

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

**LCB File No. R129-07**

Effective December 17, 2008

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

AUTHORITY: §1, NRS 445B.210, 445B.770 and 445B.785.

A REGULATION relating to vehicle emissions; revising certain provisions relating to devices for the control of pollution; establishing provisions relating to the repair of a device for the control of pollution; requiring licensed dealers of motor vehicles to maintain certain records relating to noncompliant motor vehicles; and providing other matters properly relating thereto.

**Section 1.** NAC 445B.575 is hereby amended to read as follows:

445B.575 1. Except as otherwise provided in this section, a person shall not:

(a) Sell, offer to sell, display ~~[ ]~~ *for sale*, operate *or permit the operation of* or leave standing any motor vehicle which is required by state or federal law to be equipped with a device for the control of pollution unless the device is correctly installed and in operating condition ~~[ ]~~ *in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.*

(b) Disconnect, alter or modify any such required device.

2. Except for NAC 445B.5815, the provisions of subsection 1 and NAC 445B.576 to 445B.582, inclusive, do not apply to an alteration or modification of a motor vehicle to use fuel other than gasoline or diesel fuel where the alteration or modification is effected without violating existing federal and state standards for the control of exhaust emissions.

3. The provisions of subsection 1 do not apply to a wholesale transaction between licensed dealers of motor vehicles ~~if~~ if:

*(a) The motor vehicle sold in the wholesale transaction was identified as a noncompliant motor vehicle by the Department during an audit pursuant to subsection 4 and the seller of the motor vehicle:*

*(1) Informs the prospective purchaser of the motor vehicle before the completion of the wholesale transaction that the motor vehicle is designated as a noncompliant motor vehicle; and*

*(2) Provides a written disclosure notice that identifies any device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation; or*

*(b) The seller of the motor vehicle sold in the wholesale transaction has:*

*(1) Physically separated the motor vehicle from all other motor vehicles displayed for retail sale;*

*(2) Marked the motor vehicle in a manner that reasonable and prudent persons would know the motor vehicle is not intended for retail sale;*

*(3) Indicated on all written records relating to the motor vehicle identifying the motor vehicle as suitable only for sale in a wholesale transaction; and*

*(4) Prepared a written disclosure notice for inclusion with the dealership's permanent records of the motor vehicle which details the reasons why the motor vehicle is only suitable for sale in a wholesale transaction.*

4. The Department may ~~inspect~~ *audit* a licensed dealer of motor vehicles to determine compliance with this section. Such ~~inspections must be conducted in accordance with subparagraph (2) of paragraph (a) of subsection 4 of NAC 445B.580.]~~ *audits may include, without limitation:*

*(a) An inspection of every device for the control of pollution on any motor vehicle displayed for retail sale and selected for the audit; and*

*(b) An inspection of any document which contains information relating to emission inspections for the motor vehicle selected for the audit.*

5. *A device for the control of pollution which is deemed by the Department as not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation pursuant to subsection 4 may be repaired by an authorized station or class 2 fleet station.*

6. *A noncompliant motor vehicle shall no longer be deemed noncompliant if:*

*(a) The authorized station or class 2 fleet station that repaired the device for the control of pollution issues evidence of compliance; and*

*(b) The Department conducts a physical inspection of the motor vehicle to verify compliance.*

7. *A licensed dealer of motor vehicles shall maintain a written record, in a manner satisfactory to the Department, of every noncompliant motor vehicle. The record must be maintained at the established place of business of the dealer and must be made available for inspection by any authorized agent of the Department during normal business hours. The record must include at least the following information:*

*(a) The vehicle identification number of each motor vehicle;*

- (b) Every date on which the motor vehicle was deemed noncompliant by the Department;*
- (c) If any device for the control of pollution installed on the motor vehicle was repaired and subsequently inspected by the Department, every date on which the motor vehicle was deemed compliant by the Department; and*
- (d) If the motor vehicle was sold as a wholesale transaction between licensed dealers of motor vehicles, the name of the dealer who purchased the motor vehicle and the date on which it was purchased.*

*8. For purposes of this section:*

*(a) The failure of a seller to meet any of the requirements described in subsection 3 relating to a wholesale transaction shall be deemed prima facie evidence of misrepresentation of a material fact.*

*(b) The failure of a licensed dealer of motor vehicles to comply with a directive of the Director advising him of his noncompliance with any provision of this section within 10 days after his receipt of the directive is prima facie evidence of his willful failure to comply with the directive.*

*9. As used in this section ~~[, a “device”]~~:*

*(a) “Device for the control of pollution” includes, without limitation ~~[, a gasoline cap which meets the specifications of the manufacturer of the motor vehicle and seals the neck or pipe of the fuel filler.]~~:*

*(1) On any motor vehicle manufactured on or after January 1, 1981, if the equipment was originally installed on the motor vehicle by the manufacturer, a catalytic converter, fuel inlet restrictor, air injection system, exhaust gas recirculation system, crankcase depression regulator or fuel inlet cap; and*

*(2) On any motor vehicle with a model year of 1996 or newer, if the equipment was originally installed on the motor vehicle by the manufacturer, a certified on-board diagnostic system, malfunction illumination light or a data-link connector.*

*(b) “Noncompliant motor vehicle” means any motor vehicle that has a device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File R129-07**

The Department of Motor Vehicles submits the following statement. The Department adopts permanent regulations assigned LCB File R129-07, which pertain to Chapter 445B of the Nevada Administrative Code, a regulation relating to vehicle emissions; revising certain provisions relating to devices for the control of pollution; requiring licensed dealers of motor vehicles to maintain certain records relating to noncompliant motor vehicles;

<sup>1</sup> WORKSHOP	<sup>2</sup> WORKSHOP
<p>Thursday, January 24<sup>th</sup>, 2008 at 10:00 am Washoe County Health Department 1001 E. 9<sup>th</sup> St. Bldg. C, Room #110 Reno, NV. 89512</p>	<p>Tuesday, January 29<sup>th</sup>, 2008 at 1:00 pm McCarran International Airport “Commissioner’s Conference Room” Located on the 5<sup>th</sup> Floor 5757 Wayne Newton Blvd. Las Vegas, NV. 89111-5000</p>

<sup>1</sup> Public Workshop Notice Date: December 10, 2007

<sup>2</sup> Public Workshop Notice Date: December 13, 2007

<sup>3</sup> WORKSHOP	<sup>3</sup> WORKSHOP
<p>Tuesday, September 23<sup>rd</sup>, 2008 at 9:00 am Washoe County Government Complex (Health Department) 1001 East Ninth Street Building #C Room #110 Reno, Nevada 89512</p>	<p>Friday, September 26<sup>th</sup>, 2008 at 10:00 am Community College of Southern Nevada Building #C Room #223 Las Vegas, Nevada 89146</p>

<sup>3</sup> Public Workshop Notice Date: August 28, 2008

<sup>4</sup> HEARING
<p>10:00 AM Tuesday, October 21<sup>st</sup>, 2008 Washoe County Government Complex (Health Department) 1001 E. 9<sup>th</sup> St. Bldg C, Room #110 Reno, Nevada 89512</p>

<sup>4</sup> Public Hearing Notice Date: August 28, 2008

Date of Adoption by Agency: November 10, 2008 and upon approval of Legislative Commission.

## INFORMATIONAL STATEMENT

**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 R129-07 on December 10<sup>th</sup>, 2007, December 13<sup>th</sup>, 2007 and August 28<sup>th</sup>, 2008, by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. The notice was posted at the main office of the public libraries in counties where the Department does not maintain an office. Special notice was also mailed to those persons who have requested to be placed on an Interested Parties special notice mailing list.

The Department of Motor Vehicles noticed public hearings for LCB File R129-07 on August 28<sup>th</sup>, 2008, by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. The notice was posted at the main office of the public libraries in counties where the Department does not maintain an office. Special notice was also mailed to those persons who have requested to be placed on an Interested Parties special notice mailing list.

There was no comment or testimony given by any member of the public at the Public Workshops and Public Hearings. There was no written comment submitted by any member of the public.

**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:** The Department of Motor Vehicles noticed public workshops for LCB File R129-07 on December 10<sup>th</sup>, 2007, December 13<sup>th</sup>, 2007 and August 28<sup>th</sup>, 2008 by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. The notice was posted at the main office of the public libraries in counties where the Department does not maintain an office. Special notice was also mailed to those persons who have requested to be placed on an Interested Parties special notice mailing list.

The Department of Motor Vehicles noticed public hearings for LCB File R129-07 on August 28<sup>th</sup>, 2008 by posting at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. The notice was posted at the main office of the public libraries in counties where the Department does not maintain an office. Special notice was also mailed to those persons who have requested to be placed on an Interested Parties special notice mailing list.

A copy of the minutes for the public workshop and public hearings may be obtained by contacting the Department of Motor Vehicles Compliance Enforcement Division by telephone at (775) 684-4805.

A copy of the minutes for the public workshop and public hearings may be obtained by contacting the Department of Motor Vehicles Compliance Enforcement Division in writing at the following address:

Nevada Department of Motor Vehicles  
Compliance Enforcement Division  
555 Wright Way  
Carson City, Nevada 89711-0900  
Attention: Ivie Harper Administrative Assistant III

**The number of persons who attended each Public Workshop:** Four individuals representing the franchised auto dealer industry attended the Public Workshop on January 24<sup>th</sup>, 2008, held at the Washoe County Government Complex in Reno. Three individuals representing the emission testing industry and one Registered Lobbyist representing the Motor Transport industry attended the Public Workshop held on January 29<sup>th</sup>, 2008, at the McCarran International Airport in Las Vegas.

Two individuals, representing the franchised auto dealer and emission testing industries attended the Public Workshop on September 23<sup>rd</sup>, 2008, held at the Washoe County Government Complex in Reno. No individuals attended the Public Workshop held on September 26<sup>th</sup>, 2008, at the Community College of Southern Nevada in Las Vegas.

**A summary of questions and comments received at each Public Workshop:** At the January 24<sup>th</sup>, 2008 Public Workshop held in Reno, two individuals stated their concern about the proposed regulation language authorizing Department of Motor Vehicle representatives to evaluate a vehicle's certified on-board computer data by using analysis equipment. The individuals explained that vehicles offered for sale often have their battery loses charge, which erases all emission data from the vehicle's computer, including information listed on previous emission test records. Should a Department of Motor Vehicles representative inspect a vehicle using analysis equipment after the battery has lost its charge, they may believe that the emission test was improperly conducted because of the conflicting information found on the emission test record versus the information retrieved during the audit. One individual representing the franchised auto dealer industry stated that the proposed regulation as written would provide hardship on dealers because vehicles, even though designated for a wholesale transaction, would have to undergo repairs to pass the emission device visual inspection, if problems were found.

No comments were received at the January 29<sup>th</sup>, 2008 Public Workshop held in Las Vegas.

At the September 23<sup>rd</sup>, 2008 regulation workshop held in Reno, two individuals representing the franchised vehicle dealerships expressed concern that the proposed regulation language will require an inspection of emission control devices for every vehicle intended for wholesale transactions, with a mandatory disclosure of problems found with any emission system presented to the vehicle purchaser. A Deputy Chief representing the Department of Motor Vehicles, Compliance Enforcement Division explained that the current language in NAC 445B.575 simply requires updating because it does not address inspections of emission control devices on 1996 and newer light duty vehicles. The Deputy Chief representing the Department of Motor Vehicles, Compliance Enforcement Division explained to the individuals that it is not the intention of the proposed regulation to require every vehicle intended for wholesale transactions to have an inspection of emission devices and disclosure of problems found presented to the purchaser. The



Deputy Chief explained that Department of Motor Vehicles representatives will only inspect emission devices on vehicles at dealerships offered for retail sale. Should a vehicle offered for retail sale be found to have a problem with required emission devices, the selling dealership will be required to take the vehicle off retail sale and either repair the problem or offer the vehicle for wholesale, with disclosure of the problem presented to the vehicle purchaser.

A Supervising Emission Control Officer with the Department of Motor Vehicles also recommended that an additional emission control device be added to the language found in subsection nine of NAC 445B.575. The device is found on diesel engines and is referred to as the Crankcase Depression Regulator.

**A summary of written comments submitted to the agency:** The notice for the January 2008 Public Workshops invited written comments from the public and affected industry, with a deadline for written comments to be received by January 21<sup>st</sup>, 2008. The notice for the September 2008 Public Workshops and Public Hearing invited written comments from the public and affected agencies, with a deadline for written comments to be received by September 22<sup>nd</sup>, 2008.

No written comment from either the public or affected industry was received.

**The number of persons who attended each Public Hearing:** Two individuals attended the Public Hearing held on October 21<sup>st</sup>, 2008 in Reno.

**A summary of testimony at each Public Hearing:** No testimony was offered at the Public Hearing held on October 21<sup>st</sup>, 2008 in Reno.

**A summary of written comments submitted to the agency:** The notice for Public Hearings invited written comments from the public and affected industry, with a deadline for written comments to be received by September 22<sup>nd</sup>, 2008.

No written comment from either the public or affected industry was received.

**If the regulation was adopted without changing any part of the proposed regulation, list a summary of the reasons for adopting the regulation without change.** The Department of Motor Vehicles has submitted the proposed regulation, to be considered for adoption with four changes:

- 1) Additional language has been included within NAC 445B.575 (4) (a) to clarify that only vehicles displayed for retail sale at a licensed dealer are subject to inspection audit.
- 2) Original proposed language found in NAC 445B.575 (6) (a) states that authorized inspection stations may perform repairs on devices for the control of pollution.
  - a) The reference to authorized inspection stations has been deleted from NAC 445B.575 (6) (a). Authorized inspection stations cannot perform repairs on devices for the control of pollution, as stated in NRS 445B.710.

- 3) The reference to fleet stations in NAC 445B.575 (6) (a) is further clarified to be “Class 2 fleet stations”.
  - a) As stated in NAC 445B.4099, Class 2 fleet stations are specifically licensed by the Department to perform repairs on devices for the control of pollution.
- 4) Additional language has been included within NAC 445B.575 (9) (1) to allow inspection of a Crankcase Depression Regulator on vehicles powered by diesel engines, displayed for retail sale.

**List 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.**

- (a) There is no estimated economic effect on the regulated industry, either adverse or beneficial, nor immediate or long-term.
- (b) There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

**List 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.

**List 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, list the name of the regulating federal agency:** There are no other state or federal government agency regulations that the proposed regulation amendments duplicate.

**If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:** There are no federal regulations that regulate the same activity as the proposed regulation.

**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. A total fee amount is not expected to be collected or used.