

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Emissions Program

RULE 1 - DIESEL INSPECTION PROGRAM

1 CCR 204-1

Basis and Purpose

This rule is promulgated pursuant to sections 42-4-401 through 42-4-414, 42-9-101 through 42-9-113, and 25-7-122.1, C.R.S.

Purpose: This rule establishes licensing requirements, and operational and enforcement standards for the Diesel Inspection Program, and sets out the process for an administrative hearing.

1.0 DEFINITIONS

- 1.1 Additional definitions and substantive regulations are found in the Air Quality Control Commission's Regulation 12 Part B; 5 CCR 1001-15.
- 1.2 "AQCC" means the Colorado Air Quality Control Commission. The AQCC is the rulemaking body responsible for Regulation 12 Part B; 5 CCR 1001-15.
- 1.3 "Business" means an estate, trust, firm, partnership, limited liability company, association, corporation, or other business entity.
- 1.4 "Cancellation of license" means an action by the Department rendering a license invalid.
- 1.5 "Certification of Emissions Control" (CEC) means either a Certification of Diesel Smoke Opacity Compliance or a Certification of Diesel Smoke Opacity Waiver issued to the owner of a diesel vehicle which is subject to the diesel opacity inspection program in order to indicate the status of inspection requirement compliance of such a vehicle.
- 1.6 "Data Media" means the external electronic storage device used to record the results of the Diesel Opacity Inspection.
- 1.7 "Department" means the Colorado Department of Revenue.
- 1.8 "Diesel Vehicle Inspection Report (DVIR)" means the official document generated by a diesel inspection station to record completion of a diesel opacity inspection.
- 1.9 "Division" means the Air Pollution Control Division of the Colorado Department of Public Health and Environment.

- 1.10 “Full investigation” means a reasonable ascertainment of the underlying facts on which the Department’s action is based.
- 1.11 “Inspector Number” is the license number assigned by the Department to each licensed Diesel Opacity Inspector.
- 1.12 “Regulation 12” means Part B of Regulation 12, Reduction of Diesel Vehicle Emissions adopted by the Air Quality Control Commission, also known as 5 CCR 1001-15.
- 1.13 “Revocation of a license” means that the station or inspector is no longer licensed to provide the services authorized under Part 4 of Article 4 of Title 42 C.R.S.
- 1.14 “Suspension of a license” means that the station or inspector is not authorized for a defined period of time to provide services under Part 4 of Article 4 of Title 42 C.R.S.

2.0 GENERAL REQUIREMENTS

- 2.1 Application for a Diesel Opacity Inspection Station or Diesel Opacity Inspector license(s) shall be made on forms issued by the Department.
- 2.2 No person or business shall represent that they are a licensed Diesel Opacity Inspector or licensed Diesel Opacity Inspection Station unless they have a valid license issued by the Department.
- 2.3 A Diesel Opacity Inspection Station shall not allow any person who does not have a valid Diesel Opacity Inspector licensed to perform any portion of a diesel opacity inspection.
- 2.4 A Certification of Diesel Smoke Opacity Compliance shall only be issued by a licensed Diesel Opacity Inspection Station or authorized Division personnel.
- 2.5 A Certification of Diesel Smoke Opacity Waiver shall only be issued by authorized Department Personnel.
- 2.6 Diesel Opacity Inspection Program licensees shall cooperate with the Department during the course of inspections, audits, and investigations.
- 2.7 The Department may cancel, suspend, or revoke a license for a violation of Part 4 of Article 4 of Title 42, Regulation 12, or of this Rule.

3.0 STATION LICENSES

- 3.1 All Diesel Opacity Inspection Station licenses shall be posted in a conspicuous place on the licensed premises, in a location accessible to the public and subject to approval by the Department.

3.2 Diesel Opacity Inspection Stations are responsible for the conduct of their licensed inspectors.

4.0 INSPECTOR LICENSES

4.1 Inspectors must keep their current mailing address on file with the Department.

4.2 All Diesel Opacity Inspector licenses shall be posted in a conspicuous place on the licensed premises, in a location accessible to the public and subject to approval by the Department.

4.3 The Department will cancel a Diesel Opacity Inspector's license at the request of the licensee.

4.4 Diesel Opacity Inspectors may be simultaneously employed at more than one Diesel Opacity Inspection Station.

5.0 LICENSE FEES AND TERMS

5.1 The initial fee for a Diesel Opacity Station license is \$25.00.

5.2 The annual renewal fee for a Diesel Opacity Station license is \$10.00.

5.3 The initial fee for a Diesel Opacity Inspector license is \$10.00.

5.4 The annual renewal fee for a Diesel Opacity Inspector license is \$5.00.

5.5 Diesel Opacity Inspectors who are employed at more than one Diesel Opacity Inspection Station must have a separate license for each station and will be charged an initial and renewal license fee for each license.

5.6 Licenses are valid for twelve months from the date of issue unless the license is cancelled, suspended, revoked, or the licensee is required to re-qualify.

5.7 The fee for a license not renewed on or before the date of expiration is the initial fee.

5.8 Upon expiration, suspension, cancellation, or revocation of a Diesel Opacity Inspection Station license, the station and Diesel Opacity Inspectors employed at that station are no longer authorized to perform diesel opacity inspections. [ATTENTION: Pursuant to Section 42-3-105(1)(c)(I) and (II), C.R.S., a station and/or inspector may not perform a VIN inspection without a valid license.]

5.9 License fees collected by the Department are not refundable.

6.0 USE OF INSPECTOR NUMBER

6.1 Each licensed Diesel Opacity Inspector shall be assigned a unique inspector license number by the Department.

- 6.2 A licensee shall use only the license number and access code assigned to him/her.
- 6.3 An inspector shall keep his or her access code secure and shall not reveal it to another person or allow another person to use it.
- 6.4 Inspectors shall report any unauthorized issuance or use of any DVIRs and CECs to the Department within 24 hours of discovering the unauthorized issuance or use.
- 6.5 Inspectors are presumed to have performed the inspections for all DVIRs and CECs bearing their inspector number.

7.0 DIESEL PROGRAM STATION OPERATIONS

- 7.1 Diesel Opacity Inspection Station agents or employees shall not modify, alter, tamper, or otherwise affect any portion of a vehicle's emissions control systems in any manner that renders the system inoperable or places the vehicle in a non-certified emissions control configuration.
- 7.2 Diesel Opacity Inspection Stations shall be open for business during posted business hours.
- 7.3 Licensees shall not charge more than the posted fee for a Diesel Opacity Inspection.
- 7.4 Diesel Opacity Inspection Station records, including but not limited to the weekly opacity meter calibration records, shall be available on site to the Department during posted business hours.
- 7.5 Diesel Opacity Inspection Stations shall have at least one licensed Diesel Opacity Inspector on the licensed premises when open for business.
- 7.6 Licensees shall conduct all Diesel Opacity Inspection Station operations in accordance with applicable Colorado state statutes, Regulation 12, and Department rules.
- 7.7 Licensees shall not allow, or fail to prevent, performance of any part of a Diesel Opacity Inspection by an unlicensed person.
- 7.8 The licensee shall maintain all Diesel Opacity Inspection records until collected by the Department.
- 7.9 Licensees shall conduct only those inspections authorized by the type of license held.

- 7.10 Licensed Diesel Opacity Inspection Stations shall post, in a conspicuous location, a Department approved sign identifying the facility as a Licensed Diesel Opacity Inspection Station.
- 7.11 All publications and signs issued by the Department shall be posted in a conspicuous location on the licensed premises.
- 7.12 Licensees shall back up electronic records at least once every seven (7) calendar days.
- 7.13 Licensees shall not offer or perform diesel opacity inspections at a location other than the location for which their license was issued.
- 7.14 Inspectors shall not issue a CEC when the inspector knew or should have reasonably known that the vehicle did not satisfy the requirements for issuance of a CEC.

8.0 EQUIPMENT REQUIREMENTS AND OPERATION

- 8.1 All Diesel Opacity Inspection Stations shall have, at all times, adequate facilities, equipment and safety equipment to perform all elements of a Diesel Opacity Inspection, including all tools and equipment required by Regulation 12.
- 8.2 All tools and inspection equipment shall be maintained in a manner that permits proper operation in accordance with the requirements of Regulation 12, applicable statutes, and Department rules.
- 8.3 All computer equipment must meet minimum specifications as defined in Regulation 12.
- 8.4 All computer equipment that is networked, interfaced, or connected to any internet or any other communication device or system must be approved by the Department.
- 8.5 Any computer data tamper lockout or any lockout shall be reported to the Department verbally within 24 hours.
- 8.6 No testing may be conducted without prior written approval from the Department or the Division if the Division-approved DVIR computer is locked out or is non-operational.
- 8.7 Computer lockouts must be reset by the Department or the Division.
- 8.8 Licensees shall not use the dedicated diesel opacity inspection computer for purposes not authorized by the Department.

9.0 DIESEL FORMS & DOCUMENTATION

- 9.1 All unused CECs shall be stored in a locked and secure location with limited access.
- 9.2 Diesel Opacity Inspection Stations shall report in writing any misuse of, or missing or stolen, CECs to the Department immediately upon discovery. Diesel Opacity Inspection Stations shall report theft of CECs to local law enforcement and provide a copy of the police report to the Department.
- 9.3 Diesel Opacity Stations are accountable for all Department documents issued to both the station and its inspectors.
- 9.4 Upon cancellation, suspension, or revocation of a license, licensees shall surrender to the Department all licenses, forms, data media, and documents issued by or purchased from the Department.
- 9.5 Licensees shall verify that all DVIRs and CECs issued are complete, accurate, legible, and are properly printed with all information appearing in the correct location on the forms.
- 9.6 Voided DVIRs and CECs shall be retained in a secure manner and be available for inspection by the Department.
- 9.7 Only data media approved by the Department shall be used to record diesel opacity inspection results.
- 9.8 Fees collected for licensing and compliance documents are non-refundable.
- 9.9 Licensees shall accurately record vehicle or test data in the computer system.
- 9.10 Licensees shall not provide unused CEC(s) to another licensee.

10.0 SUSPENSION AND REVOCATION OF LICENSES

- 10.1 The Department may consider mitigating and aggravating factors when considering the imposition and duration of a sanction. These factors include, but are not limited to:
 - 10.1.1 Actions taken by the licensee to prevent violations.
 - 10.1.2 The licensee's past audit history.
 - 10.1.3 The seriousness and frequency of violations.
 - 10.1.4 Corrective action(s) taken by the licensee and the effectiveness of such measures.

10.1.5 Willfulness or deliberateness of the violation.

10.1.6 Likelihood of recurrence of the violation.

10.1.7 A violation of the Colorado Air Pollution Prevention and Control Act, section 25-7-122.1, C.R.S., of section 42-4-313, C.R.S., or a violation of the Motor Vehicle Repair Act, section 42-9-101, et. seq., C.R.S.

- 10.2 Any conduct by a licensee that impedes the Department's ability to oversee, audit, or investigate matters under the Diesel Opacity Inspection Program including behavior that is threatening, disruptive, or abusive may be cause for license revocation.
- 10.3 The Department may summarily suspend a licensee pursuant to section 24-4-104(4)(a), C.R.S.
- 10.4 Any Notice from the Department, required pursuant to these rules, will be provided via first class mail addressed to the last address furnished to the Department in writing by a licensee.
- 10.5 The Department may suspend or revoke the license of a licensee convicted, as defined in section 42-1-102(19), C.R.S., of a misdemeanor under the Colorado Air Pollution Prevention and Control Act, section 25-7-122.1, C.R.S., convicted of a misdemeanor under section 42-4-313, C.R.S., or of a licensee that has violated the Motor Vehicle Repair Act, section 42-9-101, et. seq., C.R.S.

11.0 ADMINISTRATIVE HEARINGS

- 11.1 If upon full investigation objective facts or conduct are established that warrant the suspension or revocation of the license of a Diesel Opacity Inspection Station or a Diesel Opacity Inspector, the Department shall, prior to instituting proceedings, provide the licensee with written notice of such objective facts or conduct established upon a full investigation that may warrant such action, afford the licensee an opportunity to submit written data, views, and arguments with respect to the facts or conduct, and - except in cases of deliberate and willful violation or of substantial danger to public health and safety - give the licensee a reasonable opportunity to comply with all lawful requirements.
- 11.2 A licensee who receives notice pursuant to subsection 11.1 may within 30 days after the date of the notice:
- 11.2.1 submit a written response setting forth data, views, and arguments with respect to the facts or conduct; or,
- 11.2.2 comply with all lawful requirements or submit a plan acceptable to the Department to bring the licensee into compliance with all lawful requirements.

- 11.3 The Department may institute a proceeding to suspend or revoke a license pursuant to subsection 11.1 if the Department determines that the licensee failed to:
- 11.3.1 submit a written response pursuant to subsection 11.1, or that the response does not rebut the evidence of such facts and conduct; or
 - 11.3.2 the licensee failed to comply with all lawful requirements, or the plan submitted by the licensee is not acceptable to the Department.
- 11.4 If the Department has objective and reasonable grounds to believe and finds, upon full investigation, that a licensee has been guilty of deliberate and willful violations, or that the public health, safety, or welfare imperatively requires emergency action, and incorporates these findings in its order, the Department may summarily suspend a licensee's license, pending an adjudicatory hearing on the suspension.
- 11.5 The Department shall provide a licensee with notice in writing of the time, place, and nature of any adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the matters of fact and law asserted at least thirty (30) days prior to the hearing.
- 11.5.1 Any licensee given such notice shall file a written answer within 30 days after the service or mailing of such notice. If the licensee fails to answer, upon motion of the Department, default may be entered.
- 11.6 Any notice provided pursuant to this section shall be served personally or by mailing by first-class mail to the last address furnished to the Department by the licensee.
- 11.7 Any proceeding shall be conducted in accordance with section 24-4-105, C.R.S.

The Department adopts the Air Quality Control Commission's Regulation 12, Part B, found at 5 CCR 1001-15, current as of February 1, 2015, as part of 1 CCR 204-1 of the Department of Revenue, Division of Motor Vehicle's Regulations. The Air Quality Control Commission's Regulation 12, Part B, was adopted on October 20, 2011. The Code of Colorado Regulations is compiled and published by the Colorado Secretary of State's Office, and is published on the Colorado Secretary of State's website for public inspection, pursuant to section 24-4-103(11), C.R.S., at www.sos.state.co.us and an unofficial print version can be purchased from LexisNexis. The Department's Rule does not include any later amendments or editions of the incorporated Air Quality Control Commission's Regulation 12, Part B. Certified copies of the complete text of the incorporated Air Quality Control Commission Regulation 12, Part B, are maintained at the Colorado Department of Revenue, Division of Motor Vehicles, 1881 Pierce Street, Room 142, Denver, Colorado 80214, and may be inspected by contacting the Records Custodian at that address during normal business hours. The incorporated material

may also be examined at any state publications depository library. Certified copies shall be provided at no cost upon request.