

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulation for the Control of Motor Vehicle Emissions in Northern Virginia
Primary Action:	9 VAC 5 Chapter 91 (9 VAC 5-91-10 et seq.)
Secondary Action(s):	None.
Action Title:	Motor Vehicle Inspection and Maintenance Program (Rev. MG)
Date:	May 28, 2002

Please refer to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The current program requires that affected vehicles be presented to emissions inspection stations biennially to receive an emissions inspection. This is accomplished through a network of service stations, repair garages, and other similar facilities that perform the inspections. Vehicles which fail the test are denied motor vehicle registration until inspection has been accomplished. Retests, after failure and repair, are free if accomplished within 14 days of the test and performed by the emissions inspection station which performed the initial test. If a motorist wishes to request a waiver of the test, an expenditure of at least \$450 on emissions-related repairs is required. The cost amount is adjusted each January by applying the Consumer Price Index released the previous fall by the federal government.

The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Cars and trucks weighing up to 10,000 pounds and are 25 years old and newer are subject to an exhaust emissions inspection using ASM equipment which tests cars under "loaded" conditions using a dynamometer. On- Board Diagnostics Systems (OBD) on vehicles so equipped will also be inspected. In addition, random testing of vehicles is accomplished using either roadside pullovers

or a remote sensing device next to the roadway. Failing vehicles are required to report to an inspection for an out-of-cycle test.

The proposed amendments make a number of revisions to conform to changes in Virginia law and federal regulations, as well as to conform to current testing procedures and to enhance program enforcement. One of the primary changes affecting the vehicle owner is a change in the model year coverage: from the testing of model year 1968 and newer to a rolling exemption for vehicles 25 years and older. This change actually has been in effect since July 1, 2000 in accordance with the Virginia statute.

Another major change involves implementation of OBD testing. In accordance with changes in federal regulation, OBD testing will be performed for vehicles of model year 1996 and newer beginning January 1, 2002. OBD testing will also be required for diesel-fueled vehicles so equipped (model year 1997 and newer) using the same testing equipment used for gasoline-powered vehicles.

Emissions standards for the two speed idle (TSI) test are being tightened for some vehicles 1990 and newer, and the regulation is being revised to correct the order in which the TSI test modes are performed.

For the acceleration simulation mode (ASM) test, which is the test performed on the majority of vehicles subject to the emissions inspection program, the regulation is being revised to allow DEQ the flexibility to set standards less stringent than the federal "final" ASM standards. In addition, changes have been made to various permitting, licensing and enforcement procedures to reduce redundancy.

Substantial Changes Made Since the Proposed Stage

Please briefly and generally summarize any substantial changes made since the proposed action was published. Please provide citations of the sections of the proposed regulation that have been substantially altered since the proposed stage.

1. Definitions (9 VAC 5-91-20)

Added the definition "Aborted test" for clarity.

2. Applicability (9 VAC 5-91-30 A)

Modified text to ensure that a person is held responsible for compliance of the regulation, not an entity.

3. Exhaust emission standards for ASM testing in enhanced emissions inspection programs (9 VAC 5-91-170)

Modified text to clarify application of interim standards.

4. Evaporative emissions systems standards (9 VAC 5-91-200)

Modified text to clarify application of standards.

5. Inspection requirements (9 VAC 5-91-410 A)

Modified text to allow the director to require ASM or two-speed idle testing on certain OBD equipped vehicles if he determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.

6. Inspection procedure; rejection, pass, fail, waiver (9 VAC 5-91-420)

a. Modified text to clarify when OBD vehicle should be rejected from testing. (9 VAC 5-91-420 C 8 b and c)

b. Modified text to clarify appropriate testing status for OBD diesel vehicles. (9 VAC 5-91-420 G 3 c)

7. ASM test procedure (9 VAC 5-91-430)

a. Deleted tables that identify dynamometer load settings for the 2525 mode test which are in the equipment software specifications. (9 VAC 5-91-430 C)

b. Deleted tables that identify dynamometer load settings for the 5015 mode test which are in the equipment software specifications. (9 VAC 5-91-430 D)

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On May 21, 2002, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulation for the Control of Motor Vehicle Emissions in Northern Virginia" (9 VAC 5 Chapter 91). The regulation amendments are to be effective on October 1, 2002.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation and that it comports with applicable state and/or federal law.

Section 46.2-1176-1187.3 of the Virginia Air Pollution Control Law (Title 46.2, Chapter 10 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations for the control of motor vehicle emissions and for the testing process. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose

Please provide a statement explaining the rationale or justification of the regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to require that motor vehicles undergo periodic emissions inspection and be maintained in compliance with emission standards for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to conform to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.

Substance

Please identify and explain the new substantial provisions, the substantial changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the changes.

1. Add definition of “Aborted test” for clarity.
2. Modify definition of “Motor vehicle “ to reflect statutory changes.
3. Add definition of “Authorized personnel” to provide more flexibility to station owners.
4. Add definitions related to EPA requirement for on-board diagnostic testing, including “OBD system,” “OBD test,” and “OBD vehicle.”
5. Modify applicability requirements to ensure that a person is held responsible for compliance of the regulation, not an entity (9 VAC 5-91-30 A).
6. Modify exhaust emission standards for two-speed idle (TSI) emissions test (9 VAC-5-91-160).
7. Modify exhaust emission standards for ASM emissions test and clarified the applicability of interim standards (9 VAC-5-91-170).
8. Modify exhaust emission standards for remote sensing emissions test (9 VAC-5-91-180).
9. Modify evaporative system purge test requirements such that testing is contingent upon EPA mandate (9 VAC-5-91-200 and 9 VAC-5-91-460).
10. Add provisions for visible emissions standards (9 VAC-5-91-210).
11. Modify reporting requirements for fleet inspection stations according to EPA requirements (9 VAC 5-91-370).
12. Modify OBD system testing requirements to require ASM or two-speed idle testing on certain OBD equipped vehicles if the director determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits (9 VAC 5-91-410 A).
13. Add provisions for conducting OBD tests for 1996 and newer gasoline and diesel powered vehicles equipped with OBD systems (9 VAC 5-91-420).
14. Modify inspection requirements to clarify when OBD vehicle should be rejected from testing (9 VAC 5-91-420 C 8 b and c).
15. Modify inspection requirements to clarify appropriate testing status for OBD diesel vehicles (9 VAC 5-91-420 G 3 c).

16. Delete provisions setting waiver phase-in amounts for dates that have already passed (9 VAC 5-91-420).
17. Add provisions that provide more flexibility in ASM test procedure (9 VAC 5-91-430).
18. Delete tables that identify dynamometer load settings for the 2525 mode test which are in the equipment software specifications (9 VAC 5-91-430 C).
19. Delete tables that identify dynamometer load settings for the 5015 mode test which are in the equipment software specifications (9 VAC 5-91-430 D).
20. Modify regulatory language to more closely reflect software specifications for test procedures (9 VAC 5-91-440).
21. Delete requirements for warranty eligibility (9 VAC 5-91-470).
22. Modify table of major violations to reflect additional flexibility incorporated in the regulation language for test procedures (9 VAC 5-91-620).
23. Delete provisions addressing federal facilities to comply with EPA requirements (Part XIII).

Issues

Please provide a statement identifying the issues associated with the regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: The primary advantage to the general public is that air quality will improve due to the technical changes to program operation. The change to the definition of motor vehicle, for example, will result in a more effective program with the need to inspect fewer vehicles. Changes in testing procedures will result in faster yet more thorough inspections which translates into shorter lines at the testing facilities. Changes in certification requirements will mean repairs to vehicles that fail the test will be more effective.

Changes have been made to tighten the two-speed idle (TSI) test standards. This will impact a small number of vehicle owners whose vehicles would fail the new standards, but would pass the existing standards. According to current test data, this change will affect fewer than 1% of the 1990 and newer vehicles that receive the TSI test. As these vehicles age, the fail rate is expected to increase somewhat. Although it is a disadvantage that there will be expenses for repairs, there are also advantages to the vehicle owners in that needed repairs will increase vehicle fuel efficiency and enhance vehicle life, not to mention the improvement in air quality. Currently, vehicles with known faults can pass the existing standards and that is unacceptable for proper program operation.

Changes have been made to allow DEQ to set less stringent ASM test standards than those currently recommended by EPA. DEQ believes the EPA final standards may be too strict for some vehicle classes and will result in these vehicles being difficult or impossible to repair to the standards. The current regulation requires that the EPA enhanced I/M performance standards be met and that the EPA final standards be implemented.

Changes have been made with respect to the testing of federal fleet vehicles. As currently written, there is a separate section for federal fleets. The regulation has been amended to treat federal fleets the same as private fleets as required by law. As a result of this requirement, some additional reporting requirements for non-federal fleets are necessary; however, DEQ believes this reporting will be minimal. Non-federal fleet vehicle test information is on the DEQ electronic data base and can be accessed directly by DEQ. Thus, the additional reporting requirements would affect only fleets of vehicles not registered with DMV.

Changes have been made regarding OBD testing. As currently written, OBD testing was to be added as a requirement for passing the I/M test beginning January 3, 2000. The proposed amendments postpone this until January 1, 2002. The department is conducting a pilot test to evaluate OBD testing in conjunction with ASM testing. EPA anticipates that, once the fleet turns over and most vehicles are equipped with the correct equipment, OBD tests will eliminate the need for tail-pipe or ASM testing. Since the OBD test only takes a few minutes while the ASM test takes about 15 minutes, this will be a considerable advantage to both the vehicle owner and the inspection station. Language does provide discretion to the director to require ASM or two-speed idle testing on certain OBD equipped vehicles if he determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.

OBD systems identify faults that are not necessarily detected with an ASM or TSI test. This may be perceived as a disadvantage by the public as there may be a cost for a vehicle repair that otherwise would go undetected. The associated advantage is that the vehicle owner will be alerted to these emission component faults before they could cause extensive collateral damage. For example, an expensive catalytic converter can be quickly damaged by an excess rich mixture condition even though the converter may still be operating well enough to pass a tailpipe test. In addition, with each vehicle repair less pollution is emitted.

Language has been added that provides discretion to the director to require ASM or two-speed idle testing on certain OBD equipped vehicles if he determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.

Similar advantages and disadvantages will occur to owners of light duty diesel vehicles which will also be subject to OBD testing. Diesel vehicles have not been tested in the I/M

program in the past because such testing requires completely different testing equipment. However, beginning with model year 1997, all light duty diesel vehicles certified for sale in the US are required to be equipped with OBD systems similar to that of gasoline fueled vehicles. The testing of both OBD systems is the same.

Due to OBD testing, equipment will need to be upgraded at all inspections stations, i.e. approximately 400 testing stations. The cost of this upgrade will range from \$1,500 to \$3,000 per unit depending on the existing equipment currently installed in the test facility. This additional cost is expected to be offset by the time savings of OBD testing; the OBD test is expected to reduce the time to complete a full inspection sequence by at least 10 minutes.

2. Department: Most of the issues affecting the department are a result of either technical changes in program operation or federal requirements. Amendments due to technical changes in program operation include: (i) changes in the wording of some definitions, (ii) changes in the order and some elements of the testing procedure, (iii) changes in the timing and flexibility of some test standards and (iv) changes in some permitting and licensing procedures. Amendments due to federal requirements include: (i) deletion of special treatment of federally owned or controlled vehicles and (ii) changes in some enforcement procedures to reduce redundancy and overlap.

Few disadvantages are associated with these regulatory changes. There will be additional data management as a result of the information generated by OBD testing; however, the current computer capabilities are more than adequate to address this issue.

The overwhelming advantage from OBD testing is the increased emission reductions and cleaner air for Virginia citizens and continued EPA approval of the Commonwealth's I/M program. Tightening the TSI and ASM standards will have a similar advantageous effect.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, is attached.

Detail of Changes

Please detail any changes, other than strictly editorial changes, made since the publication of the proposed regulation. This statement should provide a section-by-section description of changes.

General.

1. Throughout this regulation, time periods for licensing and certification renewals have been changed from number of days to number of months, based on the last day of

the month. This change will simplify compliance with various permitting or licensing time requirements. These changes have not been itemized in this list of changes.

2. Throughout this regulation, many changes to clarify language and improve the quality of the regulation have been made and fall within the following categories:

- a. Modified text to ensure that terms used throughout the regulation are consistent and placed definitions in alphabetical order,
- b. Modified text to clarify the basis for case decisions by the Director,
- c. Modified text to ensure consistency with regard to the Code of Virginia,
- d. Modified text to delete outdated provisions, and
- e. Modified to make technical and grammatical corrections.

The following lists and describes all changes that are not strictly editorial or corrections due to format requirements with the exception of the above.

PART I. DEFINITIONS.

9 VAC 5-91-20 Terms defined.

1. Added the definition "Aborted test" for clarity.
2. The definition of "Access code" is modified to include authorized station personnel access to the certified analyzer system.
3. The definition of "Actual gross weight" is revised to specify that if gross vehicle weight rating (GVWR) is unavailable, the department may make a determination using information such as vehicle information number (VIN) decoders. This conforms to current practice and deletes the use of EW and GW to determine test type applicability.
4. The definition of "Affected motor vehicle" is revised to conform to recent legislative changes (exempting vehicles 25 years and older). In addition, tactical military vehicles are exempted from testing per agreements with respect to federal fleet vehicles.
5. The definition of "Air system" is modified for clarification.
6. The definition of "Alternative evaporative system" is modified by deleting the reference to the evaporative system purge testing which is no longer required by EPA.
7. The definition of "Alternative fuel" is deleted as it is not used in the regulation.
8. The definition of "Alternative method" is added for clarification.

9. The definition of "Authorized personnel" is added to provide more flexibility to the station manager.
10. The definition "Certified enhanced analyzer system" or "analyzer system" is modified to delete the reference to the purge test.
11. The definition of "Certification of emissions inspection" is modified. The word "temporarily" has been added to clarify that waivers are not permanent.
12. The definition of "Chargeable inspection" is modified for clarity.
13. The definition of "Curb idle" is modified due to technical changes in the program.
14. The definition of "Emissions control systems" is expanded to include "equipment," and the word "primary" replaces "sole" to correct for the possibility that emissions control systems may have multiple purposes.
15. The definition of "Enhanced emissions inspection program" is modified to include a reference to the Virginia Motor Vehicle Emissions Control Law.
16. The definition of "EPA" has been added.
17. The definition of "Evaporative system pressure test" is modified to be implemented at the department's discretion.
18. The definition of "Evaporative system purge test" is deleted since EPA has removed the purge test as part of the enhanced I/M performance standard and is no longer required.
19. The definition of "Flexible-fuel vehicle" is modified for clarification.
20. The definition of "Gross weight" is deleted as it is no longer used in the regulation.
21. A definition of "Initial inspection" is added for clarification.
22. The definition of "Inspection fee" is expanded to allow for persons other than the station owner to collect the fee.
23. The definition of "Motor vehicle" is modified to reflect statutory changes.
24. The definition of "Motor vehicle inspection report (VIR)" is expanded to clarify when a VIR must be printed and what the VIR contains.
25. A definition is added for "Nonconforming vehicle."

26. The definition of "Normal business hours" is changed to allow more flexibility for inspection station operating hours.
27. Definitions are added for "On-board diagnostic system," "On-board diagnostic test" and "On-board diagnostic vehicle."
28. The definition of "Operated primarily" is changed to be based only on mileage.
29. The definition of "Original Equipment Manufacturer (OEM) dedicated alternate fuel vehicle" is modified for clarity.
30. A definition of "Reference method" is added for clarification.
31. The definition of "Reinspection" "or retest" is modified for clarity.
32. A definition for "Rejected from testing" is added to include vehicles rejected due to unsafe conditions and not ready OBD codes.
33. A definition for "Sensitive mission vehicle" is added per an agreement with federal fleet managers regarding federal fleet testing.
34. The definition of "Thermostatic air cleaner" is modified for clarity.
35. The definition for "Tier 1" is deleted as it is no longer used in the regulation.
36. A definition for "Visible smoke" is added to clarify that exhaust steam is not considered visible emissions.

PART II. GENERAL PROVISIONS.

9 VAC 5-91-30 Applicability and authority of the department.

1. Subdivision A: Modified text to ensure that a person is held responsible for compliance of the regulation, not an entity.
2. Subdivisions B3 and B4: The applicability of the I/M program to vehicles, including fleet vehicles, not registered by DMV is changed so as to not be specific to federal fleets.
3. Subdivision C: Requires that vehicles subject to the program shall be submitted for biennial emissions inspections and comply with this regulation.
4. Subdivision C1: Reciprocity for vehicles that received an enhanced emissions inspection in another state is changed to require a passing, not a waiver, result and is

limited to one year for purposes of registration. The procedures for presenting proof to DMV and review by DEQ are clarified.

5. Subdivision E2: The words "nor received a waiver during" are added to clarify that a waiver is not allowed for vehicles receiving the used car dealer extension.

6. Subdivision F: The reporting requirements for fleets are specified in accordance with federal officials so as not to be specific to federal fleets.

9 VAC 5-91-41 Review and evaluation of chapter.

7. This section is repealed.

9 VAC 5-91-120 Export and import of motor vehicles.

8. Subdivision A: Language is included to allow the installation or reinstallation of the catalyst.

9. Subdivision C: "Non-conforming vehicles" are exempted if verified as such by the department.

PART III.

EMISSION STANDARDS FOR MOTOR VEHICLE AIR POLLUTION.

9 VAC 5-91-160 Exhaust emission standards for two-speed idle testing in enhanced emissions inspection programs.

1. Subdivision C: Two-speed idle test standards in Table III-A are revised for newer technology vehicles (1990 and newer). The revised standards were determined by an analysis of fail rates in the Virginia program and a review of standards from other state programs. The revised standards reflect the advanced technology of 1990 and newer vehicles. Previously these vehicles only had to meet the standards set for 1981 vehicles.

2. Subdivision D: Delete paragraph regarding "transitional period" since this is no longer applicable.

9 VAC 5-91-170 Exhaust emission standards for ASM testing in enhanced emissions inspection programs.

3. Subdivision B: Flexibility is provided to set ASM standards less stringent than EPA "final standards" and language was added to clarify application of interim standards. Current regulatory allows only either EPA phase-in standards or EPA final standards. The revised language allows DEQ to determine standards based on an analysis of fail rates. This would enable DEQ to set stricter standards in order to meet EPA emission

reduction requirements, but so as not to be too strict. New language will clarify under what condition these new “interim standards” would apply.

9 VAC 5-91-180 Exhaust emissions standards for on-road testing through remote sensing.

4. Subdivision A: Provides flexibility for setting on-road (i.e., remote sensing) testing standards to allow DEQ to use CO or HC or any combination as criteria for remote sensing.

5. Subdivision B: Clarifies on-road testing enforcement procedures in accordance with statute.

6. Subdivision C: Revises the remote sensing standards table to be less stringent.

9 VAC 5-91-190 Emissions control systems standards.

7. Subdivisions A, B, C, D: Revised language to be consistent with 9 VAC 5-180-30 Regulation for Mobile Sources.

9 VAC 5-91-200 Evaporative emissions systems standards.

8. Subdivision C: Revises pressure test applicability language and clarifies that such testing will only be conducted if required by EPA for State Implementation Plan credits and as determined by the director.

9. Subdivision D: Deletes purge test requirements.

9 VAC 5-91-210. Visible emissions standards.

10. Revised language to be consistent with regulation for Mobile Sources.

**PART IV.
PERMITTING AND OPERATION OF EMISSIONS INSPECTION STATIONS.**

9 VAC 5-91-220 General provisions.

1. Subdivision C: Clarifies that transfer of a permit is prohibited.

9 VAC 5-91-230 Applications.

2. Subdivision B: Adds the flexibility for authorized signature to include that of an officer of the corporation.

9 VAC 5-91-260 Emissions inspection station permits, categories.

3. Subdivision A3: Adds provisions for "sensitive mission vehicle" fleet inspection stations in accordance with agreements with federal fleet managers.

9 VAC 5-91-290. Emissions inspection station operations.

4. Subdivision D: Adds "initial" and "on the same vehicle" and "initial inspection" for clarification.

5. Subdivision G: Replaces "if applicable" with "except fleet emissions inspection stations permitted under 9 VAC 5-91-370" for clarification.

9 VAC 5-91-300. Emissions inspection station records.

6. Subdivision G: Specifies that stations shall notify the department of certain changes "within 10 days of such changes."

9 VAC 5-91-310. Sign and permit posting.

7. Subdivision C1: Deletes the requirement for the station to post all emissions standards for all makes and models of vehicles.

9 VAC 5-91-320. Equipment and facility requirements.

8. Subdivision A: Adds the language "and equipment, including all current reference and application guides, as specified in subsection D of this section" in order to clarify and to be specific.

9. Subdivision D1: Adds the requirement "capable of conducting OBD testing" to the equipment requirement.

10. Subdivision D13: Adds reference material for determining proper exhaust emissions test type and standards to the equipment requirements. This would include information such as GVWR or certification type (truck versus passenger vehicle).

9 VAC 5-91-340. Motor vehicle inspection report; certificate of emissions inspection.

11. Subdivision A: Adds the requirement to notify DEQ and the vehicle operator of incorrect VIR printing.

12. Subdivision B: Clarifies that the vehicle operator must be informed of emissions inspection results and that the VIR may be used to communicate test results to the vehicle operator.

9 VAC 5-91-370. Fleet emissions inspection stations; mobile fleet emissions inspection stations.

13. Subdivision A: Clarifies that a fleet inspection station may have special permit requirements.

14. Subdivision E: Specifies the reporting requirements of fleet inspection stations.

**PART V.
EMISSIONS INSPECTOR TESTING AND LICENSING.**

9 VAC 5-91-380 Emissions inspector licenses and renewals.

1. Subdivision F: Specifies that licensed emissions inspectors must have a valid operator's license.

2. Subdivision J: Adds the applicability of this section for reinstatement of licenses.

3. Subdivision K: Language is added to require requalification as changes in testing technology warrant it.

**PART VI.
INSPECTION PROCEDURES.**

9 VAC 5-91-410. General.

1. Subdivisions A4 and 6: Provides for OBD testing for certain 1996 and newer vehicles. Subdivision A4 does specify that the director may require ASM or two-speed idle testing on certain OBD equipped vehicles if he determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.

2. Subdivision A5: Clarifies that visible smoke emissions must be checked.

3. Subdivision A7: Deletes purge testing.

4. Subdivision A8: Specifies that the emission inspector must sign each VIR certifying that he or she performed the inspection in accordance with this chapter.

5. Subdivision A10: Clarifies that a retest must be free if performed within 14 days of the "initial chargeable inspection."

9 VAC 5-91-420. Inspection procedure; rejection, pass, fail, waiver.

6. Subdivision C7: Specifies that the inspector may reject a vehicle in an overheated condition or thinks that such condition will be present during testing.

7. Subdivision C8: Specifies OBD acceptance for testing requirements according to EPA requirements: model year 1996-2000 vehicles will be rejected from testing if a data link cannot be established or if three or more monitors are in "not ready" status (two or more for 2001 and newer vehicles). These criteria may be changed by the director if data via the auto manufacturers, in-house studies, EPA or other states' program data determine that a "not ready" status is indicated by more than the minimum number set forth in subdivision 8 b (1) and (2).
8. Subdivisions D1, 5, 6, and 7; and G2: "For vehicles subject to exhaust emissions testing" is added to distinguish that these do not apply to vehicles subject to the OBD testing.
9. Subdivision D8: Clarifies that tests must be conducted in their entirety with certain exceptions.
10. Subdivision F: Specifies that vehicle information, visual test results and visible smoke results as applicable must be entered into the certified analyzer.
11. Subdivision G: "For 1973 and newer model year vehicles" is deleted since older vehicles are no longer tested.
12. Subdivision G2: Specifies that overall visual test results must be entered into the certified analyzer. Also allows certain exemptions for emissions control system components due to unavailability of parts.
13. Subdivision G3: Specifies that an OBD test must be performed in lieu of a tailpipe test for certain vehicles 1996 and newer according to EPA regulations and that DEQ may also perform exhaust emissions testing on a limited basis for quality control or program evaluation purposes.
14. Subdivision G3a: Changes OBD "demonstration" startup for light-duty gasoline vehicles from 1/4/1999 to "pending availability and installation of hardware and software."
15. Subdivision G3b: Changes OBD "pass-fail" start-up from 1/3/2000 to the effective date of the regulation or pending availability and installation of hardware and software according to revised EPA regulations. Also specifies OBD passing criteria: malfunction indicator lamp must be operational and must not be on or commanded on with engine running.
16. Subdivision G3c: Provides for OBD testing of light-duty diesel vehicles starting two years after the effective date of the regulation. "Not ready" criteria may be changed by the director if data via EPA, in-house studies, or other states' program data determine that a "not ready" status is indicated by more than the minimum number set forth in this subdivision.

17. Subdivision G3d: Provides for exceptions to OBD testing standards for certain vehicles.
 18. Subdivision H: Adds "this or other state programs" as an information source for DEQ with respect to consideration of vehicle-specific test sequence changes.
 19. Subdivisions J2 and 4: Changes "1968 through 1980" to "1980 and older." Adds "the department" as an information source.
 20. Subdivision K: Deletes purge test section and adds "For vehicles originally factory equipped with an evaporative emissions control system," to account for vehicles which are not so equipped.
 21. Subdivision L: Makes revisions to account for OBD testing: OBD vehicles do not receive the emission component checks but do receive gas cap pressure tests and smoke tests.
 22. Subdivision N1: "1973 and newer model year vehicles only" is deleted since it no longer applies.
 23. Subdivision N3: Requires that vehicle passes an evaporative pressure test or fuel filler cap pressure test, or both.
 24. Subdivision N5: Changes "appropriate" to "emissions related" for repairs applicable to waiver expenses since repairs must be performed by or under the supervision of a certified emissions repair technician.
 25. Subdivision N6: Eliminates provisions setting waiver phase-in amounts for dates that have already passed.
- 9 VAC 5-91-430. ASM test procedure.
26. Subdivision A2a: The word "also" is added for clarification.
 27. Subdivision A2c: Deleted the requirement that the vehicle be operating for the pressure test and the fuel-filler cap test.
 28. Subdivision A2d: Paragraph regarding the purge test is deleted.
 29. Subdivision A4: States that the vehicle shall be properly restrained for ASM testing without dictating exactly how but leaves that flexibility to the inspector and station personnel.
 30. Subdivision B: Provides flexibility to "2nd chance to pass" conditions by adding the words: "The department may increase the percentage to up to 200% of the standard for

the interim or final standards." Provides the flexibility to eliminate the test if the vehicle has already failed the component check.

31. Subdivision C1: Provides discretion to the department to change default settings based on EPA guidance. In addition, deleted tables that identify dynamometer load settings for the 2525 mode test which are in the equipment software specifications.

32. Subdivision C4: Adds provision for 15 seconds of test to occur in preconditioning sequence to conform to current practice.

33. Subdivision D1: Provides discretion to the department to change default settings based on EPA guidance. In addition, deleted tables that identify dynamometer load settings for the 5015 mode test which are in the equipment software specifications.

9 VAC 5-91-440. Two-speed idle test procedure.

34. Subdivisions A2 and 3: Changes the TSI test sequence to conform with NVAS specification and current practice: i.e., the idle test is performed after the 2500 rpm mode test. Also changes the preconditioning to conform with NVAS specification and current practice and provides flexibility for DEQ to eliminate repeating 1st chance test modes that were already passed.

35. Subdivision A7c: No longer requires that the vehicle be turned-off while conducting the evaporative emissions pressure test and fuel filler cap test.

36. Subdivision B4: Corrects idle mode test length to conform with NVAS specification and current practice: the test modes are of 30-second duration.

37. Subdivision B5: Corrects averaging time to conform with NVAS specification and current practice: i.e., last 5 seconds of 30-second test mode.

38. Subdivision C3: Clarifies that if the rpm falls outside of a 2200 to 2800 rpm window for more than a cumulative total of 10 seconds, the 2500 rpm test mode must be restarted, to conform with NVAS specification and current practice.

39. Subdivision C5: Corrects 2500 rpm mode test length to conform with NVAS specification and current practice: the test modes are of 30-second duration.

40. Subdivision C6: Deleted since currently the 2nd chance 2500 rpm mode is always preceded by the idle mode second chance test.

41. Subdivision C6 (new numbering): Corrects averaging time to conform with NVAS specification and current practice: i.e., last 5 seconds of 30-second test mode.

9 VAC 5-91-450. Fuel system evaporative pressure test and gas cap pressure test procedure.

42. Subdivision D: Specifies gas cap testing requirements for multi-tank vehicles.

9 VAC 5-91-460. Repealed.

43. Entire section is deleted since there are no plans to do a purge test.

9 VAC 5-91-470. Short test standards for warranty eligibility.

44. Entire section is deleted since short test standards for warranty eligibility are administered by the federal EPA.

9 VAC 5-91-480. Emissions related repairs.

45. Subdivision A: Removes language that is redundant and confusing.

46. Subdivision C: Specifies that emissions related repair costs can qualify for the minimum waiver requirement only if performed at a Certified Emissions Repair Facility and performed by, or under the supervision or approval of, a Certified Emissions Repair Technician on duty at the time the repairs were performed. This is provided for elsewhere in the regulation and is added here for clarity.

9 VAC 5-91-490. Engine and fuel changes.

47. Subdivision B: Language referring to vehicles of model year 1973 and older is removed.

48. Subdivision C: Language is added for clarity.

PART VII.

VEHICLE EMISSIONS REPAIR FACILITY CERTIFICATION.

9 VAC 5-91-500. Applicability and authority.

1. Subdivision B: Adds “current certified facilities and applicants for” to the list of those to whom this part applies for completeness and clarity.

9 VAC 5-91-510. Certification qualifications.

2. Subdivision D: Adds “changes in partnership” and changes "will" to "shall" and “may” to “will.”

3. Subdivision H 2 I: Adds OBD scan tool as specified by federal guidance to the list of required equipment and differentiates between an OBD scan tool and the non-OBD-II scan tool already required.

9 VAC 5-91-520. Expiration, reinstatement, renewal, and requalification.

4. Subdivision A: Adds “temporary inactive status” to reasons for disallowing certification for waiver repairs and adds provisions to reactivate or reinstate certification.

9 VAC 5-91-530. Emissions repair facility operations.

5. Subdivision B: Specifies that certified emissions repair facilities must notify DEQ immediately if changes occur affecting their ability to perform waiver repairs.

6. Subdivision D: Specifies that emissions repair forms must be properly filled out and signed by the certified emissions repair technician.

7. Subdivision I: Specifies that waiver repairs must be performed in accordance with applicable sections of this regulation for clarity.

9 VAC 5-91-540. Sign and certification posting.

8. Subdivision B: Requires that certificates be posted according to DEQ requirements.

9. Subdivision C: Adds the requirement that any DEQ-required signs meet local sign ordinances.

PART VIII.

EMISSIONS REPAIR TECHNICIAN CERTIFICATION AND RESPONSIBILITIES.

9 VAC 5-91-550. Applicability and authority.

1. Subdivision A: Adds the words “emissions related” with respect to waivers for clarification.

2. Subdivision B: Adds “current certified technicians and applicants” to those to whom this part applies.

9 VAC 5-91-580. Certified emissions repair technician responsibilities.

3. Subdivision A: Specifies that it shall be a violation to claim to be a certified emissions repair technician without the proper certification.

4. Subdivision D: Specifies that certified emissions repair technicians can sign data repair forms only for repairs that were performed while they were on duty.

PART IX.

ENFORCEMENT PROCEDURES.

9 VAC 5-91-610. Consent orders and penalties for violations.

1. Subdivision H: Adds the condition that inspectors may have to demonstrate requalification through instruction or testing.

9 VAC 5-91-620. Major violations.

2. Subdivision B: Clarifies that violations of this regulation by any regulated party may constitute a major violation and revises the list of major violation sections to conform with the program changes made as a result of these amendments.

3. Subdivision D: Adds “or while under the influence of alcohol or illegal drugs” and adds that this shall be grounds for revocation.

PART X.

ANALYZER SYSTEM CERTIFICATION AND SPECIFICATIONS FOR ENHANCED EMISSIONS INSPECTION PROGRAMS.

9 VAC 5-91-650. Design goals.

1. Subdivision D: Deletes purge test equipment.

9 VAC 5-91-680. Certification of analyzer systems.

2. Subdivision D1: Clarifies that non-gasoline vehicles are not covered by ASM testing.

3. Subdivision D3: Corrects the preconditioning time to read "may be up to 90 seconds." It is currently 30 seconds.

4. Subdivision D4: Changes the required OBD connectivity date from January 4, 1999 to January 1, 2002.

5. Subdivision D9: Removes the requirement for automatic quarterly audit prompts to conform to actual practice and the NVAS specification.

9 VAC 5-91-700. Calibration of exhaust gas analyzers.

6. Subdivision 2: Removes “automatically perform” and changes “three-point” to “two-point” calibrations to conform to actual practice and the NVAS specification.

7. Subdivision C: Clarifies gas audit requirements to conform to actual practice and the NVAS specification.

PART XI.

MANUFACTURER RECALL.

9 VAC 5-91-720. Vehicle Manufacturer Recall.

1. Subdivision A: Delays applicability until an emissions recall data base and associated hardware and software are available.

**PART XIII.
FEDERAL FACILITIES.**

Entire Part is repealed as not applicable per agreement with federal fleet managers.

**PART XIV.
ASM EXHAUST EMISSION STANDARDS.**

9 VAC 5-91-790. ASM Start-up standards.

1. Table 14.1: Removes "Tier 1" and changes model year from 1994+ to "1996 and later" for LDV and LDT1, and to "1997 and later" for LDT2.

9 VAC 5-91-800 ASM Final Standards.

2. Table 14.2: Removes "Tier 1" and changes model year from 1994+ to "1996 and later" for LDV and LDT1, and to "1997 and later" for LDT2.1.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION MG

CONCERNING

MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM
(9 VAC 5 CHAPTER 91)

INTRODUCTION

At the May 2001 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning the motor vehicle inspection and maintenance program.

A public hearing was advertised accordingly and held in Northern Regional Office, Woodbridge, Virginia on November 13, 2001 and the public comment period closed on January 7, 2002. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering the motor vehicle inspection and maintenance program. A summary of the amendments follows:

1. Modify definition of "Motor vehicle " to reflect statutory changes.
2. Add definition of "Authorized personnel" to provide more flexibility to station owners.
3. Add definitions related to EPA requirement for on-board diagnostic testing, including "OBD system," "OBD test," and "OBD vehicle."
4. Modify exhaust emission standards for two-speed idle (TSI) emissions test (9 VAC-5-91-160).
5. Modify exhaust emission standards for ASM emissions test (9 VAC-5-91-170).
6. Modify exhaust emission standards for remote sensing emissions test (9 VAC-5-91-180).

7. Repeal requirements for evaporative system purge test (9 VAC-5-91-200 and 9 VAC-5-91-460).
8. Add provisions for visible emissions standards (9 VAC-5-91-210).
9. Modify reporting requirements for fleet inspection stations according to EPA requirements (9 VAC 5-91-370).
10. Add provisions for conducting OBD tests for 1996 and newer gasoline and diesel powered vehicles equipped with OBD systems (9 VAC 5-91-420).
11. Eliminate provisions setting waiver phase-in amounts for dates that have already passed (9 VAC 5-91-420).
12. Add provisions that provide more flexibility in ASM test procedure (9 VAC 5-91-430).
13. Modify regulatory language to more closely reflect software specifications for test procedures (9 VAC 5-91-440).
14. Repeal requirements for warranty eligibility (9 VAC 5-91-470).
15. Modify table of major violations to reflect additional flexibility incorporated in the regulation language for test procedures (9 VAC 5-91-620).
16. Repeal provisions addressing federal facilities to comply with EPA requirements (Part XIII).

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in the Woodbridge Regional Office. Twelve persons attended the hearing, with two of those offering testimony. One additional written comment submitted by Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline marketers Council, was received after the close of the public comment period. As required by law, notice of this hearing was given to the public on or about October 8, 2001 in the Virginia Register. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the Department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Regulation Review Process

COMMENTER: Mr. Bobby Jones, Northern Virginia Auto

TEXT: I've spoken with and represent a lot of station owners. We spent a lot of time last winter going over these changes in the regulations. We sat down with station owners, the DEQ, and we had a very cordial meeting. People presented their ideas, proposed rule changes and I thought we came away with a lot of progress. We actually got a lot of things that we wanted. It went pretty well.

Our objective was to streamline the process; eliminate a lot of things that we thought were unnecessary and wasted a lot of our time. For example, the use of straps and those kinds of things should be optional. We did all of this with the idea that by streamlining these rules and regulations, when it came time to implement OBD (onboard diagnostics) we would be able to integrate it with the current program. OBD would take no more or less time than we currently do.

RESPONSE: Support for the proposal is appreciated.

2. **SUBJECT:** OBD testing in conjunction with tailpipe testing

COMMENTER: Mr. Bobby Jones, Northern Virginia Auto

TEXT: It is recommended that the Air Board go with the changes in the regulation as proposed with the exception of the implementation of OBD II as the DEQ has proposed it or as they are working toward.

The Air Board, just once, is not being well served by the DEQ. The Board is being led down a path that is potentially embarrassing and taking the service stations along with it. The facts speak for themselves and it is important that the Board receive the facts.

The facts are that the heart of the emissions program is a tailpipe sample. A vehicle is presented and a sample of tailpipe gases is taken. The emissions inspection station, as it is currently set-up, is like a small field laboratory. We test vehicles under controlled conditions. The temperature is controlled. The loads are controlled. The speeds are controlled. The time of the test is controlled. And the most important thing is, a sample of the gases coming out of the tailpipe is taken. The gases are run through an analyzer and a determination is made as to whether the emissions are in compliance. That is an

emissions test. Many systems are checked; gas caps etc., but the heart of the system is an emissions test. Collectively, more than 20 million dollars have been spent on equipment to do an emissions test.

What DEQ is proposing is the elimination of the emissions test. DEQ is suggesting a replacement of the current emissions test with historical code retrieval. For many vehicles no sample of exhaust gas will be taken. OBD will retrieve historical data that happened sometime in the past. How long ago? That is unknown. It will not be done under laboratory controlled conditions. The equipment has been purchased. It is important to do the exhaust gas sample. To ignore that part of the test is irresponsible.

It is a public health issue. DEQ data show that 20 percent of the cars that pass OBD won't pass a tail-pipe exam. There has not been a good explanation as to why that happens. The American Heart Association, American Cancer Association, American Lung Association have data to support the position where more needs to be done, not less. The number of asthmatic cases is on the rise in Northern Virginia. Get stuck in traffic someplace on I95 under a bridge. Put the window down. Then tell yourself we need to do less in the emissions program. The service stations want to continue to do the emissions test.

DEQ has technical blinders on. OBD is a "Trojan Horse", but there is nothing inside. OBD presumes that if there is no check engine light on then the car must be clean. Currently, if a car fails the exhaust emissions test, something must be done to effect tail-pipe emissions. The vehicle owner must at least attempt to get a waiver. Under OBD, if a car fails, there is nothing to prevent one from resetting the computer, i.e. drive it long enough to reset the monitor and during that window of opportunity bring it back in and pass the OBD check. Of course it will pass. Every car will pass because there is no test.

Service stations are in the testing business. The stations have the equipment and want to continue to do the exhaust gas test.

To make the point clearly, the service stations are not against OBD testing but want to integrate the two. There is a desire to continue the current emissions test and if the government's [EPA] position is that OBD is required- great. Integrate the two tests. It is believed that the timesaving changes proposed to the regulation will permit the OBD check in the same time frame that is currently used to do the gas exhaust test.

RESPONSE: The regulation has been modified to allow the director to require ASM or two-speed idle testing on certain OBD equipped vehicles if he determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.

The vehicle emission program in Northern Virginia is designed to achieve the most pollution reduction for the least cost and meet EPA program requirements with as little

imposition to the public as possible. The concern for program efficiency while maximizing pollution reduction has always been a priority. The same is true regarding the implementation of the OBD requirements mandated by EPA.

3. **SUBJECT:** OBD testing in conjunction with tailpipe testing

COMMENTER: Mr. Ron Harold, Virginia Gasoline Marketers Council

TEXT: It is important to understand the implications of integrating OBD with the exhaust gas testing because there are some implications with regard to how long it will take to do the test, what's involved in the test, and ultimately how much it is going to cost.

Service stations believe that the cost of the emissions test is under priced with regard to the effort involved in inspecting a vehicle. Each business owner must be aware of what any addition or deletion from the testing protocol or time involved in conducting the test will be relative to the cost of the test. Any additional cost for equipment or software necessary under OBD II must be factored in as well.

It is important that everybody involved in the program know what the long-term plans are for OBD II. The pilot program is going to produce information that will enable the DEQ staff to really pinpoint whether or not the dual -type testing is needed.

RESPONSE: Please see response to comment number 2.

4. **SUBJECT:** OBD failure rates

COMMENTER: Mr. Ron Harold, Virginia Gasoline Marketers Council

TEXT: During previous testimony the statement was made that twenty percent of vehicles check using OBD II would not pass a tail-pipe test. DEQ staff have indicated that a pilot test would be conducted to evaluate that accuracy of that statistic. If the value is twenty percent or more, I hope that DEQ is prepared to take another look at where we are going with regard to OBD. Answers to these questions are necessary. It is important to take a comprehensive look at the program and what its impact is going to be on fees as well as time.

RESPONSE: The twenty percent statistic is accurate for the percentage of vehicles that passed OBD but failed the IM240 test in an analysis conducted by the state of Colorado. This data must be considered in view of very low failure rates for those vehicle tested, model years 1996 – 2000. It is the departments understanding that some of the IM240 failures were due to preconditioning problems in the Colorado test sequence. It should also be noted that these data were based on IM240 test, not ASM.

At this point in time, EPA still has the most comprehensive data analysis which indicates that OBD does detect dirty vehicles that will not be identified using ASM testing, therefore, the federal mandate that OBD testing be included in state programs.

No changes have been made to the proposal based on this comment.

5. **SUBJECT:** Regulatory authority

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline Marketers Council

TEXT: Foremost is that neither DEQ, the State Air Pollution Control Board or the Office of Air Regulatory Development has the regulatory authority to change the equipment and /or related test procedures as related to an “enhanced emissions inspection.” The statutory definition of an enhanced emissions inspection clearly states that the enhanced I/M program shall use “**only**” (emphasis added) that equipment (ASM 50/15) specified in the same section of Virginia code.

The enabling legislation, specifically by including the word “only,” provided some protection to inspection sites that the program would not make changes in required test equipment after the inspection station made a significant investment in purchasing said equipment. It further assured that if changes were to be made in the required equipment, inspection stations would have an opportunity to voice to the General Assembly their comments relative to the cost effectiveness and efficacy of such proposed equipment changes. Consequently, the addition of OBD equipment to the program by regulation is in violation of the intent of the legislation as well as the statute itself.

RESPONSE: The regulation has been reviewed by the Office of the Attorney General to determine whether the proposed changes meet all legal requirements. The Office of the Attorney General has made a determination that the regulatory changes are, in fact, legal and well within the Board’s purview.

No changes have been made to the proposal based on this comment.

6. **SUBJECT:** OBD premature

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline Marketers Council

TEXT: Our industry believes the inclusion and heavy reliance on the OBD is premature. While the EPA may be a strong advocate of moving to OBD, we remind you the same EPA previously advocated an I/M 240 system which subsequently was found ineffective. The industry notes that documented and substantive studies have yet to prove that heavy reliance on an OBD test system, even for newer model vehicles, does not presently exist. While we commend DEQ for conducting a pilot project using the OBD in Northern Virginia, results and analysis of those results have not been completed.

Consequently, moving forward with any such regulations, even if legally permitted, would be premature.

RESPONSE: The regulation has been changed to allow for tail pipe testing in conjunction with OBD provided certain criteria are met. Please see response to comment number 2.

OBD testing is mandated by EPA. Failure to implement such testing could result in a disapproval of the program by EPA, possible sanctions and institution of a Federal Implementation Plan. That would be an undesirable situation for all concerned.

All efforts must be made to ensure that every possible cost-effective improvement can be made to detect and reduce air pollution from motor vehicles. To ignore technological advancements that can significantly improve our efforts to reduce air pollution would be foolhardy at best, disastrous at worst. OBD testing will be a vital addition to that effort.

7. **SUBJECT:** Lack of support for the program

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline marketers Council

TEXT: We wish to caution that any change, without the support of current emissions inspection stations, may jeopardize the entire system in Northern Virginia. Though the number of vehicles subject to testing continues to increase, the number of emissions inspection stations had remained status quo if not slightly declined. Frankly, this is because certain assurances related to the financial return on the investment by an inspection station did not come to fruition. Though many delays or absence of implementing certain aspects were not the fault of DEQ, the failure to implement these assurances has caused a growing skepticism by the industry. Specifically, implementation of the program was delayed even though many stations had already made the investment to purchase or lease the equipment. Even now, "cut points" to fail a certain percentage of vehicles remain far below that which was to be implemented. And though DEQ maintains a list of "approved" manufacturers, it contends it is powerless to address or assist with growing problems with these same approved manufactures to provide parts and repairs to the equipment now in use. All of this has increased the cost of participation in the program though DEQ has been unwilling to endorse a long overdue increase in emissions inspection fees. When an emissions inspection by a certified mechanic generates far less than the proportionate hourly labor rate of a less skilled mechanic, it's understandable why there has not been a growth in emissions inspection stations. With the financial uncertainty of the current program, it's unfair and unreasonable to expect emissions stations to expend more funds for more equipment.

RESPONSE: The service stations that participated in the regulation development process, that worked with the DEQ to make improvements and appropriate changes to the existing regulation, do support the proposed changes. (Please see comment number 1.) It should also be noted that, in some way shape or form, there will

be vehicle emissions testing in Northern Virginia, either done by the service stations in partnership with the state, a private contractor or implemented by the federal EPA.

Traditionally, the approach to pollution control programs within the Commonwealth has been one of state supervision rather than federal implementation. This approach leads to better environmental results for all citizens and more cost-effective programs for the sources subject to the regulations. It is the intent of the DEQ to continue that tradition.

It should also be noted that state agencies, including DEQ, carry out the programs mandated by the General Assembly and the Governor. It is not the place for any state agency to advance a particular agenda via legislative means. Therefore, it would be very inappropriate for DEQ to “endorse a long overdue increase in emissions inspection fees.”

No changes have been made to the proposal based on this comment.

8. **SUBJECT:** Fiscal Impact

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline marketers Council

TEXT: Regarding cost, we note that DEQ has been unable to identify concrete costs to emissions inspection stations should OBD test equipment be added. Interesting is that DEQ was able to provide test equipment at not cost for the pilot project. this raises the perception that equipment for the pilot project was provided at no cost by a manufacturer in hopes of reaping some future contact. Regardless, it is unconscionable to propose inclusion of any new equipment without first identifying specific costs for equipment and related software. In fact, we have no assurances that software for an OBD system in Virginia would be ready in the time required, remembering that the original program was delayed due to software problems. In summary, it is inappropriate to move forward with these regulatory changes, especially since fiscal impact is unknown.

RESPONSE: That OBD would be an eventual program requirement with an additional cost associated with has been know since EPA adopted the final program requirements years ago.

The DEQ has received information indicating that estimates for OBD upgrades will be approximately \$1500, although no firm cost has been provided. Costs in other states indicate that this figure is accurate. It should be noted that DEQ hopes to contract directly with the equipment manufacturers to minimize the software update costs to inspection stations.

The perception that equipment for the pilot project was provided at no cost by a manufacturer in hopes of reaping some future contract is incorrect. Equipment upgrades will be done by the service station’s current equipment manufacturer. The equipment being used in the pilot program is not designed for long-term program use, but for use in a short-term pilot test.

With respect to software availability, DEQ is also concerned with obtaining OBD software in the time required and will make every effort to ensure the transition is accomplished as smoothly and quickly as possible.

No changes have been made to the proposal based on this comment.

9. **SUBJECT:** Regulation Adoption schedule

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline marketers Council

TEXT: Repeatedly we've been advised that DEQ must proceed with these regulations to comply with time schedules being mandated by EPA. This was the same reasoning suggested by DEQ to adopt a centralized test-only I/M 240 program. Fortunately Virginia adopted a better program. Historically EPA has shown a willingness to work with states on time schedules providing the state demonstrates efforts towards compliance of mandates. EPA must also realize that changes in Virginia's current program require statutory change and consequently require more time to implement.

RESPONSE: DEQ cannot assume that EPA will give Virginia any special treatment in implementing a required program and, in fact, it would be considered irresponsible for the state to do so. Deadlines for State Implementation Plan requirements are stipulated in the federal Clean Air Act and cannot be ignored.

EPA has demonstrated a willingness to work with a state to avoid federal sanctions when the state has made a good faith effort to comply with the federal requirements. EPA has been known to issue Federal Implementation Plans and sanctions to states that do not adopt federal requirements.

No changes have been made to the proposal based on this comment.

10. **SUBJECT:** Air Quality

COMMENTER: Mr. Bruce Keeney, Sr., Executive Vice President, Virginia Gasoline marketers Council

TEXT: Finally and perhaps most important, concern exists that a move to OBD may in fact set Northern Virginia's air quality standards backwards. As previously mentioned, the industry has yet to agree upon the efficacy of this test system in comparison with the current system used in Northern Virginia to identify polluting vehicles and thus improve air quality. We would hope DEQ would not embrace any particular test procedure unless it was first proven that such would enhance air quality.

For these reasons we oppose the proposed regulatory revisions. Your review and consideration of our comments will be appreciated.

RESPONSE: The EPA has not made a finding that OBD would set Northern Virginia's air quality standards backward. In fact, the EPA has determined that OBD testing has the proven ability to identify more emissions related problems than does the current IM test in Northern Virginia. It must be pointed out that the equipment used currently in the VA program is technically incapable of detecting emissions faults in the newest vehicles compared to the OBD test. This is particularly true for the low emission vehicles (LEVs) that have been sold in VA since 1999.

The regulation has been modified to give the director discretion to include ASM or two-speed idle testing in conjunction with OBD provided that certain criteria are met. All program changes and improvements are made to incorporate the most effective pollution reductions while ensuring the least burdensome and cost effective program is implemented (please see response to comment number 2).

DEQ acknowledges the possibility that some vehicles may have emissions defects that go undetected by the OBD test. DEQ believes that these instances will be few and does will not warrant a mandate that the 98% of the 1996 and newer model fleet, which is expected to pass the ASM test, undergo this relatively lengthy test. However, DEQ plans to conduct a random sample of the OBD test vehicles, doing both OBD and ASM for data purposes (non-pass/fail ASM) in order to monitor this belief and take appropriate action if necessary.

No changes have been made to the proposal based on this comment.