

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

LCB File No. R003-04

September 22, 2004

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

AUTHORITY: §§1-4, NRS 445B.790; §5, NRS 445B.790 and 445B.835; §6, NRS 445B.785 and 445B.790; §7, NRS 445B.835.

A REGULATION relating to vehicle emission inspections; creating a program to inspect test stations and approved inspectors; establishing revised schedules of fines and other disciplinary action for violations by owners of test stations and approved inspectors; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *The Department will conduct inspections of:*

(a) Test stations; and

(b) The performance of approved inspectors.

2. *The Department will consider the following factors in prioritizing the order of the inspections required by subsection 1:*

(a) Rates of failure of motor vehicles on exhaust emissions tests administered at a test station or by an approved inspector that the Department determines to be abnormal when compared to the overall rates of failure of motor vehicles on exhaust emissions tests administered at all test stations and by all approved inspectors;

(b) Complaints received against test stations and approved inspectors;

(c) Violations of NRS 445B.700 to 445B.845, inclusive, or 40 C.F.R. Part 51 discovered by the Department during prior inspections conducted pursuant to subsection 1 or prior inspections or audits conducted pursuant to NAC 445B.472; and

(d) Any data on the state electronic data transmission system relating to a test station or approved inspector that the Department determines is questionable.

Sec. 3. For the purposes of an inspection conducted pursuant to section 2 of this regulation, the emission control system of a motor vehicle that is used by the Department to conduct the inspection will be altered in such a manner that an approved inspector, using due care and following the testing procedures described in NAC 445B.580, 445B.5805 and 445B.589, would readily identify, through only a visual inspection of the vehicle, that the emission control system of the vehicle has been tampered with or is missing or inoperable.

Sec. 4. 1. If the Department discovers noncompliance with any of the testing procedures set forth in NAC 445B.580, 445B.5805 or 445B.589 during an inspection conducted pursuant to section 2 of this regulation, the Department will issue a preliminary written notice of the violation, on a form prescribed by the Department, to the approved inspector who committed the violation. If the approved inspector who committed the violation is no longer present at the test station, the Department will:

(a) Give the preliminary written notice of the violation to another approved inspector or any other employee of the test station who is present; and

(b) Send a copy of the written preliminary notice to the approved inspector who committed the violation by certified mail not later than 5 business days after the violation occurred.

2. Before removing the motor vehicle used in the inspection conducted pursuant to section 2 of this regulation from the test station, the Department will allow the approved

inspector who committed the violation or, in the absence of the approved inspector, the person to whom the preliminary written notice of the violation was given pursuant to paragraph (a) of subsection 1, to inspect the motor vehicle used in the inspection.

3. If the approved inspector who committed the violation is not the owner of the test station where the violation occurred, the Department will send a copy of the written preliminary notice to the owner by certified mail not later than 5 business days after the violation occurred.

Sec. 5. 1. *If the Department imposes administrative fines or other penalties against an owner of a test station pursuant to NRS 445B.835 for a violation of NAC 445B.4985, the Department will impose such fines or other penalties for violations occurring within the 2-year period immediately preceding the most recent offense according to the following schedule:*

(a) For a first offense, issue a cease and desist order.

(b) For a second offense, require the owner of the test station or his authorized representative to complete successfully an educational course, which is established and conducted by the Department, not later than the date specified in the notice of the violation.

(c) For a third offense, impose a fine of \$1,000.

(d) For a fourth offense, revoke the license of the owner to operate the test station.

2. If the Department imposes administrative fines or other penalties against an approved inspector pursuant to NRS 445B.835 for a violation of NAC 445B.580, 445B.5805 or 445B.589, the Department will impose such fines or other penalties for violations occurring within the 2-year period immediately preceding the most recent offense according to the following schedule:

(a) For a first offense:

- (1) Issue a cease and desist order;*
- (2) Require the approved inspector to complete successfully an educational course, which is established and conducted by the Department, not later than the date specified in the notice of the violation; and*
- (3) Require the approved inspector to complete successfully a practical demonstration of the procedures for testing prescribed by the Department.*

(b) For a second offense:

- (1) Impose a fine of \$250;*
- (2) Require the approved inspector to complete successfully an educational course, which is established by the Department and conducted by a provider approved by the Department, not later than the date specified in the notice of the violation; and*
- (3) Suspend the license of the approved inspector for 10 calendar days.*

(c) For a third offense:

- (1) Impose a fine of \$500; and*
- (2) Suspend the license of the approved inspector for 90 calendar days.*

(d) For a fourth offense, permanently revoke the license of the approved inspector.

3. Any person who has been fined in accordance with the schedules set forth in this section shall make payment to the Department not later than the date specified in the notice of the violation, unless the person has requested a hearing pursuant to subsection 1 of NRS 445B.835.

4. Upon the failure of a person to pay a fine or comply with any directive imposed pursuant to the provisions of this section, the Director may suspend, revoke or refuse to issue any license obtained pursuant to the provisions of chapter 445B of NRS.

5. An owner of a test station or an approved inspector whose license is revoked or suspended by the Department pursuant to this section shall not directly or indirectly engage in any activity pursuant to this chapter or chapter 445B of NRS that is related to emission control inspections of motor vehicles.

6. For the purposes of this section, the curriculum for an educational course established by the Department may include, without limitation:

(a) The pertinent laws and regulations related to the control of emissions of motor vehicles;

(b) Procedures for emission control inspections of motor vehicles;

(c) The responsibilities of owners of test stations; and

(d) A review of the penalties which may be imposed on the owner of a test station or an approved inspector for future violations of NRS 445B.700 to 445B.845, inclusive, or any rule, regulation or order adopted or issued pursuant thereto.

Sec. 6. NAC 445B.400 is hereby amended to read as follows:

445B.400 The provisions of NAC 445B.400 to 445B.735, inclusive, *and sections 2 to 5, inclusive, of this regulation* provide the standards for controlling engine emissions.

Sec. 7. NAC 445B.727 is hereby amended to read as follows:

445B.727 1. Except as otherwise provided in subsections 2 and 3 ~~[]~~ *and section 5 of this regulation*, if the Department imposes administrative fines pursuant to the provisions of NRS 445B.835, it will impose such fines for violations occurring within the ~~[3-year]~~ *2-year* period immediately preceding the most recent offense according to the following schedule:

(a) For a first offense, a fine of not less than \$100 ~~[not]~~ *or* more than \$500.

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

(c) For a third offense, a fine of not less than \$1,000 ~~nor~~ *or* more than \$1,500.

(d) For a fourth or subsequent offense, a fine of not less than \$1,500 ~~nor~~ *or* more than \$2,500.

↪ For the purposes of paragraphs (b), (c) and (d), ~~[of this subsection,]~~ a cease and desist order issued by the Department shall be deemed to be a first offense.

2. If the Department imposes administrative fines on an owner or operator of a heavy-duty motor vehicle powered by diesel for a violation of the standards of opacity established pursuant to NRS 445B.780, it will impose such fines for violations occurring within the 1-year period immediately preceding the most recent offense according to the following schedule:

(a) For a first offense, a fine of \$800. The Department will not impose this fine if demonstration of correction is provided within 45 calendar days after the receipt of the citation.

(b) For a second or subsequent offense, a fine of \$1,500.

↪ For the purposes of paragraph (b), ~~[of this subsection,]~~ a cease and desist order issued by the Department shall be deemed to be a first offense.

3. The Department may impose a fine of not less than \$1,500 ~~nor~~ *or* more than \$2,500 for any violation of NAC 445B.460 or subsection 4 of NRS 445B.840.

4. Any person who has been fined pursuant to the provisions of NRS 445B.835 shall make payment to the Department not later than the date specified in the notice of the violation, unless he has requested a hearing pursuant to subsection 1 of that section.

5. Upon the failure of a person to pay a fine imposed pursuant to the provisions of this section when it becomes due, the Director may suspend, revoke or refuse to issue any license obtained pursuant to the provisions of ~~[this chapter,]~~ *chapter 445B of NRS.*