

Agenda Item: 13-28 **Hearing Officer's Report on Inspection/Maintenance (IM) Rules Revision (517)**

Explanation:

A public hearing was held in Raleigh, NC on September 18, 2013, to take public comments on proposed amendments to the state motor vehicle emission control standards 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. Mr. Steven Vozzo of the Division of Air Quality was appointed and served as the hearing officer. The comment period closed October 14, 2013.

North Carolina's motor vehicle emission control standards rules provide for emission inspections to meet federal standards in counties with a recent history violating national ambient air quality standards. Under the current rule gasoline-powered motor vehicles in the 48 counties identified in G.S. 143-215.107A except motorcycles and the current model year are required to have an annual emissions inspection. Several additional minor housekeeping rule amendments are proposed to clarify definitions and other related regulatory aspects. Also, repeal of the rule dealing with model year 2008 and subsequent heavy-duty diesel vehicle requirements and relying solely on the federal heavy-duty engine standards rules is proposed. The repeal is based on the fact that the existing state rule is duplicative of federal rules and therefore unnecessary.

The proposed amendments are based upon the revised statutory exemption in Session Law 2012-199. The exemption becomes effective on the later of the following dates and applies to motor vehicles inspected, or due to be inspected, on or after:

- (1) January 1, 2014; or
- (2) the first day of a month that is 30 days after both of the following have occurred:

- a. the Department of Environment and Natural Resources certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amendment to the North Carolina State Implementation Plan based on the change to the emissions inspection program discussed above; and

b. the Commissioner of Motor Vehicles certifies to the Revisor of Statutes that the Motor Vehicle Inspection and Law Enforcement System (MILES) has been replaced.

15A NCAC 02D .1002 - Applicability, 02D .1003 - Definitions, 02D .1005 - On-Board Diagnostic Standards, and 02D .1006 - Sale and Service of Analyzers, are proposed for amendment to revise their appropriate provisions to be consistent with Session Law 2012-199. 15A NCAC 02D .1009 – Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements is proposed to be repealed.

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.

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 include the perspective that exemption is 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 questions regarding why inspections are required only in certain counties.

Two comments cautioned that the three year exemption would allow enthusiasts to disconnect their emission controls to improve vehicle performance and gas mileage, then later have them reconnected before the first inspection without being caught.

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 statues from emissions inspections. These two 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.

One commenter asked how the state agencies could afford a revenue loss of over \$11 million from exempting 700,000 vehicles in the next three years.

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. Two people commented that the rule language “the current model year” and “three most recent model years” was too ambiguous to implement properly, especially without an upgraded electronic system to determine whether an emissions inspection would be required. The comment prompted a proposed rule change to remove and modify the definitions of these terms, respectively, in 02D .1003. They also raised issue with the possible plan that the inspection owners would bear the cost of upgraded analyzer software and the proposed weakening of onboard diagnostic test equipment specifications in Rule 02D .1006. The comment prompted a proposed rule change to revert 02D .1006 back to its previous language.

The fiscal note approved by the Office of State Management and Budget (OSBM) estimates the impact to be substantial as defined by the Administrative Procedures Act, *i.e.*, greater than \$500,000 in aggregate to all affected parties in a twelve month period (note since the fiscal note approval, the threshold was changed to \$1 million as of September 12, 2013). The fiscal note estimates the proposed amendments to reduce regulatory burden on the order of \$14 million per year for owners of the three most recent model year vehicles. However, the vehicle owners’ cost savings are equally offset by the combined revenue losses on owners of inspection stations and on State government agencies.

Recommendation: The Hearing Officer recommends that the Commission adopt the proposed rules as presented in Chapter II of the hearing record. 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.