

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF AIR QUALITY

REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON PROPOSED AMENDMENT TO
RULES 15A NCAC 02D .1002, APPLICABILITY; 15A NCAC 02D .1003,
DEFINITIONS; 15A NCAC 02D .1005, ON-BOARD DIAGNOSTIC
STANDARDS, 15A NCAC 02D .1006, AND SALE AND SERVICE OF
ANALYZERS; AND PROPOSED REPEAL OF RULE 15A NCAC 02D .1009,
MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY
DIESEL VEHICLE REQUIREMENTS

SEPTEMBER 18, 2013
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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CONTENTS

| | | |
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| CHAPTER I | Summaries and Recommendations | I-1 |
| | Background and Summary | I-1 |
| | Comments and Responses Thereto | I-2 |
| | Summary of Comments and Responses | I-4 |
| | Conclusion | I-4 |
| | Hearing Officers' Recommendation | I-5 |
| CHAPTER II | Rules Proposed for Adoption | II-1 |
| CHAPTER III | Report of Proceedings | III-1 |
| | Introduction | III-1 |
| | Designation of Hearing Officer | III-2 |
| | Public Notice | III-3 |
| | Transcript | III-5 |
| CHAPTER IV | Exhibits | IV- 1 |
| | Proposed Rules as Presented at the Hearing | IV-2 |
| | Hearing Officer Comments at Hearing | IV-6 |
| CHAPTER V | Written Comments During Comment Period | V-1 |
| CHAPTER VI | Attachments | VI-1 |
| CHAPTER VII | Documentation | VII-1 |

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CHAPTER I

Summaries and Recommendations

Proposed amendments to 15A NCAC 02D .1002, 02D .1003, 02D .1005, 02D .1006, and 02D .1009.

BACKGROUND AND SUMMARY

A public hearing was held in Raleigh, NC on September 18, 2013, to take public comments on amendments to the Motor Vehicle Emission Control Standards in 15A NCAC 02D Section .1000. Mr. Steven Vozzo was appointed as the hearing officer for this hearing.

The North Carolina General Assembly passed legislation in 2012 calling for changes in the emissions testing program for newer cars and light-duty trucks. The North Carolina Motor Vehicle Emission Control Standard rules are proposed to be amended in order to incorporate the revised statutory exemption of the three most recent model year vehicles with less than 70,000 miles on the odometer from vehicle emissions inspection. While the new law exempts such vehicles from an emission inspection, those vehicles will still require a safety inspection where a visual inspection of the vehicles emissions components occurs. The proposed action is pursuant to Session Law 2012-199 (House Bill 585), An Act To Exempt Vehicles Of The Three Newest Model Years And With Less Than Seventy Thousand Miles From Emissions Inspections. Additional minor housekeeping amendments to clarify definitions are also proposed. In addition, Rule 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements, is proposed for repeal because it is duplicative of United States Environmental Protection Agency (USEPA) rule requirements and therefore unnecessary.

15A NCAC 02D .1002, *Applicability*, is proposed to be amended to extend the exemption from emission inspections from the current model year vehicles to the three most recent model years vehicles with less than 70,000 miles on their odometer consistent with Session Law 2012-199 and the North Carolina G.S. 20-183.2(b)(3).

15A NCAC 02D .1003, *Definitions*, is proposed for amendment to add and modify the definitions of terms in Section 02D .1000, Motor Vehicles Emission Control Standards to reflect advancements in the industry that have resulted in new technologies powering vehicles and associated new terminology intrinsic with modern motor vehicles. For example, definitions were added for vehicles powered by hybrid (electric and gas), electricity, and fuel-cell technologies. Definitions of new terms prompted by the statute change were also added, such as the term "three most recent model years."

15A NCAC 02D .1005, *On-Board Diagnostic Standards*, is proposed for amendment to align the rule with the new statutory exemption and to update the language for emergence of hybrid, electric, and fuel-cell powered vehicles.

15A NCAC 02D .1006, Sale and Service of Analyzers, is proposed to be amended to update language to reflect advancements and current capabilities for documenting and tracking emission inspection analyzer vendor repair and service calls.

Finally, **15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy Duty Diesel Vehicle Requirements**, is proposed to be repealed as it is equivalent to and duplicative of United States Environmental Protection Agency Heavy Duty Diesel rules and thus is no longer necessary.

PUBLIC COMMENTS AND RESPONSES THERETO

Comments on similar issues have been grouped and a common response provided where appropriate.

Comment: Chris Giguere, North Carolina State University Ph.D. graduate economics student and Intern with the North Carolina Division of Environmental Assistance and Customer Service, commented that his interest is evaluating available information on North Carolina's public fleet (such as fuel economy, vehicle type, and mileage) to see if the exemption terms (three most recent model years with less than 70,000 miles on the odometer) are the right numbers relative to model years and mileage. He asked for a copy of the exemption study report that the North Carolina Division of Motor Vehicles (DMV) and Division of Air Quality (DAQ) produced for the General Assembly in 2012.

Response: As requested, DAQ staff provided a copy of the DMV/DAQ exemption study report following the hearing.

Comment: Michael Gaither of BanaLogic Corporation asked a series of questions on how the 70,000 mileage exemption provision was to be enforced, what preparations are being made to enforce this mileage provision by January 2014, and how the inspection stations were going to police themselves on this provision.

Response: The DMV is currently working with DAQ to prepare for the implementation of Session Law 2012-199 and will be updating stakeholders as the implementation date approaches. The DMV has statutory and administrative authority to manage and enforce the State Inspection and Maintenance (I/M) Program. Through this authority, DMV will use education and oversight to enforce the new provisions of Session Law 2012-199. Education efforts will come in two forms: 1.) updated material will be added to the initial and renewal certification courses to address changes in the law and, 2.) guidance will be provided through educational material and media sources to station owners and inspector mechanics who will not be attending a renewal course in the 2014 calendar year. Oversight will include overt and covert audits and investigations. Additionally, I/M mechanics are required to enter the vehicle mileage prior to performing any inspection. Data is recorded in the test record and this data could then be used to determine if any fraudulent activities have taken place.

Comment: Shawn Peticos representing himself commented that the rule change was just another tax break for the rich.

Comment: Joe Culotta of Asheville representing himself stated that the emission inspection is a scam in that more than 90 percent pass it on the first try. Given the passing rate is so high, then why is it required every year, and why not every 3 years for everyone?

Comment: Terry Anderson of Gastonia representing himself commented that the annual emission test is a waste of his money and a scam. The vehicles before 1997 are not subject to an emission inspection and chances are they would fail a lot more. The diesel trucks are the worst polluters and they do not even get tested. He suggested exempting the five most recent model years.

Comment: Jim McClesse of Fletcher, NC representing himself commented that the annual emission test is a waste of his money and a scam. He suggested exempting the three, four or five most recent model years.

Comment: Max Potter representing himself commented that he would like to revoke all emissions inspections. The rule change unfairly places the burden of the emission inspection fees on the individuals that cannot afford new cars. These inspections have simply done nothing for the state except to increase fees paid by the citizenry that already pays annual taxes on the vehicles. He also questions why emission inspections are required in New Hanover County and not Brunswick County.

Response: Although cars and trucks are collectively the largest source of air pollution in North Carolina, a joint study conducted for the legislature by the state DAQ and DMV revealed that the emissions controls on newer gasoline-powered vehicles seldom experienced failures. The study concluded that exempting such vehicles from emissions tests in the first three model years could save consumers money with negligible effects on air quality. A more recent DAQ analysis has demonstrated that the exemption would not interfere with the attainment or maintenance of air quality standards in North Carolina. North Carolina's motor vehicle emission control standards rules provide for emission inspections to meet federal standards for gasoline powered vehicles, but do not cover diesel powered vehicles at this time. Emission control standards are set by the USEPA for each vehicle class and fuel type. North Carolina G.S. 143-215.107A requires emission inspections in the 48 designated counties centered largely around the largest metropolitan areas in the state. As seen in the list below, emission inspections are required in New Hanover County and Brunswick County but not in neighboring Columbus and Pender Counties. The 48 counties are: Alamance, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cleveland, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, New Hanover, Onslow, Orange, Pitt,

Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes, and Wilson.

Rules exempting new vehicles up to the six most recent model years from emissions inspections have been passed and approved by the USEPA in at least 22 other states or local jurisdictions in the U.S. The rationale for the exemption is that the warranty coverage for the emissions control system on new vehicles is in effect for 80,000 miles. The Federal Clean Air Act (CAA) requires that catalytic converters and Onboard Diagnostic devices on 1995 and newer vehicles be warranted for a minimum of 8 years or 80,000 miles. The warranty provides protection to the vehicle owner in the event of a system failure for which a check-engine light will illuminate, which in turn prompts the owner to get the vehicle inspected and corrected at the dealer under warranty, making an annual inspection required by the state unnecessary.

Comment: Craig Hauntings representing himself stated that he agrees in principle that emissions inspections for new cars seems like a waste of money. However, he claimed that it could create a problem by protecting enthusiastic owners who tamper with the emission control equipment to increase performance and gas mileage from otherwise being caught during annual emission inspections.

Comment: William Mackin representing himself commented that he is strongly opposed to exempting new vehicles from emissions testing. However, he stated that it could create a problem by protecting enthusiastic vehicle owners who tamper with the emission control equipment in order to increase performance and gas mileage at the expense of the air that we all breathe.

Response: An On-Board Diagnostic (OBD II) system has been installed on all gas-powered vehicles since model year 1996. OBD II is an automotive term referring to a vehicle's self-diagnostic and reporting capability. OBD II systems give the vehicle owner or repair technician access to the status of the various vehicle sub-systems. OBD II systems use a standardized digital communications port to provide real-time data in addition to a standardized series of diagnostic trouble codes, which allow one to rapidly identify and remedy malfunctions within the vehicle. A North Carolina emissions inspection consists of connecting a certified analyzer to the vehicle's OBD II system to verify that all vehicle emissions components/systems are working per the manufacturer specifications along with a visual safety/tamper inspection. Tampering with the emission control system is a violation of federal and state laws.

Comment: Kitty Rubin representing the N.C. Association of Inspection Only Stations and Ray Patterson of Charlotte representing Two Guys Inspection Stations commented that the rule change was just another tax break for those who can afford a new car. What should inspectors do when the check engine light is on? Do inspectors pretend to not see it, or do they fail it? If they are to fail it, then it is an emission inspection. This rule change would cut the inspection revenue to the inspection stations up to 20 percent. The inspection program has not seen a fee increase in over ten years and now the State is asking the stations to pay for the software update for this rule

change. Continuing to cut the revenue supporting the program would mean that inspection-only stations that are convenient for the public may not survive. New vehicles are easy to inspect and help to offset the extra resources needed to inspect the older ones numerous times before passing at no added charge. Please reconsider the rule and consider a fee increase for this program.

Response: If the vehicle met the statutory requirements for the three year exemption, a safety inspection would still be conducted. The check engine light is a valid concern and the inspector mechanic shall not fail the vehicle only because the check engine light is on, but should inform the customer of the potential issues and recommend them getting their vehicle serviced soon to address the issue(s).

A year before passing Session Law 2012-199, the North Carolina General Assembly directed the DMV and the DAQ to study the impacts of exempting the three newest model year vehicles and all vehicles from the emissions inspection requirements. Also evaluated were a) whether air quality standards would be violated based on existing or future air quality standards being considered for adoption by the USEPA; b) what fiscal impacts would result for motor vehicle owners, inspection stations, DMV, and DAQ; and c) any other issues pertinent to the study. Based on the detailed results of the study and its cost impacts, the General Assembly passed Session Law 2012-199. The General Assembly recognized that the vehicle owners benefit from cost savings are equally offset by the combined revenue losses by State government agencies and private sector impacts on inspection station owners. The proposed rule changes align the emissions inspection with state law requirements.

Comment: Jeff Stahl representing himself asked how the state government agencies could afford a revenue loss of over \$11 million from exempting 700,000 vehicles in the next three years.

Response: The State agencies can absorb the revenue losses by planning a few years ahead and by making adjustments to the implementation of the program that will reduce state expenditures. Those adjustments were enabled by the completion of the e-sticker program (Session Law 2007-503) and investments in state information systems. Both will result in efficiencies that reduce state expenditures associated with the program. In addition, better utilization of the monetary resources that will be generated by the program and the projected rise in the population of vehicles subject to the program in the future will help to offset the revenue loss in the long term.

The DMV has become proactive in its approach to effectively utilize its resources and reduce its inspection program costs. The largest reduction in program cost can be seen in the purchase of the new State owned inspection system, which, once fully implemented, will actually reduce the State's operating cost by approximately \$5.7 million per year. This reduction in program cost will offset the loss in revenue due to the implementation of Session Law 2012-199, pay for the new system in less than 4 years and begin to save the State money thereafter.

Comment: Kitty Rubin representing the N.C. Association of Inspection Only Stations commented that with the passing of Senate Bill 402 the pie chart showing the public where the I/M program funds go is no longer correct and a software change would be needed to correct the pie chart so as not to deceive the public. She would like to make sure that the stations are not paying for a software change when the DMV needs this software change and could include any other changes at this time.

Response: The comments have been shared with DMV, but are not considered to be within the scope of this rulemaking on the emissions inspection.

Comment: Susan Gibson with the U.S. Department of the Army representing the Department of Defense objects to the 15 NCAC 02D .1002(a)(iii) language and recommends that it be removed from the rules based on the sovereign immunity provisions stated in the CAA Section 118(c) and (d). She and the Department of Justice conclude that the USEPA I/M Rule for vehicle emission inspections is invalid to the extent it exceeds the waiver of sovereign immunity in CAA 118(a), and therefore cannot be relied upon by the States to assert jurisdiction over the Federal Government.

Response: The CAA Section 118 set forth certain requirements for Federal facilities which are located in vehicle I/M program areas. The requirements in CAA Section 118(c) and (d) both apply to Federal facilities located in vehicle I/M program areas subject to the provisions of subparts 2 and 3 of Part D, which are areas designated nonattainment for ozone (O₃) or carbon monoxide (CO). In addition, the provisions of 15 NCAC 02D .1002, G.S. 20-183.2 and 40 CFR 51.356 all must meet the applicability requirements in 40 CFR 51.350 which requires I/M programs in both O₃ and CO nonattainment areas. Therefore, federal facilities located in areas which have not been designated nonattainment for O₃ and CO are not subject to 15 NCAC 02D .1002(a)(iii) requirements for vehicles not currently registered in a North Carolina county that requires I/M inspections as a part of the vehicle registration process.

Comment: T. John Policastro of Raleigh, General Counsel for the North Carolina Automobile Dealers Association (NCADA) and David P. Ferrell of VANDEVENTER BLACK LLP of Raleigh representing the Inspection Station Association of North Carolina stated that they object to the ambiguous language or the absence of an electronic process mechanism in implementing the proposed amendments to the motor vehicle emission control standard rules. They noted that any inadvertent errors when or whether to conduct inspections (either conducting an inspection before it is required or erroneously excusing one that should have been conducted) can result in significant penalties costing money and licensing privileges. They provided comment in four areas:

Three most recent model years. Oppose the proposed language in Rule 02D. 1002, Applicability, and Rule 02D .1003, Definitions, involving the terms “current model year” and “the three most recent model years.” The proposed language is confusing, ambiguous and

should be revised to more clearly define the intent to exempt the first three inspections for vehicles with less than 70,000 miles. There is ample opportunity for uncertainty created by multiple factors, any one of which could lead to an error implementing the rule, including: (i) model years overlapping calendar years, (ii) two possible current model years, (iii) no uniformity on timing among manufacturers when introducing new model years vehicles, and (iv) vehicles older than three years with less than 70,000 miles. He recommended a revision to the definition of said language derived from a example with motor vehicle damage requirements in G.S. Section 20-74.1.

Response: Three most recent model years. DAQ agrees that the proposed terminology in Rule 02D .1002, Applicability, and corresponding definitions in Rule 02D .1003, Definitions, dealing with “the three most recent model years” leads to uncertainty in the interpretation of how it is to be implemented. Given the uncertainty, the comment has prompted a proposed change with the language in the Rule 02D .1003 in order to more clearly define how the rule is to be implemented as follows:

- Revise the following definitions in Rule 02D. 1003 as follows:

(10) “Current model year”. Delete its proposed definition.

(11) "Three most recent model years." For the purposes of this section, the term “Three most recent model years” shall be calculated by adding three years to the vehicle’s model year obtained from the Vehicle Identification Number (VIN) or the registration card to determine the first calendar year an emissions inspection is required.

Comment: 2. Electronic system. Given the ample opportunity for uncertainty and the liability in any errors, the proposed rule amendments should be revised to require the implementation of a government-provided electronic system to prescribe whether an emission inspection is required. The electronic system should be fully implemented before the effective date of the new three-year exemption in order to permit an inspector to accurately determine whether a vehicle is exempt from the emissions inspection requirement.

Response: Electronic system. The General Assembly did not allocate funds to pay for the cost of upgrading the emissions analyzer to make the determination of when a vehicle needs to be inspected. With no money designated for a software upgrade, the cost of any software change would be paid by the inspection stations. Instead of an electronic system, DMV has developed and will distribute guidance before the effective date of the rule change with a work flowchart defining the various steps in determining whether an emission inspection is required. It is reasonable to expect that trained staff under qualified inspection station management familiar with the DMV-provided work flowchart would be able to implement the rule change satisfactorily.

Comment: 3. Cost of upgrading analyzer software. The approved Fiscal Note projected an annual revenue loss of nearly \$11 million to inspection stations from the proposed rule change.

Software upgrades to analyzers could result in a one-time total expenditure of nearly \$1 million at an average estimated cost of \$180 per analyzer. As the inspection mechanics and inspection stations are already bearing the greatest financial impact, the cost of upgrading analyzer software to implement these changes should not be borne by inspection stations.

Response: Cost of upgrading analyzer software. Since The General Assembly did not designate any funds to upgrade the emissions analyzer software, and the State does not plan a software upgrade. Since one is not planned, there will be no software upgrade costs assessed at this time.

Comment: 4. Onboard diagnostic test equipment specifications. Oppose the proposed language in 02D .1006 Sale and Service of Analyzers Rule claiming that the onboard diagnostic test equipment specifications are weakened. The proposed rule amendments seek to increase the required time for a vendor to communicate with an inspection station on repairs and software revisions from 24 hours to two business days.

Response: Onboard diagnostic test equipment specifications. G.S. 143-215.107(a)(14) directs and empowers the Environmental Management Commission (EMC) to develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers. This authority requires that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers. The comment prompted a change to the proposed rule 02D .1006 back to the version prior to the notice. Upon consideration of the comment, DAQ believes the existing rule, 02D .1006, as it stood prior to the proposed revisions, best carries out the legislative intent and provides the most reasonable assurance that vendors are selling or leasing equipment that meet the program requirements stated in 40 CFR 85.2231.

SUMMARY OF COMMENTS AND RESPONSES

| <u>Comments</u> | <u>Responses</u> |
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| One person asked for a copy of the joint DMV/DAQ report that formed the basis of the Statute and the ensuing DAQ rules. | A copy of the report was provided to the commenter. |
| One person’s comment was a series of questions on how the 70,000 mileage exemption provision was to be enforced, what preparations are being made to enforce this mileage provision by January 2014, and how the inspection stations were going to police themselves on this provision. | DMV is authorized to manage and enforce the State I/M Program and will use education and oversight to enforce the new provisions by using: 1.) updated material added to the certification courses to address the law changes and, 2.) guidance provided through educational material and media sources to station owners and I/M mechanics not attending a renewal course in 2014. Oversight will include audits, |

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| | investigations, checks and safeguards to protect against fraudulent station operations, enable owners and I/M mechanics to complete the work, and hold them accountable for performing valid inspections. |
| Rule is just another tax break for the rich. | Newer vehicles seldom fail emission inspections. Given this, exempting newer vehicles citizens could save citizens money without harming air quality, as supported by recent modeling. Recent modeling shows a negligible air quality effect in 48 counties required by federal rules to have annual inspections on 1996 or newer vehicles. Rule in other states exempting up to the six most recent model years have been passed and approved by the USEPA. Federal rules require that emission controls and diagnostic devices on 1995 and newer vehicles be warranted for a minimum of 8 years or 80,000 miles. The warranty provides protection for a system failure for which a check-engine light will illuminate, prompting an inspection and correction at the dealer under warranty, making annual inspection required by the state unnecessary. |
| Emission inspection is a scam in that 90 percent pass; why required every year, and why not every 3 years? | |
| Emission inspection is a waste of money and a scam. Pre-1997 vehicles are not subject to emission inspection and would probably fail. Diesel trucks are the worst polluters and they are tested. Suggest exempting the 5 most recent years. | |
| Emission inspection is a waste of money and a scam. Suggest exempting the 3, 4, or 5 most recent years. | |
| Prefer to revoke all emissions inspections. Rule change favors the rich. Emission inspections have done nothing for the state except raise fees paid by the citizens. Why are emissions inspections required in one county and not another? | |
| Exemptions for newer vehicles would protect enthusiasts desiring higher performance and gas mileage from removing emission controls for three years, reconnecting it before the first inspection without being caught and penalized at the expense of air quality. | |
| Rule is just another tax break for the rich at the expense of business for inspection stations. What should inspectors do for exempt vehicles when the check-engine light is on; pretend not to see it, fix it, or fail them for an inspection they are not required to have? The inspection program has not seen a fee increase in over ten years. Stations are being hurt further as the rule exempts the newer, easier vehicles to inspect that previously offset the older ones that get re- | On-board diagnostic (OBD II) systems are installed on all gasoline-powered vehicles since 1996 to show the status of the key performance and emissions parameters. OBD II systems identify problems with the key parameters. A NC emissions inspection consists of connecting a certified analyzer to the OBD II system to verify that all emissions components are working properly along with a visual safety/ tamper inspection. Tampering with emission controls violates federal and state laws. |
| | The check engine light is a valid concern and the inspector shall not fail the vehicle only because the check engine light is on, but should inform the customer of the potential issues and recommend servicing the vehicle soon to address the issue(s). The General Assembly studied the impacts of exempting the three newest model year vehicles from emissions inspection. Included were air quality impacts and fiscal impacts for vehicle owners, inspection stations, DMV, and DAQ. Session Law 2012-199 was |

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| inspected multiple times before passing. | passed recognizing that the vehicle owners benefit from cost savings are equally offset by the combined revenue losses by State agencies and private sector impacts on inspection stations. |
| How could the state government agencies afford a revenue loss of over \$11 million from exempting 700,000 vehicles in the next three years? | The State agencies can absorb the revenue losses by planning ahead and making adjustments to program implementation to reduce state costs. Those adjustments were enabled by the e-sticker program completion and investments in state information systems. Both will result in efficiency gains to reduce costs. Also, the projected rise in the number of future vehicles will offset the revenue loss in the long term. The DMV has become proactive to effectively utilize its resources and reduce its inspection program costs. The largest cost reduction can be seen in the purchase of the new State owned inspection system, which will reduce the State's operating cost by \$5.7 million per year. This reduction in program cost will offset the loss in revenue from Session Law 2012-199, pay for the new system in less than four years and save the State money thereafter. |
| The Defense Department objects to the requirement that the rule would apply to vehicles operated on a federal installation located in one of the 48 designated counties and recommends its removal based on the sovereign immunity provisions stated in the CAA Section 118(c) and (d). They conclude that the USEPA I/M Rule for emission inspections is invalid as it exceeds the waiver of sovereign immunity in CAA 118(a). | The requirements in CAA Section 118(c) and (d) both apply to Federal facilities located in vehicle I/M program areas subject to the provisions of subparts 2 and 3 of Part D areas designated nonattainment for O ₃ or CO. The provisions of 15 NCAC 02D .1002, G.S. 20-183.2 and 40 CFR 51.356 all must meet the requirements in 40 CFR 51.350 which requires I/M programs in both O ₃ and CO nonattainment areas. |
| Inspection stations oppose the proposed rule language involving "the three most recent model years" that is confusing, ambiguous and should be revised to more clearly define the intent to exempt the first three inspections. | To address the ambiguity, DAQ is clarifying that "three most recent model years" shall be calculated by adding three years to the vehicle's VIN or the registration card model year to determine the first calendar year an emissions inspection is required. |
| The proposed rule amendments should be revised to require the implementation of a government-provided electronic system to prescribe whether an emission inspection is required. | Instead of an electronic system, DMV has developed a work flowchart defining the various steps in determining whether an emission inspection is required. Trained staff under qualified inspection station management familiar with the work flowchart should be able to implement the rule change suitably. |

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| Software analyzer upgrades to implement rule changes could cost nearly \$1 million at an average cost of \$180 per analyzer. As inspection stations are bearing the greatest financial impact, the upgrade cost should not be borne by the stations. | Since a software upgrade is not planned, there will be no upgrade software costs assessed at this time. |
| Oppose the proposed language in Rule 02D .1006, Sale and Service of Analyzers, that weakens the onboard diagnostic test equipment specifications. | G.S. 143-215.107(a)(14) empowers the EMC to adopt rules governing the sale and service of mobile source exhaust emissions analyzers. This authority requires that analyzer vendors provide surety for the performance of their contractual obligations. The comment prompted a change to the proposed rule 02D .1006 language back to the version prior to the notice. DAQ believes the existing rule, 02D .1006 best carries out the legislative intent and provides the most assurance that vendors are meeting 40 CFR 85.2231 requirements. |

CONCLUSION

Fifteen people commented on the proposed rules.

Two people made oral comments at the public hearing. One person asked for and received a copy of the joint DMV/DAQ report with all the information forming the basis for the Session Law 2012-199 and the ensuing DAQ rule changes. The other person's comment was a series of questions on how the 70,000 mileage exemption provision was to be enforced, what preparations are being made to enforce this mileage provision by the rule's effective date, and how the inspection stations were going to police themselves on this provision. The DMV is authorized to manage and enforce the State I/M Program and will use education and oversight to enforce the new provisions by using: 1.) updated material added to the certification courses to address the law changes and, 2.) guidance provided through educational material and media sources to those not attending a renewal course in 2014. Oversight will include audits, investigations, checks and safeguards to protect against fraudulent station operations, enable owners and I/M mechanics to complete the work, and hold them accountable for performing valid inspections.

Five commenters raised concerns on the various aspects of the proposed rules which were aligned directly with the State statute in Session Law 2012-199. The aspects included the apparent favoritism in tax breaks for those who can afford newer cars, the number defining how many recent model years would be exempt, claims that inspections are a waste of money and a scam, and why inspections are required only in certain counties. The concerns are addressed as follows: A joint study conducted for the legislature by the DAQ and DMV revealed that the emissions controls on newer cars seldom experienced failures. The study concluded that

exempting vehicles from emissions tests in the first three model years could save consumers money with negligible effects on air quality. A more recent DAQ analysis demonstrates that the exemption would not interfere with the attainment or maintenance of air quality standards in North Carolina. North Carolina's motor vehicle emission control standards rules provide for emission inspections to meet federal standards. Emission inspections are required in the 48 designated counties under an EPA requirement.

Two comments cautioned that the three year exemption would allow enthusiasts to disconnect their emission controls to improve vehicle performance and gas mileage, and then later have them reconnected before the first inspection without being caught. However, an OBD II system has been installed on all gas-powered vehicles since model year 1996 for self-diagnostic and reporting capability. These systems give access to the status of the various vehicle sub-systems and diagnostic trouble codes, which allow one to identify and remedy malfunctions within the vehicle. A North Carolina emissions inspection consists of connecting a certified analyzer to the OBD II system to verify that all emissions systems are working properly along with a visual safety/tamper inspection.

Two people provided comments on whether and how inspectors would deal with issues on newer vehicles with diagnosed trouble code warning signals given their exemption statuses from emissions inspections. They also stated that stations continue to be hurt financially since there has not been a fee increase in over ten years and the rule would command more resources since it exempts the newer, easier vehicles to inspect that previously offset the older ones that get re-inspected multiple times before passing. The inspector shall not fail the vehicle only because the check engine light is on, but should inform the customer of the potential issues and recommend servicing the vehicle soon to address the issue(s). The General Assembly was aware of the results of an effort to study the impacts of exempting the three newest model year vehicles from emissions inspection. Included were air quality impacts; fiscal impacts for vehicle owners, inspection stations, and State agencies. With this awareness the General Assembly passed Session Law 2012-199 recognizing that the vehicle owners benefit from cost savings are equally offset by the combined revenue losses by State agencies and private sector impacts on inspection stations.

One comment asked how the state agencies could afford a revenue loss of over \$11 million from exempting 700,000 vehicles in the next three years. The State agencies can absorb the revenue losses by planning ahead and making adjustments to program implementation to reduce costs. Those adjustments were enabled by the e-sticker program completion and investments in information systems. Both will result in efficiency gains to reduce costs. Also, the projected rise in the number of future vehicles will offset the revenue loss in the longer term. The DMV has become proactive to effectively utilize its resources and reduce its inspection program costs. The largest reduction in cost can be seen in the purchase of the new State owned inspection system, which will reduce the State's operating cost by \$5.7 million per year. This reduction in cost will

offset the loss in revenue resulting from Session Law 2012-199, pay for the new system in less than four years and save the State money thereafter.

One comment objected to the requirement that the rule would apply to vehicles operated on a federal installation located in one of the 48 designated counties of the inspection program. The CAA Section 118(c) and (d) both apply to Federal facilities located in vehicle I/M program areas designated nonattainment for O₃ or CO. The provisions of 15 NCAC 02D .1002, G.S. 20-183.2 and 40 CFR 51.356 all must meet the requirements in 40 CFR 51.350 which requires I/M programs in both O₃ and CO nonattainment areas.

Two people commented that the rule language was too ambiguous to implement properly, especially without an upgraded electronic system to determine whether an emissions inspection would be required. They also raised issue with the plan that the inspection owners would bear the cost of upgraded analyzer software and the weakening of onboard diagnostic test equipment specifications in Rule 02D .1006. The comment prompted a change in the definition of two terms in the proposed rule 02D .1003. To address the ambiguity, DAQ clarified its definitions to determine the first calendar year an emissions inspection is required. Instead of an electronic system, DMV developed a work flowchart defining the steps in determining whether an emission inspection is required. Trained staff under qualified inspection station management familiar with the work flowchart should be able to implement the rule change satisfactorily. Since a software upgrade is not planned, there will be no upgrade software costs assessed at this time. State statute empowers the EMC to adopt rules governing the sale and service of mobile source exhaust emissions analyzers. This authority requires that analyzer vendors provide surety for the performance of their contractual obligations. The comment prompted a change to the proposed rule 02D .1006 back to the version prior to the notice. DAQ believes the existing rule, 02D .1006 best carries out the legislative intent and provides the most assurance that vendors are meeting federal requirements.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing record be adopted by the Environmental Management Commission. The Hearing Officer also recommends that DAQ study further the concerns raised regarding clarification of applicability to federal installations and commit to report back to the EMC no later than its March 2014 meeting and provide a concept for a rule change contingent upon the need for a rule change at that time.

CHAPTER II

15A NCAC 02D .1002 is amended with changes as published in 28:04 NCR 329 as follows:

15A NCAC 02D .1002 APPLICABILITY

(a) This ~~Section~~ ~~[Rule]~~ is applicable to all gasoline-powered and hybrid-powered motor vehicles, except motorcycles and excluding the current model year, ~~year;~~ vehicles for model years specified in Paragraphs (b) or (c) of this Rule. This Rule applies to all vehicles that are:

- ~~(1) — until the time the criteria in subparagraph (a)(2) are met,~~
- ~~(2) — as of January 1, 2014 or the first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later, this rule is applicable to all gasoline powered and hybrid-powered motor vehicles of a 1996 or more recent model except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, plug-in and fuel cell electric motor vehicles and motorcycles as specified in G.S. 20-183.2(b) that are:~~

- (1) ~~(A)~~ required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph ~~(b)(e)~~ of this Rule;
- (2) ~~(B)~~ part of a fleet primarily operated within the counties identified in Paragraph ~~(b)(e)~~ of this Rule; or
- (3) ~~(C)~~ operated on a federal installation located in a county identified in Paragraph ~~(b)(e)~~ of this Rule and that meet the requirements of 40 CFR 51.356(a)(4).

(b) This Rule applies to model year 1996 or more recent model years for motor vehicles under Paragraph (a) of this Rule, excluding the current model year.

(c) Beginning ~~As of~~ January 1, 2014 or the first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later, this Rule applies to 1996 or more recent model for motor vehicles under Paragraph (a) of this Rule, excluding the three most recent model years with less than 70,000 miles on their odometers.

(d) This Rule shall not apply to motorcycles, plug-in electric vehicles or fuel cell electric vehicles as specified in G.S. 20-183.2(b).

~~(b)(e)~~ The emission control standards of this Section become effective in the counties identified in G.S. 143-215.107A on the dates specified in G.S. 143-215.107A.

History Note: Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A; 20-183.2; Eff. December 1, 1982;

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Amended Eff. July 1, 1992; April 1, 1991;
Temporary Amendment Eff. January 1, 1993 for a period of 180 days or until the permanent rule
becomes effective, whichever is sooner;
Amended Eff. January 1, 2014; August 1, 2002; July 1, 1994; July 1, 1993.

1 15A NCAC 02D .1003 is amended with changes as published in 28:04 NCR 329-330 as follows:

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3 **15A NCAC 02D .1003 DEFINITIONS**

4 The following definitions of terms apply to Rules 02D .1002 through 02D .1006 regulating gasoline-powered and
5 hybrid-powered motor vehicles throughout this Section:

- 6 (1) "Heavy-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle
7 which is designed primarily for:
8 (a) transportation of property and has a GVWR (Gross Vehicle Weight Rating) of more than
9 8,500 ~~pounds~~ pounds but less than 14,001 pounds;
10 (b) transportation of persons and has a capacity of more than 12 persons; or
11 (c) use as a recreational motor vehicle, which is designed primarily to provide temporary or
12 permanent living quarters for travel, camping, or other recreational use and has a GVWR
13 of more than 8,500 pounds.
- 14 (2) "Light-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle
15 which is designed primarily for:
16 (a) transportation of property and has a GVWR of 8,500 pounds or less; or
17 (b) transportation of persons and has a capacity of 12 persons or less.
- 18 (3) "Motor Vehicle" means ~~any self-propelled vehicle used for transporting property or persons.~~
19 every vehicle which is self-propelled and every vehicle designed to run upon the highways which
20 is pulled by a self-propelled vehicle as defined in G.S. 20-4.01(23).
- 21 (4) "Motorcycle" means any motor vehicle having ~~a seat or saddle for the use of the rider and~~
22 ~~designed to travel on not more than three wheels in contact with the ground.~~ saddle for the use of
23 the rider and designed to travel on not more than three wheels in contact with the ground,
24 including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles
25 equipped with an additional form of device designed to transport property, three-wheeled vehicles
26 while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this
27 subsection" as defined in G.S. 20-4.01(27)d.
- 28 (5) "Gasoline-powered Motor Vehicle" means a four-wheeled motor vehicle designed primarily to be
29 propelled by the burning of gasoline in an internal combustion engine.
- 30 (6) "Hybrid-powered Vehicle" means a four-wheeled motor vehicle designed to be propelled by a
31 combination of one or more electric motors and the burning of gasoline in an internal combustion
32 engine.
- 33 (7) "Plug-in Electric Vehicle" as defined in G.S. 20-4.01(28a).
- 34 (8) "Fuel Cell Electric Vehicle" as defined in G.S. 20-4.01(12a).
- 35 (9) "Model year" means the year used to designate a discrete vehicle model, irrespective of the
36 calendar year in which the vehicle was actually produced, provided that the production period
37 does not exceed 24 months.

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~~[(10)]~~ [~~“Current model year means the most recent year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.”~~]

~~(10)~~ [(11)] “Three most recent model years” For the purposes of this section, the term “Three most recent model years” shall be calculated by adding three years to the vehicle’s Vehicle Identification Number (VIN) model year to determine the first calendar year an emissions inspection is required. [~~means the current (first) model year and the second and third model years following the current model year.~~]

~~(11)~~ [(12)] “Vendor” means any person who sells or leases equipment to inspection stations that is used to perform on-board diagnostic tests to show compliance with Rule 02D .1005 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 20-4.01 (12a); 20-4.01 (28a)
Eff. December 1, 1982,
Amended Eff. January 1, 2014.

1 15A NCAC 02D .1005 is proposed for amendment as follows:

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15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS

(a) This Rule applies according to Rule .1002 of this Section to all ~~1996 and later~~ gasoline-powered and hybrid-powered motor vehicles, vehicles 1996 or more recent models except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, except plug-in and fuel-cell electric motor vehicles, and motorcycles, in the counties identified in G.S. 143-215.107A.

(b) Vehicles covered under this Rule shall pass annually the on-board diagnostic test described in 40 CFR 85.2222. The vehicle shall fail the on-board diagnostic test if any of the conditions of 40 CFR 85.2207 are met. Equipment used to perform on-board diagnostic tests shall meet the requirements of 40 CFR 85.2231.

(c) The tester shall provide the owner of a vehicle that fails the on-board diagnostic test described in Paragraph (b) of this Rule a report of the test results. This report shall include the codes retrieved (these codes are listed in 40 CFR 85.2223(b)), the status of the malfunction indicator light illumination command, and the customer alert statement described in 40 CFR 85.2223(c).

(d) Persons performing on-board diagnostic tests shall provide the Division of Air Quality data necessary to determine the effectiveness of the on-board diagnostic testing program. The data submitted shall be what is necessary to satisfy the requirements of 40 CFR 51.365, Data Collection, and 40 CFR 51.366, Data Analysis and ~~Reporting~~, Reporting, and 40 CFR 51.358, Test Equipment.

*History Note: Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A(b); S.L. 1999 c. 328 s. 3.2
Eff. December 1, 1982;
Amended Eff. January 1, 2014; Amended Eff. August 1, 2002; July 1, 1998; April 1, 1991; November 1, 1986.*

1 15A NCAC 02D .1006 is amended with changes as published in 28:04 NCR 330-331 as follows:

2
3 **15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS**

4 ~~(a) Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to~~
5 ~~inspection stations that is used to measure emissions from motor vehicles for the purpose of showing~~
6 ~~compliance with Rule .1004 of this Section or that is used to perform on board diagnostic tests to show~~
7 ~~compliance with Rule .1005 of this Section.~~

8 ~~(b)~~ (a) Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231
9 Onboard Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data
10 required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the
11 inspection/maintenance program requirements of this Section.

12 ~~(c)~~ (b) Hardware repair and software repair. When equipment hardware or software fails to meet the requirements of
13 Paragraph ~~(b)~~ (a) of this Rule for a particular analyzer, the vendor, after receiving a call to its respective service call
14 center, shall communicate with the impacted station within 24 hours. ~~[two business days and shall complete repairs~~
15 ~~within the warranty guidelines of the vendor.]~~ Where the hardware problem is stopping 20 percent or more
16 inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall repair
17 the problem within 48 hours after the initial call to its respective service call center.

18 (1) Where the hardware problem is stopping less than 20 percent of all inspections for a particular
19 analyzer and is not compromising the security of the inspection system, the vendor shall repair the
20 problem within 72 hours after the initial call to its respective service call center.

21 (2) Where the hardware problem is not stopping inspections and is not compromising the security of the
22 inspection system, the vendor shall repair the problem within 96 hours after the initial call to its
23 respective service call center.

24 ~~(c)~~ (c) Software repair revisions. When analyzer software fails to meet the requirements of Paragraph (b) of this
25 Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the station within
26 24 hours. ~~[two business days.]~~ The vendor shall identify and characterize the software problem within 5 days. The
27 vendor shall, within that same 5-day period, inform the station owner and the Division as to the nature of the
28 problem and the proposed corrective course of ~~action and: [action.]~~

29 (1) Where the software problem is stopping 20 percent or more inspections for a particular analyzer or
30 is compromising the security of the inspection system, the vendor shall submit a new revision of the
31 software to the Division for approval within 19 days after receiving the initial call to its service call
32 center.

33 (2) Where the software problem is stopping less than 20 percent of all inspections for a particular
34 analyzer and is not compromising the security of the inspection system, the vendor shall submit a
35 new revision of the software to the Division for approval within 33 days after receiving the initial
36 call to its service call center.

1 (3) The vendor shall distribute the new revision of the software to all impacted stations within 14 days
2 after the vendor receives written notification from the Division that the software has been approved
3 as meeting the requirements of Paragraph (b) of this Rule.

4 (e) (d) Documentation of the initial service call. The vendor's service call center shall assign a unique service
5 response number to every reported new hardware or software problem. The time and date of the initial call shall
6 be recorded and identified with the service response number. The service response number shall be
7 communicated to the inspection station operator at the time of the initial contact.

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9 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6), (14);*
10 *Eff. January 1, ~~2007~~ 2007;*
11 *Amended Eff. January 1, 2014;*

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1 15A NCAC 02D .1009 is proposed to be repealed:

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3 **15A NCAC 02D .1009 MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY**
4 **DIESEL VEHICLE REQUIREMENTS (REPEALED)**

5 ~~(a) Applicability. This Rule applies to model year 2008 and subsequent model years heavy duty diesel vehicles.~~

6 ~~(b) Definitions. For the purposes of this Rule the following definitions shall apply.~~

7 ~~(1) "Heavy duty diesel vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle~~
8 ~~weight rating (as certified by the manufacturer) of 14,001 pounds or greater that is propelled by a~~
9 ~~diesel engine.~~

10 ~~(2) "Motor vehicle dealer" means motor vehicle dealer as defined in G.S. 20-286(11) and includes~~
11 ~~"new motor vehicle dealer" as defined in G.S. 20-286(13) and "used motor vehicle dealer" as~~
12 ~~defined in G.S. 20-286(16).~~

13 ~~(3) "New motor vehicle" means new motor vehicle as defined in G.S. 20-286(10)(a).~~

14 ~~(4) "Used motor vehicle" means used motor vehicle as defined in G.S. 20-286(10)(b).~~

15 ~~(c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment as specified~~
16 ~~in Title 13 of the California Code of Regulations, Section 1905 shall apply.~~

17 ~~(d) Requirement. No model year 2008 or subsequent model year heavy duty diesel vehicle that is a~~

18 ~~(1) used heavy duty diesel vehicle sold by a motor vehicle dealer; or~~

19 ~~(2) new motor vehicle, however it is sold,~~

20 ~~may be leased or registered within North Carolina unless the vehicle or its engine has been certified by the~~
21 ~~California Air Resources Board as meeting the applicable model year requirements of Title 13 of the California~~
22 ~~Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and~~
23 ~~Subsequent Model Heavy Duty Diesel Engines and Vehicles.~~

24 ~~(e) Referenced Regulation. The California Code of Regulations Title 13, Division 3, Chapter 1, Article 1, Section~~
25 ~~1905 and Article 2, Section 1956.8 are incorporated by reference in this Rule and include any later amendments~~
26 ~~thereto. A copy of the referenced materials may be obtained free of charge via the internet from the Office of~~
27 ~~Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard copy may be obtained~~
28 ~~at a cost of \$5.00 from the Public Information Office, California Air Resources Board, P.O. Box 2815, Sacramento,~~
29 ~~CA, 95812.~~

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31 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7);*

32 *Eff. December 1, 2004-2004;*

33 *Repealed Eff. January 1, 2014;*

CHAPTER III

REPORT OF PROCEEDINGS

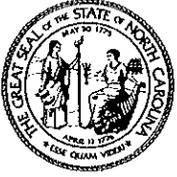
Introduction

The Department of Environmental and Natural Resources, Division of Air Quality, held a public hearing on September 18, 2013 at 6:00pm at the Training Room #1210, DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603.

The hearing considered the proposed amendments to Rule 15A NCAC 02D .1002, Applicability; 02D .1003, Definitions; 02D .1005, On-Board Diagnostic Standards; 02D .1006, Sale and Service of Analyzers; and 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements.

The proposed effective date for these rules is projected to be January 1, 2014.

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the North Carolina Register at least 30 days before the public hearing.



ENVIRONMENTAL MANAGEMENT COMMISSION

Benne C. Hutson
Chairman

NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Pat McCrory, Governor
John Skvarla, Secretary

September 3, 2013

MEMORANDUM

To: Steve Vozzo

From: Benne C. Hutson 

Subject: Hearing Officer Appointment

A public hearing has been scheduled for September 18, 2013 at 6:00 p.m. at the Division of Air Quality central office in Raleigh to receive public comments on amendments to the Motor Vehicle Emissions Control Standards rules. The attached public notice describes the hearing's purpose.

I am hereby appointing you to serve as hearing officer for this hearing. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Mrs. Joelle Burlison will provide staff support for you.

If you have any questions, please feel free to contact Joelle Burlison at (919) 707-8720, or me.

SCH/jb

Attachment

cc: Sheila Holman
Lois Thomas
Hearing Record File

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

PUBLIC NOTICE

Notice is hereby given for one public hearing to be heard by the North Carolina Department of Environment and Natural Resources, Division of Air Quality concerning the proposed amendments to air quality rules.

PURPOSE:

To receive comments on amendments to the Motor Vehicle Emission Control Standard rules to incorporate the revised statutory exemption of the three most recent model year vehicles with less than 70,000 miles on the odometer from vehicle emissions inspection pursuant to Session Law 2012-199. Additional minor housekeeping amendments to clarify definitions are also proposed. In addition, Rule 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements, is proposed for repeal because it is duplicative of EPA rule requirements and therefore unnecessary.

NOTE: The proposed amendments considered in this hearing, if adopted, will be effective statewide and submitted to the USEPA to be included in the State Implementation Plan (SIP); if they are later adopted by a local air pollution control agency, then that agency will enforce them in its area of jurisdiction.

DATES AND LOCATION:

September 18, 2013, 6:00 P.M.
Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC

COMMENT PROCEDURES:

All persons interested in these matters are invited to attend the public hearings. **Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing.** The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until October 14, 2013 to receive additional written statements. To be included, the statement must be received by the Division by October 14, 2013.

INFORMATION:

Copies of the proposed rule changes may be downloaded at <http://daq.state.nc.us/Rules/Hearing/> Copies of the proposals may also be reviewed at the

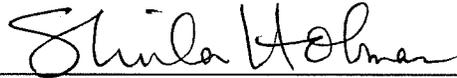
regional offices of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, located at the following cities:

| | |
|---------------|--------------|
| Asheville | 828/296-4500 |
| Fayetteville | 910/433-3300 |
| Mooreville | 704/663-1699 |
| Raleigh | 919/791-4200 |
| Washington | 252/946-6481 |
| Wilmington | 910/796-7215 |
| Winston-Salem | 336/771-5000 |

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Ms. Joelle Burleson
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
(919) 707-8720 Phone/Fax
joelle.burleson@ncdenr.gov

DATE: 8/12/2013



Sheila Holman,
DAQ Director

Transcript

A transcript of the September 18, 2013 hearing has not been prepared; however, an audio recording of the proceeding will be kept on file with the Division of Air Quality (DAQ) for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing is as follows:

Hearing Officer

Mr. Steven Vozzo, DAQ, DENR, Fayetteville Regional Office Supervisor

Staff Members

Ms. Joelle Burleson, DENR, DAQ
Mr. Steve Schliesser, DENR, DAQ,
Mr. Patrick Knowlson, DENR, DAQ,
Mr. Brian Phillips, DENR, DAQ,
Ms. Sushma Masemore, DENR, DAQ,
Mr. Michael Abraczinskas, DENR, DAQ, Deputy Director

Members of the General Public

Mr. Michael Gaither, BanaLogic Corporation, Snow Camp, NC
Mr. Mark Newell, CMW Inspections, Raleigh, NC
Mr. Kirk Fordham, DEKRA Certifications, Inc., Auburn, Georgia
Mr. Chris Giguere, NC State University, Raleigh, NC
Ms. Marge Howell, North Carolina Department of Motor Vehicles staff, Raleigh, NC
Mr. Robert Sawyer, North Carolina Department of Motor Vehicles staff, Raleigh, NC

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CHAPTER IV

EXHIBITS

| <u>EXHIBIT</u> | <u>PAGE</u> |
|---|-------------|
| Proposed Regulations as Published in the North Carolina Register and Presented at the Hearing | IV-2 |
| Hearing Officer Comments at the Public Hearing | IV-6 |

PROPOSED RULES

- RRC certified on:
 Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncair.org/rules/hearing>

Proposed Effective Date: *January 1, 2014*

Public Hearing:

Date: *September 18, 2013*

Time: *6:00 p.m.*

Location: *Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC*

Reason for Proposed Action: *In response to statutory revisions in North Carolina Session Law 2012-199, the Division of Air Quality (DAQ) is proposing changes to its emission inspections rules. In the existing rule, only the current model year vehicles are excluded from emission inspections in the 48 counties required to have an emission inspection program under federal or State rules. The revised statute excludes from emissions inspections those vehicles in the three most recent model years with less than 70,000 miles on the odometer. Several additional minor housekeeping rule amendments are proposed to clarify definitions. Also, DAQ recommends repealing Rule .1009 and relying solely on the federal heavy-duty engine standards rules. This is based on the fact that the California rule referenced in Rule .1009 is equivalent to the EPA Heavy Duty Diesel (HDD) regulations and EPA did not delay or relax their HDD rules.*

Comments may be submitted to: *Joelle Burlison, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)707-8720, fax (919)707-8720, joelle.burlison@ncdenr.gov*

Comment period ends: *October 14, 2013*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
 Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation

- Local funds affected
 Date submitted to OSBM: *June 11, 2013*
 Substantial economic impact (≥\$500,000)
 Approved by OSBM
 No fiscal note required by G.S. 150B-21.4

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1000 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1002 APPLICABILITY

(a) This ~~Section~~ Rule is applicable to all gasoline-powered and hybrid-powered motor vehicles, except motorcycles and excluding the current model ~~year~~, year;

(1) until the time the criteria in Subparagraph (a)(2) are met,

(2) as of January 1, 2014 or the first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later, this Rule is applicable to all gasoline-powered and hybrid-powered motor vehicles of a 1996 or more recent model except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, plug-in and fuel-cell electric motor vehicles and motorcycles as specified in G.S. 20-183.2(b) that are:

(~~1~~)(A) required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (b) of this Rule;

(~~2~~)(B) part of a fleet primarily operated within the counties identified in Paragraph (b) of this Rule; or

(~~3~~)(C) operated on a federal installation located in a county identified in Paragraph (b) of this Rule and that meet the requirements of 40 CFR 51.356(a)(4).

(b) The emission control standards of this Section become effective in the counties identified in G.S. 143-215.107A on the dates specified in G.S. 143-215.107A.

Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A; 20-183.2.

15A NCAC 02D .1003 DEFINITIONS

The following definitions of terms apply to Rules 02D .1002 through 02D .1006 regulating gasoline-powered and hybrid-powered motor vehicles throughout this Section:

PROPOSED RULES

- (1) "Heavy-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is designed primarily for:
- transportation of property and has a GVWR (Gross Vehicle Weight Rating) of more than 8,500 ~~pounds~~ pounds but less than 14,001 pounds;
 - transportation of persons and has a capacity of more than 12 persons; or
 - use as a recreational motor vehicle, which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use and has a GVWR of more than 8,500 pounds.
- (2) "Light-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is designed primarily for:
- transportation of property and has a GVWR of 8,500 pounds or less; or
 - transportation of persons and has a capacity of 12 persons or less.
- (3) "Motor Vehicle" means ~~any self-propelled vehicle used for transporting property or persons.~~ every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle as defined in G.S. 20-4.01(23).
- (4) "Motorcycle" means any motor vehicle having ~~a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.~~ saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection" as defined in G.S. 20-4.01(27)d.
- (5) "Gasoline-powered Motor Vehicle" means a four-wheeled motor vehicle designed primarily to be propelled by the burning of gasoline in an internal combustion engine.
- (6) "Hybrid-powered Vehicle" means a four-wheeled motor vehicle designed to be propelled by a combination of one or more electric motors and the burning of gasoline in an internal combustion engine.
- (7) "Plug-in Electric Vehicle" as defined in G.S. 20-4.01(28a).
- (8) "Fuel-Cell Electric Vehicle" as defined in G.S. 20-4.01(12a).
- (9) "Model year" means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.
- (10) "Current model year" means the most recent year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.
- (11) "Three most recent model years" means the current (first) model year and the second and third model years following the current model year.
- (12) "Vendor" means any person who sells or leases equipment to inspection stations that is used to perform on-board diagnostic tests to show compliance with Rule 02D .1005 of this Section.

Authority G.S. 20-4.01(12a); 20-4.01(28a); 143-215.3(a)(1).

15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS

(a) This Rule applies according to Rule .1002 of this Section to all ~~1996 and later~~ gasoline-powered and hybrid-powered motor vehicles, vehicles 1996 or more recent models except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, except plug-in and fuel-cell electric motor vehicles, and motorcycles, in the counties identified in G.S. 143-215.107A.

(b) Vehicles covered under this Rule shall pass annually the on-board diagnostic test described in 40 CFR 85.2222. The vehicle shall fail the on-board diagnostic test if any of the conditions of 40 CFR 85.2207 are met. Equipment used to perform on-board diagnostic tests shall meet the requirements of 40 CFR 85.2231.

(c) The tester shall provide the owner of a vehicle that fails the on-board diagnostic test described in Paragraph (b) of this Rule a report of the test results. This report shall include the codes retrieved (these codes are listed in 40 CFR 85.2223(b)), the status of the malfunction indicator light illumination command, and the customer alert statement described in 40 CFR 85.2223(c).

(d) Persons performing on-board diagnostic tests shall provide the Division of Air Quality data necessary to determine the effectiveness of the on-board diagnostic testing program. The data submitted shall be what is necessary to satisfy the requirements of 40 CFR 51.365, Data Collection, and 40 CFR 51.366, Data Analysis and ~~Reporting.~~ Reporting, and 40 CFR 51.358, Test Equipment.

Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A(b); S.L. 1999 c. 328 s. 3.2.

15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS

(a) ~~Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to inspection stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule .1004 of this Section~~

PROPOSED RULES

or that is used to perform on board diagnostic tests to show compliance with Rule .1005 of this Section.

~~(b)(a)~~ Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231 Onboard Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the inspection/maintenance program requirements of this Section.

~~(e)(b)~~ Hardware repair and software repair. When equipment hardware or software fails to meet the requirements of Paragraph ~~(b)(c)~~ of this Rule for a particular analyzer, the vendor, after receiving a call to its respective service call center, shall communicate with the impacted station within ~~24 hours; two business days and shall complete repairs within the warranty guidelines of the vendor.~~ Where the hardware problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall repair the problem within 48 hours after the initial call to its respective service call center.

~~(1) Where the hardware problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall repair the problem within 72 hours after the initial call to its respective service call center.~~

~~(2) Where the hardware problem is not stopping inspections and is not compromising the security of the inspection system, the vendor shall repair the problem within 96 hours after the initial call to its respective service call center.~~

~~(d)(c)~~ Software repair revisions. When analyzer software fails to meet the requirements of Paragraph (b) of this Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the station within ~~24 hours; two business days.~~ The vendor shall identify and characterize the software problem within 5 days. The vendor shall, within that same 5-day period, inform the station owner and the Division as to the nature of the problem and the proposed corrective course of ~~action and action.~~

~~(1) Where the software problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 19 days after receiving the initial call to its service call center.~~

~~(2) Where the software problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 33 days after receiving the initial call to its service call center.~~

~~(3) The vendor shall distribute the new revision of the software to all impacted stations within 14~~

~~days after the vendor receives written notification from the Division that the software has been approved as meeting the requirements of Paragraph (b) of this Rule.~~

~~(e)(d)~~ Documentation of the initial service call. The vendor's service call center shall assign a unique service response number to every reported new hardware or software problem. The time and date of the initial call shall be recorded and identified with the service response number. The service response number shall be communicated to the inspection station operator at the time of the initial contact.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6),(14).

15A NCAC 02D .1009 MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL VEHICLE REQUIREMENTS

~~(a) Applicability. This Rule applies to model year 2008 and subsequent model years heavy duty diesel vehicles.~~

~~(b) Definitions. For the purposes of this Rule the following definitions shall apply:~~

~~(1) "Heavy duty diesel vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight rating (as certified by the manufacturer) of 14,001 pounds or greater that is propelled by a diesel engine.~~

~~(2) "Motor vehicle dealer" means motor vehicle dealer as defined in G.S. 20-286(11) and includes "new motor vehicle dealer" as defined in G.S. 20-286(13) and "used motor vehicle dealer" as defined in G.S. 20-286(16).~~

~~(3) "New motor vehicle" means new motor vehicle as defined in G.S. 20-286(10)(a).~~

~~(4) "Used motor vehicle" means used motor vehicle as defined in G.S. 20-286(10)(b).~~

~~(c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment as specified in Title 13 of the California Code of Regulations, Section 1905 shall apply.~~

~~(d) Requirement. No model year 2008 or subsequent model year heavy duty diesel vehicle that is a~~

~~(1) used heavy duty diesel vehicle sold by a motor vehicle dealer; or~~

~~(2) new motor vehicle, however it is sold,~~

~~may be leased or registered within North Carolina unless the vehicle or its engine has been certified by the California Air Resources Board as meeting the applicable model year requirements of Title 13 of the California Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy Duty Diesel Engines and Vehicles.~~

~~(e) Referenced Regulation. The California Code of Regulations Title 13, Division 3, Chapter 1, Article 1, Section 1905 and Article 2, Section 1956.8 are incorporated by reference in this Rule and include any later amendments thereto. A copy of the referenced materials may be obtained free of charge via the internet from the Office of Administrative Law California Code of Regulations website at <http://cer.oal.ca.gov/>, or a hard copy may be obtained at a cost of \$5.00 from the Public Information~~

PROPOSED RULES

~~Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1104; 02Q .0701-.0704, .0706, .0709, .0711 and repeal the rules cited as 15A NCAC 02Q .0705 and .0704.

Agency obtained G.S. 150B-19.1 certification:

- OSBM certified on:** June 28, 2013
 RRC certified on:
 Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncair.org/rules/hearing/>

Proposed Effective Date: January 1, 2014

Public Hearing:

Date: September 19, 2013

Time: 3:00 p.m.

Location: Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC

Reason for Proposed Action: *Session Law 2012-91 provides an exemption from North Carolina's air toxics rules for certain sources of toxic air pollutants as long as the Division of Air Quality (DAQ) determines that the emissions from that facility will not pose an unacceptable risk to human health.*

Section 1 of the law exempts sources subject to federal maximum achievable control technology (MACT), generally available control technology (GACT), or case-by-case emission limits for toxic air pollutants established under Section 112(j) of the Clean Air Act, and codifies the Director's Call provision of the state air toxics rules.

Section 2 of the law requires rule amendments consistent with Section 1.

Section 3 of the Session Law requires the DAQ to review the existing air toxics rules and make recommendations to the Environmental Review Commission (ERC) on whether further changes could be made that would reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining public health protections.

The proposed recommendations include: develop additional set of toxic emission permitting rates (TPER) for unobstructed vertical stacks; exempt natural gas and propane-fired combustion sources less than 450 mm BTU/hr that are only source of benzene; exempt emergency engines less than 4843 hp that are only source of formaldehyde; repeal Standard Industrial Classification (SIC) call rule; clarify the term "actual rate of emissions"; and remove the term "unadulterated wood".

Rules in Section 15A NCAC 02Q .0700 are proposed to be amended or repealed to incorporate the Section 1 statutory

exemptions and the Section 3 report recommendations. In addition, Rule 15A NCAC 02Q .0714, Waste Water Treatment Systems At Pulp And Paper Mills, is proposed to be repealed due to applicable requirements having expired.

Existing rule numerical values for the asbestos ambient air level (AAL) in 15A NCAC 02D .1104 and the associated asbestos TPER in 15A NCAC 02Q .0711 are proposed to be revised due to a calculation error in their original development.

Comments may be submitted to: Joelle Burlison, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, Phone (919)707-8720, fax (919)707-8720, email joelle.burlison@ncdenr.gov.

Comment period ends: October 14, 2013

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected**
 Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation
 Local funds affected
 Date submitted to OSBM:
 Substantial economic impact (≥\$500,000)
 Approved by OSBM
 No fiscal note required by G.S. 150B-21.4

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

Note: Text in italics was previously published in 27:20 NCR 1903-1906 and has not yet been adopted by the Environmental Management Commission.

Hearing Officer's Suggested Hearing Comments
Raleigh, NC – September 18, 2013

INTRODUCTION

[Steven Vozzo, hearing officer]:

Good evening ladies and gentlemen. My name is Steven Vozzo. I am Regional Supervisor of the Division of Air Quality's Fayetteville Regional Office. My role as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is Ms. Joelle Burleson. She is with the North Carolina Division of Air Quality, Planning Section.

Some of the staff from the Division of Air Quality are here to assist. Ms. Burleson, please introduce the staff present.

Ms. Burleson. (Introduce staff)

[Steven Vozzo]:

This evening we are conducting a public hearing to take comments on amendments to rules concerning Motor Vehicle Emission Control Standards in 15A NCAC 02D Section .1000. A fiscal note has been written for the rule amendments presented in the hearing tonight and was approved and certified by the Office of State Budget and Management. This hearing will be held according to the North Carolina Administrative Procedures Act. The public notice for this hearing has been advertised in the North Carolina Register and on the Division of Air Quality website. Copies of the notice have also been sent to those on the official DAQ mailing list. I will enter the public notice, proposed amendments and fiscal note into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment would also submit a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent. I will now open the hearing and take relevant comments on amendments to the Motor Vehicle

Emission Control Standard rules to incorporate the revised statutory exemption of the three most recent model year vehicles with less than 70,000 miles on the odometer from vehicle emissions inspection pursuant to Session Law 2012-199, An Act To Exempt Vehicles Of The Three Newest Model Years And With Less Than Seventy Thousand Miles From Emissions Inspections. Additional minor housekeeping amendments to clarify definitions are also proposed. In addition, Rule 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements, is proposed for repeal because it is duplicative of United States Environmental Protection Agency rule requirements and therefore unnecessary.

{ optional script if there are a large number of speakers }

[Hearing officer]: Optional Time Limit: Many people have requested to speak at this hearing. Due to time constraints, speakers' presentations will be limited to ____ minutes.

[Steven Vozzo]:

I will now take any comments you may have.

[SPEAKERS]

Is there anyone else who would like to comment? If there are no more comments, then the hearing is closed. The hearing record will remain open until October 14, 2013 for additional written comments.

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CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

| <u>NAME</u> | <u>REPRESENTING</u> | <u>PAGE</u> |
|--------------------|--|-------------|
| Chris Giguere | | V-2 |
| Michael Gaither | BanaLogic Corporation | V-3 |
| Shawn Petico | | V-4 |
| Joe Culotta | | V-5 |
| Terry Anderson | | V-6 |
| Jim McClesse | | V-7 |
| Max Potter | | V-8 |
| Craig Hauntings | | V-9 |
| William Markin | | V-10 |
| Kitty Rubin | N.C. Association of Inspection Only Stations | V-11 |
| Jeff Stahl | | V-13 |
| Ray Patterson | | V-14 |
| Susan Gibson | Department of Defense | V-15 |
| T. John Policastro | North Carolina Automobile Dealers Association | V-23 |
| David Ferrell | Inspection Station Association of North Carolina | V-30 |

[Chris Giguere, North Carolina State University Ph.D. graduate economics student and Intern with the North Carolina Division of Environmental Assistance and Customer Service]:

My name is Chris Giguere. I'm an intern in the Division of Environmental Assistance in customer service and I'm also a GHG student in economics at NC State. I already have a data set from the Division of Air Quality from 2006 thru 2012 of all the emissions and safety inspections conducted in the state. I understand that there is a report that Brian worked on that I'm going to get access to that and look at it, but I'm interested in is whether three years is the right amount of time. We're trying to build a data set right now to try to study that and other effects of automobile policies on extensive and intensive margins. Choices in terms of the fleet fuel economy, the type of car that you drive and also the mileage that you drive. My main comment is that I'm very interested to look at this report and I am interested in also trying to come to the same conclusion. I'm interested in doing the analysis and checking. Thank you.

[Michael Gaither of BanaLogic Corporation]:

My name is Mike Gaither and I'm employed with BanaLogic Corporation. I have a question more than a comment. I think technology is such that this three-year exemption is certainly no surprise to anybody. It's just a matter of time. My question is how is it going to be enforced and what preparations are being made to enforce it. Will this all be in effect January 1st or if there's no enforcement, will the stations police themselves? How is this going to be enforced, especially the mileage part?

Burleson, Joelle

From: Shawn Peticos [shawn41@bellsouth.net]
Sent: Monday, September 23, 2013 3:21 PM
To: Burleson, Joelle
Subject: Tax

This is just another tax break for the rich, what middle class working family buy new cars? Me and 90% of my coworkers don't own a car 3 years old or less and we make good money in Aerospace.

Shawn

Burleson, Joelle

From: joe cool [joecool26368@yahoo.com]
Sent: Wednesday, September 18, 2013 8:26 PM
To: Burleson, Joelle
Subject: Emissions test

Hello,

This "Annual Test" is a scam.
I understand 90% plus pass first try.

If this is so why do we have to do this EVERY Year?

How about every 3 years for EVERYONE?

This would be less of a financial hardship and less of a waste of time
for all drivers.

Also, the so called safety inspection is a joke. In all the years we have been
doing this, only 1 station ever raised the car on a hoist.

Joe Culotta
Asheville, NC

Burleson, Joelle

From: terry483@lycos.com
Sent: Wednesday, September 18, 2013 8:48 PM
To: Burleson, Joelle
Subject: My Suggestion on Emission Test

To tell you the truth, I think this annual requirement for emissions is a Waste of our money.

Why do you insist on scamming us on this stuff?

The vehicles before 1997 do not even have to do this and chances are they would fail a lot more.

The diesel trucks are the worst polluters and they do not even get tested.

Stop this foolishness and drop it back to every 5 years.

Waste of our money.

Terry Anderson
Gastonia

Burleson, Joelle

From: j c [jccmac483@yahoo.com]
Sent: Wednesday, September 18, 2013 8:32 PM
To: Burleson, Joelle
Subject: Emission Test Input

I think this whole emission thing is a scam.

Why do you force people to waste their money every year on this?
Some of us actually work for a living and hate to waste their money on this every year.

How about doing this every 3-5 years?

I would rather donate the money to Goodwill instead of this. I really feel ripped off!

Jim McClesse
Fletcher, NC

Burleson, Joelle

From: max potter [potter_max@yahoo.com]
Sent: Wednesday, September 18, 2013 2:57 PM
To: Burleson, Joelle
Subject: emissions testing

I would like to ask the commission to revoke all emissions testing. as the new law stands right now you are removing the extra testing from cars that are less than three years old with less than 70,000 miles. This places the burden of the extra money for an inspection on the individuals that cannot afford new cars. This is unfair to those individuals. It is also a quandary why New Hanover County has to have this and Brunswick doesn't. the emissions test have simply done nothing for the state except to increase fees paid by the citizenry that already pays annual taxes on the vehicles.

Thank you
Max Potter

Burleson, Joelle

From: cbhauntings@cs.com
Sent: Thursday, September 12, 2013 11:59 AM
To: Burleson, Joelle
Subject: New Car Emissions Testing

Dear Joelle,

While I agree in principle that emissions testing for a new car seems like a waste of money, and it probably is for most car and truck owners. The problem comes to how best to police the aftermarket car upgrades that are performed all the time by many car and truck owners who like to modify their vehicles for speed and driving on race tracks from time to time. Many upgrades are safe (its their driving that may come into question), but not street legal, usually because they would fail an emissions test...not a safety inspection. One modification that is common for track-use only is the removal of the power-robbing catalytic converter and replaced by a straight exhaust pipe system. It also makes the car/truck exhaust **louder** (more unrestricted exhaust airflow-think NASCAR). The emission system is the single biggest horsepower robbing feature of all cars and trucks, and would be swapped out and/or bypassed immediately by many more drivers if it were legal. What better time to do it than when you get the car new! Buy the car, increase the horsepower and instead of having to swap it back to factory original for a yearly emission inspection, you get to keep your mods for 3 years...then swap it back to original and as often occurs, turn in your leased car for a new one and do it again!!! Come on...such people who flip 2yr and 3yr car leases would never have to pay a dime in emissions testing and have a lot of "racing" fun circumventing the process. Just a thought.

Regards,
Craig

Burleson, Joelle

From: William Mackin [willmackin@gmail.com]
Sent: Thursday, September 12, 2013 9:13 AM
To: Burleson, Joelle
Subject: Caution against this 3 year exemption for emissions testing

Dear Ms. Bureleson,

I am strongly opposed to exempting new vehicles from emissions testing.

This move is naïve. Of course new vehicles will have working emissions equipment. However, people will immediately modify their vehicles to removes emissions control equipment so they can have "better performance" from their vehicle at the expense of the air that we all breathe.

I am outdoors enough to experience pre-emissions testing vehicles. You can feel it as they drive by and you have trouble breathing. There is an idea that we don't need the EPA. It is a stupid idea and the people that espouse it should be forced to run behind a 1979 dodge pickup truck for 10 minutes.

The emissions from new vehicles with their emissions control systems removed will be equally bad. It will contribute to Lung Disease and Terrible Air Quality, and many of our cities are already in violation of the Clean Air Act.

The people who came up with this idea are ignorant, naïve, or corrupt, in my humble opinion. Please put a stop to it or create massive penalties for vehicles that have had their emisisions control systems disabled.

Thanks,

William A. Mackin, PhD

--

www.wicbirds.net

919-358-1714

Burleson, Joelle

From: kitty rubin [ncinspection@yahoo.com]
Sent: Tuesday, October 08, 2013 1:19 PM
To: Burleson, Joelle
Subject: Inspection program changes

Hello,

The N.C. Association of Inspection only Stations would like to comment on the changes to the inspection program. This plan to exempt the first three year models of cars is clearly a perk to the motoring public that can afford to buy a new car. We would like to know who asked for this perk? These vehicles are new and should be checked for emissions one year after purchase for compliance. Our members would like to know what we should do when one of these vehicles comes in for inspection and the check engine light is on? Do we pretend to not see it or do we fail it, something we can't do with the current system. If we are to fail it then it is an emission inspection.

This plan to exempt these cars would cut the inspection revenue to the inspection stations by 18 to 20 percent. This is already on top of a program that has not seen a fee increase in over ten years and asking the stations to pay for the software update for this change is absurd. Continuing to cut this program would mean that Inspection only stations may not survive. These stations are convenient for the public.

This is a change that is not needed and is not fair to the motoring public that cannot afford a new car. These cars that are new are easy to inspect and help to offset the older cars that are not ready and are tested numerous times before passing at no added charge.

With this change the state will lose revenue the stations will lose revenue and the burden of paying for the communication to the VID will be placed on the motoring public with the older cars.

Please reconsider these changes and consider a fee increase for this program.

Thanks, Kitty Rubin
N.C. Association of Inspection only Stations

Burleson, Joelle

From: kitty rubin [ncinspection@yahoo.com]
Sent: Monday, October 14, 2013 11:32 AM
To: Burleson, Joelle
Subject: Inspection Program

The N.C. Association of Inspection only Stations would like to point out that with the passing of Senate Bill 402 that the pie chart that shows the Motoring Public where the funds that are raised in the IM program go is no longer correct and a software change would be needed to correct the pie chart so as not to deceive the Motoring Public.

The N.C. Association of Inspection only Stations would like to make sure that the stations are not paying for a software change when DOT/DMV need this software change and could include any other changes at this time.

Thanks, Kitty Rubin

Burleson, Joelle

From: Jeff Stahl [jes353@yahoo.com]
Sent: Friday, October 11, 2013 2:09 PM
To: Burleson, Joelle
Subject: Inspection Program

According to NCDENR figures, with the 3 year exemption for new cars about 700,000 vehicles will be getting a safety inspection instead of an emission inspection in 2014. At the SI rate that will bring in about \$595,000 in revenue for the program, at the IM rate it will bring in about \$4,375,00. How can your department, DMV and the state justify losing about \$3,780,000 in revenue in 2014 alone and then keep losing at the same rate until 2017, a total of over \$11,340,000 in 3 years. I am looking forward to your reply

Thank you
Jeff Stahl

Burleson, Joelle

From: ray patterson [ray_p100@yahoo.com]
Sent: Friday, October 11, 2013 2:55 PM
To: Burleson, Joelle
Subject: INSPECTION CHANGES

The N.C. Association of Inspection only Stations would like to comment on the changes to the inspection program. This plan to exempt the first three year models of cars is clearly a perk to the motoring public that can afford to buy a new car. We would like to know who asked for this perk? These vehicles are new and should be checked for emissions one year after purchase for compliance. Our members would like to know what we should do when one of these vehicles comes in for inspection and the check engine light is on? Do we pretend to not see it or do we fail it, something we can't do with the current system. If we are to fail it then it is an emission inspection.

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With this change the state will lose revenue the stations will lose revenue and the burden of paying for the communication to the VID will be placed on the motoring public with the older cars.

Please reconsider these changes and consider a fee increase for this program.

Ray Patterson, Partner
Two Guys Inspection Stations
Charlotte, NC
704 566 0355



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS, ENERGY AND ENVIRONMENT
REGIONAL ENVIRONMENTAL AND ENERGY OFFICE-SOUTHERN
200 WESTPARK DRIVE, SUITE 140
PEACHTREE CITY, GA 30269

October 8, 2013

Ms. Sheila Holman
North Carolina Department of
Environment and Natural Resources
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

Dear Ms. Holman:

On behalf of the Department of Defense (DoD) installations located in the State of North Carolina, I am responding to the North Carolina Environmental Management Commission Public Notice, dated 12 August 2013, respecting amendments to the Motor Vehicle Emissions Control Standard rules. More specifically, DoD comments are provided to reiterate concerns with the language under 15A NCAC 02D .1002(a)(3) [or (a)(2)(iii), as renumbered].

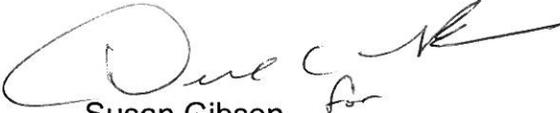
The DoD previously submitted comments on this matter to the North Carolina Department of Environment and Natural Resources (DENR) Division of Air Quality, dated 28 March 2005 [enclosed]. The purpose of those comments was to highlight the U.S. Department of Justice (DOJ) determination that the Inspection and Maintenance (I/M) regulation codified at 40 CFR § 51.356(a)(4) was invalid. The details of DOJ objections are in its letter to the EPA Acting General Counsel, dated 29 July 1998 [enclosed]. In sum, the DOJ determined that the EPA mistakenly assumed that CAA §§118(c) and (d) waive sovereign immunity, thereby allowing States to enforce unique I/M obligations on federal facilities as part of the State Implementation Plan. Only Congress, and not a Federal agency, can waive sovereign immunity. The DOJ concluded that the EPA I/M regulation is invalid to the extent it exceeds the waiver of sovereign immunity in §118(a), and therefore cannot be relied upon by the States to assert jurisdiction over the Federal Government. The EPA acknowledged this deficiency in its letter to the Virginia Attorney General [enclosed].

While the EPA had initially taken steps in 1999 to amend the I/M rule in order to conform to the DOJ opinion, the regulation was not amended. As a result, provisions of 40 CFR § 51.356(a)(4) remain invalid to this day, as do State rules and Implementation Plans that were developed in furtherance of those provisions. In response to the 2005 letters from DENR to DoD installations, the DoD determined that compliance with 15A NCAC 02D.1002 provisions that specifically targeted federal installations was not required based upon analysis in the DOJ letter and EPA acknowledgement of the same. Developments since 2005 and recent analysis in response to this rulemaking, has not change the determination that the language at 15A NCAC 02D .1002(a)(2)(iii) is not legally enforceable.

In light of the above, we respectfully recommend that 15A NCAC 02D .1002(a)(2)(iii), as renumbered, be removed from Motor Vehicle Emissions Control Standard rules. Removing the language would not be expected to appreciably impact local air quality as the military services continue to evaluate policy alternatives for implementing emissions inspection program for government and employee vehicles, where applicable. DoD installations also play a substantial role in local stakeholders efforts to address air quality, as we have seen with the success of the Combined Air Team "CombAT" partnership in Cumberland County. But even beyond these efforts, the DoD is aggressively responding to federal energy mandates that result in further emissions reductions from facilities and fleet vehicles. These partnerships and initiatives should continue to have a positive impact on air quality in North Carolina going forward.

We appreciate the opportunity to comment and if you have any questions, please contact me at 404-460-3131 or David Blalock at 404-545-5655.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Gibson" with a stylized flourish at the end.

Susan Gibson
DoD Regional Environmental
Coordinator, Region 4

Enclosures

CF:
Air Force Regional Environmental Coordinator
Navy Regional Environmental Coordinator
Marine Corps Environmental Coordinator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF
AIR AND RADIATION

August 28, 1998

Mary Jo Leugers, Esquire
Virginia Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Dear Ms. Leugers:

As you may know, the Clean Air Act (CAA) set forth certain requirements for Federal facilities which are located in vehicle inspection and maintenance (I/M) program areas. These requirements in §118 apply to both Federal fleet and Federal employee vehicles. Congress intended in that section that those facilities in I/M program areas comply with certain local and State I/M requirements. You should know that the Federal government is committed to meeting those obligations and is taking steps which will help your State to reach its air quality goals.

I am writing at this time to inform you of a recent development in national policy on Federal facilities' compliance with I/M programs. I want to take this opportunity to explain changes with respect to the way in which Federal facilities will meet the CAA requirements and how those changes might affect your State's I/M program. I also want to give you the opportunity to provide comment on the proposed Federal Facilities Guidance document as EPA moves toward finalization of the current draft.

When EPA published the I/M rule in 1992, we interpreted CAA §118(c) and (d) as a partial waiver of the Federal government's sovereign immunity thereby allowing states to regulate Federal facilities in their I/M programs. We therefore established certain State Implementation Plan (SIP) requirements for Federal facilities in that rule.

Recently, a group of Federal agencies approached EPA with implementation issues it had identified. Additionally, the Department of Justice has expressed the opinion that §118(c) and (d) do not waive sovereign immunity for the Federal government and thus states are without authority to enforce the §118(c) and (d) requirements for Federal facilities. Furthermore, EPA does not have statutory authority

for including §118(c) and (d) requirements as SIP requirements. EPA is now anticipating amending its I/M rule to remove requirements for Federal facilities as SIP requirements in addition to creating a Federal program to execute §118(c) and (d) requirements. EPA has been working with this Federal agency workgroup to develop a program for Federal agencies to implement which ensures full compliance with the CAA and which preserves the Federal government's sovereign immunity.

It is important to note that removing Federal facility I/M requirements from SIPs will in no way impact the emissions reductions credits states earn for their I/M programs. Likewise, this change in policy does not affect the waiver of sovereign immunity contained in CAA §118 (a), which requires Federal agencies to comply with air pollution control programs to the same extent as any nongovernmental entity. Federal agencies will continue to comply with programs of general applicability as they have done in the past.

This change also would require that SIPs be amended in concert with the I/M rule change to remove all state obligations with regard to Federal facility I/M requirements. We are currently working with the Office of General Counsel to determine the least burdensome way for EPA and affected states to carry out these changes.

I recognize that there may be some uncertainty concerning the parameters of §118 compliance in the interim period during which EPA would amend its I/M rule, create the Federal program and oversee SIP changes. Some states have already established §118 requirements for Federal facilities as part of their I/M programs whereas others may still be developing that component for implementation at a later date. In either case, I ask that you extend to those Federal facilities in your I/M program areas the flexibility to proceed with implementation of their Federal §118(c) and (d) requirements in lieu of current state requirements where and when possible. There should be no interim effect on §118(a) programs. Please direct any questions on which of your State's requirements may be affected in the interim to the EPA contact person below.

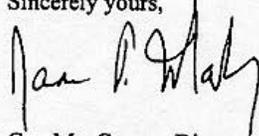
Finally, I would like to emphasize that these changes and the subsequent Federal program will ensure that the Federal government and its employees will be subject to the I/M obligations intended by Congress in §118(c) and (d). Those requirements already go beyond those to which private facilities and their employees are subject and this guidance preserves that effect. It is my understanding that many states which implemented these requirements previously have enforced the requirements primarily for military facilities. This new program will ensure that all subject Federal facilities comply. Your state should benefit from the increased emissions reductions, without a loss of SIP credit, and would not have to bear the administrative burdens associated with the requirements.

Attached for your review is a copy of a proposed guidance developed by the

workgroup of Federal agencies in consultation with EPA. The current draft is in need of input from states. Please take the time to review the attached documents and provide any feedback to EPA Office of Mobile Sources. Comments and questions should be directed to the attention of Buddy Polovick who can be reached at (734) 214-4928 or electronically at: polovick.buddy@epa.gov by September 18, 1998. If this time frame is insufficient, please contact Mr. Polovick to discuss. If requested, EPA will arrange a conference call to answer questions or discuss issues of concern.

Thank you in advance for your assistance in making these changes.

Sincerely yours,



f. Gay MacGregor, Director
Regional and State Programs Division

enclosure:



U.S. Department of Justice

Environmental and Natural Resources Division

July 29, 1998

Scott Fulton, Acting General Counsel
 United States Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

Re: Federal Agency Compliance with the Clean Air Act Vehicle Inspection and Maintenance Requirements

Dear Mr. Fulton:

I am writing to you about an issue that has been identified concerning an EPA regulation that implements Clean Air Act ("CAA") provisions relating to state vehicle inspection and maintenance ("I/M") requirements for federal fleet and federal employee vehicles. See 40 C.F.R. § 51.356. This issue was brought to our attention by several federal agencies, including the United States Postal Service, the Department of Defense, the General Services Administration, as well as our own Justice Management Division, after the Commonwealth of Virginia issued regulations which imposed discriminatory I/M obligations on federal fleet and federal employee vehicles in reliance on the EPA regulation at issue. Per discussions with the EPA and the affected federal agencies, this Division has reached the conclusion, which is concurred in by the Department's Office of Legal Counsel, that the EPA regulation should be revised so as not to provide that the federal government is subject to Virginia's I/M requirements. If you concur with our conclusion, we suggest that appropriate steps be taken to revise the EPA regulation.

In short, the EPA regulation appears to be premised on the assumption that CAA section 118 includes a waiver of immunity that permits states to impose discriminatory I/M requirements on federal fleet and federal employee vehicles. Section 118 does contain a waiver of immunity, but only as to requirements a state imposes on the federal government "in the same manner and to the same extent as non-governmental entities." Section 118(a) 42 U.S.C. § 7418(a).

The express waiver of immunity in section 118(a) does not extend to sections 118(c) and (d). Although sections 118(c) and (d) require federal fleet and federal employee vehicles to comply with valid state I/M requirements, because they do not contain an express waiver, the responsibility for ensuring compliance with them lies with the federal government, not the states.

The EPA regulation does not reflect this distinction between section 118(a), which waives immunity for nondiscriminatory state I/M requirements, and sections 118(c) and (d), which do not. On the contrary, it authorizes the states to enforce sections 118(c) and (d) and further, requires the states to do so. Specifically, the EPA regulation requires that state CAA implementation plans ("SIPs") include the legal authority to implement and enforce I/M

requirements on all federal fleet and federal employee vehicles that operate on a federal facility. 40 C.F.R. § 51.356. Currently, a number of states, including Virginia and Maryland, have issued regulations, subsequently incorporated into EPA-approved SIPs, that single out the federal fleet and federal employee vehicles for discriminatory I/M requirements. However, EPA's regulation is invalid to the extent that it exceeds the waiver of sovereign immunity, and therefore cannot be relied upon by states to assert jurisdiction over the federal government. See Mitrefelt v. Department of Air Force, 903 F.2d 1293, 1296 (10th Cir. 1990) ("[A]dministrative regulations cannot waive the federal government's sovereign immunity"), citing United States v. Mitchell, 463 U.S. 206, 215 (1983); c.f. LEAF v. EPA 118 F.3d 1467, 1473 (11th Cir. 1997) ("[I]f regulations are inconsistent with the statute... these regulations would be void ab initio").

In enacting the Clean Air Act Congress recognized that the federal government shares an important responsibility with other units of government and non-governmental entities to ensure that all Americans can live in areas that meet or exceed the National Ambient Air Quality Standards. As you know, I am a strong advocate of ensuring that the federal government takes seriously the responsibility to comply with its legal obligations and assume its fair share in controlling air emissions to protect public health. The revision to the EPA regulation at issue would simply ensure that the federal agencies are not subjected to discriminatory state I/M requirements. Several states, including the State of Washington, have included in their SIPs state I/M requirements for all fleet vehicles that operate within certain areas of the state, and such nondiscriminatory requirements are a valid imposition on federal fleets consistent with the waiver of immunity in section 118(a).

In recognition that federal agencies are required to comply with all nondiscriminatory state I/M requirements, an interagency work group was established to develop an implementation plan for compliance with applicable state I/M requirements at federal facilities. The work group, with EPA's assistance, has devised a draft interim guidance and model implementation plan. EPA has reviewed the draft interim guidance and model implementation plan, and we understand that EPA will adopt them to assure that the state I/M requirements are met until EPA issues its own guidance and/or regulations directing federal agency compliance with sections 118(c) and (d).

There is one additional matter I would like to bring to your attention about the Northern Virginia SIP. In devising a system to impose user-fees on the I/M program, Virginia has developed a program that requires the federal government to remit \$2 for each vehicle operating on or commuting to federal facilities in the Northern Virginia area, including employee and contractor vehicles. In our view such an assessment cannot be imposed on the United States. The United States is constitutionally immune from state taxes and regulatory fees, and the \$2 fee falls outside the waiver of immunity in CAA section 118 because it discriminates against the United States. And, in addition, while the United States is not immune from user fees imposed by the states, the \$2 fee does not qualify as a user fee. Although Virginia could construct a fee system that passes constitutional muster and that is consistent with the limited waiver of immunity in CAA section 118 to offset any overhead it may incur in overseeing federal agency compliance with its I/M requirements, its current scheme lacks the necessary features of a valid fee system.

I appreciate your attention to this matter. If you have any questions please feel free to contact me or Deputy Assistant Attorney General Nancy Firestone.

Sincerely,

//s//

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division

North Carolina Automobile Dealers Association

October 14, 2013

Via U.S. Mail and Electronic Mail

Ms. Joelle Burleson
 North Carolina Department of Environment and Natural Resources
 Division of Air Quality
 1641 Mail Service Center
 Raleigh, North Carolina 27699-1641

Re: **Proposed Amendments to Motor Vehicle Emission Control Standard Rules Incorporating Session Law 2012-199**

Dear Ms. Burleson:

On behalf of the North Carolina Automobile Dealers Association (“NCADA”), the following comments are respectfully submitted on the proposed amendments to the motor vehicle emission control standard rules incorporating Session Law 2012-199. NCADA is a trade association representing the franchised (new) automobile, truck and motorized RV dealers in North Carolina. Many of the dealer members of NCADA also operate licensed North Carolina motor vehicle inspection stations. NCADA did not oppose the final version of Session Law 2012-199, and these comments do not in any way relate to the underlying public policy issues and decisions included in that session law.

NCADA and its members strongly support the overall goals of North Carolina’s Motor Vehicle Inspection/Maintenance program and thank the Division of Air Quality and the Division of Motor Vehicles (“DMV”) for their efforts related to the operation of the program. The public policy debates in the North Carolina General Assembly on these issues have continued for several years now and have required the extensive work of the Department of Environment and Natural Resources, Division of Air Quality (“DAQ”). DAQ has been responsible for conducting various studies, data collection and assessment, and now the development of these proposed rule amendments that will ultimately be included in the revised State Implementation Plan and subject to approval by the US Environmental Protection Agency. Again, NCADA commends DAQ, as well as DMV, for your continued work on these issues.

Background

An important aspect of the inspection program includes ensuring that all regulated individuals (including vehicle owners, inspection mechanics and inspection stations) have a clear understanding of the program and its requirements. **Violations of various program requirements, including those resulting from the most inadvertent and unintentional of errors, can result in significant monetary penalties and license suspensions/revocations for inspection mechanics and inspection stations. *The suspension of a station inspection license can put the licensee out of business, and leave its employees without a job.***

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 919-828-4421 • FAX 919-829-9525



Comments of NCADA

October 14, 2013

Page 2

Throughout the numerous public policy debates on these issues, the emissions inspection exemption included in Session Law 2012-199, has generally been referred to as a “three-year” exemption. Specifically, in addition to the first year exemption provided for in current law (which is actually an exemption for any new motor vehicle regardless of model year), a vehicle would be exempt from the emissions inspection at its next two annual inspections, provided the vehicle has less than 70,000 miles on its odometer at the time of inspection. NCADA believes that this was the intent of Session Law 2012-199 and also what DAQ is attempting to implement.

However, as currently drafted, the proposed rule amendments could be interpreted to create a measurement mechanism that will be extremely difficult for inspection mechanics and inspection stations to discern and that will not necessarily result in a true “three-year” exemption for all vehicles under 70,000 miles.

Such an interpretation would significantly increase the burden of compliance, both in operations and in cost, for inspection mechanics and inspection stations in North Carolina. NCADA respectfully requests that the proposed amendments be revised before they are adopted in order to reduce the significant compliance burden and to provide a clear and unambiguous means for inspection mechanics and inspection stations to discern whether a vehicle being presented for inspection is exempt from the emissions inspection requirement.

Summary of Concerns

These comments highlight various concerns with the proposed rule amendments as currently drafted. However, as noted above, the more significant overarching concerns are twofold:

1) **“Three most recent model years” calculation** - Throughout the numerous public policy debates on these issues, the emissions inspection exemption included in Session Law 2012-199, has been generally referred to as a “three-year” exemption. Specifically, in addition to the first year exemption in current law, a vehicle would be exempt from the emissions inspection at its next two annual inspections, provided the vehicle has less than 70,000 miles on its odometer at the time of inspection. However, as noted above, the proposed rule amendments could be interpreted as creating a measurement mechanism that will not necessarily result in a “three-year” exemption for all vehicles under 70,000 miles. Further, it appears that, whether a particular vehicle is exempt from having an emissions inspection conducted would not be determined with relative ease by simply looking at the calendar year. Rather, it would be based on whether a third subsequent model year for the particular model in question has been released on the date of inspection. *If it is the intent of these proposed rule amendments that the emissions inspection exemption be an exemption for the first three inspections of a vehicle with less than 70,000 miles, NCADA would recommend that the proposed rule amendments be revised to clearly reflect that intent.*

2) **Potential significant additional burden on inspection mechanics and inspection stations** - As noted above, the proposed rule amendments appear to require an inspection mechanic to know, at the time of inspection, whether a certain model year has been released for the vehicle being inspected. However, the proposed rule amendments do not include any method by which inspection mechanics and inspection stations may accurately determine the first model year when an inspection would be required

Comments of NCADA

October 14, 2013

Page 3

for a particular type of vehicle. This is particularly problematic because there is no set date on which new model year vehicles are introduced. This can happen for an individual model at any time during the calendar year. Inspection mechanics and inspection stations would be required to somehow monitor and constantly update the release date for each model of vehicle sold in the United States. This lack of readily available information could subject inspection mechanics and inspections stations to the high risk of significant penalties and license suspensions. *The proposed rule amendments should be revised to require the implementation of an electronic system or system updates that will immediately alert the inspection mechanic as to the proper inspection to perform, regardless of how the “three-year” exemption is measured, and before the law and these proposed rule amendments become effective.*

“Three most recent model years” calculation

Among other changes, the proposed amendments to 15A NCAC 02D .1003 include definitions for the terms: “model year”, “current model year”, and “three most recent model years.” The proposed model year definitions (model year and current model year) refer to the, “year used to designate a discrete vehicle model.”

As such, under these proposed rules, it can be interpreted that the determination of whether a vehicle falls within the “three most recent model years” would not be based upon a measurement starting with the vehicle’s first or initial year’s emission inspection exemption (at point of sale or lease), plus the next two (2) inspections due in the next two (2) calendar years. Rather, it would be a measure of the current model year (most recent model year) of the vehicle in question, plus the next two (2) model years released for that particular vehicle regardless of calendar year. Stated another way, the determination provided for in the proposed rule amendments appears to be dependent upon whether the particular vehicle manufacturer has released a third additional model year for that vehicle before its next inspection due date.

As an example, if a new 2014 model year Chevrolet Impala is purchased and registered in June, 2014, that vehicle would be exempt from an initial emissions inspection (first year exemption). When the vehicle is due for its second safety inspection in June, 2015, it is extremely likely that the vehicle will still be within the three most recent model years at that time and the emissions inspection exemption will apply (second year exemption). However, when the vehicle’s third safety inspection is due in June, 2016, it is quite possible that the 2017 model year for that particular vehicle model will have been released and the vehicle will no longer be within the “three most recent model years” as currently defined in the proposed rule amendments. This would be the case even though it would only have been two calendar years since the vehicle was purchased and the vehicle was only exempted from its first and second year emissions inspections. Further, it is conceivable that two different owners could purchase the same vehicle on the same date in June, 2014, but that the third year exemption could apply to one vehicle and not the other depending upon the inspection date and the 2017 model year release date (e.g., June 15, 2016 release date of 2017 model with one 2014 model year vehicle inspected the day before on June 14 and the other on June 15).

Also, it is important to note that there is no specific uniformity to automobile manufacturer model year release dates. The time frame between model years of a particular vehicle model is not necessarily a full twelve (12) months. Also, the release date for a particular vehicle model is rarely

Comments of NCADA

October 14, 2013

Page 4

in the same calendar month, much less on the same calendar date every year. There is really no way we know of for inspection mechanics and inspection stations to track release dates on all vehicle models sold.

Recommendation - NCADA would recommend a revision to the various model year definitions and the definition of “three most recent model years” to clearly provide for a definitive time frame involving calendar years. As an example, G.S. §20-74.1, addresses motor vehicle damage disclosure requirements and requires a damage disclosure statement when transferring a motor vehicle, “up to and including five model years old...” G.S. §20-74.1(a1) goes on to define the term “five model years” as follows:

“(a1) For the purposes of this section, the term “five model years” shall be calculated by counting the model year of the vehicle’s manufacture as the first model year and the current calendar year as the final model year.”

Under this definition and method of measuring, it would be clear that the requirement would apply to a 2014 model year vehicle from 2014 up to and including 2018.

As Session Law 2012-199 did not define “three most recent model years” in statute, the above example involving G.S. §20-74.1 provides an example of how this type of term has been defined in other motor vehicle statutes.

Potential significant additional burden on inspection mechanics and inspection stations

Under current law, while there are other exemptions to the emissions inspection requirements, a vehicle is generally subject to an emissions inspection if it is a 1996 or newer motor vehicle and is not a new motor vehicle. This determination is a relatively easy task for the inspection mechanic and one currently performed every day.

Under Session Law 2012-199 and the proposed rule amendments, a vehicle with 70,000 or more miles on its odometer at the time of inspection will not be exempt from an emissions inspection regardless of whether the vehicle is in the three most recent model years. This mileage assessment appears to also be a relatively easy and quick task for an inspection mechanic and one not easily susceptible to inadvertent error, provided that the odometer is functioning properly and can be read.

However, as noted above, the proposed rule amendments as currently drafted, could be interpreted to require that an inspection mechanic also make a determination, at the time of vehicle inspection, whether an automobile manufacturer has released the third subsequent model year following the model year of the vehicle being inspected. Clearly, this would present a significant, if not impossible, burden for inspection mechanics and inspection stations to accurately determine on their own. Also, as noted above, under such an interpretation, the emissions inspection requirement for a particular vehicle could change, theoretically, on a day to day basis.

Again, NCADA would recommend clarifying changes be made to the proposed rule amendments to avoid this type of interpretation. However, this issue demonstrates the need for some type of electronic process for inspection mechanics and inspection stations to determine the proper required inspection for

Comments of NCADA

October 14, 2013

Page 5

the vehicle being inspected. Such a process should be in place **before** the rule amendments and the new “three-year” exemption become effective, regardless of how the exemption will be measured.

In the Fiscal Note prepared by the Division of Air Quality for these proposed rule amendments, the following is noted on Page 15 in the Section X. Consideration of Alternatives:

“Based on present Analyzer and VID Central logic, inspection procedures can be performed in the same manner they are presently being performed without Analyzer and/or VID Central updates. The responsibility to perform the correct inspection on the vehicle presented would be that of the Inspector-Mechanic, which is no different than it is presently allowed or practiced now. **The Analyzer and VID Central updates would incorporate additional system logic to warn the Inspector Mechanic from continuing with an OBD/Emissions Inspection, or to convert a Safety-Only Inspection to an OBD/ Emissions Inspection on a vehicle that meets the requirements outlined in Session Law 2012-199.**” (emphasis added).

The above statement recognizes that the responsibility for performing the “correct inspection” supposedly falls on the inspection mechanic. The above statement also recognizes the importance of incorporating some type of “system logic” to inspection analyzers to warn an inspection mechanic not to conduct an emission inspection for the particular vehicle, and more importantly, to ensure that an emissions inspection is conducted when required. While such system logic changes appear to have been contemplated, such a requirement is not included in the proposed rule amendments.

Further, the following additional statement is included in Section X. Consideration of Alternatives:

“A determination must be made by DMV as to the absolute necessity of an analyzer and VID Central update, resulting in almost \$1.2 million when a proposed, but not yet developed, web-based system and software application could eliminate the need for this and future individual analyzer updates, if all current analyzers are converted to the web-based system. The incremental cost for the web-based system and software application associated with the rule change is assumed to be negligible. **Until then, appropriate statutes are present to address improper inspections should they occur. It is important to remember that if this type of improper inspection should occur, the inspection that occurs is a more stringent inspection and not a less stringent one, but is still subject to penalties for an improper inspection.**” (emphasis added).

The above statement appears to indicate that if the necessary systems changes to properly warn inspection mechanics are too costly to implement and/or if the system changes will be delayed until some future date when an alternative system can be developed after the effective date of the new law and the proposed rule changes, that the “backstop” will be the penalties the inspection mechanic and inspection station will receive should an improper inspection occur. Again, these penalties mandate inspection license suspensions, including possible multi-year license suspensions regardless of the inadvertency of the errors or the diligence of the inspection mechanic.

Comments of NCADA

October 14, 2013

Page 6

Further, NCADA does not agree with the premise of the last sentence in the above statement. **If an improper inspection occurs under these proposed rule amendments, it is just as possible that the error will involve not performing an emissions inspection when required.** That is, per the examples noted above, the error may not be in conducting an emissions inspection too early in the life of a new vehicle, but rather, in not conducting an emissions inspection early enough in the life of the vehicle.

Such potential errors and the possibility for a considerable amount of vehicles to receive the incorrect inspection despite the diligence of the inspection mechanic and inspection station, would appear to justifiably place in jeopardy the chances for the ultimate approval of the revisions to the Statewide Implementation Plan (including the proposed rule amendments) based on the changes to the emissions inspection program in Session Law 2012-1999, by the United States Environmental Protection Agency.

Recommendation - NCADA recommends that the proposed rule amendments be revised to include a requirement that the necessary electronic systems or system changes be fully implemented **before the effective date of the new “three-year” exemption** in order to permit an inspection mechanic to accurately determine whether a particular vehicle is exempt from the emissions inspection requirement. Again, such changes should be implemented regardless of how the “three-year exemption” is calculated. However, if the proposed rule amendments are interpreted to require a determination of manufacturer vehicle model release dates, such system changes would need to include regularly updated data regarding the current model year (most recent model year) of all vehicles. It is important to note that such information can change on a daily basis as there is no uniformity to individual manufacturer and/or individual vehicle model release dates. Without such a system in place before these proposed rule amendments become effective, these changes in inspection requirements pose a clear trap for even the most diligent of inspection mechanics and inspection stations.

Costs of Implementation

As noted throughout the Fiscal Note prepared by DAQ for these proposed rule amendments, implementation of the “three-year” exemption, will certainly be costly for inspection mechanics and inspection stations. In the March 1, 2012, *Study of the Potential Impacts of Exempting Motor Vehicles from Emissions Inspections*, submitted by the Department of Transportation, Division of Motor Vehicles and the Department of Environment and Natural Resources, Division of Air Quality to multiple legislative committees, it is noted that a projected combined annual revenue loss of \$10,359,418 to inspection stations in the 48 emission counties by exempting the first three model years from emission inspection requirement. Further, the Fiscal Note prepared by DAQ for these proposed rule amendments includes similar projected decrease in revenues for emissions inspection stations.

It is noted in the Fiscal Note that software upgrades to analyzers could result in a one-time expenditure of \$990,000, at a cost of approximately \$180 per analyzer. As the inspection mechanics and inspection stations are already bearing the greatest financial impact resulting from Session Law 2012-199 and these proposed rule amendments, the cost of upgrading analyzer software to implement these changes should not be borne by inspection stations.

Recommendation – NCADA recommends that the proposed rule amendments be revised to not only require the required systems changes to be implemented before the effective date of Session Law 2012-

Comments of NCADA

October 14, 2013

Page 7

199 and the proposed rule amendments as noted earlier, but also to provide that any costs incurred be borne by the vendor of any such system.

Analyzer Performance Standards

As noted above, Session Law 2012-199 and the proposed rule amendments will increase the compliance burden for inspection mechanics and inspections stations regardless of how the “three-year exemption” is calculated. However, the proposed rule amendments also include changes that appear to potentially weaken the required performance standards of inspection station analyzer equipment and equipment vendors depending upon the warranty guidelines of a current vendor. These proposed amendments to 15A NCAC 02D .1006 do not appear to be authorized or required by Session Law 2012-199, and it is unclear if such revisions will result in weakening the minimum performance standards at a time when a significant change to the inspections program and increased burdens are being placed on inspection mechanics and inspection stations.

Specifically, the proposed rule amendments seek to increase the required time frame for a vendor to communicate with an impacted inspection station on a hardware or software repair and software repair revisions from 24 hours to two (2) business days. Further, the changes would eliminate the specifically stated maximum time frames for necessary repairs and replace with the vendor’s warranty guidelines. In addition, for software repair revisions, the maximum time frames for necessary repairs are simply eliminated.

Recommendation - Again, it is not clear from the proposed rule amendment or the Fiscal Note, the impetus or the necessity for these proposed changes. However, if such changes would weaken the performance standards required of inspection analyzer equipment and/or equipment vendors, then NCADA would recommend against these proposed changes.

New motor vehicle emissions inspection exemption

Finally, under the current version of G.S. §20-183.2, and as it will be amended by Session Law 2012-199, new motor vehicles as defined in G.S. §20-286(10)a. are exempt from the emissions inspection requirement. Current rule 15A NCAC 02D .1002 refers to this exemption as applying to “current model year” vehicles, but does not define the term. The proposed rule amendments will now define the term “current model year” as the most recent model year used to designate a discrete vehicle model....” However, this definition does not necessarily incorporate all new motor vehicles. For example, a certain model year vehicle can still be a “new motor vehicle” even after the next model year for that particular vehicle is released. As such, even though it is still a “new motor vehicle” and would still be exempt from the emission inspection requirement per G.S. §20-183.2(7), the new motor vehicle may not actually be the “most recent model year” vehicle, and thus, not a “current model year” vehicle.

Recommendation - NCADA recommends the inclusion of a reference to the exemption of “new motor vehicles” in the proposed amendment to 15A NCAC 02D .1002, in addition to the “current model year” reference. While it is certainly likely that any new motor vehicle will still be in the three most recent model years when it is first purchased and inspected, the definition of “current model year” could be effective for some time before the criteria in the proposed subparagraph (a)(2) of 15A NCAC 02D .1002

Comments of NCADA

October 14, 2013

Page 8

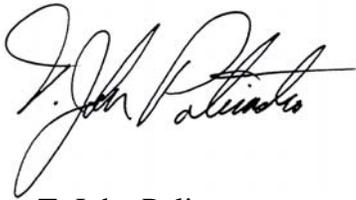
are met. As such, it would not be accurate for the rule to be interpreted as limiting the current first year emissions inspection exemption to just “current model year” vehicles during the time frame before the (a)(2) criteria are met. Again, “new motor vehicles” are excluded regardless of model year.

Conclusion

Based upon the concerns noted above, as currently drafted, NCADA respectfully objects to the proposed amendments to the motor vehicle emission control standard rules with the exception of the proposed repeal of 15A NCAC 02D .1009. NCADA welcomes the opportunity to work with the DAQ, and any other interested stakeholders in recommending revisions to the rules in question and to properly implement Session Law 2012-199 in a clear and unambiguous manner as well as in a manner that is not overly burdensome to the individuals and entities that are regulated by the rules.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. John Policastro". The signature is fluid and cursive, with a large initial "T" and "J".

T. John Policastro
General Counsel
North Carolina Automobile Dealers Association
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October 14, 2013

Via Electronic & U.S Mail

Ms. Joelle Burleson
North Carolina Department of Environment and Natural Resources
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

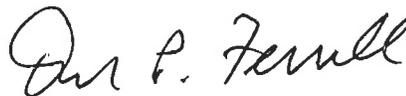
RE: Proposed Amendments to Motor Vehicle Emission Control Standard Rules
Incorporating Session Law 2012-199
Our File No.: 33552-0001

Dear Ms. Burleson:

I am writing on behalf of the Inspection Station Association of North Carolina. We hereby incorporate by reference the comments and concerns of the North Carolina Automobile Dealers Association as expressed in their October 14, 2013 letter (see enclosed). If you have any questions, please do not hesitate to contact me.

Sincerely,

VANDEVENTER BLACK LLP



David P. Ferrell

DPF/tjm

Enclosure

4848-9466-6774, v. 1

North Carolina Automobile Dealers Association

October 14, 2013

Via U.S. Mail and Electronic Mail

Ms. Joelle Burleson
 North Carolina Department of Environment and Natural Resources
 Division of Air Quality
 1641 Mail Service Center
 Raleigh, North Carolina 27699-1641

Re: **Proposed Amendments to Motor Vehicle Emission Control Standard Rules Incorporating Session Law 2012-199**

Dear Ms. Burleson:

On behalf of the North Carolina Automobile Dealers Association (“NCADA”), the following comments are respectfully submitted on the proposed amendments to the motor vehicle emission control standard rules incorporating Session Law 2012-199. NCADA is a trade association representing the franchised (new) automobile, truck and motorized RV dealers in North Carolina. Many of the dealer members of NCADA also operate licensed North Carolina motor vehicle inspection stations. NCADA did not oppose the final version of Session Law 2012-199, and these comments do not in any way relate to the underlying public policy issues and decisions included in that session law.

NCADA and its members strongly support the overall goals of North Carolina’s Motor Vehicle Inspection/Maintenance program and thank the Division of Air Quality and the Division of Motor Vehicles (“DMV”) for their efforts related to the operation of the program. The public policy debates in the North Carolina General Assembly on these issues have continued for several years now and have required the extensive work of the Department of Environment and Natural Resources, Division of Air Quality (“DAQ”). DAQ has been responsible for conducting various studies, data collection and assessment, and now the development of these proposed rule amendments that will ultimately be included in the revised State Implementation Plan and subject to approval by the US Environmental Protection Agency. Again, NCADA commends DAQ, as well as DMV, for your continued work on these issues.

Background

An important aspect of the inspection program includes ensuring that all regulated individuals (including vehicle owners, inspection mechanics and inspection stations) have a clear understanding of the program and its requirements. **Violations of various program requirements, including those resulting from the most inadvertent and unintentional of errors, can result in significant monetary penalties and license suspensions/revocations for inspection mechanics and inspection stations. *The suspension of a station inspection license can put the licensee out of business, and leave its employees without a job.***

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Comments of NCADA
October 14, 2013
Page 2

Throughout the numerous public policy debates on these issues, the emissions inspection exemption included in Session Law 2012-199, has generally been referred to as a “three-year” exemption. Specifically, in addition to the first year exemption provided for in current law (which is actually an exemption for any new motor vehicle regardless of model year), a vehicle would be exempt from the emissions inspection at its next two annual inspections, provided the vehicle has less than 70,000 miles on its odometer at the time of inspection. NCADA believes that this was the intent of Session Law 2012-199 and also what DAQ is attempting to implement.

However, as currently drafted, the proposed rule amendments could be interpreted to create a measurement mechanism that will be extremely difficult for inspection mechanics and inspection stations to discern and that will not necessarily result in a true “three-year” exemption for all vehicles under 70,000 miles.

Such an interpretation would significantly increase the burden of compliance, both in operations and in cost, for inspection mechanics and inspection stations in North Carolina. NCADA respectfully requests that the proposed amendments be revised before they are adopted in order to reduce the significant compliance burden and to provide a clear and unambiguous means for inspection mechanics and inspection stations to discern whether a vehicle being presented for inspection is exempt from the emissions inspection requirement.

Summary of Concerns

These comments highlight various concerns with the proposed rule amendments as currently drafted. However, as noted above, the more significant overarching concerns are twofold:

1) **“Three most recent model years” calculation** - Throughout the numerous public policy debates on these issues, the emissions inspection exemption included in Session Law 2012-199, has been generally referred to as a “three-year” exemption. Specifically, in addition to the first year exemption in current law, a vehicle would be exempt from the emissions inspection at its next two annual inspections, provided the vehicle has less than 70,000 miles on its odometer at the time of inspection. However, as noted above, the proposed rule amendments could be interpreted as creating a measurement mechanism that will not necessarily result in a “three-year” exemption for all vehicles under 70,000 miles. Further, it appears that, whether a particular vehicle is exempt from having an emissions inspection conducted would not be determined with relative ease by simply looking at the calendar year. Rather, it would be based on whether a third subsequent model year for the particular model in question has been released on the date of inspection. *If it is the intent of these proposed rule amendments that the emissions inspection exemption be an exemption for the first three inspections of a vehicle with less than 70,000 miles, NCADA would recommend that the proposed rule amendments be revised to clearly reflect that intent.*

2) **Potential significant additional burden on inspection mechanics and inspection stations** - As noted above, the proposed rule amendments appear to require an inspection mechanic to know, at the time of inspection, whether a certain model year has been released for the vehicle being inspected. However, the proposed rule amendments do not include any method by which inspection mechanics and inspection stations may accurately determine the first model year when an inspection would be required

Comments of NCADA

October 14, 2013

Page 3

for a particular type of vehicle. This is particularly problematic because there is no set date on which new model year vehicles are introduced. This can happen for an individual model at any time during the calendar year. Inspection mechanics and inspection stations would be required to somehow monitor and constantly update the release date for each model of vehicle sold in the United States. This lack of readily available information could subject inspection mechanics and inspections stations to the high risk of significant penalties and license suspensions. *The proposed rule amendments should be revised to require the implementation of an electronic system or system updates that will immediately alert the inspection mechanic as to the proper inspection to perform, regardless of how the “three-year” exemption is measured, and before the law and these proposed rule amendments become effective.*

“Three most recent model years” calculation

Among other changes, the proposed amendments to 15A NCAC 02D .1003 include definitions for the terms: “model year”, “current model year”, and “three most recent model years.” The proposed model year definitions (model year and current model year) refer to the, “year used to designate a discrete vehicle model.”

As such, under these proposed rules, it can be interpreted that the determination of whether a vehicle falls within the “three most recent model years” would not be based upon a measurement starting with the vehicle’s first or initial year’s emission inspection exemption (at point of sale or lease), plus the next two (2) inspections due in the next two (2) calendar years. Rather, it would be a measure of the current model year (most recent model year) of the vehicle in question, plus the next two (2) model years released for that particular vehicle regardless of calendar year. Stated another way, the determination provided for in the proposed rule amendments appears to be dependent upon whether the particular vehicle manufacturer has released a third additional model year for that vehicle before its next inspection due date.

As an example, if a new 2014 model year Chevrolet Impala is purchased and registered in June, 2014, that vehicle would be exempt from an initial emissions inspection (first year exemption). When the vehicle is due for its second safety inspection in June, 2015, it is extremely likely that the vehicle will still be within the three most recent model years at that time and the emissions inspection exemption will apply (second year exemption). However, when the vehicle’s third safety inspection is due in June, 2016, it is quite possible that the 2017 model year for that particular vehicle model will have been released and the vehicle will no longer be within the “three most recent model years” as currently defined in the proposed rule amendments. This would be the case even though it would only have been two calendar years since the vehicle was purchased and the vehicle was only exempted from its first and second year emissions inspections. Further, it is conceivable that two different owners could purchase the same vehicle on the same date in June, 2014, but that the third year exemption could apply to one vehicle and not the other depending upon the inspection date and the 2017 model year release date (e.g., June 15, 2016 release date of 2017 model with one 2014 model year vehicle inspected the day before on June 14 and the other on June 15).

Also, it is important to note that there is no specific uniformity to automobile manufacturer model year release dates. The time frame between model years of a particular vehicle model is not necessarily a full twelve (12) months. Also, the release date for a particular vehicle model is rarely

Comments of NCADA
October 14, 2013
Page 4

in the same calendar month, much less on the same calendar date every year. There is really no way we know of for inspection mechanics and inspection stations to track release dates on all vehicle models sold.

Recommendation - NCADA would recommend a revision to the various model year definitions and the definition of “three most recent model years” to clearly provide for a definitive time frame involving calendar years. As an example, G.S. §20-74.1, addresses motor vehicle damage disclosure requirements and requires a damage disclosure statement when transferring a motor vehicle, “up to and including five model years old....” G.S. §20-74.1(a1) goes on to define the term “five model years” as follows:

“(a1) For the purposes of this section, the term “five model years” shall be calculated by counting the model year of the vehicle’s manufacture as the first model year and the current calendar year as the final model year.”

Under this definition and method of measuring, it would be clear that the requirement would apply to a 2014 model year vehicle from 2014 up to and including 2018.

As Session Law 2012-199 did not define “three most recent model years” in statute, the above example involving G.S. §20-74.1 provides an example of how this type of term has been defined in other motor vehicle statutes.

Potential significant additional burden on inspection mechanics and inspection stations

Under current law, while there are other exemptions to the emissions inspection requirements, a vehicle is generally subject to an emissions inspection if it is a 1996 or newer motor vehicle and is not a new motor vehicle. This determination is a relatively easy task for the inspection mechanic and one currently performed every day.

Under Session Law 2012-199 and the proposed rule amendments, a vehicle with 70,000 or more miles on its odometer at the time of inspection will not be exempt from an emissions inspection regardless of whether the vehicle is in the three most recent model years. This mileage assessment appears to also be a relatively easy and quick task for an inspection mechanic and one not easily susceptible to inadvertent error, provided that the odometer is functioning properly and can be read.

However, as noted above, the proposed rule amendments as currently drafted, could be interpreted to require that an inspection mechanic also make a determination, at the time of vehicle inspection, whether an automobile manufacturer has released the third subsequent model year following the model year of the vehicle being inspected. Clearly, this would present a significant, if not impossible, burden for inspection mechanics and inspection stations to accurately determine on their own. Also, as noted above, under such an interpretation, the emissions inspection requirement for a particular vehicle could change, theoretically, on a day to day basis.

Again, NCADA would recommend clarifying changes be made to the proposed rule amendments to avoid this type of interpretation. However, this issue demonstrates the need for some type of electronic process for inspection mechanics and inspection stations to determine the proper required inspection for

Comments of NCADA
October 14, 2013
Page 5

the vehicle being inspected. Such a process should be in place **before** the rule amendments and the new “three-year” exemption become effective, regardless of how the exemption will be measured.

In the Fiscal Note prepared by the Division of Air Quality for these proposed rule amendments, the following is noted on Page 15 in the Section X. Consideration of Alternatives:

“Based on present Analyzer and VID Central logic, inspection procedures can be performed in the same manner they are presently being performed without Analyzer and/or VID Central updates. The responsibility to perform the correct inspection on the vehicle presented would be that of the Inspector-Mechanic, which is no different than it is presently allowed or practiced now. **The Analyzer and VID Central updates would incorporate additional system logic to warn the Inspector Mechanic from continuing with an OBD/Emissions Inspection, or to convert a Safety-Only Inspection to an OBD/ Emissions Inspection on a vehicle that meets the requirements outlined in Session Law 2012-199.**” (emphasis added).

The above statement recognizes that the responsibility for performing the “correct inspection” supposedly falls on the inspection mechanic. The above statement also recognizes the importance of incorporating some type of “system logic” to inspection analyzers to warn an inspection mechanic not to conduct an emission inspection for the particular vehicle, and more importantly, to ensure that an emissions inspection is conducted when required. While such system logic changes appear to have been contemplated, such a requirement is not included in the proposed rule amendments.

Further, the following additional statement is included in Section X. Consideration of Alternatives:

“A determination must be made by DMV as to the absolute necessity of an analyzer and VID Central update, resulting in almost \$1.2 million when a proposed, but not yet developed, web-based system and software application could eliminate the need for this and future individual analyzer updates, if all current analyzers are converted to the web-based system. The incremental cost for the web-based system and software application associated with the rule change is assumed to be negligible. **Until then, appropriate statutes are present to address improper inspections should they occur. It is important to remember that if this type of improper inspection should occur, the inspection that occurs is a more stringent inspection and not a less stringent one, but is still subject to penalties for an improper inspection.**” (emphasis added).

The above statement appears to indicate that if the necessary systems changes to properly warn inspection mechanics are too costly to implement and/or if the system changes will be delayed until some future date when an alternative system can be developed after the effective date of the new law and the proposed rule changes, that the “backstop” will be the penalties the inspection mechanic and inspection station will receive should an improper inspection occur. Again, these penalties mandate inspection license suspensions, including possible multi-year license suspensions regardless of the inadvertency of the errors or the diligence of the inspection mechanic.

Comments of NCADA

October 14, 2013

Page 6

Further, NCADA does not agree with the premise of the last sentence in the above statement. **If an improper inspection occurs under these proposed rule amendments, it is just as possible that the error will involve not performing an emissions inspection when required.** That is, per the examples noted above, the error may not be in conducting an emissions inspection too early in the life of a new vehicle, but rather, in not conducting an emissions inspection early enough in the life of the vehicle.

Such potential errors and the possibility for a considerable amount of vehicles to receive the incorrect inspection despite the diligence of the inspection mechanic and inspection station, would appear to justifiably place in jeopardy the chances for the ultimate approval of the revisions to the Statewide Implementation Plan (including the proposed rule amendments) based on the changes to the emissions inspection program in Session Law 2012-1999, by the United States Environmental Protection Agency.

Recommendation - NCADA recommends that the proposed rule amendments be revised to include a requirement that the necessary electronic systems or system changes be fully implemented **before the effective date of the new “three-year” exemption** in order to permit an inspection mechanic to accurately determine whether a particular vehicle is exempt from the emissions inspection requirement. Again, such changes should be implemented regardless of how the “three-year exemption” is calculated. However, if the proposed rule amendments are interpreted to require a determination of manufacturer vehicle model release dates, such system changes would need to include regularly updated data regarding the current model year (most recent model year) of all vehicles. It is important to note that such information can change on a daily basis as there is no uniformity to individual manufacturer and/or individual vehicle model release dates. Without such a system in place before these proposed rule amendments become effective, these changes in inspection requirements pose a clear trap for even the most diligent of inspection mechanics and inspection stations.

Costs of Implementation

As noted throughout the Fiscal Note prepared by DAQ for these proposed rule amendments, implementation of the “three-year” exemption, will certainly be costly for inspection mechanics and inspection stations. In the March 1, 2012, *Study of the Potential Impacts of Exempting Motor Vehicles from Emissions Inspections*, submitted by the Department of Transportation, Division of Motor Vehicles and the Department of Environment and Natural Resources, Division of Air Quality to multiple legislative committees, it is noted that a projected combined annual revenue loss of \$10,359,418 to inspection stations in the 48 emission counties by exempting the first three model years from emission inspection requirement. Further, the Fiscal Note prepared by DAQ for these proposed rule amendments includes similar projected decrease in revenues for emissions inspection stations.

It is noted in the Fiscal Note that software upgrades to analyzers could result in a one-time expenditure of \$990,000, at a cost of approximately \$180 per analyzer. As the inspection mechanics and inspection stations are already bearing the greatest financial impact resulting from Session Law 2012-199 and these proposed rule amendments, the cost of upgrading analyzer software to implement these changes should not be borne by inspection stations.

Recommendation – NCADA recommends that the proposed rule amendments be revised to not only require the required systems changes to be implemented before the effective date of Session Law 2012-

Comments of NCADA
October 14, 2013
Page 7

199 and the proposed rule amendments as noted earlier, but also to provide that any costs incurred be borne by the vendor of any such system.

Analyzer Performance Standards

As noted above, Session Law 2012-199 and the proposed rule amendments will increase the compliance burden for inspection mechanics and inspections stations regardless of how the “three-year exemption” is calculated. However, the proposed rule amendments also include changes that appear to potentially weaken the required performance standards of inspection station analyzer equipment and equipment vendors depending upon the warranty guidelines of a current vendor. These proposed amendments to 15A NCAC 02D .1006 do not appear to be authorized or required by Session Law 2012-199, and it is unclear if such revisions will result in weakening the minimum performance standards at a time when a significant change to the inspections program and increased burdens are being placed on inspection mechanics and inspection stations.

Specifically, the proposed rule amendments seek to increase the required time frame for a vendor to communicate with an impacted inspection station on a hardware or software repair and software repair revisions from 24 hours to two (2) business days. Further, the changes would eliminate the specifically stated maximum time frames for necessary repairs and replace with the vendor’s warranty guidelines. In addition, for software repair revisions, the maximum time frames for necessary repairs are simply eliminated.

Recommendation - Again, it is not clear from the proposed rule amendment or the Fiscal Note, the impetus or the necessity for these proposed changes. However, if such changes would weaken the performance standards required of inspection analyzer equipment and/or equipment vendors, then NCADA would recommend against these proposed changes.

New motor vehicle emissions inspection exemption

Finally, under the current version of G.S. §20-183.2, and as it will be amended by Session Law 2012-199, new motor vehicles as defined in G.S. §20-286(10)a. are exempt from the emissions inspection requirement. Current rule 15A NCAC 02D .1002 refers to this exemption as applying to “current model year” vehicles, but does not define the term. The proposed rule amendments will now define the term “current model year” as the most recent model year used to designate a discrete vehicle model....” However, this definition does not necessarily incorporate all new motor vehicles. For example, a certain model year vehicle can still be a “new motor vehicle” even after the next model year for that particular vehicle is released. As such, even though it is still a “new motor vehicle” and would still be exempt from the emission inspection requirement per G.S. §20-183.2(7), the new motor vehicle may not actually be the “most recent model year” vehicle, and thus, not a “current model year” vehicle.

Recommendation - NCADA recommends the inclusion of a reference to the exemption of “new motor vehicles” in the proposed amendment to 15A NCAC 02D .1002, in addition to the “current model year” reference. While it is certainly likely that any new motor vehicle will still be in the three most recent model years when it is first purchased and inspected, the definition of “current model year” could be effective for some time before the criteria in the proposed subparagraph (a)(2) of 15A NCAC 02D .1002

Comments of NCADA
October 14, 2013
Page 8

are met. As such, it would not be accurate for the rule to be interpreted as limiting the current first year emissions inspection exemption to just “current model year” vehicles during the time frame before the (a)(2) criteria are met. Again, “new motor vehicles” are excluded regardless of model year.

Conclusion

Based upon the concerns noted above, as currently drafted, NCADA respectfully objects to the proposed amendments to the motor vehicle emission control standard rules with the exception of the proposed repeal of 15A NCAC 02D .1009. NCADA welcomes the opportunity to work with the DAQ, and any other interested stakeholders in recommending revisions to the rules in question and to properly implement Session Law 2012-199 in a clear and unambiguous manner as well as in a manner that is not overly burdensome to the individuals and entities that are regulated by the rules.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. John Policastro". The signature is fluid and cursive, with the first name being the most prominent.

T. John Policastro
General Counsel
North Carolina Automobile Dealers Association
Email: jpolicastro@ncada.com
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Mobile: 919-349-0122

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CHAPTER VI
INDEX OF ATTACHMENTS

| <u>ATTACHMENTS</u> | <u>PAGE</u> |
|--|-------------|
| Economic Analysis for Amendment to Vehicle Emissions Control Standards | VI-2 |

Fiscal Note

| | |
|------------------------|--|
| Rule Topic: | Exemption of Certain Motor Vehicles from Emission Inspections (517) |
| Rule Citation: | 15A NCAC 02D .1002 <i>Applicability</i> , 15A NCAC 02D .1003 <i>Definitions</i> , 15A NCAC 02D .1005 <i>On-Board Diagnostic Standards</i> 15A NCAC 02D .1006 <i>Sale and Service of Analyzers</i> 15A NCAC 02D .1009 <i>Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements</i> |
| DENR Division: | Division of Air Quality |
| Agency Contact: | Joelle Burleson, Rule Development Branch Supervisor Division of Air Quality (DAQ) (919) 707-8720 Joelle.Burleson@ncdenr.gov |
| Analyst: | Steve Schliesser, DAQ (919) 707-8701 Steve.Schliesser@ncdenr.gov |
| Impact Summary: | State government: Yes Local government: Yes Substantial impact: Yes Federal government: No |
| Authority: | G.S. 20-128.2(a); G.S. 20-183.2(b); 143-215.3(a)(1); 143-215.107(a)(3),(4),(6),(7); 143-215.107A; 143-215.108 |
| Necessity: | In response to statutory revisions in North Carolina Session Law 2012-199, the Division of Air Quality (DAQ) is proposing changes to its emission inspections rules. In the existing rule, only the current model year vehicles are excluded from emission inspections in the 48 counties required to have an emission inspection program under federal or State rules. The revised statute excludes from emissions inspections those vehicles in the three most recent model years with less than 70,000 miles on the odometer. Several additional minor housekeeping rule amendments are proposed to clarify definitions. Also, DAQ recommends repealing rule .1009 and relying solely on the federal heavy-duty engine standards rules. This is based on the fact that the California rule referenced in rule .1009 is equivalent to the EPA Heavy Duty Diesel (HDD) regulations and EPA did not delay or relax their HDD rules. NC General Statute 150B-19.3 stipulates that a State agency may not adopt a rule for environmental protection that imposes a more restrictive standard than that imposed by federal law. |

I. Executive Summary

The purpose of this document is to conduct an evaluation of the costs and benefits associated with changes and revisions to the DAQ rules on motor vehicles emission inspections in the 48 counties required to have those inspections under State or federal rules. The new statute will amend the current rule's exclusion of the current model year for emission inspection to exclude vehicles of the three most recent model years with less than 70,000 miles on its odometer. This change directly involves amending four rules:

- 15A NCAC 02D .1002, Applicability;
- 15A NCAC 02D .1003, Definitions;
- 15A NCAC 02D .1005, On-Board Diagnostic Standards; and
- 15A NCAC 02D .1006, Sale and Service of Analyzers (see proposed changes in Appendix A).

These four rules establish and define which vehicles are subject to the Motor Vehicle Emission Control Standard and which analyzers are suitable for conducting the emission inspections.

In addition, this change involves minor housekeeping amendments and the repealing a rule – 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements. This rule establishes heavy-duty diesel vehicle requirements for 2008 and more recent model years referencing regulations from California instead of regulations from EPA. None of these minor changes have any additional impact.

Table 1, Estimated Fiscal Impacts of the Proposed Amendments, shows the fiscal impacts of exempting the second and third model year vehicles which are estimated to be \$6.7 million during the last half of State Fiscal Year (SFY) ending on June 30, 2014. The full impacts are realized in SFY-2015 and SFY-2016, reaching \$14.0 million and \$14.6 million, respectively, due to a projected 2.8% annual growth on the number of vehicles affected. Owners of vehicles benefit from cost savings that are equally offset by the combined revenue losses by State government agencies and private sector impacts on owners of inspection stations. If station owners are required to purchase software upgrades to implement the rule changes, there could be an additional one-time expenditure of \$990,000 paid by the 4,550 station owners (about \$180 for the typical station) and \$200,000 paid by DMV.

The net present value of these fiscal impacts of these proposed amendments are estimated to equal \$30,155,000 over the initial three year period of this analysis. These rule amendments cause substantial economic impacts, as defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$500,000 in any calendar year.

Table 1. Estimated Fiscal Impacts of the Proposed Amendments*

| | SFY-2014 (Jan.-Jun.) | SFY-2015 | SFY-2016 |
|---|-----------------------------|----------------------|----------------------|
| Vehicles in 2nd & 3rd Model Year | 405,500 | 846,000 | 883,000 |
| DAQ Impacts | -\$264,000 | -\$550,000 | -\$574,000 |
| + DMV Emission Program Account | -\$1,216,000 | -\$2,538,000 | -\$2,648,000 |
| + DMV Telecommunications Account | -\$710,000 | -\$1,480,000 | -\$1,545,000 |
| = Total North Carolina Agency Impacts | -\$2,190,000 | -\$4,568,000 | -\$4,767,000 |
| + Inspection Station Owners Impacts | -\$4,461,000 | -\$9,306,000 | -\$9,714,000 |
| = Total Revenue + Receipts Impacts** | -\$6,651,000 | -\$13,874,000 | -\$14,481,000 |
| State Motor Fleet Savings | \$21,000 | \$43,000 | \$45,000 |
| + Local Government Motor Fleet Savings | \$39,000 | \$81,000 | \$83,000 |
| + Private Vehicle Owner Savings | \$6,591,000 | \$13,750,000 | \$14,353,000 |
| = Total Vehicle Owners Savings** | \$6,651,000 | \$13,874,000 | \$14,481,000 |

* The table excludes the one-time cost to station owners (total of \$990,000) and DMV (\$200,000) for potentially needed station software upgrades to implement the proposed exemption. These costs may be borne by the vendors of analyzers used to perform the emission inspection or even DMV.

**Total revenues to emission inspection station owners plus State government receipts equal the savings experienced by vehicle owner due to the proposed exemptions.

II. Background

The federal Clean Air Act (CAA), as amended, established National Ambient Air Quality Standards (NAAQS) for the following criteria pollutants: carbon monoxide, lead, ozone, nitrogen dioxide, particulate matter and sulfur dioxide. The North Carolina vehicle inspection and maintenance (I&M) program started in 1982 with Mecklenburg County being required to have an emission inspection program to address violations of the carbon monoxide NAAQS. In 1984, Wake County was added to the program for carbon monoxide NAAQS violations. With the passage of the 1990 CAA Amendments, seven other Counties (Cabarrus, Durham, Forsyth, Gaston, Guilford, Orange and Union) were added to the emission inspection program to address violations of the 1-hour ozone and/or carbon monoxide standards. Under the 1997 8-hour ozone standard, the Charlotte/Gastonia/Rock Hill area was designated as a moderate nonattainment area. Senate Bill 953 (Session Law 1999-328) required an additional 39 counties to have the vehicle emission program in order to improve air quality statewide. These counties were added to the program based on population, vehicle miles traveled, and the likely contribution by motor vehicles to high ozone levels in these counties and nearby counties. This expanded the program to a total of 48 counties.

The initial emission inspection program in North Carolina was based on a “tail-pipe” test. The test was administered by inserting a probe in the vehicle’s tail-pipe and measuring the emissions of the pollutants. The tail-pipe test measured carbon monoxide and total hydrocarbon emissions. The test

could not identify the emission-related component that was malfunctioning, nor could it measure emissions of nitrogen oxides, which is a key precursor to ozone formation.

Starting in October 2002, inspection stations in the original nine counties converted from tailpipe testing to the new On-Board Diagnostic II (OBD) emission testing for all 1996 and newer light duty gasoline vehicles. The program continued to expand until January 1, 2006, at which time inspection stations in 48 counties were performing the OBD emission test on all 1996 and newer light duty gasoline vehicles. Once the program was fully implemented, tail-pipe testing for vehicles older than 1996 was discontinued. Model year 1996 and newer vehicles have standardized computer systems that continually monitor the electronic sensors of engines and emission control system parameters. When a potential problem is detected, a dashboard warning light is illuminated to alert the driver. An OBD system detects a problem well before symptoms such as poor performance, high emissions or poor fuel economy are recognized by the driver. An OBD emission test provides a more timely and comprehensive picture of a vehicle's emission status because it continuously evaluates emission performance during operation, whereas a tail-pipe test measures emissions only for a few moments once a year. Early detection helps to avoid costly repairs and improves engine and emission performance.

In 2008, North Carolina began the electronic authorization program. This program replaced the paper stickers that had been placed on vehicle windshields by inspection stations with electronic authorizations. The electronic authorization program also synchronized the vehicle registration renewal date with the vehicle inspection renewal date. A safety only inspection is required for all vehicles less than 35 years old. A vehicle that qualifies for an emission waiver may have their registration renewed after passing the safety equipment portion of the inspection and receiving a waiver for the OBD portion. The Department of Transportation (DOT) Division of Motor Vehicles (DMV) had contracted with Verizon Business to manage the Vehicle Inspection Database (VID). In April 2012 the DMV signed a contract with Systech International (now Opus Inspection) to serve as the State's new VID program vendor and to enhance its functionality. This new system will allow for real time data transfer between the inspection stations, the VID and the DMV's vehicle registration database, thus minimizing wait time for vehicle registration issuance and renewals.

The rule amendments discussed in this analysis are necessary to comply with the new Session Law 2012-199 statute that reduces the regulatory burden on many vehicle owners while meeting federal air quality standards. The DMV and DAQ jointly led a study per Session law 2011-145 to examine exempting vehicles from the emission inspection requirements under G.S. 20-183.2(b) for the three newest model year vehicles. As part of this study, DAQ in coordination with the DMV evaluated the potential impacts of exempting these motor vehicles on emission levels and air quality and determined that the exemption would not have a negative effect on air quality or on EPA accepting the State Implementation Plan (SIP) revision. Despite a slight emission increase from the inspection exemption, DAQ modeling showed that the offsetting emission effects of a higher compliance rate were stronger, the net result having a positive effect on air quality. A higher compliance rate than in previous modeling was assumed because recent data shows a higher rate has been achieved since the 2008

statute started the electronic authorization program. The results of the joint DMV and DAQ study¹ were contained in a report with a recommendation to exempt the three newest model year vehicles from emission inspections and for the State to adjust compliance rate targets in the SIP to make up for the projected deficit in emission reductions.

The January 2014 effective date of this legislation is structured to allow the DMV the time needed to recode its software to properly reflect the change in legislation. Additionally, it is important that the State submit to EPA the appropriate SIP revisions addressing any legislative change in the program prior to implementation of the amendment. The effective date would allow DAQ to submit the revisions demonstrating that no net increase in certain pollutants would result from 16 percent of the baseline number of vehicles being exempt from emission inspections since this would be offset by a higher compliance rate. Recent data shows a higher compliance rate than what is stated in the current SIP has been achieved since the electronic authorization program and synchronized vehicle registration and inspection renewal dates started in 2008. As a result, the State could move forward with the proposed three most recent model years exemption without losing eligibility to secure federal transportation funds.

III. Description of Existing Rules

15A NCAC 02D .1002, *Applicability*. This rule defines the trigger mechanisms for *which* specific vehicles (*i.e.*, current model year) are subject to the Motor Vehicle Emission Control Standard in the 48 counties specified in G.S. 143-215.107A. Those subject are gasoline-powered motor vehicles, except motorcycles and excluding the current model year, that are:

- (1) required to be registered by the DMV in the 48 designated counties;
- (2) part of a fleet primarily operated within the 48 counties; or
- (3) operated on a federal installation located in one of the 48 counties.

15A NCAC 02D .1003, *Definitions*. This rule defines the key terms, but the previous version did not include all the terminology with corresponding definitions for the related new rule and available types of motor vehicles (*i.e.*, hybrids, and the different types of electric vehicles), which are added in the rule change.

15A NCAC 02D .1005, *On-Board Diagnostic Standards*. This rule defines *what* the requirements are for the vehicles subject to emission inspection and those performing the inspection. The standards are:

1. pass the on-board diagnostic test as prescribed in 40 CFR 85.2207,
2. use equipment meeting the performance warranty tests in 40 CFR 85.2231, and
3. report the test results to DAQ satisfying the computerized system and data analysis requirements specified in 40 CFR 51.358, 51.365, and 51.366.

¹ DOT/DMV and DENR/DAQ, "A Study of the Potential Impacts of Exempting Motor Vehicles from Emissions Inspections," March 1, 2012, submitted pursuant to the requirement of Section 28.24(a) of Session Law 2011-145. http://www.ncleg.net/PED/Reports/documents/Emissions/Emissions_Report.pdf

15A NCAC 02D .1006, *Sale and Service of Analyzers*. This rule defines *what* the performance requirements are for the analyzer hardware and software responsible for conducting the emissions inspections and communicating the results on the identified vehicles to government officials.

15A NCAC 02D .1009, *Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements*. This rule establishes heavy-duty diesel (HDD) vehicle requirements for 2008 and more recent model years referencing a regulation from California. DAQ adopted the California on-road heavy-duty diesel (HDD) regulations by reference in 2004 as a backstop in case the U.S. EPA delayed or relaxed their HDD regulations. Given that EPA did not delay or relax their HDD regulations and the California rule is equivalent to and duplicative of EPA HDD rules, DAQ recommends eliminating the 02D .1009 Rule.

IV. Motivation for the Proposed Rules

The motivation for the Session Law 2012-199 statute and the ensuing proposed rule is to reduce the economic impact of environmental rules while not interfering with the State's ability to attain federal air standards, resulting in loss of future federal transportation funding. Session Law 2011-145 required DMV and DAQ to investigate and report on the feasibility of extending the current one-year exemption to three-years. The agencies:

- Reported that while North Carolina only exempts the current model year, 22 other State and local governments have laws granting multi-year exemptions (up to 6 years) for the on-board diagnostic standards meeting EPA approval;
- Produced scientific findings that the exemptions would maintain EPA air quality standards; and
- Determined the fiscal impacts resulting from the extended exemptions for vehicle owners, inspection stations, and State government agencies.²

V. Identification of the Affected Sources

Affected sources will be the owners of vehicles of the second and third most recent model years with less than 70,000 miles in the 48 counties specified in G.S. 143-215.107A. Vehicle documentation and records are kept systematically by DMV, as each vehicle must have a registration card, license plate, and annual safety inspection with the odometer mileage recorded. Within a given calendar year there are two vehicle model years, as manufacturers are allowed and always issue a new model year sometime after January 2 for a given year. The model year and the actual calendar year of production do not always coincide for motor vehicles. In the United States, government authorities allow cars of a given model year to be sold starting on January 2 of the previous calendar year. For example, this means that a 2013 model year vehicle can legally go on sale on January 2, 2012.

Table 2 below provides a projection of the number of vehicles in North Carolina that would be subject to the emission inspection under the current rules and the number of vehicles subject with the enactment of the proposed exemption. The information in Table 2 was derived based on a detailed

² Ibid.

national annual growth trend forecast from the US EPA MOVES2010 model.³ National annual growth trends of roughly 2.8 percent in vehicles of model year 1996 or more recent, excluding the current model year, was used to predict the subject vehicle numbers in North Carolina in the period of interest, 2014 – 2016. Vehicle age distributions were also obtained from the EPA MOVES2010 model to estimate the fraction of first model year. Those fractions were applied to the projected number of NC vehicles after an adjustment for vehicles with more than 70,000 miles was made. For this analysis, one percent of the second most recent model year and five percent of the third most recent model year are assumed to exceed the 70,000 mile limit on eligibility for the exemption based on 2011 DMV data.

Table 2. Baseline and Additional Vehicles Exempted under the Revised Statute

| State Fiscal Year | 2014 | 2015 | 2016 |
|--|----------------|----------------|----------------|
| Baseline Number of Vehicles Subject to Emissions Inspection | 5,186,000 | 5,327,000 | 5,477,000 |
| Percent change from baseline due to proposal to exempt 2 nd and 3 rd Model Years with less than 70,000 miles | 15.64% | 15.88% | 16.11% |
| Exempted 2nd and 3rd Model Year Vehicles | 811,000 | 846,000 | 883,000 |
| Resulting Number of Vehicles Subject to Emissions Inspection with exemption | 4,375,000 | 4,481,000 | 4,594,000 |

During the next year the DMV has plans to recode its software to reflect the change in DAQ rules required by recent legislation. The software change will identify the affected vehicles of the three most recent model years with less than 70,000 miles, instead of only the current model year independent of mileage, in the designated 48 counties.

VI. Establishment of the Regulatory Baseline

This section presents what the revenues and costs to affected parties would have been without the exemption for second and third most recent model year vehicles. Under the current rules, only the current model year vehicles within a calendar year in the designated 48 counties are exempt from the OBD inspection for emission control standards. For example, in the 2011 calendar year, any new vehicles that have not been previously titled by DMV receive a safety-only inspection prior to sale in the 48 designated emission counties.

For owners of vehicles subject to the rules, an emission and safety inspection costs up to \$30, while a safety-only inspection costs \$13.60. Table 3, Cost Breakdown for Vehicle Emission and Safety Inspection, delineates the inspection station cost and various government fee components in the vehicle emission and safety inspections.

³ US EPA MOVES2010 Model.

<http://www.epa.gov/otaq/models/moves/tools/MOVES2010DefaultAgeDistributions20100209.xls>

Table 3. Cost Breakdown for Vehicle Emission and Safety Inspection

| 1. Emission Inspection | Fee | Cost | Sub-total |
|--|---------------|----------------|------------------|
| - Emission Program Account (DMV) | \$3.00 | | |
| - Telecommunications Account (DMV) | \$1.75 | | |
| - Division of Air Quality (DENR) | <u>\$0.65</u> | | |
| Fee Sub-total | \$5.40 | | |
| Emission Inspection Cost | | \$11.00 | |
| Emission Inspection Sub-total (maximum allowed) | | | \$16.40 |
| 2. Safely Inspection | | | |
| - Highway Fund (DMV) | \$0.55 | | |
| - Volunteer Rescue/EMS Fund | \$0.18 | | |
| - Rescue Squad Workers' Relief Fund | <u>\$0.12</u> | | |
| Fee Sub-total | \$0.85 | | |
| Safety Inspection | | \$12.75 | |
| Safety Inspection Sub-total | | | \$13.60 |
| Total Government Agencies Fee Revenue | \$6.25 | | |
| Total Inspection Stations Revenue | | \$23.75 | |
| TOTAL INSPECTION COST TO VEHICLE OWNERS | | | \$30.00 |

Table 4, Baseline Revenue and Expenditures from Emission Inspections, presents receipt projections from emission inspections for the affected State agencies, DAQ and DMV, based on the projected number of vehicles that would have been subject to inspection under the current rules (see column two of Table 2). The table also includes the baseline projections for inspection station owners and owners of vehicles, including state and local governments, subject to emission inspections.

Table 4. Baseline Revenue and Expenditures from Emission Inspections

| Baseline Revenue and Expenditures | SFY-2014 (Jan.-Jun.) | SFY-2015 | SFY-2016 |
|--|-----------------------------|----------------------|----------------------|
| Vehicles Subject to Emission Inspections | 2,593,000 | 5,327,000 | 5,477,000 |
| DAQ Emission Inspection Receipts | \$1,685,000 | \$3,463,000 | \$3,560,000 |
| + DMV Emission Program Account | \$7,779,000 | \$15,981,000 | \$16,431,000 |
| + DMV Telecommunications Account | \$4,538,000 | \$9,322,000 | \$9,585,000 |
| = Total State Agency Receipts | \$14,002,000 | \$28,766,000 | \$29,576,000 |
| + Inspection Station Revenue | \$28,523,000 | \$58,597,000 | \$60,247,000 |
| = Total Receipts + Revenues | \$42,525,000 | \$87,363,000 | \$89,823,000 |
| Vehicle Owner Expenditures | -\$42,525,000 | -\$87,363,000 | -\$89,823,000 |

VII. Changes from the Baseline: Estimate Impacts to the Existing Affected Sources

Under the existing rule, only the current model year vehicles are exempt from emission inspection amounting to roughly 97,000 vehicles for calendar year 2012. The changes from the baseline include the number of the second and third most recent model year vehicles being exempted from emission inspections, and are presented in Table 2 for State fiscal year (SFY) 2014, 2015, and 2016.

Table 5, Changes from Baseline Revenue and Expenditures, presents the projections for the changes in the receipts from the emission inspections to affected State agencies, inspection station owners, and owners of vehicles subject to emission inspections, which includes private owners as well as state and local governments. Based on current size of State and local government motor fleets, the estimates in the Table 5 below assume that there would be about 1,250 in SFY-2014, 2,600 in SFY-2015 and 2,700 in SFY-2016 vehicles in the State motor fleet and 2,400 in SFY-2014, 4,900 in SFY-2015 and 5,100 in SFY-2016 vehicles in the local government motor fleet due to the vehicles exempted under the proposed rule during the period of this analysis. There is limited available data on the future makeup of local government owned vehicles, therefore the assumption was made that the current ratio of about 12 percent of State owned vehicle that are in the second and third model year to the fleet size would hold for the next few years. Additionally, it was assumed that only 93 percent of the State and local government motor fleets are subject to emission inspections and that this percentage would stay constant over the next few years. This percentage comes from a report by the North Carolina Solar Center's Clean Transportation Program⁴ regarding the share of State's motor fleet that is fueled by gasoline.

Table 5. Changes from the Baseline Revenue and Expenditures with Proposed Exemption

| Changes from the Baseline | SFY-2014 (Jan.-Jun.) | SFY-2015 | SFY-2016 |
|--|-----------------------------|----------------------|----------------------|
| Vehicles in 2nd & 3rd Model Year | 405,500 | 846,000 | 883,000 |
| DAQ Impacts | -\$264,000 | -\$550,000 | -\$574,000 |
| + DMV - Emission Program Account | -\$1,216,000 | -\$2,538,000 | -\$2,648,000 |
| + DMV - Telecommunications Account | -\$710,000 | -\$1,480,000 | -\$1,545,000 |
| = Total North Carolina Agency Impacts | -\$2,190,000 | -\$4,568,000 | -\$4,767,000 |
| + Inspection Station Owners Impacts | -\$4,461,000 | -\$9,306,000 | -\$9,714,000 |
| = Total Revenue + Receipts Impacts* | -\$6,651,000 | -\$13,874,000 | -\$14,481,000 |
| State Motor Fleet Savings | \$21,000 | \$43,000 | \$45,000 |
| + Local Government Motor Fleet Savings | \$39,000 | \$81,000 | \$83,000 |
| + Private Vehicle Owner Savings | \$6,591,000 | \$13,750,000 | \$14,353,000 |
| = Total Vehicle Owners Savings* | \$6,651,000 | \$13,874,000 | \$14,481,000 |

* Numbers may not add up due to rounding.

⁴ NC State University, North Carolina Solar Center. "North Carolina FY 2011-2012 Petroleum Displacement Program Report." Available at: http://ncsc.ncsu.edu/wp-content/uploads/FY11-12-PDP-Annual-Report_final-draft-9_27_12.pdf

Table 6, Net Present Value of the Impacts, calculates the net present value of the impacts to be \$30,155,000 during the initial three years of implementation of these proposed amendments, using a seven percent discount rate.

Table 6. Net Present Value of the Impacts*

| Affected Parties | Net Present Value |
|--|--------------------------|
| + DAQ Impacts | -\$1,196,000 |
| + DMV - Emission Program Account | -\$5,515,000 |
| + DMV - Telecommunications Account | <u>-\$3,217,000</u> |
| = Total North Carolina Agency Impacts | -\$9,928,000 |
| + Inspection Station Owners Impacts | <u>-\$20,227,000</u> |
| = Total Revenue + Receipts Impacts* | -\$30,155,000 |
| State Motor Fleet Savings | \$94,000 |
| + Local Government Motor Fleet Savings | \$175,000 |
| + Private Vehicle Owner Savings | <u>\$29,886,000</u> |
| = Total Vehicle Owners Savings* | \$30,155,000 |

*Assumes a 7% discount rate on fiscal impacts, over the initial 3 State fiscal years.

Revenue Losses

As shown in Table 5 above, the combined revenue losses for the State government agencies are estimated to be nearly \$2.2 million during the last half of SFY 2014. The full impacts are realized in SFY-2015 and SFY-2016, reaching \$4.6 million and \$4.8 million, respectively. The two DMV accounts (emission program and telecommunication accounts) would bear most of the losses with \$1.9 million during the last half of SFY-2014. The full impacts are realized in SFY-2015 and SFY-2016, reaching \$4.0 million and \$4.2 million, respectively.

Private sector revenue losses for all the inspection station owners in the 48 counties are estimated to be \$4.5 million during the last half of SFY 2014 and reaching \$9.3 million and \$9.7 million in the following two years, respectively.

There is no guarantee that a VID software update or analyzer software changes are necessary. An on-line application is presently being explored by DMV with OPUS Inspection (previously Systech International) that would allow for software updates and negate the need for an individual analyzer software update. This online application would eliminate future need and associated cost with analyzer updates. These new enhancements will not only benefit the State by reducing administrative costs, but they will minimize the financial impact currently placed on inspection station owners. These enhancements will be recognized through the implementation of a web based solution to eliminate the

need for inspection stations to own specific analyzers, maintain costly service contracts and dedicated phone lines for dial up connections.

However, in the event that analyzer updates are considered necessary, the estimate for the emission inspection software upgrades according to the seven vendors of analyzers could be a one-time expenditure of roughly \$990,000 paid by the 4,550 station owners resulting in a roughly \$180 cost per analyzer. Software upgrades to the VID could also add a one-time cost to DMV of roughly \$200,000, according to information obtained from DMV. There are less than 5,600 analyzers that could require software modification and over 80 percent of inspection stations only have one. The vendors estimated weighted-average software upgrade cost ranges from \$160 to \$190.

There is also uncertainty regarding who would actually pay for the upgrades. The current North Carolina Analyzer Specification (NCAS) states that inspection station owners may have to purchase software upgrades directly from the analyzer vendors when initiated due to a statutory change, which suggests the stations would bear the cost. However, there are several requirements of vendors in 15A NCAC 02D .1006, *Sale and Service of Analyzers*, that in the past have created business decisions by vendors to waive the software upgrade costs to inspection stations. The current rule .1006, defines “vendor” to mean “any person who sells or leases equipment to inspection stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule [15A NCAC 02D .1004] or that is used to perform on-board diagnostic tests to show compliance with Rule [15A NCAC 02D.1005].”⁵ Rule .1006 states in the current paragraph (b), Requirements, that a vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231 On-board Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the inspection/ maintenance program requirements. In effect, if the software for their analyzer is not meeting the requirements, then they are no longer legitimate vendors.

Although the estimates show revenue losses to State government, the DAQ expects to be able to absorb these losses, primarily as a result of offsetting these losses through the growth in the number of vehicles subject to emission inspections. Figures 1 and 2 below illustrate this point by showing that the baseline receipts to State agencies and inspection stations in fiscal year 2011 change little from the forecasted level of receipts once the changes are in place. The point that DAQ could absorb the estimated losses is further illustrated in Appendix B, Revenue and Expenditure Data and Projections for State Fiscal Years 2011 – 2016, which presents a time series of these revenue and expenditure estimates used in this analysis from 2011 to 2016.

Figure 1, DMV and DAQ Annual Receipts from the Emission Inspection Program, illustrates the baseline receipts and the fact that proposed receipts to DMV and DAQ are relatively unchanged from receipts in State fiscal year 2011. This supports the conclusion that these changes can be absorbed while maintaining the historic levels of program support.

⁵ Note in the proposed changes, this definition moves to 15A NCAC 02D .1002, and the reference to Rule .1004 is deleted.

Figure 1. DMV and DAQ Annual Receipts from the Emission Inspection Program

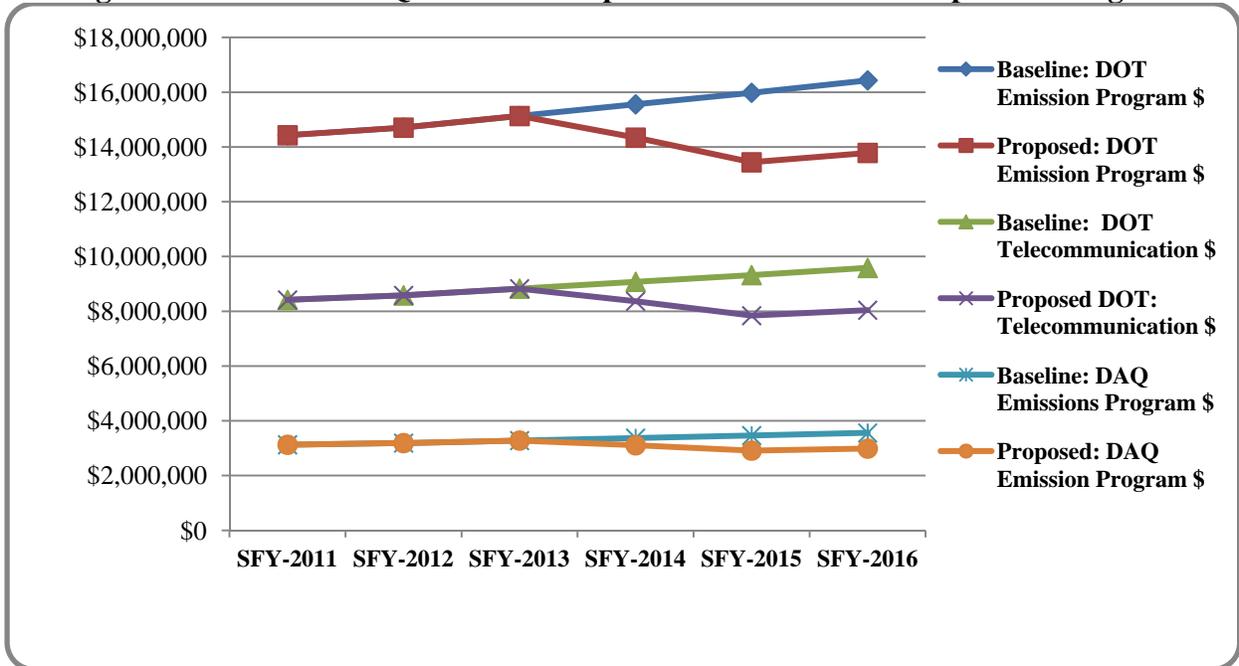
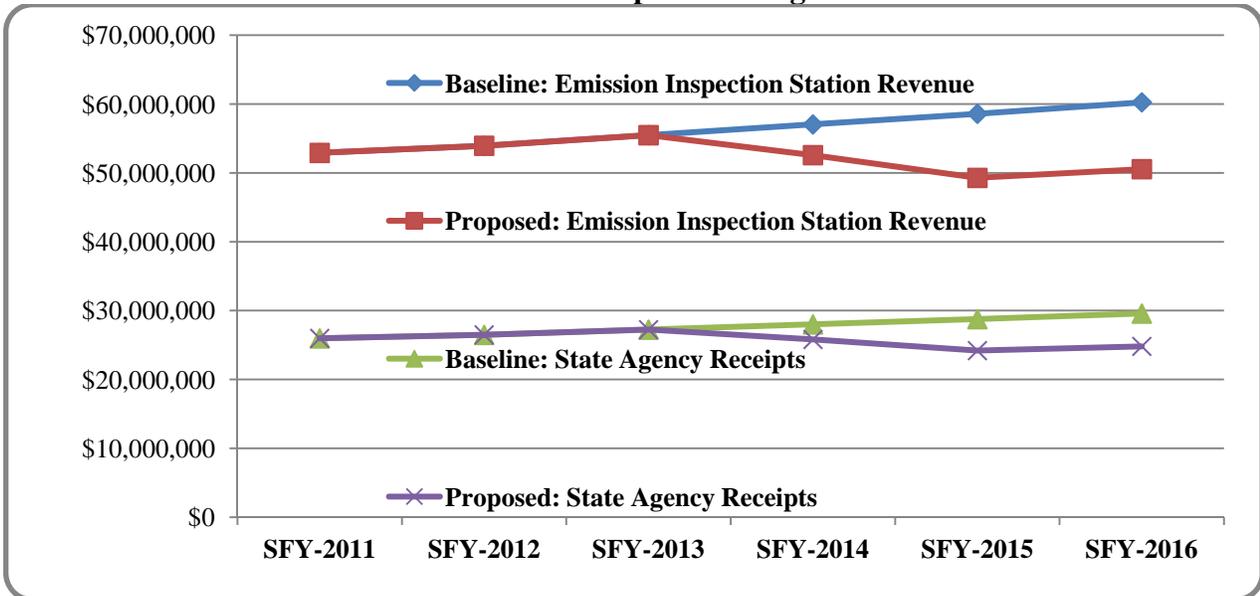


Figure 2, State Agency Annual Receipts and Emission Inspection Station Revenue from the Emission Inspection Program, illustrates the baseline receipts and the fact that proposed receipts and revenues are relatively unchanged when compared to levels in State fiscal year 2011. This supports the conclusion that these changes can be absorbed while maintaining the historic levels of program support.

Figure 2. State Agency Annual Receipts and Emission Inspection Station Revenue from the Emission Inspection Program

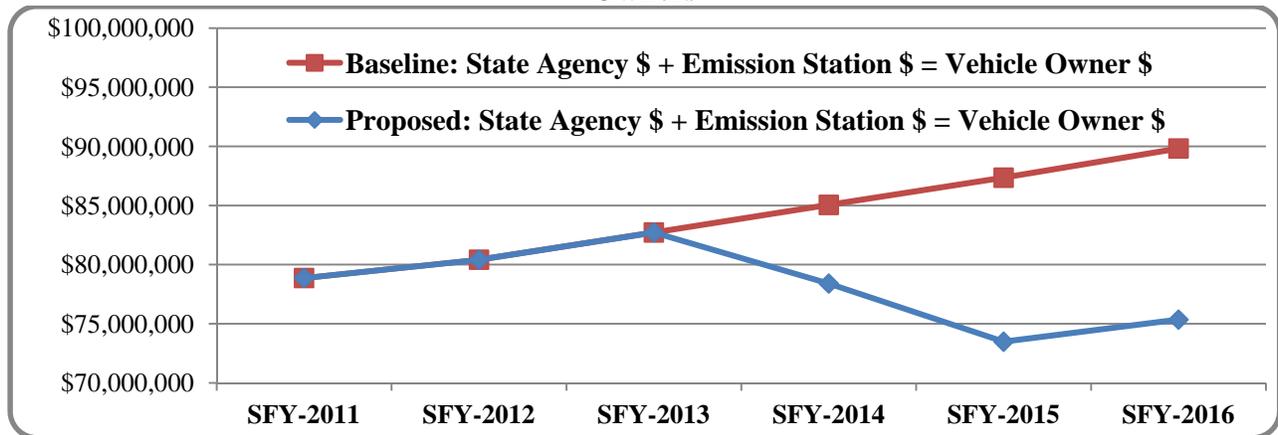


Revenue Savings

With a three-year exemption of the emission inspection, affected vehicle owners will still be required to pass a safety-only inspection that costs \$13.60. Therefore, affected vehicle owners would save a maximum of \$16.40 a vehicle per year. Based on the predicted number of affected vehicles exempt according to DMV records and national trends, affected vehicle owners would incur cost savings of \$6.6 million during the last half of SFY-2014 and \$13.9 million and \$14.5 million in the following two fiscal years, respectively, as shown in Table 5 above. The savings to State and local governments from fewer government owned vehicles requiring an emission inspection are also included in these estimates; however, their share of the savings is only 0.3 percent and 0.6 percent, respectively.

Figure 3, Annual Impacts on State Agencies, Emission Inspection Station Owners and Vehicle Owners, shows the predicted savings by comparing costs to owners under the current rules with costs under the proposed changes.

Figure 3. Annual Impacts on State Agencies, Emission Inspection Station Owners and Vehicle Owners



Inspection station owners may also incur a savings in terms of the opportunity cost of labor since station staff would spend less time performing emission inspections than they would absent the rule change. Given that second and third model year cars would still need to undergo a safety inspection, these savings were assumed to be marginal and are not included in this analysis.

VIII. Comparison with Original Analysis

The original statute, Session Law 2011-145, studied the impact of exempting the three most recent model years independent of mileage from emissions inspection in the 48 designated counties. The original economic analysis in response to Session Law 2011-145 only looked at one set of vehicle data (three most recent model years, 2009-2011), assumed future years would contain the same number of new vehicles as the 2009-2011 period, and did not account for vehicles with 70,000 miles or more on their odometers. In addition, the one data set evaluated happened to occur in a time period with an unusually low number of new car purchases following the 2008 economic recession.

The revised statute, Session Law 2012-199, will exclude vehicles of the three most recent model years with less than 70,000 miles in the 48 designated counties. This section summarizes the impacts presented in the tables above. It is important to note that there are cost impacts that were not considered in the original analysis that accompanied the statute-making process. These include a higher projected number of vehicles affected due to using US trends in the growth in new car sales (2.8 percent growth annually) and vehicle age distribution profile. In addition, one percent of the second most recent model year and five percent of the third most recent model year are assumed to exceed the 70,000 mile limit on eligibility for the exemption based on 2011 DMV inspection data. Also, as this rule change is expected to become effective in the second-half of the SFY-2014 (Jan. 1, 2014), this analysis assumes the change would affect only one-half of the annual emission inspection fee receipts for SFY-2014.

IX. Risk and Uncertainty

This economic analysis relies upon several US default data references that could contribute to significant error in the resulting projection. To the extent that deviations occurred in the underlying assumption, the projection will be off accordingly. For example, if the 2.8 percent growth in the number of vehicles subject to emission inspection is instead level or drops, then the growth component would be overestimated accordingly. The long run trend in the US default vehicle age profile was responsive to the drop off in 2008 and shows a steady recovery to the normal long term default. If another economic shock were to happen, then the forecast will be off accordingly.

The vehicle inspection data from DMV for 2011 shows that about one percent of the second most recent model year vehicles and five percent of the third most recent model year exceed the 70,000 odometer miles limit. To the extent that these percentages continue to be expressed in the vehicle population into the future, these assumptions could be a small source of uncertainty.

The estimates of the State and local government vehicles that could benefit from these amendments have a certain degree of uncertainty. Although these estimates are based on 2010 DMV registration data, that information does not include the fuel type of the vehicles. As a result, the assumption was made that 93 percent of the State motor pool fleet is gasoline based. That 93 percent factor was used to scale down the 22,000 permanent plated State owned vehicles. The remainder of the 64,600 government owned vehicles were assumed to be owned by units of local government. The State government fraction of gasoline vehicles was assumed to be reasonable to estimate the local government fraction. There is no readily available data to confirm or refute this assumption, and as such, this data gap could cause uncertainty in these estimates. Also the fraction of local government owned vehicles within their second and third most recent model year is not known, therefore the State fractions of about 12 percent was applied. All of these simplifying assumptions contribute to this uncertainty.

As stated in Section VII, there is uncertainty regarding the necessity for the VID update or analyzer software changes and who, if anybody, would then bear those estimated costs. Currently under certain circumstances, the vendors may require inspection stations to purchase software updates. Thus far the vendors have not exercised this option to pass along these costs. When major software upgrades have been required by the State, DMV has used receipts from the telecommunications account fund to pay

vendors. In the event that those costs become necessary, then the cost impacts would have to be added to the impacts presented in this economic assessment.

X. Consideration of Alternatives

The statutory revisions were specific and only added the second and third most recent model year vehicles to the current exemptions from emission inspections. The exclusion of additional model years would imply additional environmental and air quality reductions which would require additional offsetting benefits elsewhere in the State implementation plan revision. Given that further offsets were not likely achievable, such an alternative would be unacceptable to the EPA. Therefore no other viable alternatives were considered in this analysis.

Based on present Analyzer and VID Central logic, inspection procedures can be performed in the same manner they are presently being performed without Analyzer and/or VID Central updates. The responsibility to perform the correct inspection on the vehicle presented would be that of the Inspector-Mechanic, which is no different than it is presently allowed or practiced now. The Analyzer and VID Central updates would incorporate additional system logic to warn the Inspector Mechanic from continuing with an OBD/Emissions Inspection, or to convert a Safety-Only Inspection to an OBD/Emissions Inspection on a vehicle that meets the requirements outlined in Session Law 2012-199.

A determination must be made by DMV as to the absolute necessity of an analyzer and VID Central update, resulting in almost \$1.2 million when a proposed, but not yet developed, web-based system and software application could eliminate the need for this and future individual analyzer updates, if all current analyzers are converted to the web-based system. The incremental cost for the web-based system and software application associated with the rule change is assumed to be negligible. Until then, appropriate statutes are present to address improper inspections should they occur. It is important to remember that if this type of improper inspection should occur, the inspection that occurs is a more stringent inspection and not a less stringent one, but is still subject to penalties for an improper inspection.

XI. Conclusions

There would be substantial economic impacts from the revised statute, but the rule change itself has no impact beyond that created by the statute since its purpose is solely to bring the related rules into agreement with the revised statute. There are minor cost impacts such as the savings to State and local government vehicle owners that were not considered in development of the statute. State agencies or units of local government that own exempted second or third most recent model year vehicles may also benefit from the \$16.40 cost saving when switching to safety only inspection requirement for two years.

The total fiscal impacts of exempting the second and third most recent model year vehicles are estimated to be \$6.7 million during the last half of SFY-2014. The full impacts are realized in SFY-2015 and SFY-2016, reaching \$13.9 million and \$14.5 million, respectively. The net present value of these fiscal impacts of these proposed amendments are estimated to equal \$30,155,000 over the initial three year period of this analysis. These rule amendments cause substantial economic impacts, as

defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$500,000 in any calendar year. Owners of vehicles benefit from cost savings that are equally offset by the combined revenue losses by State government agencies and private sector impacts on inspection station owners.

If Analyzer and VID Central Updates are found necessary, the estimates for the updates could be one-time expenditures of roughly \$990,000 paid by the station owners and roughly \$200,000 paid by DMV, respectively.

There are no expected cost impacts from the repeal of Rule 02D .1009 or any of the other minor changes proposed alongside the emission exemption for second and third year models.

Appendix A. Proposed Rule Changes

15A NCAC 02D .1002 is proposed for amendment as follows:

15A NCAC 02D .1002 APPLICABILITY

(a) This ~~Section~~ Rule is applicable to all gasoline-powered and hybrid-powered motor vehicles, except motorcycles and excluding the current model ~~year~~, year;

(1) ~~until the time the criteria in subparagraph (a)(2) are met.~~

(2) as of January 1, 2014 or the first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later, this rule is applicable to all gasoline-powered and hybrid-powered motor vehicles of a 1996 or more recent model except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, plug-in and fuel-cell electric motor vehicles and motorcycles as specified in G.S. 20-183.2(b) that are:

(1) (i) required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (b) of this Rule;

(2) (ii) part of a fleet primarily operated within the counties identified in Paragraph (b) of this Rule; or

(3) (iii) operated on a federal installation located in a county identified in Paragraph (b) of this Rule and that meet the requirements of 40 CFR 51.356(a)(4).

(b) The emission control standards of this Section become effective in the counties identified in G.S. 143-215.107A on the dates specified in G.S. 143-215.107A.

History Note: Authority G.S. 20-128.2(a); G.S. 143-215.3(a)(1); G.S. 143-215.107(a)(3); G.S. 143-215.107(a)(6); G.S. 143-215.107(a)(7); G.S. 143-215.107A; G.S. 20-183.2; Eff. December 1, 1982; Amended Eff. July 1, 1992; April 1, 1991; Temporary Amendment Eff. January 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2014; August 1, 2002; July 1, 1994; July 1, 1993.

1 15A NCAC 02D .1003 is proposed for amendment as follows:

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3 **15A NCAC 02D .1003 DEFINITIONS**

4 The following definitions of terms apply to Rules 02D .1002 through 02D .1006 regulating gasoline-powered and hybrid-
 5 powered motor vehicles throughout this Section:

6 (1) "Heavy-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is
 7 designed primarily for:

8 (a) transportation of property and has a GVWR (Gross Vehicle Weight Rating) of more than 8,500
 9 ~~pounds~~ pounds but less than 14,001 pounds;

10 (b) transportation of persons and has a capacity of more than 12 persons; or

11 (c) use as a recreational motor vehicle, which is designed primarily to provide temporary or
 12 permanent living quarters for travel, camping, or other recreational use and has a GVWR of
 13 more than 8,500 pounds.

14 (2) "Light-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is
 15 designed primarily for:

16 (a) transportation of property and has a GVWR of 8,500 pounds or less; or

17 (b) transportation of persons and has a capacity of 12 persons or less.

18 (3) "Motor Vehicle" means ~~any self-propelled vehicle used for transporting property or persons.~~
 19 every vehicle which is self-propelled and every vehicle designed to run upon the highways which is
 20 pulled by a self-propelled vehicle as defined in G.S. 20-4.01(23).

21 (4) "Motorcycle" means any motor vehicle having a ~~seat or saddle for the use of the rider and designed to~~
 22 ~~travel on not more than three wheels in contact with the ground.~~ saddle for the use of the rider and
 23 designed to travel on not more than three wheels in contact with the ground, including motor scooters and
 24 motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of
 25 device designed to transport property, three-wheeled vehicles while being used by law-enforcement
 26 agencies and mopeds as defined in G.S. 20-4.01(27)d.

27 (5) "Gasoline-powered Motor Vehicle" means a four-wheeled motor vehicle designed primarily to be
 28 propelled by the burning of gasoline in an internal combustion engine.

29 (6) "Hybrid-powered Vehicle" means a four-wheeled motor vehicle designed to be propelled by a
 30 combination of one or more electric motors and the burning of gasoline in an internal combustion engine.

31 (7) "Plug-in Electric Vehicle" as defined in G.S. 20-4.01(28a).

32 (8) "Fuel-cell Electric Vehicle" as defined in G.S. 20-4.01(12a).

33 (9) "Model year" means the year used to designate a discrete vehicle model, irrespective of the calendar year
 34 in which the vehicle was actually produced, provided that the production period does not exceed 24
 35 months.

1 (10) "Current model year" means the most recent year used to designate a discrete vehicle model, irrespective
2 of the calendar year in which the vehicle was actually produced, provided that the production period does
3 not exceed 24 months.

4 (11) "Three most recent model years" means the current (first) model year and the second and third model
5 years following the current model year.

6 (12) "Vendor" means any person who sells or leases equipment to inspection stations that is used to perform
7 on-board diagnostic tests to show compliance with Rule 02D .1005 of this Section.

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10 *History Note: Authority G.S. 143-215.3(a)(1); G.S. 20-4.01 (12a); G.S. 20-4.01 (28a)*

11 *Eff. December 1, 1982,*

12 *Amended Eff. January 1, 2014.*

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1 15A NCAC 02D .1005 is proposed for amendment as follows:

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3 **15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS**

4 (a) This Rule applies according to Rule .1002 of this Section to all ~~1996 and later~~ gasoline-powered and hybrid-powered
5 motor ~~vehicles,~~ vehicles 1996 or more recent models except the vehicles in the three most recent model years with less than
6 70,000 miles on their odometers, except plug-in and fuel-cell electric motor vehicles, and motorcycles, in the counties
7 identified in G.S. 143-215.107A.

8 (b) Vehicles covered under this Rule shall pass annually the on-board diagnostic test described in 40 CFR 85.2222. The
9 vehicle shall fail the on-board diagnostic test if any of the conditions of 40 CFR 85.2207 are met. Equipment used to
10 perform on-board diagnostic tests shall meet the requirements of 40 CFR 85.2231.

11 (c) The tester shall provide the owner of a vehicle that fails the on-board diagnostic test described in Paragraph (b) of this
12 Rule a report of the test results. This report shall include the codes retrieved (these codes are listed in 40 CFR 85.2223(b)),
13 the status of the malfunction indicator light illumination command, and the customer alert statement described in 40 CFR
14 85.2223(c).

15 (d) Persons performing on-board diagnostic tests shall provide the Division of Air Quality data necessary to determine the
16 effectiveness of the on-board diagnostic testing program. The data submitted shall be what is necessary to satisfy the
17 requirements of 40 CFR 51.365, Data Collection, and 40 CFR 51.366, Data Analysis and ~~Reporting.~~ Reporting, and 40
18 CFR 51.358, Test Equipment.

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20 *History Note: Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A(b);*
21 *S.L. 1999 c. 328 s. 3.2*
22 *Eff. December 1, 1982;*
23 *Amended Eff. January 1, 2014; Amended Eff. August 1, 2002; July 1, 1998; April 1, 1991; November 1,*
24 *1986.*

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1 15A NCAC 02D .1006 is proposed to be amended as follows:

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3 **15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS**

4 ~~(a) Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to inspection~~
 5 ~~stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule .1004~~
 6 ~~of this Section or that is used to perform on-board diagnostic tests to show compliance with Rule .1005 of this~~
 7 ~~Section.~~

8 ~~(b)~~ (a) Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231
 9 Onboard Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required
 10 by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the
 11 inspection/maintenance program requirements of this Section.

12 ~~(c)~~ (b) Hardware repair and software repair. When equipment hardware or software fails to meet the requirements of
 13 Paragraph ~~(b)~~ (a) of this Rule for a particular analyzer, the vendor, after receiving a call to its respective service call center,
 14 shall communicate with the impacted station within ~~24 hours;~~ two business days and shall complete repairs within the
 15 warranty guidelines of the vendor. ~~Where the hardware problem is stopping 20 percent or more inspections for a particular~~
 16 ~~analyzer or is compromising the security of the inspection system, the vendor shall repair the problem within 48 hours after~~
 17 ~~the initial call to its respective service call center.~~

18 ~~(1) Where the hardware problem is stopping less than 20 percent of all inspections for a particular analyzer and~~
 19 ~~is not compromising the security of the inspection system, the vendor shall repair the problem within 72~~
 20 ~~hours after the initial call to its respective service call center.~~

21 ~~(2) Where the hardware problem is not stopping inspections and is not compromising the security of the~~
 22 ~~inspection system, the vendor shall repair the problem within 96 hours after the initial call to its respective~~
 23 ~~service call center.~~

24 ~~(d)~~ (c) Software repair revisions. When analyzer software fails to meet the requirements of Paragraph (b) of this Rule, the
 25 vendor, after receiving a call to its respective service call center, shall communicate with the station within ~~24 hours.~~
 26 two business days. The vendor shall identify and characterize the software problem within 5 days. The vendor shall,
 27 within that same 5-day period, inform the station owner and the Division as to the nature of the problem and the
 28 proposed corrective course of ~~action and:~~ action.

29 ~~(1) Where the software problem is stopping 20 percent or more inspections for a particular analyzer or is~~
 30 ~~compromising the security of the inspection system, the vendor shall submit a new revision of the software~~
 31 ~~to the Division for approval within 19 days after receiving the initial call to its service call center.~~

32 ~~(2) Where the software problem is stopping less than 20 percent of all inspections for a particular analyzer and~~
 33 ~~is not compromising the security of the inspection system, the vendor shall submit a new revision of the~~
 34 ~~software to the Division for approval within 33 days after receiving the initial call to its service call center.~~

1 ~~(3) The vendor shall distribute the new revision of the software to all impacted stations within 14 days after~~
2 ~~the vendor receives written notification from the Division that the software has been approved as meeting~~
3 ~~the requirements of Paragraph (b) of this Rule.~~

4 (⇌) (d) Documentation of the initial service call. The vendor's service call center shall assign a unique service response
5 number to every reported new hardware or software problem. The time and date of the initial call shall be recorded and
6 identified with the service response number. The service response number shall be communicated to the inspection
7 station operator at the time of the initial contact.

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9 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6), (14);*
10 *Eff. January 1, 2007. 2007;*
11 *Amended Eff. January 1, 2014;*

1 15A NCAC 02D .1009 is proposed to be repealed:

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3 **15A NCAC 02D .1009 MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL**
4 **VEHICLE REQUIREMENTS (REPEALED)**

5 ~~(a) Applicability. This Rule applies to model year 2008 and subsequent model years heavy duty diesel vehicles.~~

6 ~~(b) Definitions. For the purposes of this Rule the following definitions shall apply.~~

7 ~~(1) "Heavy duty diesel vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight~~
8 ~~rating (as certified by the manufacturer) of 14,001 pounds or greater that is propelled by a diesel engine.~~

9 ~~(2) "Motor vehicle dealer" means motor vehicle dealer as defined in G.S. 20-286(11) and includes "new~~
10 ~~motor vehicle dealer" as defined in G.S. 20-286(13) and "used motor vehicle dealer" as defined in G.S.~~
11 ~~20-286(16).~~

12 ~~(3) "New motor vehicle" means new motor vehicle as defined in G.S. 20-286(10)(a).~~

13 ~~(4) "Used motor vehicle" means used motor vehicle as defined in G.S. 20-286(10)(b).~~

14 ~~(c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment as specified in~~
15 ~~Title 13 of the California Code of Regulations, Section 1905 shall apply.~~

16 ~~(d) Requirement. No model year 2008 or subsequent model year heavy duty diesel vehicle that is a~~

17 ~~(1) used heavy duty diesel vehicle sold by a motor vehicle dealer; or~~

18 ~~(2) new motor vehicle, however it is sold,~~

19 ~~may be leased or registered within North Carolina unless the vehicle or its engine has been certified by the California Air~~
20 ~~Resources Board as meeting the applicable model year requirements of Title 13 of the California Code of Regulations,~~
21 ~~Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy Duty~~
22 ~~Diesel Engines and Vehicles.~~

23 ~~(e) Referenced Regulation. The California Code of Regulations Title 13, Division 3, Chapter 1, Article 1, Section 1905 and~~
24 ~~Article 2, Section 1956.8 are incorporated by reference in this Rule and include any later amendments thereto. A copy of~~
25 ~~the referenced materials may be obtained free of charge via the internet from the Office of Administrative Law California~~
26 ~~Code of Regulations website at <http://cer.oal.ca.gov/>, or a hard copy may be obtained at a cost of \$5.00 from the Public~~
27 ~~Information Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.~~

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29 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7);*

30 *Eff. December 1, 2004-2004;*

31 *Repealed Eff. January 1, 2014;*

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Appendix B. Emission Inspection Revenue and Expenditure Data and Projections, SFY-2011 – SFY-2016

| Baseline Revenue or Expenditures | SFY-2011 | SFY-2012 | SFY-2013 | SFY-2014 | SFY-2015 | SFY-2016 |
|--|-----------------|-----------------|-----------------|-----------------------------|-----------------|-----------------|
| Vehicles subject to Emission Inspection | 4,809,000 | 4,903,000 | 5,044,000 | 5,186,000 | 5,327,000 | 5,477,000 |
| + DAQ Emission Receipts | \$3,126,000 | \$3,187,000 | \$3,279,000 | \$3,371,000 | \$3,462,000 | \$3,560,000 |
| + DMV - Emission Program Account | \$14,427,000 | \$14,710,000 | \$15,132,000 | \$15,558,000 | \$15,980,000 | \$16,432,000 |
| + DMV - Telecommunications Account | \$8,416,000 | \$8,581,000 | \$8,827,000 | \$9,076,000 | \$9,321,000 | \$9,585,000 |
| = Total North Carolina Agency Receipts | \$25,969,000 | \$26,478,000 | \$27,238,000 | \$28,005,000 | \$28,763,000 | \$29,577,000 |
| + Inspection Station Revenue | \$52,900,000 | \$53,937,000 | \$55,484,000 | \$57,046,000 | \$58,597,000 | \$60,247,000 |
| = Total Receipts + Revenues from Emission Inspection | \$78,869,000 | \$80,415,000 | \$82,722,000 | \$85,051,000 | \$87,360,000 | \$89,824,000 |
| = Vehicle Owner Expenditures* | -\$78,869,000 | -\$80,415,000 | -\$82,722,000 | -\$85,051,000 | -\$87,360,000 | -\$89,824,000 |
| Changes From Baseline | | | | | | |
| | SFY-2011 | SFY-2012 | SFY-2013 | SFY-2014 (Jan.-Jun.) | SFY-2015 | SFY-2016 |
| Exempt 2nd & 3rd Model Year Vehicles | 0 | 0 | 0 | 405,500 | 846,000 | 883,000 |
| + DAQ Impacts | \$0 | \$0 | \$0 | -\$264,000 | -\$550,000 | -\$574,000 |
| + DMV - Emission Program Account | \$0 | \$0 | \$0 | -\$1,216,000 | -\$2,538,000 | -\$2,649,000 |
| + DMV - Telecommunications Account | \$0 | \$0 | \$0 | -\$710,000 | -\$1,480,000 | -\$1,545,000 |
| = Total North Carolina Agency Impacts | \$0 | \$0 | \$0 | -\$2,190,000 | -\$4,568,000 | -\$4,768,000 |
| + Inspection Station Owners Impacts | \$0 | \$0 | \$0 | -\$4,461,000 | -\$9,306,000 | -\$9,713,000 |
| = Total Revenue + Receipts Impacts | \$0 | \$0 | \$0 | -\$6,651,000 | -\$13,874,000 | -\$14,481,000 |
| = Vehicle Owners Savings | \$0 | \$0 | \$0 | \$6,651,000 | \$13,874,000 | \$14,481,000 |
| Net Revenue or Expenditures | | | | | | |
| | SFY-2011 | SFY-2012 | SFY-2013 | SFY-2014 | SFY-2015 | SFY-2016 |
| Vehicles subject to Emission Inspection | 4,809,000 | 4,903,000 | 5,044,000 | 4,780,500 | 4,481,000 | 4,594,000 |
| + DAQ Emission Receipts | \$3,126,000 | \$3,187,000 | \$3,279,000 | \$3,107,000 | \$2,912,000 | \$2,986,000 |
| + DMV - Emission Program Account | \$14,427,000 | \$14,710,000 | \$15,132,000 | \$14,342,000 | \$13,442,000 | \$13,783,000 |
| + DMV - Telecommunications Account | \$8,416,000 | \$8,581,000 | \$8,827,000 | \$8,366,000 | \$7,841,000 | \$8,040,000 |
| = Total North Carolina Agency Receipts | \$25,969,000 | \$26,478,000 | \$27,238,000 | \$25,815,000 | \$24,195,000 | \$24,809,000 |
| + Inspection Station Revenue | \$52,900,000 | \$53,937,000 | \$55,484,000 | \$52,585,000 | \$49,291,000 | \$50,534,000 |
| = Total Receipts + Revenues from Emission | \$78,869,000 | \$80,415,000 | \$82,722,000 | \$78,400,000 | \$73,486,000 | \$75,343,000 |
| = Vehicle Owner Expenditures | -\$78,869,000 | -\$80,415,000 | -\$82,722,000 | -\$78,400,000 | -\$73,486,000 | -\$75,343,000 |

* Includes expenditures/savings related to State and local government motor fleet, which account for an estimated 0.3% and 0.6% of total.

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Chapter VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. ENR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 28, Issue 04, pages 328-332.
4. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
5. Memorandum transmitting hearing notice and proposal to local programs.
6. Submission of Filing Forms and material filed with Office of Administrative Hearings.
7. Executive Order No. 70 Certification Form

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