

**DIVISION OF CONSUMER EQUITABILITY WORKSHOP MEETING**  
**October 22, 2013**

**Purpose of Meeting:** To conduct a public and business workshop regarding NAC 581 and the fee increases, price verification inspections, and fuel standards referenced to Hand Book 130. The draft regulation LCB File number R179-12 is attached for reference; two modifications to the hourly rates were added.

**In Attendance:**

Brandon Harmon --- Nevada Division of Consumer Equitability  
Dave Jones --- Nevada Division of Consumer Equitability  
Lea Tauchen --- Nevada Retail Association, Retail Industry  
Tom Benton --- Sclaris, Retail Industry

**In General:**

The Administrator of the Nevada Division of Consumer Equitability conducted a workshop 9:00 – 10:00, October 22, 2013, to solicit comments, positions, feedback and impacts from the attendees and the public regarding the NAC 581 regulation modifications. Comments and correspondence are attached for reference.

The Administrator commenced the meeting referred the attendees to LCB File # R179-12 (see Attachment 1). The Administrator also discussed the results of the initial and follow-on price verification tests.

The sequence of events were:

**Past:**

- |              |   |
|--------------|---|
| Workshop I:  | April 12, 2012; discussed proposal to increase fees, add price verification regulations and adopt Handbook 130 fuel standards by reference into NAC 581.  |
| Workshop II: | July 10, 2012; discussed proposal to increase fees, add price verification regulations and adopt Handbook 130 fuel standards by reference into NAC 581. Additionally, Peter Krueger recommended the Division conduct a price verification test. |
| Test I:      | Conducted six months – September 2012 to  |

February 2013. Results – 119 price verifications conducted, 108 locations passed; 90% pass rate; four of nine inspectors recorded overcharges (19) and undercharges (17).

Test II:

Conducted three months – July 2013 to September 2013. Results – 89 price verifications conducted, 83 locations passed; 93% pass rate; all twelve of twelve inspectors recorded overcharges (23) and undercharges (25).

**Future:**

TBD, 2014

Nevada Department of Agriculture (NDA) will conduct an LCB R179-12 hearing.

Each of the Attendees were asked to provide answers/input regarding specific questions (see attached) then enter into a general discussion. Comments from that discussion are indicated below:

Dave Jones:

1. Clarified that the hourly rate from \$40.00 to \$50.00 for special testing checks and retests also pertain to the Metrology Laboratory calibrations. This was not reflected in the LCB File No. 179-12.
2. Presented the two price verification tests results to the attendees.
3. Presented the Price Verification Working Brief methodology (see Attachment 2).

Lea and Tom asked the following questions (for answers see Attachment 3):

Would there be additional fees?

Why do or increase the number of inspections if both tests reflect favorable results? Why can't the Division just inspect on a complaint basis?

**Attachments:**

Attachment 1 – LCB File No. R179-12

Attachment 2 – Price Verification Working Paper

Attachment 3 – Meeting Questions, Answers, and Industry's Response Email

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November 14, 2012

Dave Jones  
Administrator  
Division of Measurement Standards  
2150 Frazer Avenue  
Sparks, Nevada 89431

Re: LCB File No. R179-12

Dear Mr. Jones:

A proposed regulation of the State Sealer of Weights and Measures has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel Peinado".

Daniel Peinado  
Deputy Legislative Counsel

Brenda J. Erdoes  
Legislative Counsel

DP/slj  
Enclosure

*National Institute of Standards and Technology Handbook 44*, which is adopted by reference ~~in~~ NAC 581.011, and the National Institute of Standards and Technology 105-Series Handbooks and Training Materials which are adopted by reference ~~in~~ NAC 581.009; and

3. The applicant has sufficient standards and equipment to test devices adequately as set forth in the notes section of each applicable code in the *National Institute of Standards and Technology Handbook 44*.

**Sec. 8.** NAC 581.350 is hereby amended to read as follows:

581.350 The standards used by a service agency or serviceperson to repair or adjust a weighing or measuring device must be certified by a laboratory that has been qualified by the National Institute of Standards and Technology to certify such standards or the State Sealer of Weights and Measures according to the following schedule:

Standards for measuring mass .....	Every 2 years
Standards for measuring volume ( <i>less than 5 gallons</i> ) .....	Annually
Standards for proving volume ( <i>5 gallons or more</i> ) .....	Every <del>5</del> 2 years
Any other standards .....	As prescribed by the State Sealer of Weights and Measures

(b) Testing of standards from out of State; or

(c) Testing which requires special arrangements or conditions,

→ will be determined by agreement between the State Sealer of Weights and Measures and the owner or operator of the device or standard to be tested.

5. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section.

6. *For the purposes of this section, "recheck" means a test performed after a device has been recalibrated or otherwise adjusted to measure correctly.*

Sec. 6. NAC 581.230 is hereby amended to read as follows:

581.230 1. Except as otherwise provided in subsection 2, before use for a commercial or governmental purpose, a type of:

(a) Weighing or measuring device kept or used in:

(1) Proving the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption, which are purchased, offered or submitted for sale, hire or award;

(2) Computing a basic charge or payment for services rendered on the basis of weight and measure; or

(3) Determining weight or measure when a charge is made for the determination;

(b) Accessory attached to or used in connection with a commercial weighing or measuring device which is designed so that its operation affects the accuracy of the device; and

(c) Weighing and measuring device in official use for law enforcement or the collection of statistical information by a governmental agency,

Nontemperature-compensated meter used to measure liquid petroleum gas ..... 100

Temperature-compensated meter used to measure liquid petroleum gas.....200

(d) For standards of mass, volume or length, per hour:

For certification of standards for use in testing a commercial device for a service agency or serviceperson.....40

For certification of standards for use in testing a noncommercial device..... 80

(e) *For accredited certification of any standard with a certificate of calibration from the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology* ..... 100

3. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section.

Sec. 5. NAC 581.220 is hereby amended to read as follows:

581.220 1. In addition to the fees prescribed in NAC 581.210, the following fees will be charged *and collected* for a special test *or recheck*, except as otherwise provided in this section:

(a) For each hour for testing *or rechecking* a device above the time normally required to perform that test *or recheck* .....~~[\$40]~~ \$50

(b) For each hour for witnessing the test *or recheck* of a device that is not ..... 40

3. A violation of any provision of that portion of the publication adopted by reference in subsection 1 shall be deemed a violation of this chapter.

Sec. 4. NAC 581.210 is hereby amended to read as follows:

581.210 1. The tests and services for which fees will be charged *and collected* pursuant to this section include, without limitation:

- (a) A retest of a device which was marked "out of order" during a test.
- (b) A trip to test a device which was not available or ready for testing at the time scheduled for a test.
- (c) A test requested for a device if a special trip is required to perform the test. If, upon the arrival of the inspector, the test scheduled for the device cannot be performed for any reason which is not the fault of the Division or the inspector, any fee which would have been charged for that test remains due.
- (d) A test requested for a noncommercial device.
- (e) A calibration according to industrial standards of weights and measures.
- (f) An adjustment of a commercial device immediately following a determination of noncompliance during an annual test.
- (g) *An inspection of a point-of-sale system. If, upon the arrival of the inspector, the inspection scheduled for the point-of-sale system cannot be performed for any reason which is not the fault of the Division or the inspector, any fee which would have been charged for that inspection remains due.*

581.009 1. The State Sealer of Weights and Measures hereby adopts by reference the National Institute of Standards and Technology 105-Series Handbooks and Training Materials, as those publications existed on January 1, 2003, and any subsequent revision to those publications issued by the National Institute of Standards and Technology, which has been approved by the State Sealer of Weights and Measures for use in this State. Each new revision shall be deemed approved by the State Sealer of Weights and Measures unless he or she disapproves the revision within 60 days after the date of publication by the National Institute of Standards and Technology.

2. The State Sealer of Weights and Measures will review each revision issued after January 1, 2003, to ensure its suitability for this State and file a copy of each revision he or she approves with the Secretary of State and the State Library and Archives Administrator. The most recent revision that has been approved by the State Sealer of Weights and Measures will be available for inspection at the office of the Bureau of Weights and Measures, Division of Measurement Standards, 2150 Frazer Avenue, Sparks, Nevada 89431, or may be obtained free of charge from the Weights and Measures Division, NIST, 100 Bureau Drive, STOP 2600, Gaithersburg, Maryland ~~{20899-2600,}~~ 20899-2350, or at ~~{http://ts.nist.gov,}~~ <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

**Sec. 3.** NAC 581.030 is hereby amended to read as follows:

581.030 1. The State Sealer of Weights and Measures hereby adopts by reference:

- (a) The "Examination Procedure for Price Verification";
- (b) The "Uniform Packaging and Labeling Regulation";
- (c) The "Uniform Regulation for the Method of Sale of Commodities";

## NAC 581 FEE INCREASES

- Hourly Rate – Already in NAC; raising from \$40.00 to \$50.00.
- Mileage Rates – Already in NAC; raising relative to size of vehicle; due to price per gallon increases.
- Price Verification – NRS 581.067 (18) requires inspections; NRS 561.153 authorizes Director to raise fees for Title 51 (that's us.)

This briefing pertains to Price Verification.

## PRICE VERIFICATION – BOTTOM LINE

- Fee charged to *each store location* with four or more point-of-sales systems - \$50.00.
- Fee charged to *each store location* with three or less point-of-sales systems - \$25.00.

## DCE NEEDS

- Total needed dollars - \$142,900
- Employees – \$140,000 (2 @ \$70,000 each)
- Database - <sup>10,000</sup>~~\$2,900~~ <sup>5%</sup> (based on 5800 retail locations @ \$.50 per annual maintenance.
- Mileage – undetermined (why because the significant amount of store locations are within about 10 minutes driving time and previous POS inspections were done in conjunction with store scale checks.)

## PROJECTED REVENUE RECEIPTS

- Projected Income - \$192,850
- Equation is:
  - 5800 retail store locations (4 or more POSs) @  $1/3 = 1914$  locations.  $1914 \times \$50.00 = \$95,700$
  - 5800 retail store locations (3 or less POSs) @  $2/3 = 3886$  locations.  $3886 \times \$25.00 = \$97,150$

## DCE PRODUCTIVITY GOAL

- DCE will inspect 1840 retail store locations per year throughout Nevada.
- Equation is:
  - 2 Additional EEs = 1320 store locations (660 each)
  - 13 Inspector IIs = 520 store locations (40 each)
- Note:  $5800/1840 = 32\%$  retail stores inspected.

## ASSUMPTIONS

- 1840 store locations inspected annually is a satisfactory goal.
- 5800 store locations have POS systems.
- Not all stores (beauty salons, perfume shops, airport stores) post advertised prices.
- Not all stores scan products (furniture stores).
- 1/3 of the 5800 store locations have 4 or more POS systems.

## ASSUMPTIONS

- All store locations will pay their fees.
- DCE will not inspect restaurants.

## PLANNING FEE CONCERNS

- Not overwhelming the “Mom and Pop” stores; logical proportionate fee schedule.
- Developing a logical fee program
  - based on HB 130 - 3 or less POS systems = 25 items inspected.
  - Based on HB 130 -- 4 or more POS systems = 50 items inspected.
  - Based on one store versus a chain (more than one store) the cost increases.

## INITIAL INDUSTRY FEEDBACK

- Why are you increasing the frequency of your inspections?  
Because NRS 581.067 (18) requires DCE to execute.
- Why are you establishing fees?  
Because in order to test 100% devices and rechecks, and inspect 32% store locations additional revenues are required.
- Why are you not inspecting restaurants?

Because I have not received any complaints for restaurant charges.

**David Michael Jones**

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**From:** Tray Abney [tabney@thechambernv.org]  
**Sent:** Monday, November 04, 2013 10:02 PM  
**To:** David Michael Jones  
**Cc:** Lea Tauchen; bentont@scolarisclub.com; Peter Krueger; 2013 Legislation; Dennis L. Belcourt; Brian McAnallen; Bruce Gescheider  
**Subject:** Re: NAC Workshop Questions

Dave-

The Chamber will continue to oppose this process.

This seems to be a solution in search of a problem.

NRS 581.067.18 states that price verifications will be done "as necessary." There is certainly not any language that would suggest that regular checks outside of the current complaint driven process are called for or expected.

Your own numbers show a 93% compliance rate with checks done this summer, and over half of the "non-compliant" businesses were UNDER charging consumers. That certainly does not seem to suggest that there is any kind of abuse in Nevada.

On top of that, most of our surrounding states do not conduct these verifications and those that do perform much fewer of them.

We are not convinced that this process needs to continue any further and would urge you to focus your efforts elsewhere.

Thanks and please let me know if I can answer any questions or if I have misconstrued anything here.

Tray

On Thu, Oct 31, 2013 at 11:39 AM, David Michael Jones <[djones@agri.nv.gov](mailto:djones@agri.nv.gov)> wrote:

Hi All,

At the NAC 581 Workshop two questions were asked:

1. Will there be any additional fees or charges assessed beyond the annual point-of-sale annual fee?

- Yes, retail store locations may incur additional fees or charges should inspectors be required to perform price verification *rechecks*.
- Yes, retail store locations may incur *late payment fees* should payments not be made within thirty days of the retailer receiving the bill.
- Yes, if a retail store location is charged with a *civil penalty* (Reference NRS 581.057 3, then NRS 581.067 18, then NRS 581.415 1(e), then NRS 581.445 and NAC 581.260).

2. Why can't the NRS and NAC be changed to price verifications being conducted on a complaint basis only?

The NRS can be changed to complaint based price verifications; the legislature would have to make that change. Should the legislature make the change, the NAC would be adjusted accordingly.

Remember, the purpose of this action is because:

1. NRS 581.067 18 requires price verifications.
2. The Division of Consumer Equitability has not inspected but a fraction of the price verifications relative to existing locations. The Division has determined a more comprehensive, robust price verification program is needed to reach more retail locations.
3. In order to reach more locations, the Division determined that two new inspector positions and a database program must be added.
4. To finance the price verification program, the Division is establishing a fee schedule.
5. The aggregate revenues generated by recheck fees, late billing fees and civil penalties would be insufficient to support the robust program. This is reflected based on the two Divisional test periods.

Within sixty days I will have the modifications made to the current LCB File No. R 179-12 to include the point-of-sale fee structure. Additionally, I will send out reminders as to the Hearing date – this will be based on the return of the revised LCB File No. R179-12.

Should you have questions please call.

**Dave Jones**

**Administrator**

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