



Minnesota Pollution Control Agency

August 23, 1993

Ms. Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules
State Office Building, Room 55
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Subject: Statement of Need and Reasonableness for Proposed Amendments to Permanent Rules Governing Annual Vehicle Inspections, Minn. Rules pts. 7023.1010 to 7023.1105

Enclosed for your review is a copy of the Statement of Need and Reasonableness for proposed rules as required by Minn. Stat. § 14.115, subd. 8 (1992). If you have any questions please call me at 296-7712.

Sincerely,

A handwritten signature in cursive script that reads "Norma L. Florell".

Norma L. Florell
Planning and Rule Coordinator
Program Development Section
Air Quality Division

NLF:lmg

Enclosure

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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In The Matter Of Proposed Rule
Amendments Governing Annual
Vehicle Inspections, Minn. Rules
Parts 7023.1010 to 7023.1105

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (MPCA) was authorized and directed by the 1988 Minnesota Legislature to adopt rules establishing a motor vehicle Inspection/Maintenance Program for the Twin Cities seven county metropolitan area. Minn. Stat. §§ 116.60 to 116.65 required the MPCA to adopt standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions and to hire a contractor to build and operate a network of inspection facilities.

As required by Minn. Stat. § 116.62, the MPCA adopted Minn. Rules pts. 7023.1010 to 7023.1105 (formerly numbered 7005.5010 to 7005.5105), which established standards and criteria governing the testing and inspection of motor vehicles for carbon monoxide and hydrocarbon emissions in the Twin Cities seven county metropolitan area.

As directed by Minn. Stat. §§ 116.60 to 116.65, the MPCA issued a Request for Proposal (RFP) to hire a contractor to build and operate a network of inspection facilities. Five proposals were received by the MPCA in response to the RFP. Upon completion of a review process, the MPCA awarded Systems Control, Inc. the contract during the summer of 1990. Vehicle testing then began on July 1, 1991. Systems Control has subsequently been purchased by Envirotech Technologies, Inc. and is doing business in Minnesota as Envirotech Technologies, Inc.

The MPCA recognized a need to make a minor amendment to Minn. Rules pt. 7023.1030, subs. 10 and 11, to clarify the emission standards that apply to reconstructed vehicles and vehicles with exchanged engines. That amendment was adopted by the MPCA on June 29, 1992.

On November 5, 1992, the U.S. Environmental Protection Agency (EPA) adopted rules governing motor vehicle Inspection/Maintenance Programs. 57 Fed. Reg. 52950-53014 (Nov. 5, 1992). These rules were required by the Clean Air Act Amendments of 1990. The EPA rule requires all motor vehicle Inspection/Maintenance Programs throughout the country to meet the requirements of the rule and demonstrate compliance with the EPA rule by requiring all states, including Minnesota, to submit a State Implementation Plan (SIP) amendment to the EPA by November 15, 1993, for their review and approval. The SIP must contain a complete description of the motor vehicle Inspection/Maintenance Program including statutory authority and administrative rules.

In order for the motor vehicle Inspection/Maintenance Program to meet the requirements contained in the EPA rule the MPCA recognized a need to make minor amendments to Minn. Rules pts. 7023.1010 to 7023.1105. Since the implementation of the motor vehicle Inspection/Maintenance Program (I/M Program) on July 1, 1991, the MPCA has also recognized a need to make minor amendments to clarify and update the rule to reflect the MPCA's experience in implementing the program.

A Notice to Solicit Outside Information was published in the State Register on Monday, May 24, 1993. No comments were received by the MPCA.

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.62, which provides in part:

Subd. 1. Establishment. The MPCA shall establish and administer a program to test and inspect for air pollution emissions the motor vehicles that are subject to the requirement of Minn. Stat. § 116.61.

Subd. 2. Criteria and Standards.

- (a) The MPCA shall adopt rules for the program under chapter 14 establishing standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions.
- (b) The rules must specify maximum pollutant emission levels for motor vehicles, giving consideration to the levels of emissions necessary to achieve applicable federal and state air

quality standards. The standards may be different for different model years, sizes, and types of motor vehicles.

- (c) The rules must establish testing procedures and standards for test equipment used for the inspection. The test procedures or procedures producing comparable results must be available to the automobile pollution equipment repair industry. The test equipment used for the inspection or comparable equipment must be available to the repair industry on the open market.
- (d) The rules must establish standards and procedures for the issuance of licenses for fleet inspection stations.
- (e) The rules must establish standards and procedures for the issuance of certificates of compliance and waiver.

Under this statute, the MPCA has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. §§ 14.131, 14.14, subp. 2, and 14.23 (1990), require the MPCA to make an affirmative presentation of facts establishing the need for and the reasonableness of the proposed rules. In general terms, this means that the MPCA must set forth the reasons for proposing rules and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is a proper one. The need for the changes to Minn. Rules pts. 7023.1010 to 7023.1105 are discussed below.

1. The need for these changes to Minn. Rules pts. 7023.1010 to 7023.1105 arises from the MPCA's experience in implementing the I/M Program.

Since the implementation of the motor vehicle I/M Program on July 1, 1991, the MPCA has gained experience in operating the program. Because of this experience the MPCA has recognized a need to amend Minn. Rules pts. 7023.1010 to 7023.1105 to make appropriate changes in procedure.

Many of the amendments are intended to increase public convenience in meeting program requirements by removing rule limitations that have proven to be cumbersome and not needed to attain program objectives. For example, the requirement that a citizen return to the same inspection station to resolve a tampering dispute within 20 days of the test is deleted because the MPCA has found the contractor's central computer system enables any inspection station to work with the citizen to resolve the dispute.

Other amendments will streamline MPCA and contractor administration of the program. For example, separate letters of extension and exemption are no longer needed because these can now be accommodated on the existing Vehicle Inspection Report, which reduces the number of forms used in the program and assists the registrars because they only have to process one form during vehicle registration.

Finally, the MPCA's experience with tampering inspections has led the MPCA to conclude the inspection no longer needs to include the fuel inlet restrictor. This inspection is no longer needed due to the small number of vehicles that have tampered fuel inlet restrictors and because leaded fuel is increasingly not available to motorists.

2. The need for these changes to Minn. Rules pts. 7023.1010 to 7023.1105 arises from the EPA's adoption of new federal rules governing motor vehicle I/M Programs.

On November 5, 1992, the EPA adopted rules governing motor vehicle I/M Programs. The EPA rule requires all motor vehicle I/M Programs throughout the country to meet the requirements of the rule and demonstrate that compliance by requiring all states, including Minnesota, to submit a SIP amendment to the EPA by November 15, 1993, for their review and approval. The SIP must contain a complete description of the motor vehicle I/M Program including statutory authority and administrative rules. These amendments incorporate the exhaust gas analyzer specifications, calibration and quality control requirements of the new federal rule. Additionally, the amendments adopt the preferred federal and industry nomenclature by replacing the term "mechanic" with "automotive repair technician." Finally, th

amendments reflect the federal requirement that retests include the same elements as the initial test. The state rule currently requires a retest only for that portion of the test that was failed. The federal requirement is designed to detect increases in emissions of one pollutant that can be caused by repairs designed to decrease emissions of another pollutant.

After review of the EPA rules governing motor vehicle I/M Programs the MPCA recognized a need to amend Minn. Rules pts. 7023.1010 to 7023.1105 to be consistent with the EPA rule. If the motor vehicle I/M Program is not consistent with the EPA rule the SIP may not be approved by the EPA and the state may be subject to sanctions under the Clean Air Act, such as the withholding of federal highway funds for the metropolitan area and federal grant funds to the MPCA Air Quality program, as well as restrictions on construction of major new stationary sources of air pollution. 42 U.S.C. § 7509 (1993).

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rule is discussed below.

1. FUEL INLET RESTRICTOR

Minn. Rules pt. 7023.1025 establishes what components are required to be checked as part of the tampering inspection. The tampering inspection requires a visual check for the presence of an unvented fuel cap, a fuel inlet restrictor and a catalytic converter.

The purpose of the fuel inlet restrictor is to not allow the introduction of leaded fuel, dispensed with a larger diameter nozzle than unleaded fuel, into the fuel tank. The reason that the fuel inlet restrictor has been inspected is that, if leaded gasoline is used in a vehicle, the lead can damage the

catalytic converter, a major pollution control device on a vehicle. The amendment will remove the visual inspection requirement for the fuel inlet restrictor.

Historically, fuel inlet restrictors were removed or enlarged by vehicle owners to allow leaded fuel to be used in vehicles designed for unleaded fuel. This was done because leaded fuel was widely available and somewhat less expensive than unleaded fuel. EPA required that vehicles burn only unleaded fuel in the late 1970's. Over time, the availability of leaded fuel has diminished to the point where it is extremely difficult to obtain in the Twin Cities metropolitan area. Leaded fuel has also become more expensive than unleaded fuel because unleaded fuel is now the norm instead of the exception. The practice of removing or enlarging fuel inlet restrictors has been reduced to where it is no longer necessary to inspect for them during the initial inspection.

In the first two years of the program, the MPCA has tested approximately 2.5 million vehicles, and approximately 20,000 vehicles have failed the tampering inspection. Over 90 percent of the vehicles that failed the tampering inspection failed either because of tampering with the catalytic converter or because of tampering with both the catalytic converter and the fuel inlet restrictor. Therefore only a minute number of the vehicles tested fail only because of tampering with the fuel inlet restrictor.¹ Retaining the test for the catalytic converter assures that tampering will still be detected. Therefore, it is reasonable to remove the requirement to inspect for the fuel inlet restrictor as part of the tampering inspection.

The rule amendments remove the requirement to inspect the fuel inlet restrictor during the tampering inspection. Several other amendments reflect the effect of this change throughout the rules. For example, the same change occurs at Minn. Rules pt. 7023.1050, subp. 1 A. Minn. Rules pt. 7023.1010, subp. 36, states that a fuel inlet restrictor is part of the tampering inspection. The amendment to Minn. Rules pt. 7023.1010, subp. 36, removes the fuel inlet restrictor as part of the tampering inspection definition. This is reasonable because the fuel inlet restrictor is no longer part of the tampering inspection. Minn. Rules pt. 7023.1025 A requires that when a fuel inlet restrictor is not in place or

¹The MPCA experience has been that most people who tamper with cars tamper more completely than with just the fuel inlet restrictor.

damaged, the catalytic converter must also be replaced. The amendment removes this requirement. This is reasonable because the fuel inlet restrictor is no longer part of the tampering inspection.

2. TAMPERING INSPECTION DISPUTES

Minn. Rules pt. 7023.1025 B establishes that a vehicle owner may dispute the results of the tampering inspection, seek proof of non tampering and return to the same inspection facility with documentation within 20 days to continue with the tampering inspection. The amendment removes the 20 day requirement and allows the owner to return to any inspection facility, to continue with the tampering inspection, at the owner's convenience.

The amendment is reasonable because it allows more flexibility and is more convenient for the public when dealing with disputes about tampering. Because inspection facilities are integrated under one computerized system, the owner receives the same services at all the inspection facilities and thus need not return to the same station. The 20 day limit has not proven necessary since owners must meet all requirements of the rule by the time their registration expires. The same change is also reflected in the amendment to Minn. Rules pt. 7023.1060, subp. 4.

3. TABLE OF MAXIMUM ALLOWABLE EMISSION CONCENTRATIONS

Minn. Rules pt. 7023.1030, subp. 3, provides two tables containing maximum allowable emission concentrations to be used as pass/fail criteria for exhaust emission testing. Table 1 was effective until December 31, 1992, and Table 2 became effective on January 1, 1993. The amendment to subp. 3 removes Table 1. Table 2 replaces Table 1 as the current table containing maximum allowable emission concentrations. The amendment renames "Table 2" to "the Table" in this subpart.

The amendment is reasonable because after December 31, 1992, Table 1 was no longer in effect. It is also reasonable because Table 2 became effective on January 1, 1993, and subsequently renamed as "the Table." This change is also reflected in the amendment to Minn. Rules pt. 7023.1030, subp. 10 and 11.

4. CERTIFICATES OF EXTENSION AND EXEMPTION

The amendment to Minn. Rules pt. 7023.1010, subp. 23 and 24, changes the word "letter" to "certificate" and adds the word "contractor." Subparts 23 and 24 currently use the term "letter" to refer to a letter issued by the commissioner as an exemption (subp. 23) or extension (subp. 24) from testing. Updated policies and procedures no longer requires the MPCA to issue a separate letter for exemptions and extensions. One existing computerized form, the Certificate of Inspection, is used for issuing all program certificates. Additionally, the computerized system allows both the commissioner and the contractor to issue certificates, which was not contemplated in the original rule.

On July 1, 1992, the contract between our contractor, currently Envirotest Technologies, Inc., and the MPCA was amended to allow the issuance of certificates of exemption, annual exemption and temporary extension by the contractor at the inspection facilities. The MPCA also continues to issue a limited number of these certificates. One standardized computerized form is used by both the contractor and the MPCA for these certificates.

It is reasonable to make these changes to clarify that "letters" are no longer used and have been replaced with "certificates." Additionally, it is reasonable to make these changes to clarify that both the contractor and the MPCA issue certificates. This change is also reflected in amendments to Minn. Rules pt. 7023.1070, subp. 1 C, D, E, F, H and I, and subp. 2 A and B, Minn. Rules pt. 7023.1075, subp. B, Minn. Rules pt. 7023.1100, subp. B, and , Minn. Rules pt. 7023.1105, subp. 1.

5. CERTIFICATE OF EXTENSION

Minn. Rules pt. 7023.1070, subp. 1 A, B and C, establishes the criteria for issuing a letter of temporary extension if the vehicle or owner will not be available for an inspection during the 90 day period before the registration renewal. The owner must provide the reason for requesting the letter of temporary extension.

Since the implementation of the motor vehicle I/M Program on July 1, 1991, the MPCA has gained experience in operating the program. Because of this experience the MPCA has recognized that additional circumstances exist, other than a vehicle or owner not being available for inspection, when a temporary extension may be appropriate. The amendment to Minn. Rules pt. 7023.1070 replaces subp. 1 A and B and adds additional criteria under which a temporary extension may be issued.

Specifically the amendment to Minn. Rules pt. 7023.1070, subp. 1 A and B, replaces the word "certify" with the word "document" and establishes the following criteria under which a temporary extension may be issued.

- (1) The vehicle will not be available, due to the vehicle's absence or storage, or the owner's absence or illness, for an inspection within the state during the 90-day period before registration expiration. The owner must document that the vehicle or owner will not be available for inspection.
- (2) The vehicle has failed the initial inspection and additional time is needed for repair and reinspection.
- (3) The vehicle registration has been expired for at least twelve months or more.
- (4) The vehicle owner presents satisfactory evidence to the commissioner or the contractor which demonstrates that due to circumstances beyond the owner's control, the inspection could not have been completed prior to registration expiration.

The amendment is reasonable because it recognizes that additional circumstances exist for issuing a temporary extension and it clarifies under what circumstances a temporary extension may be issued. It is also reasonable to establish more than one criteria to accommodate the public in meeting the requirements of this rule when circumstances prevent an individual from completing all rule requirements by the date a vehicle's registration expires. For example, a motorist may not be able to reasonably complete repairs prior to the expiration of vehicle registration, but has been diligently attempting to meet the requirements in good faith. This is a reasonable ground for an extension, since the rule requires that the testing requirements be completed prior to the next registration or further extensions will not be granted.

Additionally, some motorists will allow registration to lapse for a year or more when not using a vehicle. These motorists need to renew their tabs before they drive even to the test station. A temporary extension will allow registration in this situation and then the motorist can fulfill testing requirements.

Finally, the rule amendment allows temporary extensions when circumstances beyond the owner's control prevent timely completion of testing requirements. For example, the timing of title transfer and sale may make it very difficult, in some circumstances, for a new owner to complete testing and registration requirements without an extension.

Minn. Rules pt. 7023.1070, subp. 1 C, provides that upon approval of the application by the commissioner, a letter of temporary extension shall be issued to the vehicle owner. The amendment to Minn. Rules pt. 7023.1070, subp. 1 C, provides that upon finding that the owner meets one or more of the criteria contained in subpart 1 B, the commissioner or contractor shall issue a certificate of temporary extension to the owner. The amendment is reasonable because it establishes specific criteria to be used by the commissioner and contractor when issuing temporary extensions.

Minn. Rules pt. 7023.1070, subp. 1 D 3, provides that an owner who has obtained a temporary extension shall have the vehicle inspected within 30 days of again operating the vehicle within the metropolitan area. The amendment removes this item and provides that the vehicle shall be inspected on or before the inspection due date indicated on the certificate of temporary extension. This is reasonable because the vehicle may already be operating within the metropolitan area at the time the temporary extension was issued and the rule is then unclear about when the testing must be completed. The inspection due date, as indicated on the certificate of temporary extension, is tailored to the reason the individual certificate is issued, and is therefore reasonable and clear to use for determining whether a vehicle owner has fulfilled the requirements of the rule in the time required.

6. CERTIFICATE OF ANNUAL EXEMPTION

Minn. Rules pt. 7023.1010, subp. 9, means that a vehicle, although registered to an owner residing in the metropolitan area, is kept outside the metropolitan area for a minimum of 11 months each

calendar year. The amendment to Minn. Rules pt. 7023.1010, subp. 9, changes the phrase "each calendar year" to "during the one-year registration renewal period." This is reasonable because annual exemptions are not valid for longer than the annual registration period, as opposed to the calendar year. Therefore, the phrase "each calendar year" is not applicable.

Minn. Rules pt. 7023.1070, subp. 2 A, establishes that an owner whose subject vehicle is customarily domiciled outside of the metropolitan area may apply to the commissioner for an annual exemption. Customarily domiciled is defined at Minn. Rules pt. 7023.1010, subp. 9, and means a vehicle is kept outside the metropolitan area for a minimum of 11 months during the one-year registration renewal period. The subpart does not establish any documentation requirements allowing the commissioner to determine where the vehicle is domiciled or for how long. This has led to uncertainties about what is required to obtain an annual exemption.

The amendment to Minn. Rules pt. 7023.1070, subp. 2 A, establishes a documentation requirement. This is reasonable because the documentation provides information to the commissioner or contractor to review and verify that the vehicle is in fact customarily domiciled elsewhere for the required 11 months during each one-year registration renewal period.

7. CERTIFICATE OF EXEMPTION

The amendment to Minn. Rules pt. 7023.1010 adds a definition for a certificate of exemption. The certificate of exemption is defined as a certificate issued by the commissioner or contractor for the exemption of a vehicle from vehicle inspection requirements as prescribed in part 7023.1070. It is reasonable to add this definition because this rule contains a provision which allows for an exemption and the amendment defines what an exemption is.

The amendment to Minn. Rules pt. 7023.1070 adds a new subpart 3 which establishes criteria for issuing a certificate of exemption. The exemption is necessary because the Department of Public Safety (DPS) can not always distinguish between a subject vehicle and a non-subject vehicle. An example of a vehicle improperly identified by the DPS as a subject vehicle would be a vehicle containing a diesel

engine. An owner whose vehicle is improperly identified by the DPS would need to have the vehicle certified at an inspection station as meeting the requirements of Minn. Rules pt. 7023.1010, subp. 35. The certificate of exemption is valid as long as the requirements of Minn. Rules pt. 7023.1010, subp. 35, are met, and provides proof to the DPS for registration purposes that the vehicle is not subject to emissions testing.

This amendment is reasonable because it provides a way to exempt vehicles that are not required to test. By identifying these vehicles with a certificate, only vehicles required to test will be tested. It is reasonable to certify a vehicle as exempt at an inspection station because the DPS does not identify these non-subject vehicles. It is also reasonable that the certificate of exemption be valid only for as long as the requirements are met, because a vehicle can be altered to no longer meet the exemption requirements, and then must be tested annually.

The amendment to Minn. Rules pt. 7023.1075 B adds certificate of exemption as evidence of meeting inspection requirements. This is reasonable because it provides proof to the DPS for registration purposes that the vehicle is not subject to emissions testing.

8. WAIVER PROVISIONS

The amendment to Minn. Rules pt. 7023.1055, subp. 1 C, changes the word "mechanic" to "automotive repair technician." Subpart 1 uses the term "mechanic" to refer to a person who performs automotive diagnosis and repair. The automotive repair industry no longer uses the term "mechanic" and has replaced it with "automotive repair technician." The amendment is reasonable because the term "automotive repair technician" is consistent with current industry and federal terminology and more accurately reflects the role of the person performing repairs in the automotive repair industry. The same word change occurs at Minn. Rules pt. 7023.1055, subp. 2 A, B, subp. 5, and Minn. Rules pt. 7023.1080, subp. 1 C, 2 J, 4, 5, and 6.

Minn. Rules pt. 7023.1055, subp. 1 D, requires the owner to complete a low emissions adjustment after the initial exhaust emission test and within 90 days before renewal of registration. The

amendment to Minn. Rules pt. 7023.1055, subp. 1 D, removes the 90 day requirement. Removing the 90 day requirement is reasonable because it allows a low emissions adjustment to be completed after failure of the emissions test. Since the owner must perform the low emission adjustment to get a waiver, the 90 day time period is not necessary. This change is also reflected in the amendment to Minn. Rules pt. 7023.1065, subp. 3.

Minn. Rules pt. 7023.1055, subp. 3 B, states that the MPCA shall distribute a standard form to be used by new car dealerships when documenting emission control system warranty eligibility. The amendment removes this requirement and is reasonable because new car dealerships have developed their own standard form for this purpose and the MPCA does not need to prepare this form anymore.

Minn. Rules pt. 7023.1055, subp. 6, establishes criteria for issuing a 30 day waiver to allow time for repair and reinspection after the registration renewal date. The amendment to Minn. Rules pt. 7023.1055 removes subpart 6 and therefore removes the 30 day waiver criteria. The amendment is reasonable because a way to allow time for repair and reinspection after the registration renewal date has been provided by the amendments to the temporary extension rule discussed above.

9. FLEET INSPECTION STATION PERMITS, PROCEDURES AND INSPECTION

Minn. Rules pt. 7023.1080, subp. 1, establishes the criteria for a fleet inspection station permit application. Subpart B, (1) to (5) lists specific tools and equipment necessary to make emission related repairs as part of the application. The amendment removes items (1) to (4), which are specific tools used for emission related repairs. A specific list is no longer necessary because the MPCA has learned by auditing fleet repair facilities, that these facilities have sufficient tools, beyond what is required on the list, to perform emission related repairs. Additionally some of the items on the list, such as the positive crankcase ventilation tester, are outdated and therefore no longer used for emission related repairs.

Minn. Rules pt. 7023.1080, subp. 1 C (2), allows a fleet permit applicant to enter into an agreement with the contractor for the contractor to perform emission tests on the applicant's fleet vehicles. The amendment removes subpart C 2 (2). This is reasonable because the contractor does not

need to enter into an agreement to test fleet vehicles since fleet vehicles are not uniquely identified and can be tested in the same manner as non-fleet vehicles. Additionally the MPCA, in its two years of operational experience, has determined that the inspection stations adequately accommodate the very small number of fleet vehicles tested. The MPCA has not received a single request for an agreement. This change is also reflected in amendments to Minn. Rules pt. 5023.1080, subp. 6 C, and Minn. Rules pt. 7023.1085, subp. A, B and C.

The amendment to Minn. Rules pt. 7023.1080, subp. 7, allows the MPCA to inspect fleet vehicles if requested by the commissioner. This is reasonable because the MPCA has the technical ability and equipment to meet the requirements of this subpart without using inspection stations in all cases.

Minn. Rules pt. 7023.1080, subp. 8, provides for an MPCA representative to audit a fleet station and "red tag" an analyzer if it does not pass the audit. Once an analyzer is "red tagged" it must not be used for testing until the "red tag" is removed by an MPCA representative. The amendment establishes a new audit procedure. Analyzers continue to be audited however, if an analyzer fails an audit, the analyzer may no longer be used for fleet emission testing until the MPCA determines that the analyzer has been properly repaired or calibrated. The analyzer may be used for purposes other than fleet testing until the MPCA representative determines that the analyzer passes the audit. This is reasonable because the process of "red tagging" is an outdated procedure and prevents the analyzer from being used for purposes other than fleet testing.

10. EXHAUST GAS ANALYZER SPECIFICATIONS, CALIBRATION AND QUALITY CONTROL

Minn. Rules pts. 7023.1090 and 7023.1095 defines gas analyzer specifications and establishes calibration procedures. The amendment removes both parts and replaces them with standardized specifications, calibration procedures and quality control measures contained in the new EPA rules governing motor vehicle I/M Programs. 57 Fed. Reg. at 53003 and 53012. The EPA rules are incorporated by reference as 40 CFR subpart S, appendix A and D. The amendment is reasonable

because it duplicates the new EPA rule requirements and establishes uniform, up-to-date criteria for exhaust gas analyzers.

11. OTHER

The following miscellaneous amendments are reasonable because they reflect the experience the MPCA has gained in operating the program. These amendments clarify changes in policy and procedure and are consistent with EPA rules governing motor vehicle I/M Programs. The amendments discussed below are minor because they address changes, additions and deletions and wording. These changes are discussed below.

1. The amendment to Minn. Rules pt. 7005.5010 adds a definition for dual exhaust. Dual exhaust is defined as two separate exhaust streams, one on each side of a vehicle's engine, both containing a catalytic converter and muffler. The definition is reasonable to clarify what dual exhaust is because a vehicle engine only has two sides and therefore no more than two exhausts. The term "multiple" implies that a vehicle may have more than two exhausts. A vehicle with dual exhaust needs to be inspected for each exhaust stream as described in Minn. Rules pt. 7023.1030.

The amendment to Minn. Rules pt. 7023.1030, subp. 1 D, changes the phrase "multiple exhaust" to "dual exhaust" consistent with the definition of dual exhaust in Minn Rules pt. 7023.1010. When referring to the word tailpipe, the amendment changes the word "all" to the word "both." This is also consistent with the definition of dual exhaust in part 7023.1010. The same change is reflected in the amendment to Minn. Rules pt. 7023.1030, subp. 6 B 6.

2. The amendment to Minn. Rules pt. 7023.1015, subp. 2 B (2), establishes an option for tax-exempt vehicles to be tested at an inspection station, as well as a fleet inspection station, with mutual agreement between the owner and the commissioner. Adding this option allows for testing to be conducted during any month. This is necessary because tax-exempt fleets may be either too large or not always available during their registration period in January and February of each year. These vehicles must still be tested each year under the rule.

3. The amendment to Minn. Rules pt. 7023.1020, subp. 2, allows the vehicle's license plate or Vehicle Identification Number (VIN) to identify the vehicle. This is reasonable because a vehicle entering the inspection station can be readily identified by the license plate or VIN displayed on the vehicle. The license plate and VIN uniquely identifies the vehicle for testing. If the license plate or VIN is not displayed then a registration renewal notice, registration card or title is acceptable.

4. The amendment to Minn. Rules pt. 7023.1030, subp. 1 A, allows the vehicle to be tested with the transmission in neutral or park if appropriate. Vehicle manufacturers recommend that some vehicles be tested in park, rather than neutral, to obtain an accurate idle test exhaust reading. The same change is reflected in the amendment to Minn. Rules pt. 7023.1030, subp. 9 A.

5. The amendment to Minn. Rules pt. 7023.1035, subp. C and D, removes the 30 day requirement and requires a reinspection to include both the exhaust emission test and tampering inspection. Removing the 30 day requirement is reasonable because it allows more flexibility and convenience for the owner to complete repairs and retest. The amendment is also reasonable because at 57 Fed. Reg. 52992, it reflects the new federal requirement that retests include the same elements as the initial test.

6. The amendment to Minn. Rules pt. 7023.1040, subp. 1 V, adds a space on the Vehicle Inspection Report for the person making repairs to record readings, if available, for carbon dioxide and oxygen. This is reasonable because the Vehicle Inspection Report currently does not contain space for this information. By providing additional space for these readings, repair facilities may record the information if available. This information is used by the MPCA to further assist vehicle owners in interpreting repair information.

7. The amendment to Minn. Rules pt. 7023.1040, subp. 2, clarifies that the contractor is responsible for completing items A to R on the Vehicle Inspection Report for fleet and nonfleet vehicles. The amendment is reasonable because the contractor uses the same Vehicle Inspection Report for all vehicles and makes no distinction between fleet and nonfleet vehicles.

8. The amendment to Minn. Rules pt. 7023.1105, subp. 1, removes the October 1 date. This amendment is reasonable because it provides for the MPCA and the DPS to make fee adjustments, if

necessary, at other times of the year. For example, the need for a contract change, resulting in a fee adjustment, may occur at times other than October. The overall statutory limit of \$10.00 for the fee remains in place.

9. The amendment to Minn. Rules pt. 7023.1105, subp. 2 A, requires that payments for additional reinspections be made to the contractor or registrar instead of the commissioner. The amendment is reasonable because the registrar, not the commissioner, collects fees. The amendment is also reasonable because in some instances the contractor collects fees for reinspection. This occurs when an extension has been issued and registration has been renewed even though testing has not been completed. The extension allows the owner to reregister and complete testing at a later date. Because of this, reinspection fees are sometimes collected at the inspection stations.

10. The amendment to Minn. Rules pt. 7023.1105, subp. 2 B, requires each elective inspection to be approved by the commissioner or contractor. The amendment also requires that the fee be paid to the contractor. This amendment is reasonable because the commissioner does not collect fees. It is reasonable to allow the contractor to approve requests for elective inspections because operational experience has shown that most of these requests occur at the inspection stations. Therefore, this amendment provides additional convenience for the public.

11. Renumbering. As a result of the amendments to Minn. Rules pts. 7023.1010 to 7023.1105, subparts of the rule have been renumbered accordingly.

V. SMALL BUSINESS CONSIDERATIONS IN RULE MAKING

Minn. Stat. § 14.115, subd. 2 (1990), requires the MPCA, when proposing rules which may affect small business, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

These rule amendments reflect changes in federal law and correct problems that have arisen in the MPCA's experience with the rule. These technical amendments do not change which vehicles are subject to testing under current rules or the frequency of testing, and is therefore not expected to effect costs of compliance for small businesses.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1990), to give due consideration to economic factors. The statute provides:

"In exercising all its powers the Minnesota Pollution Control Agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances."

In proposing the changes to Minn. Rules pt. 7023.1010 to 7023.1105, the MPCA has given due consideration to available information as to any economic impacts the proposed changes would have. No significant adverse economic impacts are anticipated to result from the adoption of the proposed rule changes, which reflect minor technical changes to the program, and changes mandated by EPA rules.

VII. AGRICULTURAL LANDS

The proposed rule amendments will not have a direct and substantial adverse impact on agricultural land in the state. See Minn. Stat. § 14.11, subd. 2 (1990).

VIII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7023.1010 to 7023.1105 are both needed and reasonable.

Dated: July 27, 1993

Ann Klumac, deputy
for Charles W. Williams
Commissioner

