

**ADOPTED REGULATION OF THE  
DEPARTMENT OF MOTOR VEHICLES**

**LCB File No. R066-05**

Effective February 23, 2006

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

AUTHORITY: §§1-8, NRS 445B.785.

A REGULATION relating to vehicle emissions; revising the provisions governing approved inspectors; and providing other matters properly relating thereto.

**Section 1.** Chapter 445B of NAC is hereby amended by adding thereto a new section to read as follows:

*1. In addition to the identification number assigned to each approved inspector, the Department will issue to each approved inspector a unique and confidential access code. The access code will enable the approved inspector to activate, access and input data into the exhaust gas analyzer located at the test station where he is employed.*

*2. An approved inspector, including, without limitation, the operator of a test station, shall not willfully or negligently allow any person to use his identification number or access code to:*

*(a) Activate, access or input data into the exhaust gas analyzer; or*

*(b) Issue a certificate of compliance.*

**Sec. 2.** NAC 445B.485 is hereby amended to read as follows:

445B.485 1. The Department will not license a person as a class 1 approved inspector unless he has demonstrated his qualifications and ability to test motor vehicles to its satisfaction by:

(a) Submitting an application, on a form provided by the Department;

(b) Submitting a certificate of competence issued by the manufacturer of an exhaust gas analyzer approved by the Department, indicating his ability to adjust and operate the equipment required to obtain the rating or ratings for which he is applying pursuant to NAC 445B.498, or by demonstrating to the Department his ability to adjust and operate such equipment; and

(c) Successfully:

(1) Completing a training course or courses for a license as a class 1 approved inspector which was conducted or approved by the Department, or equivalent training approved by the Department, for the particular rating or ratings for which he is applying;

(2) Completing a written test for a license as a class 1 approved inspector which was prepared by the Department for the particular rating or ratings for which the person is applying with a score of at least 80 percent; and

(3) Performing a practical demonstration of the procedures for testing prescribed by the Department.

2. The Department will not license a person as a class 2 approved inspector unless he has demonstrated his qualifications and ability to test motor vehicles and to diagnose, repair and service devices for the control of exhaust emissions to its satisfaction by submitting an application, on a form provided by the Department, which establishes that he has ~~F~~:

~~—(a) Within~~, *within* the last 12 months, satisfied the requirements set forth in paragraphs (b) and (c) of subsection 1 for a license as a class 1 approved inspector for the particular rating or ratings for which the person is applying ~~[-and~~

~~—(b)] and:~~

(a) Successfully completed a written test for a license as a class 2 approved inspector which was ~~[-prepared]~~ *administered* by the Department for the particular rating or ratings for which the person is applying with a score of at least 80 percent ~~[-]~~; *or*

*(b) Submitted current certification from the National Institute for Automotive Service Excellence as an advanced engine performance specialist. The certification must remain valid throughout the applicant's 24-month period of licensure as a class 2 approved inspector.*

3. The Department will investigate each applicant to determine his fitness.

**Sec. 3.** NAC 445B.486 is hereby amended to read as follows:

445B.486 1. The Department will establish written tests for the licensing and rating of class 1 approved inspectors and class 2 approved inspectors.

2. An applicant taking such a test must show that he has completed the course, courses or equivalent training required pursuant to NAC 445B.485 for the rating or ratings for which he is applying.

3. An applicant who fails to pass the written test or practical demonstration required for a license as a class 1 approved inspector must wait 7 calendar days before he may retake the test or demonstration.

4. If an applicant fails two *or more* consecutive written tests or practical demonstrations required for a license as a class 1 approved inspector, he must, ~~[-wait 90 days]~~ before he may retake the test or demonstration ~~[-]~~

~~—5.— If an applicant fails three consecutive written tests or practical demonstrations required for a license as a class 1 approved inspector, he must, before he may retake the test or demonstration, wait 180 days and submit proof to the Department that he has successfully completed an additional training course which is conducted or approved by the Department for the rating or ratings for which he is applying.~~

~~—6.] , submit proof to the Department that he has, after failing the tests or demonstrations, successfully completed an additional training course which is conducted or approved by the Department.~~

5. If an applicant fails to pass the written test required for a license as a class 2 approved inspector, he must, before he may retake the test, submit proof to the Department that he has, after failing the test, completed a training course regarding the diagnosis, repair and servicing of devices for the control of exhaust emissions which was conducted or approved by the Department for the rating or ratings for which he is applying.

**Sec. 4.** NAC 445B.489 is hereby amended to read as follows:

445B.489 The Department may deny the issuance of, suspend or revoke the license of an approved inspector if:

1. The approved inspector fails to establish by satisfactory evidence to the Department that he is employed by a test station with an appropriate rating.

2. The approved inspector has knowingly made any false statement or concealed any material fact on his application for a license.

3. The approved inspector knowingly submits false, inaccurate or misleading information on evidence of compliance or any other records submitted to the Department.

4. The approved inspector fails to report in writing to the Department every change in his place of employment or any termination of his employment within 10 days after the date of the change or termination.

~~5. [The approved inspector willfully or negligently issues evidence of compliance which contains fraudulent information. As used in this subsection, the term “fraudulent” includes, but is not limited to, a backdated document, a postdated document or a document based on anything other than actual physical inspection at the time of the issuance of the evidence of compliance.~~

~~—6.]~~ 6. The approved inspector does not follow the procedures for testing prescribed by the Department.

~~[7.]~~ 6. The approved inspector allows evidence of compliance to be completed or issued by a person who is not an approved inspector.

~~[8.]~~ 7. The approved inspector allows another person to perform emissions tests by using the identification number assigned to the approved inspector.

~~[9.]~~ 8. The approved inspector submits to the Department falsified credentials or certifications of training.

~~[10.]~~ 9. The approved inspector makes an inaccurate determination regarding a classification of a motor vehicle.

~~[11.]~~ 10. The approved inspector fails to comply with any provision of NAC 445B.400 to 445B.735, inclusive ~~[~~

~~—12.]~~ , and *section 1 of this regulation.*

*11.* The Department determines that an applicant or approved inspector is not lawfully entitled to a license.

~~{13.}~~ **12.** The approved inspector is convicted for violating the provisions of chapter 598 of NRS relating to deceptive trade practices.

~~{14.}~~ **13.** The approved inspector is unable to demonstrate proficiency in the verbal and written expression of the English language.

**Sec. 5.** NAC 445B.490 is hereby amended to read as follows:

445B.490 1. The ~~{applicant or}~~ approved inspector may, within 30 days after receipt of the notice of ~~{denial,}~~ suspension or revocation, petition the Director, in writing, for a hearing which will be conducted by the Director or his authorized representative.

2. Failure of the ~~{applicant or}~~ approved inspector to petition the Director in writing for a hearing within the 30-day period constitutes an automatic ~~{denial of the application or}~~ suspension or revocation of the license.

3. Upon filing the petition, a date for hearing will be fixed ~~{no longer}~~ *not later* than 20 days after receipt of the request for a hearing, and the ~~{applicant or}~~ approved inspector is entitled to be present at the hearing, *to* testify in his own behalf and to have such other persons as he desires to be present to testify at the hearing.

4. Within 10 days after the hearing, the Director or his authorized representative will make written findings of fact and conclusions of law and ~~{will:~~

~~—(a) Grant or finally deny the application; or~~

~~—(b) Suspend} *may, without limitation, suspend* or revoke the license.~~

**Sec. 6.** NAC 445B.493 is hereby amended to read as follows:

445B.493 1. ~~{When}~~ *Except as otherwise provided in subsection 3, if* an approved inspector's license has been revoked for cause, the person may not reapply for an approved inspector's license for 1 year after the date of revocation.

2. The approved inspector's license which has been revoked must be surrendered to the Department.

3. *The Department will permanently revoke the license of an approved inspector who willfully or negligently:*

(a) *Issues or assists in the issuance of evidence of compliance which contains fraudulent information.*

(b) *Conspires or causes to be produced evidence of compliance which contains fraudulent information.*

4. An applicant for an *approved* inspector's license who has been denied a license may not reapply for a license after denial:

(a) Until he has taken an action which removes the ground for the denial; or

(b) Within 1 year after the denial,

↳ whichever first occurs.

5. *If the Department determines that an approved inspector engages in egregious conduct or conduct that poses a serious risk to the public safety, the Department may, in its discretion, permanently revoke the license of the approved inspector.*

6. *As used in this section:*

(a) *"Egregious conduct" includes, without limitation, using a motor vehicle that meets the standards for emission control for the purpose of fraudulently issuing a certificate of compliance for another motor vehicle that does not meet such standards.*

(b) *"Fraudulent information" includes, without limitation:*

(1) *A backdated document;*

(2) *A postdated document;*

*(3) A document based on anything other than the actual physical inspection of the vehicle for which the evidence of compliance was issued; or*

*(4) A certificate of compliance issued by a person wrongfully utilizing the identification number or access code of an approved inspector.*

**Sec. 7.** NAC 445B.497 is hereby amended to read as follows:

445B.497 1. If an approved inspector wishes to renew his license, he must, within the 3 months before its expiration and before it is reissued, successfully:

(a) Complete a course for the renewal of his license which is approved or developed and conducted by the Department for the particular class and rating or ratings the *approved* inspector is attempting to renew; and

(b) Complete a written test, with a score of at least 80 percent, which is approved or prepared by the Department for the particular class and rating or ratings the *approved* inspector is attempting to renew. Before the holder of a license as a class 2 approved inspector may take a test for the renewal of that class of license, he must submit to the Department proof that he has, after the initial issuance or last renewal of his license, whichever occurred last, successfully completed a ~~refresher~~ course *that includes updates on the latest technology available* regarding the diagnosis, repair and servicing of devices for the control of exhaust emissions which was conducted or approved by the Department for the rating or ratings the *approved* inspector is attempting to renew.

2. An *approved* inspector who fails to attain a score of 80 percent on the written examination required by subsection 1 for the renewal of a license as:

(a) A class 1 approved inspector may not take the examination again within 7 calendar days after the date of the first examination. If an *approved* inspector fails two *or more* consecutive



written examinations for the renewal of a license as a class 1 approved inspector, he must ~~[wait 90 calendar days]~~ *submit proof to the Department that he has, after failing the examinations, successfully completed an additional course conducted or approved by the Department* before he may retake the examination. ~~[If an inspector fails three consecutive written examinations for the renewal of a license as a class 1 approved inspector, he must, before he may retake the examination, wait 180 calendar days and submit proof to the Department that he has successfully completed an additional course conducted or approved by the Department for the rating or ratings the inspector is attempting to renew.]~~

(b) A class 2 approved inspector must, before he may retake the examination, submit proof to the Department that he has, after his failure of that examination, successfully completed a course regarding diagnosis, repair and servicing of devices for the control of exhaust emissions which was conducted or approved by the Department for the rating or ratings the *approved* inspector is attempting to renew.

*3. If the license of an approved inspector remains inactive, revoked or in expired status for 1 year or longer, the approved inspector shall be deemed to be a new applicant and must again comply with all applicable requirements concerning training and examinations.*

**Sec. 8.** NAC 445B.498 is hereby amended to read as follows:

445B.498 1. A person shall not perform any emission inspection for the purpose of issuing evidence of compliance unless he is currently licensed by the Department as an approved inspector.

2. Each license issued to an approved inspector expires 24 months after the date on which the license is issued.

3. Each approved inspector ~~[shall]~~ *must* have one or both of the following license ratings:

(a) A “G” rating to perform *certified on-board diagnostic system and* two-speed emissions inspections on gasoline-powered motor vehicles using the procedures set forth in NAC 445B.580.

(b) A “D” rating to perform light-duty diesel emissions inspections using the procedures set forth in NAC 445B.589.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R066-05**

The Department of Motor Vehicles submits the following statement. The Department adopted regulations assigned LCB File R066-05, which pertain to Chapter 445B of the Nevada Administrative Code, a regulation relating to pollution; LCB File R066-05 revises regulations relating to vehicle emissions; revises provisions governing approved inspectors;

**Workshop Notice date: 06/20/2005**

<b><u>Workshop Dates</u></b> Tuesday, 07/12/2005 3:00 PM Community College of Southern Nevada Bldg B, Room 140 3200 Cheyenne Ave Las Vegas NV 89030	<b><u>Workshop Dates</u></b> Tuesday, 07/26/2005 3:00 PM Washoe County Library South Valleys Branch 15650A Wedge Pkwy Reno, NV 89511
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**Hearing Notice date: 10/25/2005**

<b><u>Hearing Dates</u></b> Tuesday, 11/29/2005 1:15 PM Washoe County Library Sparks Branch 1125 12 <sup>th</sup> Street Sparks, NV 89431	<b><u>Hearing Dates</u></b> Thursday, 12/01/2005 1:15 PM Clark County Library Jewelbox Theatre 1401 E Flamingo Road Las Vegas, NV 89119
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**Date of adoption by agency: January 18, 2006**

**Filing date: February 23, 2006**

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.**

The Department of Motor Vehicles noticed public workshops for LCB File R066-05 on 06/20/2005 by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. The Department of Motor Vehicles noticed public hearings for LCB File R066-05 on 10/25/2005 by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. In counties where the Department does not maintain an office, the notices for both the public workshop and hearing were posted at the main office of

the public libraries. Special notices were also mailed to those persons who have requested to be placed on a special notice mailing list. An Electronic Message Bulletin was sent to emission analyzers at each emission station displaying the dates for the Public Hearings in Clark and Washoe Counties on 10/25/2005. Notice of the Workshops and Hearings were also posted on the Department of Motor Vehicle's website.

A copy of written comments may be obtained by calling the Nevada Department of Motor Vehicles at (775) 684-4805, or by writing the Department's Compliance Enforcement Division at 555 Wright Way, Carson City, NV. 89711. No comment or testimony was given by any member of the public at the Public Workshops and Public Hearings. No written comments by any member of the public were submitted to the Department.

**2. The number of persons who:**

**(a) Attended each workshop:**

<p><b><u>Workshop Dates</u></b> Tuesday, 07/12/2005 3:00 PM Community College of Southern Nevada Bldg B, Room 140 3200 Cheyenne Ave Las Vegas NV 89030 7 Persons Attended</p>	<p><b><u>Workshop Dates</u></b> Tuesday, 07/26/2005 3:00 PM Washoe County Library South Valleys Branch 15650A Wedge Pkwy Reno, NV 89511 5 Persons Attended</p>
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**(b) Attended each hearing:**

<p><b><u>Hearing Dates</u></b> Tuesday, 11/29/2005 1:15 PM Washoe County Library Sparks Branch 1125 12<sup>th</sup> Street Sparks, NV 89431 11 Persons Attended</p>	<p><b><u>Hearing Dates</u></b> Thursday, 12/01/2005 1:15 PM Clark County Library Jewelbox Theatre 1401 E Flamingo Road Las Vegas, NV 89119 8 Persons Attended</p>
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**(c) Testified at each hearing:**

Name	Representing	Date
Dolf Vankesteren	Wayne's Automotive, Mooney's Automotive, Xpress Lube	11/29/2005
Scott Allen	Truckee Meadows Community College	11/29/2005
Peter Krueger	Nevada Emission Testers Council	11/29/2005 12/01/2005
Mike Prince	Terrible Herbst	12/01/2005

**(d) Submitted to the agency written comments:**

Name	Representing	Date
Russ Lucas	Jiffy Smog	09/06/2005
Dolf Vankesteren	Wayne's Automotive Mooney's Automotive Xpress Lube	12/3/2005

**3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from businesses through postings as outlined in question one, and by direct mail to the Departments interested parties' list.

Russ Lucas, owner of Jiffy Smog in Las Vegas submitted recommendations by e-mail on September 6<sup>th</sup>, 2005. Mr. Lucas provided the following information:

445B.485 2(b) & 2(c) Mr. Lucas noted in his written statement to the Department of Motor Vehicles that the testing requirement should be an alternative. The testing requirement should be either a DMV test OR an ASE certification, not both.

445B.486 and 445B.497 Mr. Lucas noted that he agrees that the 90 and 180 day waiting periods be removed, but strongly believes the required training should be given by the DMV, and that it should specifically address the areas of need.

Dolf Vankesteren, representing Wayne's Automotive, Mooney's Automotive and Xpress Lube in Reno submitted recommendations by e-mail on September 6<sup>th</sup>, 2005. Mr. Vankesteren provided the following information regarding proposed language:

Mr. Vankesteren expressed concern regarding certain words found in the proposed language: frequented (to go to or be in often), peculiar (identifying to an individual or group), opacity (quality of smoke), demonstration (display, showing off), proficiency (course of action), egregious (objectionable bad). Mr. Vankesteren expressed other concerns: Demonstrate proficiency in the verbal and written expression of the English language. Who will assign the English Class? Please review some of this material and try your best to simplify, make it easier to understand the English wording, so documents will be more effective in the training and teaching of our Emission Inspectors.

A Public Hearing was held 11/29/2005 at the Sparks NV Library, starting at 1:15 p.m. Four individuals provided testimony. A summary of the testimony received follows:

Dolf Vankesteren representing Wayne's Automotive, Mooneys Automotive & Xpress Lube:  
Mr. Vankesteren commented about the hard to understand language and words found in the Nevada Administrative Codes. Some words mentioned by Mr. Vankesteren are noted in bold font:

**445B.486(4)** If an applicant fails two or more consecutive written tests or practical **demonstrations** required for a license as a class 1 approved inspector, he must, before he may retake the test or demonstration, submit proof to the Department that he has, after failing the tests or **demonstrations**, successfully completed an additional training course which is conducted or approved by the Department. **445B.489(13)** The approved inspector is unable to **demonstrate** proficiency in the verbal and written expression of the English language. **445B.493(5)** If the Department determines that an approved inspector engages in **egregious** conduct or conduct that poses a serious risk to the public safety, **the** Department may, in its discretion, permanently revoke the license of the **approved** inspector. **445B.498(1b)** "**Egregious** conduct" includes, without limitation, using a motor vehicle that meets the standards for emission control for the purpose of fraudulently issuing a certificate of compliance for another motor vehicle that does not meet such standards. Mr. Vankesteren recommended changing "latest" to "current" technology available found on page 8 of NAC 445B.497(1b) and also recommended adding "OBDII" to certified on-board diagnostic system found on page 10 of 445B.498(3a).

Scott Allen representing Truckee Meadows Community College: Mr. Allen supports the Department's decision to allow alternate inspector test and repair (2G) certification through acceptance of Automotive Service Excellence (L1) Advanced Engine Performance Certification, as proposed on Page 3 of the proposed draft, 445B.485(2). This practice will prevent redundant testing for test and repair inspectors.

A Public Hearing was held 12/01/2005 at the Clark County NV Library located on E Flamingo Rd, starting at 1:15 p.m. Two individuals provided testimony. A summary of the testimony received follows:

Peter Krueger representing the Nevada Emission Testers Council: Mr. Krueger made a general comment that the Department's Practical Exam addressed under 445B.486 needs to be administered in a standard method in both the Northern & Southern Regions. Advised that the Department should work on better standardization so applicants can expect consistent grading of exams.

Mike Prince representing Terrible Herbst: Mr. Prince asked if the Department is considering issuing one Photo Identification Card to emission inspectors that are employed at more than one location, which would be valid at all locations instead of separate license forms for each emission station the inspector is employed. Mr. Prince asked if a certified on-board diagnostic system found on page 10 of 445B.498(3a) is an OBDII system.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The Department of Motor Vehicles evaluated all of the recommendations submitted in writing and by testimony.

- The Department is satisfied both the current language and the proposed language amendments found in LCB File R066-05 meet the needs of the emission testing industry and are written in a manner that is not difficult to understand. The Legislative Council Bureau has reviewed all of the regulatory language found in this LCB file. A Chief Investigator with the Department of Motor Vehicles offered to meet with the individual noting concerns with the regulatory language, to clarify the requirements of any Nevada Administrative Code regulation he may have in question. All Department training provided to the emission testing industry is drafted in basic, easy to understand language.
- During the Public Hearing in the Reno area there was testimony that noted “OBDII” should be added to language within this LCB File when reference to a vehicle’s “certified on-board ” diagnostic system is made. While OBDII is an acronym familiar within the automotive service industry, there is an actual definition for "certified on-board" diagnostic system found under 445B.4092 of the Nevada Administrative Code. The Department believes current language stating “certified on-board” diagnostic system meets the needs of all emission program stakeholders.
- During the Public Hearing in the Reno area there was testimony that recommended changing "latest" to "current" technology available found on page 8 of NAC 445B.497(1b). Since the words “latest” and “current” are quite similar, and the intent of the regulation will be the same by use of either word, there will not be a language amendment.
- Regarding the testimony at the Public Hearing addressing arbitrary grading of emission inspector applicants, the staff that represents the Department of Motor Vehicles use a grading sheet when evaluating emission inspector applicants. Grading is based upon guidelines found on the grading sheet. The Department has taken great effort to make certain every emission applicant is evaluated in a consistent manner.
- Proposed regulatory language states that Emission Inspectors will be allowed a choice of obtaining Class 2 Test and Repair Certification by meeting either the Department’s Class 2 exam requirements or by submitting Automotive Service Excellence Certification for L1 Advanced Engine Performance.
- The Department believes that 445B.486 and 445B.497, as proposed will provide a fair balance of training for inspectors. New applicants without Automotive Service Excellence Certification, approved inspectors who have been found to commit repeat violations of the Nevada Administrative Codes and Class 2 inspectors in need of update training are required to attend training courses not provided by the Department. Individuals that require training from providers outside of the Department will in many instances be better served due to the more technical aspects of the training provided. The training provided by the Department primarily addresses the federal and state regulations for vehicle emission control and prescribed testing procedures.

**5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:**

**(a) Both adverse and beneficial effects; and**

**(b) Both immediate and long-term effects.**

- There will be no immediate or long-term adverse or beneficial economic effect to the public due to the adoption of these regulations.
- There will be no immediate or long-term adverse or beneficial economic effects to the emission testing industry due to the adoption of these regulations.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There is no additional cost to the agency for enforcement of this regulation.

**7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation amendments duplicate.

**8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

No federal regulations regulate the same activity as the proposed regulation.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide or involve a new fee.