

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

**LCB File No. R003-04**

Effective February 3, 2005

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:***

*(a) Annual inspections of test stations; and*

*(b) Inspections of the performance of approved inspectors.*

**2. *In addition to the annual inspections of test stations required pursuant to paragraph***

*(a) of subsection 1, the Department may determine that additional inspections of test stations are necessary based on the following factors:*

*(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; and*

*(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.*

*(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 whose license is revoked by the Department pursuant to this section:*

*(a) 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, if the violation:*

*(1) Was knowing or willful; or*

*(2) Involved fraud.*

*(b) May 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 at a test station other than the test station where the violation occurred, if the violation:*

*(1) Was not knowing or willful; and*

*(2) Did not involve fraud.*

*6. 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.*

*7. 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 ~~[nor]~~ *or* more than \$500.

(b) For a second offense, a fine of not less than \$500 ~~[nor]~~ *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 ~~[not]~~ *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.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File R003-04**

The Department of Motor Vehicles submits the following statement. The Department adopted regulations assigned LCB File R003-04, which pertain to Chapter 445B of the Nevada Administrative Code on vehicle emission inspections; creating a program to inspect authorized emission stations and approved emission inspectors; establishing training classes, fines and other disciplinary action for violations by owners of authorized inspection stations and approved emission inspectors; and providing other matters properly relating thereto.

<b>Notice dates:</b>	<b>11/17/2003 05/21/2004 10/15/2004</b>	<b>Date of adoption by agency:</b>	<b>12/28/2004</b>
<b>Workshop dates:</b>	<b>12/17/2003 12/18/2003 07/01/2004 07/13/2004</b>	<b>Filing Date:</b>	<b>2/3/2005</b>
<b>Hearing dates:</b>	<b>07/01/2004 07/13/2004 11/19/2004</b>		

**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 R003-04 on separate occasions, November 17, 2003 and May 21, 2004 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 notice was posted at the main office of the public libraries. Special notice was also mailed to those persons who have requested to be placed on a special notice mailing list. The public hearings for LCB File R003-04 were also noticed on two separate occasions, May 21, 2004 and October 15, 2004, by posting the notice at 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 notice was posted at the main office of the public libraries. Special notice was also mailed to those persons who have requested to be placed on a special notice mailing list. A copy of written comments may be obtained by calling the Nevada Department of Motor Vehicles at (775) 684-4682 or by writing the Department's Management Services and Programs Division at 555 Wright Way, Carson City, NV. 89711. There was no comment or testimony given by any member of the public at the public workshops and public hearings held. There were no written comments submitted to the Department.



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

- (a) Attended each workshop:** 12 on 12/17/2003  
22 on 12/18/2003  
5 on 07/01/2004  
16 on 07/13/2004
- (b) Attended each hearing:** 5 on 07/01/2004  
10 on 07/13/2004  
12 on 11/19/2004
- (c) Testified at each hearing:** 3 on 07/01/2004  
5 on 07/13/2004  
5 on 11/19/2004

**(d) Submitted to the agency written comments:** Comments were submitted by Mr. Peter Krueger representing the Nevada Emission Testers Council and Mr. David Brown, owner of Budget Smog in Las Vegas.

**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. An electronic message was broadcasted on the emission analyzers located in every Nevada emission station on 05/27/2004 notifying them that public workshop and hearings are scheduled to be held on 07/01/2004 and 07/13/2004. On 11/16/2004 another electronic message was broadcasted to all Clark County emission stations for notification of a hearing scheduled for Las Vegas on 11/19/2004.

Comment was received at each public workshop and hearing. Written comments were submitted from emission station owners and emission inspectors representing the emission testing industry. Mr. Peter Krueger representing the Nevada Emission Testers Council and Mr. David Brown, owner of Budget Smog in Las Vegas, submitted the written comments. Comments received by the Department of Motor Vehicles from members of the emission testing industry focused upon preparation of the audit vehicle in a manner that an emission inspector only has to conduct a visual inspection of a vehicle's emission device to determine if tampering of any such device has occurred. If a violation of the Nevada Prescribed test procedure has occurred then a representative of the Department of Motor Vehicles shall immediately provide notification to the emission inspector. Whenever it has been determined the inspector has violated the Nevada Prescribed emission testing procedure, then the emission inspector that has been determined to violate the Nevada Prescribed emission testing procedure is provided an immediate opportunity to inspect the audit vehicle before it leaves the emission station. Recommendations were also submitted pertaining to sanctions administered by the Department for violations committed by emission inspectors and responsibilities of emission station owners for actions of their employees. Copies of the minutes containing

the summary of responses obtained at each public hearing held may be obtained by contacting the Nevada Department of Motor Vehicles at (775) 684-4805 or by writing the Department's Management Services and Programs Division at 555 Wright Way, Carson City, NV. 89711.

**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.**

Two revisions of the original proposed regulation, LCB File R003-04 were prepared. Revisions to the original proposed version were based upon input received from emission station owners and emission inspectors. Revisions to the original proposed version clarifies that the Department of Motor Vehicles shall allow an immediate inspection of the audit vehicle by an emission inspector that had been determined to have violated the Nevada Prescribed Emission Inspector Procedure. Revocation of an emission station license would only occur at the specific emission station location where the violation(s) occurred for owners of multiple emission stations; Revisions were also made to sanctions administered to emission station owners and emission inspectors. The Department of Motor Vehicles adopts the second revised proposed regulation with additional clarification that each licensed emission station in Nevada will receive one covert inspection per year. This also explains the basis for additional covert inspections and criteria detailing when emission station owners are prohibited to conduct business related to emission testing of motor vehicles based upon license suspension or revocation.

**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.**

- (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.

**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.**

The 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.**

There are not federal regulations which 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. There is not a total amount expected to be collected or used.