows or has reason to know is not a nontaxable use of the fuel.
- 2) Any dyed fuel is held for use or used by the person for a use other than a nontaxable use and the person knew, or had reason to know, that the fuel was dyed.

- 3) The person willfully alters, or attempts to alter, the strength or composition of any dye in dyed fuel.

The penalty is the greater of \$1,000 or \$10 per gallon of the dyed diesel fuel or dyed kerosene involved. After the first violation, the \$1,000 portion of the penalty increases depending on the number of violations.

This penalty is in addition to any tax imposed on the fuel.

If the penalty is imposed, each officer, employee, or agent of a business entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with that entity for the penalty.

If you are liable for the penalty, you may also be liable for the back-up tax, discussed later. However, the penalty applies only to dyed diesel fuel and dyed kerosene, while the back-up tax may apply to other fuels. The penalty may apply if the fuel is held for sale or use for a taxable use while the back-up tax does not apply unless the fuel is delivered into a fuel supply tank.

**Exception to penalty.** The penalty under item (3) will not apply in any of the following situations.

- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with any undyed liquid and the resulting product meets the dyeing requirements.
- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with any other liquid (other than diesel fuel or kerosene) that contains the type and amount of dye required to meet the dyeing requirements.
- The alteration or attempted alteration occurs in an exempt area of Alaska. See *Sale or use in Alaska*, earlier.
- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with diesel fuel or kerosene not meeting the dyeing requirements and the blending occurs as part of a nontaxable use (other than export), discussed later.

### Back-Up Tax

Tax is imposed on the delivery of any of the following into the fuel supply tank of a diesel-powered highway vehicle, train, or bus.

- Any dyed diesel fuel or dyed kerosene for other than a nontaxable use.
- Any diesel fuel or kerosene on which a credit or refund (for fuel used for a nontaxable purpose) has been allowed.
- Any liquid other than gasoline, diesel fuel, or kerosene.

Generally, this back-up tax is imposed at a rate of 24.4 cents a gallon. However, the rate for fuel for a diesel-powered train is 4.4 cents a gallon. The rate for delivery into the fuel supply tank of certain intercity or local buses is 7.4 cents a gallon.

**Liability for tax.** Generally, the operator of the vehicle, bus, or train into which the fuel is delivered is liable for the tax. In addition, the seller of the diesel fuel or kerosene is jointly and sever-

ally liable for the tax if the seller knows or has reason to know that the fuel will be used for other than a nontaxable use. Generally, a seller of diesel fuel or kerosene is not liable for tax on fuel delivered into the fuel supply tank of a bus or train. However, the person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable for the tax if, at the time of delivery, the deliverer and the train operator are both registered by the IRS as train operators and a written agreement between them requires the deliverer to pay the tax.

**Exemptions from the back-up tax.** The back-up tax does not apply to a delivery of diesel fuel or kerosene for uses (1) through (8) listed under *Nontaxable Uses*, next.

In addition, since the back-up tax is imposed only on the delivery into the fuel supply tank of a diesel-powered vehicle, bus, or train, the tax does not apply to diesel fuel or kerosene used as heating oil or in stationary engines.

### Nontaxable Uses ★

The following are nontaxable uses of diesel fuel and kerosene.

- 1) Use on a farm for farming purposes (discussed later).
- 2) Exclusive use by a state (defined earlier under *Definitions*).
- 3) Use in a vehicle owned by an aircraft museum (as discussed later under *Aviation Fuel*).
- 4) Use in a school bus (discussed later).
- 5) Use in a qualified local bus (discussed later).
- 6) Use in a highway vehicle that:
  - a) Is not registered (and is not required to be registered), for highway use under the laws of any state or foreign country, and
  - b) Is used in the operator's trade or business or for the production of income.
- 7) Exclusive use by a nonprofit educational organization.
- 8) Use in a highway vehicle owned by the United States that is not used on a highway.
- 9) Exported.
- 10) Use other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (such as home heating oil).
- 11) Use as a fuel in a propulsion engine of a diesel-powered train (subject to back-up tax, discussed earlier).
- 12) Use in an intercity or local bus meeting certain qualifications, discussed later (subject to back-up tax, discussed earlier).

**Used on a farm for farming purposes.** Diesel fuel or kerosene is used on a farm for farming purposes only if used in carrying on a trade or business of farming, on a farm in the United States, and for farming purposes.

**Farm.** A farm includes livestock, dairy, fish, poultry, fruit, fur-bearing animals, and truck

farms, orchards, plantations, ranches, nurseries, ranges, and feedyards for fattening cattle. It also includes structures such as greenhouses used primarily for raising agricultural or horticultural commodities. A fish farm is an area where fish are grown or raised—not merely caught or harvested.

**Farming purposes.** Diesel fuel or kerosene is used on a farm for farming purposes if it is bought by the owner, tenant, or operator of the farm and used for any of the following purposes.

- 1) To cultivate the soil, or to raise or harvest any agricultural or horticultural commodity.
- 2) To raise, shear, feed, care for, train or manage livestock, bees, poultry, fur-bearing animals, or wildlife.
- 3) To operate, manage, conserve, improve, or maintain your farm and its tools and equipment.
- 4) To handle, dry, pack, grade, or store any raw agricultural or horticultural commodity (as provided below).
- 5) To plant, cultivate, care for, or cut trees or to prepare (other than sawing logs into lumber, chipping, or other milling) trees for market, but only if the planting, etc., is incidental to your farming operations (as provided below).

Diesel fuel or kerosene is treated as used on a farm for farming purposes if it is bought by a person other than the owner, tenant, or operator of the farm and used on the farm for any of the purposes in item (1) or (2).

Item (4) applies only if more than one-half of the commodity so treated during the tax year was produced on the farm. Commodity refers to a single raw product. For example, apples would be one commodity and peaches another. The more-than-one-half test applies separately to each commodity.

Item (5) applies if the operations are minor in nature when compared to the total farming operations.

**Not used for farming purposes.** Diesel fuel or kerosene is not used for farming purposes if it is used in any of the following ways.

- Off the farm, such as on the highway or in noncommercial aviation, even if the fuel is used in transporting livestock, feed, crops, or equipment.
- For personal use, such as mowing the lawn.
- In processing, packaging, freezing, or canning operations.
- In processing crude gum into gum spirits of turpentine or gum resin or in processing maple sap into maple syrup or maple sugar.

**Buses.** Diesel fuel or kerosene used in a school bus or in a qualified local bus is used for a nontaxable use and is not subject to excise tax. However, fuel used in an intercity or local bus is subject to a reduced rate of tax.

**School bus.** A school bus is a bus engaged in the transportation of students and employees of schools. A school is an educational organization with a regular faculty and curriculum and a

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[Page 822-823]

TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

PART 80--REGULATION OF FUELS AND FUEL ADDITIVES--Table of Contents

Subpart I--Motor Vehicle Diesel Fuel

Sec. 80.520 What are the standards and dye requirements for motor vehicle diesel fuel?

(a) Standards. All motor vehicle diesel fuel is subject to the following per-gallon standards:

[[Page 823]]

(1) Sulfur content. 15 parts per million (ppm) maximum, except as provided in paragraph (c) of this section;

(2) Cetane index and aromatic content. (i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(b) Dye requirements. (1) All motor vehicle diesel fuel shall be free of visible evidence of dye solvent red 164 (which has a characteristic red color in diesel fuel), except for motor vehicle diesel fuel that is used in a manner that is tax exempt under section 4082 of the Internal Revenue Code.

(2) Any diesel fuel that does not show visible evidence of dye solvent red 164 shall be considered to be motor vehicle diesel fuel and subject to all the requirements of this subpart for motor vehicle diesel fuel, except for diesel fuel designated or classified for use only in:

(i) The State of Alaska as provided under 40 CFR 69.51; or

(ii) Jet aircraft, a research and development testing program exempted under 80.600, or motor vehicles covered by an exemption under Sec. 80.602.

(c) Pursuant and subject to the provisions of Secs. 80.530-80.532, 80.552(a), 80.560-80.561, and 80.620, only motor vehicle diesel fuel produced or imported in full compliance with the requirements of those provisions is subject to the following per-gallon standard for sulfur content: 500 ppm maximum.

(d) Kerosene and any other distillate product, that meets the definition of motor vehicle diesel fuel, is subject to the standards and requirements under this section.

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**CHAPTER 482**  
**MOTOR VEHICLES AND TRAILERS: LICENSING, REGISTRATION, SALES AND**  
**LEASES**  
**GENERAL PROVISIONS**

**SPECIAL USE PERMITS FOR SPECIAL EVENTS**

**NRS 482.383 Conditions for issuance; fee.**

1. The department may issue a special use permit for the operation of any unregistered and unlicensed vehicle upon any highway in this state to enable such a vehicle to operate in connection with special events, such as parades.
2. A permit issued pursuant to subsection 1 must be in a form prescribed by the department and must limit the use of the vehicle for which it is issued to movement for the purpose set forth in the application for the permit. Such a permit must be affixed to the vehicle in a manner and position determined by the department and must be canceled, destroyed or surrendered under such rules as the department may prescribe.
3. The department shall charge a fee of \$2 for each permit issued pursuant to subsection 1.

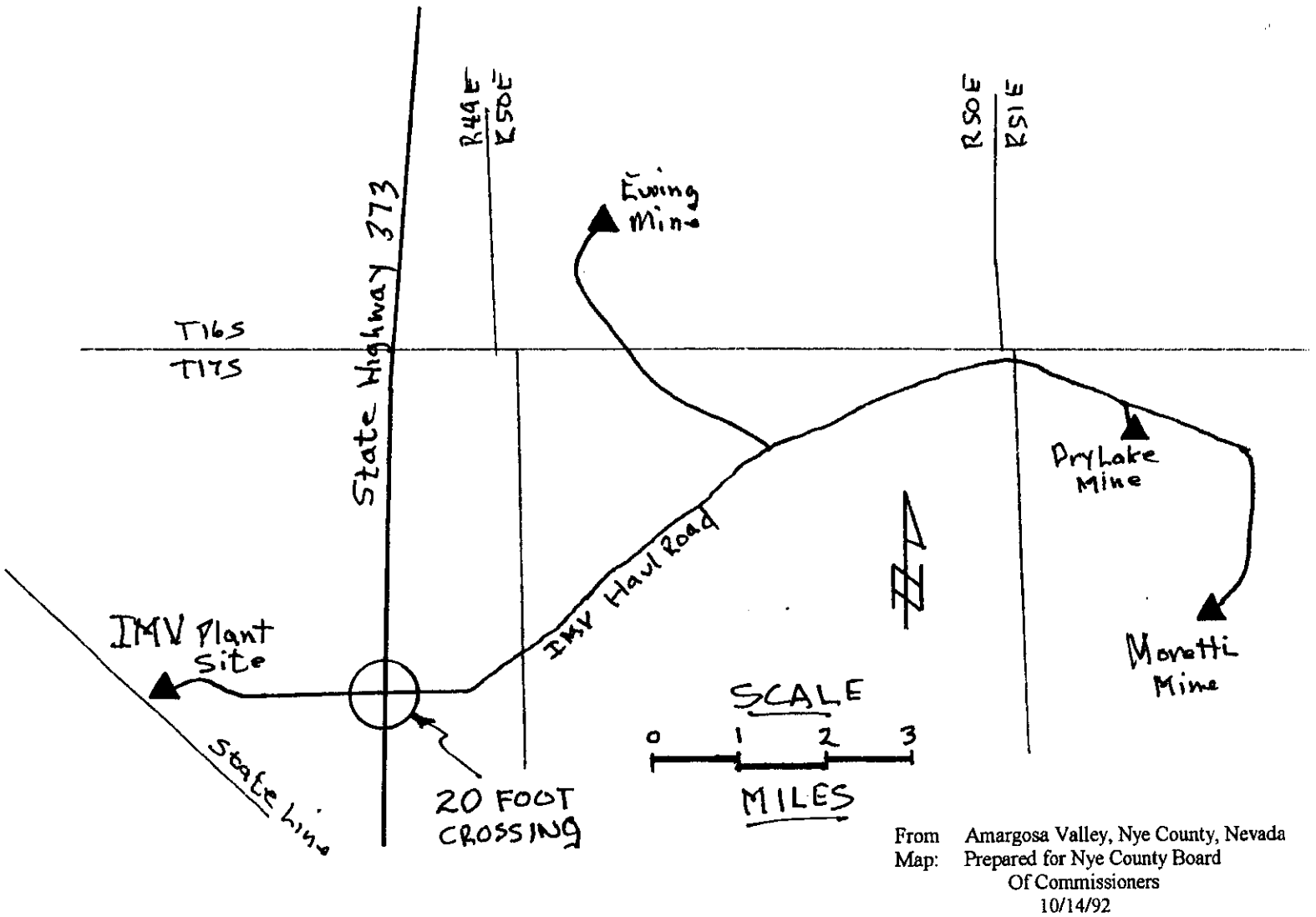
(Added to NRS by 1963, 1276; A 1973, 91; 1993, 1387; 1999, 3577)





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COMPARISON OF ROUND TRIP MILES ON IMV HAUL ROADS  
 TO FEET OF HIGHWAY CROSSING

	<u>MILES</u>	<u>FEET</u>
EWING MINE	22.0	20
DRY LAKE MINE	26.8	20
MORETTI MINE	33.2	20