ATTACHMENT 2

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the matter of the Proposed Motor Vehicle Inspection/Maintenance Rules 7005.5010 to 7005.5105.

STATEMENT OF NEED AND REASONABLENESS

Minnesota Pollution Control Agency
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I. INTRODUCTION

The Minnesota Pollution Control Agency (Agency) 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. 1988 Minn. Laws ch. 661 require the Agency to adopt standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions. The proposed rules limit the amount of carbon monoxide and hydrocarbons that may be emitted into the atmosphere from automobiles and pickup trucks with a carrying capacity of less than or equal to three-quarter ton. These standards vary depending on the model year of the vehicle. The proposed rules establish the requirements and procedures for inspection of these vehicles for compliance with these emission limits. The proposed rules also establish standards and procedures for the issuance of permits for fleet inspection stations.

The Agency staff formed a Technical Advisory Committee (TAC) to aid in the formulation of the draft rules. The TAC consisted of representatives from the Department of Public Safety, State Patrol, Metropolitan Council, the automotive industry, rental car agencies, American Automobile Association, automotive experts, hobbyists and the American Lung Association. Seven meetings, open to the public, were held from October of 1988 to February of 1989. At these meetings, Inspection/Maintenance issues were discussed and several recommendations were made by the TAC regarding the proposed rules.

On November 28, 1988 the Agency published a Notice of Intent to Solicit Outside Opinion on the draft rule. The Agency Air Quality Committee has been informed, at the January and February committee meetings, of the progress on the draft rule.

Upon approval from the Agency Board, the proposed rule and a Notice of Intent to Solicit Outside Opinion will be published in the State Register. The notice will also be mailed to approximately two hundred interested persons whose names are maintained on a mailing list by the Agency. This list includes governmental officials, industry representatives, citizens and organizations which have expressed an interest in the Inspection/Maintenance Rules.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat., section 116.62 (1988), which provides:

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

Subd.2. Criteria and standards.(a) The Agency 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 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 Agency has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minn. Stat., sections 14.14, subd. 2 and 14.23 (1988) require an Agency 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 Agency 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 Agency is a proper one. The need for the rules is discussed below.

The need for these rules arises from the following sources:

1. The need for compliance in Minnesota with National and State Ambient Air Quality Standards for carbon monoxide and ozone. These standards have been established by the U.S. Environmental Protection Agency (EPA) in 40 C.F.R. part 50; and Minn. Rules parts 7005.0010 to 7005.0117.

2. The need to comply with the requirements in Minn. Stat., sections 116.60 to 116.65 (1988).

A. Compliance with National Ambient Air Quality Standards for Carbon Monoxide and Ozone.

EPA has adopted National Ambient Air Quality Standards (NAAQS) for carbon monoxide 1/ and ozone, based upon the levels at which those pollutants may be present in the atmosphere without causing damage to public health or welfare. The federal carbon monoxide eight-hour standard is an average of no more than nine parts per million over an eight-hour period; the one-hour standard is an average of no more than thirty five parts per million (40 C.F.R. part 50, subsection C). The State carbon monoxide eight-hour standard is an average of no more than nine parts per million over an eight-hour period; the one-hour standard is an average of no more than thirty parts per million (Minn. rules, part 7005.0080). The ozone standard is a one-hour average of 120 parts per billion. Hydrocarbon emissions are a precursor to ozone formation in the atmosphere.

1/ Carbon monoxide is a pollutant which, in high enough concentrations, poses a danger to public health and the environment. Its effects are due to its ability to combine with hemoglobin. Since it is the hemoglobin that must carry oxygen throughout the body, high carbon monoxide levels lead to hemoglobin cells carrying carbon monoxide rather than oxygen and results in oxygen starvation to the body. This can be especially serious for people whose respiratory systems are already damaged. It is also especially true for fetuses, those who are suffering from heart disease, anemia (low hemoglobin levels), lung disease and those who have constriction of arteries to the brain. People breathing high concentration of carbon monoxide may experience a slowing of responses, including reduced vigilance, visual perception, manual dexterity, reduced ability to perform complex tasks, reduced birth weight and greater risk of death at birth for newborn babies. This information was provided by the EPA.

Motor vehicles are a source of carbon monoxide. Although EPA regulates the amount of carbon monoxide emissions new motor vehicles may emit (40 C.F.R. part 85, subpart W), gasoline powered motor vehicles still make a significant contribution to ambient carbon monoxide levels in urban areas. Passenger vehicles and light duty trucks are estimated to contribute more than 65 percent of the carbon monoxide emissions for the Twin Cities area. This percentage is thought by EPA to be conservative (personal communication, EPA, Ann Arbor, Michigan).

When the Agency began monitoring ambient air quality, several areas in the State were in violation of ambient carbon monoxide standards: St. Paul, Minneapolis, Duluth, Rochester and St. Cloud. Plans were developed to address the carbon monoxide problem in those cities. Those plans included strategies to improve traffic flow and thus prevent concentrations of automobile emissions in one place. All of the measures required in the plans for the Twin Cities metropolitan area have been or soon will be implemented. For example, many streets in downtown St. Paul and Minneapolis were made into one-way pairs, traffic lights were better timed, and intersections, bus stops and turn lanes were improved to help move traffic along. Finally, public transit plans were improved to help reduce the number of vehicles on certain routes.

These improvements successfully reduced carbon monoxide levels at the monitored "hot spot" intersections. However, EPA has investigated the situation in Minnesota and has concluded that in the Twin Cities metropolitan area, violations of carbon monoxide standards are not limited to one or two hot spots but involve a much wider area. If the Twin Cities metropolitan area does not attain compliance with carbon monoxide standards, the EPA has the authority

to impose sanctions on the Twin Cities metropolitan area. Those sanctions may include the denial of federal funds for sewer separation and highway construction (Clean Air Act, as amended). The EPA may also ban further development or construction within the area. Because of this, the EPA required the State of Minnesota to determine by December 1987 whether an intersection-by-intersection control strategy would solve the carbon monoxide problem or whether an area-wide control strategy, such as a vehicle Inspection/Maintenance program, would be necessary.

The Agency addressed this question by conducting additional carbon monoxide monitoring in the metropolitan area and by modeling various intersections to determine how wide spread the carbon monoxide problem was. The Agency determined, from this analysis, that the carbon monoxide problem was not limited to specific intersections but was an area-wide problem. The Agency concluded that an Inspection/Maintenance program for the seven county metropolitan area would result in the additional control of carbon monoxide emissions from motor vehicles and was the appropriate strategy for bringing the area into compliance with ambient carbon monoxide standards. Therefore there is a need for an Inspection/Maintenance program for the metropolitan area.

Motor vehicles are also a source of hyrdocarbon emissions. Hydrocarbon has been found to react with sunlight and oxides of nitrogen to form ozone. Passenger vehicles and light duty vehicles are estimated to contribute more than 40 percent of the hydrocarbon emissions for the seven county metropolitan area. The EPA has established the NAAQS for ozone, which is very close to being exceeded in the metropolitan area. If no steps are taken to reduce the amount of hydrocarbons being emitted into the atmosphere, the Twin Cities will

most likely become an ozone nonattainment area. Establishment of an Inspection/Maintenance program in the Twin Cities metropolitan area will help to control automobile emissions of hydrocarbons. Therefore, there is a need to establish an Inspection/Maintenance program for the metropolitan area.

B. Need to Comply with Minn. Stat., sections 116.60 to 116.65 (1988).

After identifying the need for an Inspection/Maintenance program in Minnesota, the Agency sought from the Minnesota legislature the enactment of legislation establishing such a program in Minnesota. 1988 Minn. Laws, ch. 661, codified as Minn. Stat., sections 116.60 to 116.65 (1988), establishes the authority for the program and charges the Agency with the necessary powers and duties to adopt rules to establish and administer the program.

In order for the Agency to comply with the directive of Minn. Stat., sections 116.60 to 116.65, there is a need for the Agency to adopt rules to establish and administer an Inspection/Maintenance program in the Twin Cities metropolitan area.

III. STATEMENT OF REASONABLENESS

The Agency 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 Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The Agency approached the need to adopt rules for an Inspection/Maintenance program in the Twin Cities metropolitan area by closely examining its rulemaking authority set forth in Minn. Stat, section 116.62 (1988). Subdivision 2 of the statute requires that the rules establish:

(a) standards and criteria for testing and inspection of motor vehicles for air pollution emissions;

(b) maximum pollutant emissions for motor vehicles;

(c) testing procedures and standards for test equipment;

(d) standards and procedures for issuance of licenses for fleet inspection stations; and

(e) standards and procedures for fleet inspection rules.

The Agency has addressed all of these requirements in the proposed rules and has, in addition, drafted the rules to be consistent with program requirements specified in Minn. Stat., sections 116.60 to 116.65 (1988). This approach to addressing the need for an Inspection/Maintenance program in the Twin Cities metropolitan area is therefore reasonable.

B. Reasonableness of Individual Rules.

The following discussion addresses the specific provisions of the proposed rules.

Part 7005.5010, Definitions

This proposed rule sets forth 39 definitions of words or phrases used within the rules. These definitions are discussed below.

Subpart 1. Scope. This subpart states that the definitions in part 7005.0100 of the Air Quality Rules apply to the terms used in parts 7005.5010 to 7005.5105, unless the terms are defined in this part. Because the proposed rules are a part of the Air Quality Rules, it is reasonable to use the same definitions as those used in other parts of the Air Quality program in order to achieve consistency within the air quality program.

Subp. 2. Agency representative. "Agency representative" is defined in the proposed rule as an Agency employee or contractor designated by the Commissioner to conduct inspections and tests, gather information and perform other activities related to vehicle inspection and testing. It is reasonable to define this term in order to identify the person or persons who will be authorized to act on behalf of the Agency in the Inspection/Maintenance program.

Subp. 3. Calibration gas. The proposed rule defines "calibration gas" as a gas or gas mixture of known concentration that is used to establish the response curve of an emission analyzer. It is reasonable to define this term to assure that instrumentation is calibrated with gases of known quality so that accurate test results will be obtained.

Subp. 4. Certificate of compliance. "Certificate of compliance" is defined as a serially numbered inspection report marked "passed" indicating that a motor vehicle complies with the requirements of parts 7005.5010 to 7005.5105. It is reasonable to define this term because the substantive requirements of the rule provide that the vehicle's owner must be provided with written documentation that the vehicle has passed inspection and received a certificate of compliance.

Subp. 5. Certificate of waiver. "Certificate of waiver" is defined as a serially numbered inspection report marked "waived" indicating that a motor vehicle complies with the requirements of part 7005.5055. It is reasonable to define this term because the substantive requirements of the rule provide that the vehicle's owner be provided with written documentation that the vehicle has met the requirements of the waiver and received a certificate of waiver.

Subp. 6. Commissioner. "Commissioner" is defined as the Commissioner of the Minnesota Pollution Control Agency. It is reasonable to define this term because the legislature has changed the title of the Agency's chief executive office from "Director" to "Commissioner." See 1987 Minn. Laws ch. 186, section 15.

Subp. 7. Constant four-wheel drive vehicle. "Constant four-wheel drive vehicle" is defined as any four-wheel drive vehicle which cannot be converted to two-wheel drive except by removing one of the vehicle's drive shafts. It is reasonable to define this term in order to clarify what a four-wheel drive vehicle is because four-wheel drive vehicles are not able to

be preconditioned on a chassis dynamometer and would be preconditioned using an alternate method.

Subp. 8. Contractor. The proposed rule defines "contractor" as a person, business firm, partnership or corporation with whom the Agency has a contract that provides for the operation of one or more inspection stations. It is reasonable to define this term because contractors will be conducting inspections under supervision of the Agency.

Subp. 9. Customarily domiciled. The term "customarily domiciled", which is used in the rules with respect to motor vehicles, means a vehicle, although registered to an owner residing in the metropolitan area, is kept outside the seven county metropolitan area for a minimum of 11 months each calendar year and not generally used for transportation within the metropolitan area. It is reasonable to define this term because a vehicle that is "customarily domiciled" outside the seven county metropolitan area may be eligible for an annual exemption. This is necessary to distinguish which vehicles are to be inspected. It is reasonable to select 11 months as the time period because a motor vehicle kept in a place for the great majority of the year is considered by most people to be "domiciled" there.

Subp. 10. Dealer. The proposed rules states "dealer" has the same meaning given in Minnesota Statutes, section 168.27. It is reasonable to define this term by reference to statute because the reference establishes the definition.

Subp. 11. Department. "Department" means the Department of Public Safety. It is reasonable to define this term in order to identify the Department of Public Safety in a shorthand manner. The Department of Public Safety is responsible for all vehicle registrations. Vehicle registrations will be utilized in the application of this rule.

Subp. 12. Drive wheels. The term "drive wheels" is defined as the pair of wheels that propel a vehicle. It is reasonable to define this term in order to establish which wheels will be placed on the chassis dynamometer.

Subp. 13. Emission control equipment inspection. "Emission control equipment inspection" is defined as the inspection of the emission control equipment conducted by the waiver surveillance inspector as described in part 7005.5060. It is reasonable to define this term to distinguish which inspection the waiver surveillance inspector will be conducting. The definition distinguishes the term from another similar term, "tampering inspection" as used, for example, in part 7005.5025.

Subp. 14. Emission inspector. The proposed rule defines "emission inspector" as the individual who performs the vehicular exhaust emission test and inspection for the contractor. It is reasonable to define this term in order to establish who specifically will be conducting the inspections of subject vehicles.

Subp. 15. Exhaust emissions. "Exhaust emissions" is defined as substances emitted into the atmosphere from the tailpipe of a motor vehicle. It

is reasonable to define this term to establish what emissions are to be tested. The exhaust emission test will be conducted on the gases from the tailpipe.

Subp. 16. Field audit gas. The proposed rules define "field audit gas" as a gas with assigned concentrations that is required to check the accuracy of an emission analyzer and the calibration gas used by inspection stations, fleet inspection stations and vehicular repair facilities. It is reasonable to define this term because the field audit gas will be used in a quality assurance check on emission analyzers. It is necessary and reasonable to verify the accuracy of emission analyzers to assure correct exhaust emission test results.

Subp. 17. Fleet inspection station. "Fleet inspection station" is defined as a facility for the inspection of motor vehicle fleets operated under a permit issued by the Agency under part 7005.5080. It is reasonable to define this term because Minn. Stat., section 116.62, subd. 4 authorizes the inspection of fleet vehicles at permitted fleet inspection stations.

Subp. 18. Fleet owner. "Fleet owner" is defined as any owner of at least 50 subject vehicles, or two or more persons each owning 25 or more subject vehicles. It is reasonable to define this term to clarify who a fleet owner is. The definition is reasonable because it is consistent with Minn. Stat., section 116.62. subd. 4(b) as the number of vehicles constituting a fleet.

Subp. 19. Fleet vehicle. "Fleet vehicle" is defined as a subject motor vehicle owned by a person holding a fleet inspection station permit. It

is reasonable to define this term to clarify that a fleet vehicle must be owned by the fleet permittee in order to be tested at the fleet inspection station.

Subp. 20. Idle mode test. The proposed rule defines "idle mode test" as an exhaust emission test conducted with the vehicle at idle. It is reasonable to define this term because the exhaust emission test will be conducted while the vehicle is at idle.

Subp. 21. Inspection report. "Inspection report" is defined as a document issued by an inspection station or fleet inspection station that indicates the vehicle has been inspected in accordance with parts 7005.5010 to 7005.5105. It is reasonable to define this term because elsewhere in the rules it is required that the vehicle owner be provided with written documentation of the result of the inspection.

Subp. 22. Inspection station. The proposed rule defines "inspection station" as a facility for motor vehicle inspection operated under contract with the Agency. It is reasonable to define this term to clarify where vehicles will be inspected.

Subp. 23. Letter of annual exemption. "Letter of annual exemption" is defined as a letter issued by the Commissioner for the annual exemption of a vehicle from the State vehicle inspection requirements as prescribed in part 7005.5070. It is reasonable to define this term because the rules contain a provision allowing an exemption from testing to be obtained in certain cases. The letter serves as verification of the exemption.

Subp. 24. Letter of temporary extension. "Letter of temporary extension" is defined as a letter issued by the Commissioner for the extension of the time period for a vehicle to meet State vehicle inspection requirements as prescribed in part 7005.5070. It is reasonable to define this term because the rules allow some vehicles that are outside the seven county metropolitan area or are unavailable when inspection is required, to obtain a temporary extension. For example, vehicles that require inspection during the winter months but are being stored during these months could receive a letter of temporary extension and be tested when they are no longer being stored. The letter serves as verification of the temporary extension.

Subp. 25. Loaded mode. The proposed rule defines "loaded mode" as operation of a vehicle at approximately 30 miles per hour on the chassis dynamometer as prescribed in part 7005.5030, subp. 6. It is reasonable to define this term to distinguish a loaded mode condition from an idle condition. Preconditioning of a vehicle subject to this rule may be conducted under loaded mode conditions on a chassis dynamometer, whereas exhaust emission testing is conducted with the vehicle at idle.

Subp. 26. Low emission adjustment. "Low emission adjustment" is defined as diagnostic or repair procedures which are likely to improve carbon monoxide and/or hydrocarbon emissions and are included on a list established by the Commissioner, under part 7005.5065, subp. 4. It is reasonable to define this term because elsewhere in the rules the Commissioner is required to establish a list of diagnostic or repair procedures, referred to as the low emission adjustment, which must be performed in order to obtain a certificate of waiver.

Subp. 27. Metropolitan area. In the proposed rules the term "metropolitan area" has the meaning given in Minn. Stat., section 473.121. It is reasonable to define this term by reference as the definition is commonly used throughout Minnesota. This rule applies to vehicles registered in the seven county metropolitan area.

Subp. 28. Model year. "Model year" is defined as the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer. If the manufacturer does not designate a production period, the term "model year" is defined as the calendar year. It is reasonable to define this term because model year is the basis for determining the motor vehicles subject to inspection. Vehicles with a model year older than 1976 are not subject to inspection under this rule as required by statute.

Subp. 29. Motor vehicle or vehicle. "Motor vehicle" or "vehicle" is defined as a passenger automobile, station wagon, pickup truck, or van, as defined in Minn. Stat., section 168.011, licensed for use on the public streets and highways; or a passenger automobile, station wagon, pickup truck or van exempt from registration or fees under Minn. Stat., section 168.012, subd. 1 or 437.448. The first clause of this definition is reasonable because it is consistent with Minn. Stat., section 116.60, subd. 7 (1988). The second clause of the definition is reasonable because it is consistent with the inspection requirements of Minn. Stat., section 116.61, subd. 1 (1988).

Subp. 30. Nonfleet vehicle. "Nonfleet vehicle" is defined as any subject vehicle (as defined in subp. 35) except for a subject vehicle owned by

a person holding a fleet inspection station permit. It is reasonable to define this term to clarify that vehicles that are not fleet vehicles are subject to inspection under this rule by the Agency's contractor and not by a fleet owner.

Subp. 31. Owner. "Owner" is defined as "registered owner" as defined in Minn. Stat., section 168.011, subd. 5a. It is reasonable to define this term by reference to ensure consistency with an existing definition.

Subp. 32. Registrar. "Registrar" is defined as the registrar or deputy registrar of motor vehicles under Minn. Stat., section 168.33. It is reasonable to define this term by reference in order to clarify who is responsible for the registration of vehicles.

Subp. 33. Rescue vehicles. "Rescue vehicles" is defined as vehicles that are used for rescue operations. It is reasonable to define this term to identify one type of vehicle that is not subject to inspection under the rules.

Subp. 34. Span gas. "Span gas" is defined as a gas of known concentration that is used routinely to set the output level of an emission analyzer. It is reasonable to define this term because elsewhere in the rules span gases are required to be used to check emission analyzers for accuracy of operational performance.

Subp. 35. Subject vehicle. The proposed rule defines "subject vehicle" as a nontax-exempt motor vehicle registered to an owner residing in the metropolitan area or a tax-exempt motor vehicle in the metropolitan area except:

A. a motor vehicle manufactured before the 1976 model year;

B. a motor vehicle with an engine manufactured for a model year before 1976;

C. a motor vehicle registered as classic, pioneer, collector, or street rod under Minn. Stat., section 168.10;

D. a motor vehicle powered solely by diesel fuel, electricity, natural gas, propane, pure alcohol, or hydrogen;

E. a motor vehicle powered solely by a diesel cycle engine; and

F. fire apparatus, ambulances and rescue vehicles.

It is reasonable to define subject vehicle to establish which vehicles are subject to inspection and testing.

Items A to C of the proposed rule states that the definition of subject vehicle does not include motor vehicles manufactured before the 1976 model year; vehicles with an engine manufactured before 1976; or a vehicle registered as classic, pioneer, collector or street rod. It is reasonable that the definition of subject vehicle does not include vehicles older than 1976, vehicles with engines older than 1976, and vehicles registered as classic, pioneer, collector or street rod because these vehicles are generally more than 20 years old, or are specially built to resemble old vehicles, do not have the pollution control equipment found on more modern cars, such as catalytic

converters, and are allowed to burn leaded gasoline. The Agency believes that only a small number of vehicles will qualify for this exemption. These clauses are also reasonable because they are consistent with Minn. Stat., section 116.61, subd. 2 (1988).

Item D of the proposed rule states that the definition of subject vehicle does not include vehicles powered solely by diesel fuel, electricity, natural gas, propane, pure alcohol, or hydrogen. Item E of the rule states that the definition of subject vehicle does not include motor vehicles powered solely by diesel cycle engines. As discussed previously, gasoline powered motor vehicles are estimated to contribute more than 65 percent of the carbon monoxide emissions for the Twin Cities' area. It is reasonable that the definition of subject vehicle does not include vehicles powered solely by diesel fuel, electricity, natural gas, propane, pure alcohol, or hydrogen because motor vehicles powered solely by these sources of fuel do not contribute significant amounts of carbon monoxide compared to gasoline powered vehicles. EPA estimates that these vehicles contribute less than one percent of the carbon monoxide emissions for the Twin Cities area (personal communication, EPA, Ann Arbor, Michigan, April 1989). The Agency believes that there are very few of these vehicles in the metropolitan area.

Item F of the proposed rule states that the definition of subject vehicle does not include fire apparatus, ambulances and rescue vehicles. It is reasonable that the definition of subject vehicle not include fire apparatus, ambulances and rescue vehicles because this clause is consistent with Minn. Stat., section 116.61, subd. 2 (1988). The statute states that any class of motor vehicle is exempted if the vehicles are inappropriate for inspection.

These vehicles are inappropriate for inspection because these vehicles are needed to ensure the health and safety of the public. Removal of these vehicles from service may adversely affect emergency and rescue operations particularly in the more rural areas of the metropolitan area. Staff believes that these vehicles do not contribute a significant amount of carbon monoxide to the metropolitan area. The Agency believes that there are only a few of these vehicles in the metropolitan area.

Subp. 36. Tampering inspection. "Tampering inspection" is defined as the inspection of the catalytic converter, fuel inlet restrictor and the gas cap conducted by the emission inspector under part 7005.5025. It is reasonable to define this term to distinguish it from the term "emission control equipment inspection", which is conducted by a waiver surveillance inspector.

Subp. 37. Tax-exempt. "Tax exempt" is defined as exempt from license fees under Minn. Stat., section 168.012, subd. 1, or Minn. Stat., section 473.448. It is reasonable to define this term by reference to ensure consistency with an existing definition. Tax-exempt motor vehicles are subject to inspection.

Subp. 38. Waiver. "Waiver" is defined as the act of excusing a motor vehicle from complying with part 7005.5050, subp. 2. It is reasonable to define this term because a waiver may be granted under specific conditions of this rule.

Subp. 39. Waiver surveillance inspector. The proposed rule defines "waiver surveillance inspector" as the Agency employee or contractor charged

with performing the emission control equipment inspection, and approving or disapproving applications for certificates of waiver. It is reasonable to define this term to establish what a waiver surveillance inspector does and that the inspector is an Agency employee or contractor.

Part 7005.5015, Inspection Requirement.

Subpart 1 of the proposed rule establishes the basic requirement that subject vehicles must be inspected annually at an inspection station or a fleet inspection station in accordance with Minn. Stat., sections 116.60 to 116.65 and these rules. This rule is reasonable because it is consistent with the inspection requirements established in Minn. Stat., section 116.61, subd. 1 (1988).

Subpart 2 establishes a schedule for the timing of inspections depending upon the type of inspection station at which the vehicles are to be inspected (inspection station or a fleet inspection station). Nontax-exempt subject vehicles are required to be inspected within 90 days before expiration of current registration at an inspection station or fleet inspection station and tax-exempt vehicles will be inspected during the months of January and February if the inspection is done at an inspection station. If the inspection of a tax-exempt vehicle is done at a fleet inspection station, the owner may designate and the Commissioner may approve a different schedule for the inspection.

It is reasonable to include a schedule for inspections. The schedule included in subpart 2 is consistent with the Department of Public Safety's

schedule for registration of nontax-exempt vehicles. With the exception of the months of January and February, the re-registration of nontax-exempt vehicles is scheduled on a monthly basis according to the first initial of the owner's last name. Requiring nontax-exempt vehicles to be inspected within the 90 days prior to registration renewal is consistent with requirements for inspection in Minn. Stat., section 116.61, subd. 1 (b), and provides a convenience for owners and is therefore reasonable.

It is reasonable to inspect tax-exempt vehicles at an inspection station during the two months of the year when there will be fewer nontax-exempt motor vehicles that will need to be inspected at the inspection station. It is also necessary and reasonable to allow tax-exempt fleet vehicles to be inspected annually at the fleet inspection station at times other than January and February, as designated by the owner and approved by the Commissioner, to accommodate the operation requirements of the tax-exempt fleets.

Subpart 3 of the proposed rule allows subject vehicles that have failed the tampering inspection or an exhaust emission test to be reinspected under the conditions of part 7005.5035. It is reasonable to allow an owner to have his or her vehicle reinspected if the vehicle has not passed the inspection because, if the owner has taken the corrective actions necessary as a result of the inspection, it is fair to give the owner another opportunity to pass the inspection.

Part 7005.5020, Description of Inspection and Documents Required.

Subpart 1 states that, except as provided in part 7005.5035, item D, the inspection shall consist of a tampering inspection and an exhaust emission test. The inspection is required to be performed at an inspection station or fleet inspection station. The exception in the rule relates to reinspections, in which only those areas that failed the previous inspection will be inspected. It is reasonable for an inspection to include a tampering inspection because the items are necessary components of a vehicle's emission control system (Minn. Rules part 7005.1190 and the Clean Air Act, as amended). It is reasonable to include an emission test because the emission test determines whether a vehicle meets the applicable exhaust emission standards. It is reasonable to require that the inspection be conducted at an inspection station or fleet inspection station because these are the facilities which the Agency has determined to have the proper equipment and qualified personnel to conduct the inspection.

Subpart 2 requires each vehicle that is inspected at an inspection station to be accompanied by one of the following documents that identifies the vehicle by make, model year, vehicle identification number, license plate number, and registered owner's name and address: a current Minnesota registration renewal notice, a current Minnesota registration card, or a Minnesota certificate of title.

Subpart 2 is reasonable because it specifies which documents contain adequate information (vehicle's make, model year, vehicle identification number, license plate number, and registered owner's name and address) to

uniquely identify the vehicle. This is necessary so a record can be established and maintained for each vehicle. It is also reasonable to require one of these documents to be presented at the time of inspection so the inspector can verify that the appropriate vehicle is being inspected and as a protection to the owner of the vehicle.

Part 7005.5025, Tampering Inspection.

This part states that a visual inspection shall be conducted for the unvented fuel cap, a fuel inlet restrictor and a catalytic converter if the vehicle was equipped with these items at the time of manufacture. If an unvented cap is not in place, the tampering inspection continues and the owner will be advised to replace the fuel cap. If the fuel inlet restrictor or catalytic converter is not in place or is damaged, the vehicle shall fail the tampering inspection, except as provided in item C and D, and the owner must replace the fuel inlet restrictor and the catalytic converter.

Requiring a visual inspection for the presence of a fuel inlet restrictor and a catalytic converter is necessary and reasonable because these items are major components of a vehicle's emission control system. For the same reason, it is reasonable to fail the vehicle if these items are not in place or are damaged (Minn. Rules part 7005.1190 and the Clean Air Act, as amended). Otherwise, a vehicle will be allowed back on the street without important pollutant controls in place.

It is reasonable to require a visual inspection of the unvented fuel cap. The unvented fuel cap prevents the release of hydrocarbons into the

atmosphere which in turn reduces ozone and toxic air pollutants. The unvented fuel cap, however, is not critical to the functioning of the catalytic converter or the fuel inlet restrictor and has little or no effect on carbon monoxide emissions. It is therefore necessary and reasonable to inspect for the presence of the unvented fuel cap but allow the tampering inspection to continue if the unvented fuel cap is missing, so long as the owner is then notified that the unvented fuel cap should be replaced.

Item A states that if the catalytic converter is not in place or is damaged, the owner shall replace the catalytic converter. This is reasonable because a catalytic converter is necessary to reduce carbon monoxide and hydrocarbon emissions. This is also reasonable because Minn. Stats., section 325E.0951 and Minnesota Rules, part 7005.1190 require that vehicles be equipped with catalytic converters. If the fuel inlet restrictor is not in place or is damaged, the owner shall repair or replace the fuel inlet restrictor and replace the catalytic converter. It is reasonable to require replacement of the catalytic converter if the fuel inlet restrictor is missing or damaged because it is likely that the vehicle has been fueled with leaded gas, which results in a non-functional catalytic converter. The rule requires that fuel inlet restrictors must be replaced with original manufacturer's equipment or equivalent. Catalytic converters must be replaced with either original manufacture's equipment or new after-market equipment that is certified by the EPA. This is reasonable to guarantee that the replacement catalytic converter will function properly.

Item B states that in a dispute over tampering, the owner or operator may elect to leave the tampering inspection area and seek proof of nontampering

and return to the same inspection station, with documentation, within 20 days and continue with the tampering inspection. The continuation of the inspection under this item shall not be billed to the Agency. This is reasonable because it allows the owner or operator an opportunity, within a reasonable time period, to provide information or documentation that the vehicle has not been tampered with (i.e., the vehicle was not originally equipped by the manufacturer with the emission control device in question). If the owner or operator can provide satisfactory evidence that tampering has not occurred, the inspector will complete the tampering inspection. This rule also provides that continued tampering inspections shall not be billed to the Agency. Because the tampering inspection has not been concluded until the owner or operator has had the opportunity to resolve a dispute, it is reasonable for the Agency not to be billed until the tampering inspection is complete.

Item C states that if the vehicle owner provides to the waiver surveillance inspector a release letter from the EPA addressed to the U.S. Customs Service granting the vehicle exemption from federal emission requirements, the vehicle shall pass the tampering inspection. It is reasonable to allow these vehicles to pass the tampering inspection because of equity and conformance to federal policy. The Agency believes that there are very few of these vehicles in the metropolitan area.

Item D states that if the vehicle owner presents satisfactory evidence and signs an affidavit certifying to the waiver surveillance inspector that the vehicle is a show car and that the vehicle is not generally used for transportation, the vehicle shall pass the tampering inspection. Show cars are considered to be cars used for show purposes or exhibitions and not generally

used for transportation. This item is reasonable because it provides a mechanism for those cars that are not generally used for transportation, and therefore which are not contributing emissions to the metropolitan area, to be excluded from the tampering inspection. The Agency believes that there are few of these vehicles in the metropolitan area that would be subject to this rule (personal communication, Minnesota Street Machine Association, April 1989).

Part 7005.5030, Exhaust Emission Test.

Subpart 1 states that exhaust emission testing shall be conducted in accordance with 40 C.F.R. section 85.2212, as amended. The test will be conducted with the vehicle at idle and the transmission in neutral, the engine running at normal operating temperature with all accessories off, and with the vehicle positioned nearly level. If a vehicle has multiple exhaust pipes, the exhaust pipes may be tested simultaneously and the results averaged for each pollutant.

Requiring testing to be conducted in accordance with the C.F.R. is reasonable because this test procedure is accepted and approved by the EPA after extensive testing of emissions from a wide variety of motor vehicles, and in consideration of federal motor vehicle emission standards. A test at idle was selected as the appropriate test because it is approved by the EPA, is effective in obtaining accurate test results, and will make the testing process convenient for the public.

It is reasonable to test multiple exhaust pipes simultaneously and average the results for each pollutant because that will give an accurate analysis of the exhaust emissions from the vehicle.

Subpart 2 states that the exhaust emission test consists of sampling the exhaust emission from the tailpipe and measuring the concentration of hydrocarbon as hexane, carbon monoxide and carbon dioxide. Exhaust emission concentrations must be recorded after stabilized readings are obtained or at the end of 30 seconds, whichever occurs first. Hydrocarbons and carbon monoxide are air pollutants emitted from motor vehicles and regulated by this rule. The intent of the Inspection/Maintenance program is to reduce the amount of carbon monoxide and hydrocarbons emitted into the atmosphere from automobiles. Therefore, it is reasonable to test for the concentrations of these gases.

It is also reasonable to measure these gases after the exhaust flow has stabilized, or at the end of 30 seconds, in order to provide accurate test results. Measuring the gases earlier than that could result in inaccurate test results because the catalytic converter would not be warmed up.

Although carbon dioxide is not a pollutant regulated by this rule, the required measurement of carbon dioxide concentration is used to indicate any exhaust system leakage. Leakage in excess of 4% carbon dioxide by volume will dilute the concentration of gases being tested and will invalidate the exhaust emission test results. Therefore, to obtain a valid exhaust emission test result it is necessary to measure the concentration of carbon dioxide.

Subpart 3 establishes the maximum allowable concentrations of hydrocarbons as hexane and carbon monoxide from the exhaust emission system. Table 1 is in effect until December 31, 1992 and Table 2 will take effect on January 1, 1993. Hydrocarbons are measured as hexane (40 C.F.R. part 85, subp. W).

Table 1

TABLE OF MAXIMUM ALLOWABLE EMISSION CONCENTRATIONS
EFFECTIVE UNTIL DECEMBER 31, 1992

Model Year	Maximum Allowable Emission Concentrations	
	Hydrocarbons as hexane (parts per million of exhaust)	Carbon Monoxide (as a percent of exhaust)
1976-77	600	6.0
1978-79	400	4.0
1980	275	2.5
1981 and later	220	1.2

Table 2

TABLE OF MAXIMUM ALLOWABLE EMISSION CONCENTRATIONS
EFFECTIVE JANUARY 1, 1993

Model Year	Maximum Allowable Emission Concentrations	
	Hydrocarbons as hexane (parts per million of exhaust)	Carbon Monoxide (as a percent of exhaust)
1976-77	600	5.5
1978-79	400	3.5
1980	275	2.0
1981 and later	220	1.2

The maximum allowable emission concentrations contained in Tables 1 and 2 are reasonable because they have been set at levels that the Agency believes

will result in a reduction in the amount of carbon monoxide and hydrocarbons emitted into the atmosphere by motor vehicles. The allowable emission standards for 1981 and later model year vehicles are the same as the standards set by EPA regulations in 40 C.F.R. part 85, subpart W. The standards for 1980 and earlier motor vehicles were based on a review of the maximum emission levels for motor vehicles set forth in rules adopted by other States (refer to Table 3) and were based on the EPA's recommendations. It is reasonable to base the maximum allowable standards for hydrocarbons as hexane and carbon monoxide on the concentrations published in rules adopted by other States and EPA recommendations because it has been their experience that the standards adopted in other States are appropriate to reducing the level of carbon monoxide and hydrocarbons emitted by motor vehicles and to attain compliance with National Ambient Air Quality Standards for carbon monoxide and maintain compliance with ozone National Ambient Air Quality Standards in metropolitan areas.

Table 3

COMPARISON OF MAXIMUM ALLOWABLE EMISSION CONCENTRATIONS IN OTHER STATES 2/

Model Year	Hydrocarbons (parts per million)	Carbon Monoxide (percent of exhaust)
Maryland		
1977	500	6.0
1978	430	5.5
1979	400	4.0
1980	220	1.7
1981 and later	220	1.2
Chicago, Illinois		
1975-1977	700	7.0
1978-1979	600	6.0
1980	300	3.0
1981 and later	220	1.2
Milwaukee, Wisconsin		
1975-1977	450	5.5
1978	350	4.0
1979	275	3.0
1980	250	2.0
1981 and later	220	1.2

2/ source, EPA, Ann Arbor, Michigan.

As discussed in the Statement of Need, reductions in the concentrations of these pollutants are needed in order to attain compliance with National Ambient Air Quality Standards for carbon monoxide and to maintain compliance with ozone National Ambient Air Quality Standards in the metropolitan area. These maximum emission concentrations are consistent with the EPA's policy and recommendations for carbon monoxide and hydrocarbon reduction goals for the metropolitan area and are therefore reasonable.

The maximum allowable emission concentrations for carbon monoxide and hydrocarbons are more stringent for newer vehicles and less stringent for older vehicles. This is to reflect newer emission control technology for newer vehicles. By using these maximum allowable concentrations, the Agency believes that vehicles properly tuned will pass the inspection. The Agency also

believes that approximately 20% of the vehicles will not pass the inspection (personal communication, EPA, Ann Arbor, Michigan, March 1989). Therefore these maximum allowable concentrations are necessary and reasonable because the majority of vehicles will pass the inspection and the gross polluters will not pass the inspection and will be required to be repaired.

Subpart 4 states the grounds for an inspector to refuse to perform the exhaust emission test and to refuse entry of a vehicle into the inspection lane: the vehicle is carrying explosives or other hazardous material not used as fuel for the vehicle; there are apparent gasoline, oil, or other fluid leaks that constitute a safety hazard; or the vehicle is being towed or is towing a trailer. This is reasonable in order to provide a safe working environment for the inspector and those present at the inspection stations.

Subpart 5 states the grounds for an inspector to invalidate the exhaust emission test results until the following conditions are corrected: the vehicle's exhaust system has an obvious leakage or other condition that could affect the validity of the exhaust sample readings as determined by the station's vehicle emission inspector; or the measured carbon dioxide concentration is less than four percent by volume. This subpart is reasonable because it assures valid emission tests. Emission tests conducted without correction of those conditions cannot produce accurate results.

Subpart 6 requires a vehicle that has failed its exhaust emission test at idle to be preconditioned (warmed up) on a chassis dynamometer, to undergo a diagnostic analysis, and to be tested again at idle. Preconditioning and diagnostic analysis are accomplished by positioning the vehicle's driving

wheels on the dynamometer; inserting the analyzer probe in the tailpipe; bringing the vehicle speed up to approximately 30 miles per hour while in drive for an automatic transmission and third gear for manual transmissions; maintaining that speed for at least 30 seconds; and taking an exhaust sample to analyze for diagnostic purposes. Vehicles with multiple exhaust pipes must be tested either by simultaneous sampling of all tailpipes or by sampling each tailpipe and then averaging the test results. After the diagnostics are taken and the vehicle is preconditioned, the vehicle must be nearly level and running at normal temperature with all accessories off and running at constant idle. The vehicle shall then be tested at idle.

This procedure is reasonable, based on EPA and other State's experiences, because it allows a vehicle another chance to pass the emission test by being preconditioned and tested again if that vehicle fails the exhaust emission test. Some vehicles may fail the exhaust emission test if the catalytic converter has not been adequately warmed up, or preconditioned. The preconditioning will bring the catalytic converter up to its normal operating temperature and therefore, allow the exhaust emission test to be conducted under normal operating conditions.

Subpart 7 states the grounds for the inspector to omit the loaded mode preconditioning on the chassis dynamometer: the vehicle has a driving wheel with less than 2/32 inch of tread or has metal protuberances or has low tire pressure or has any other condition that may be a hazard to personnel, facilities, equipment, or the vehicle. This is reasonable because it provides for a safe work environment for the inspector and others present at the inspection station and prevents potential damage to the vehicle being tested.

Subpart 8 states that a vehicle shall not be preconditioned on the chassis dynamometer if the vehicle operator refuses the loaded mode preconditioning, the vehicle is unable to obtain the 30 miles per hour, the vehicle is equipped with constant four-wheel drive, the vehicle operator is physically unable to yield the driver's seat to the inspector or if the vehicle operator refuses to yield the driver's seat to the inspector. This subpart is reasonable because it allows the loaded mode preconditioning to be omitted when the vehicle is not suitable for preconditioning on a dynamometer (e.g., four-wheel drive), or when the vehicle is old or in need of repair and cannot attain the required speed, or when the operator is physically unable or unwilling to yield the driver's seat. It is necessary for a trained operator to operate a front-wheel drive vehicle on a dynamometer for safety reasons.

Subpart 9 states that vehicles unable to be preconditioned on a chassis dynamometer shall be preconditioned by completing the following: the vehicle's transmission shall be placed in neutral; the vehicle's speed be increased to 2500 revolutions per minute plus or minus 300 revolutions per minute as measured by a tachometer which shall be maintained for at least 30 seconds; and then return the vehicle's engine speed to idle. The emission inspector then conducts an exhaust emission test after the vehicle has been preconditioned. This part is reasonable because it gives vehicles that are not able to be preconditioned on a chassis dynamometer another chance to pass the emission test by providing an alternative preconditioning method.

Subpart 10 states that a reconstructed vehicle shall be tested using the standards applicable to the year of manufacture of the engine installed in the vehicle. A reconstructed vehicle is a vehicle that has been built from

several components and may not be recognizable by any particular model year. The engine, however, does have an identifiable date of manufacture. Therefore, it is reasonable to use the engine date of manufacture to identify the appropriate emission standard. It would not be reasonable to expect an engine to perform better than its design.

Subpart 11 states that if a vehicle has an exchanged engine, the vehicle shall be classified by the model year and the manufacturer's make of the exchanged engine.

This rule is reasonable because it allows for a vehicle to be tested to emission standards that are appropriate for the age of the engine in that vehicle. It is reasonable for a vehicle to be tested to the emission standards for the age of the engine because the emission standards are appropriate for the model year in which the engine was manufactured and the pollution control equipment for that engine age. 3/

Part 7005.5035, Reinspections.

This part allows a vehicle that has failed an inspection to be reinspected provided the vehicle has been repaired or adjusted according to the vehicle inspection report. It is reasonable to give the owner of a vehicle that has failed the inspection the opportunity to be reinspected and pass the tampering inspection and/or exhaust emission test if the owner has gone to the trouble and expense of repairing the vehicle.

Items A, B and C state that vehicles may be reinspected at any inspection station and must be accompanied by the previous inspection report and repair information. Information on repairs made to the vehicle subsequent to inspection must be completed by the person performing the repairs on the repair portion of the inspection report form. In addition, the reinspection must take place within 30 days after the inspection, unless the owner presents satisfactory evidence that the repairs, adjustments or the reinspection could not have been made within 30 days.

It is reasonable to allow the owner to have the reinspection conducted at any inspection station because any of the inspection stations is qualified to perform a reinspection. In order to demonstrate the vehicle has been repaired or adjusted, it is reasonable to require the owner to supply repair information at the time of reinspection. The repair information will be used to collect data on repairs in order to better serve the public. In addition, the repair information will be used by the waiver surveillance inspector if the owner is applying for a waiver. It is reasonable to require the person performing the repairs to complete the repair information in order to insure that the repair information will be accurate. It is reasonable to require the reinspection to be done within 30 days of initial inspection unless the owner can show that this was not able to be done because it insures that the owner

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This subpart acknowledges that engine switching is done by the public and provides a means of classifying a motor vehicle for purposes of the inspection and maintenance required by parts 7005.5010 to 7005.5105, but does not relieve the owner of a motor vehicle from the requirements of Minn. Stat., section 325E.0951 or Minn. Rules part 7005.1190, which prohibit, in part, removing, altering, or otherwise rendering inoperative any air pollution control system on a motor vehicle.

will make repairs that are appropriate to the results of the tampering inspection and/or exhaust emission test in a timely fashion. If the repairs were not able to be done within 30 days, it is reasonable to allow the owner additional time to make the repairs to pass the reinspection.

Item D states that a vehicle shall be reinspected only for those items that were failed, as indicated on the previous inspection report form, during an inspection. This is reasonable because narrowing the scope of the reinspection will keep the cost of the inspection down and better serve the public. Item D also provides that if the owner or operator does not provide a copy of the previous inspection report forms, the vehicle must be given a full inspection. This is reasonable because if the owner or operator does not provide a copy of the previous inspection report form, the Agency will not have a record that the repairs made were appropriate to the results of the previous tampering inspection or exhaust emission test, and will need to conduct a full inspection to assure compliance.

Item E states that the vehicle shall be eligible for no more than two reinspections unless the owner pays an additional fee. It is reasonable because the services of the inspection stations cost the State money. In order for the State to cover the cost of the Inspection/Maintenance program additional fees must be collected if a vehicle owner causes the State to incur the cost of several additional inspections. Two reinspections should be adequate for most owners to have necessary repairs made.

Item F states that if the vehicle passes the reinspection, a vehicle inspection report shall be issued indicating that the vehicle has passed

reinspection and a certificate of compliance shall be issued. The certificate of compliance may be combined with the vehicle inspection report form.

It is necessary and reasonable to issue an inspection report indicating that the vehicle has passed reinspection and a certificate of compliance in order to provide written documentation that the vehicle has passed the required inspection. It is reasonable to combine the certificate of compliance with the vehicle inspection report because a consolidated form will be more convenient both for the inspection station and the vehicle owner.

Item G states that if a vehicle cannot pass the reinspection, a vehicle inspection report indicating noncompliance shall be issued. The owner may be eligible to apply for a certificate of waiver. If the owner requests a certificate of waiver, the waiver surveillance inspector must approve or deny the waiver request in accordance with part 7005.5055. Item G is reasonable because it provides an opportunity for an owner to complete the inspection requirements, through the waiver process, if the vehicle cannot pass inspection even after it has been repaired.

Part 7005.5040, Vehicle Inspection Report

Subpart 1 describes the information to be included in the Commissioner approved vehicle inspection report form, which is supplied by the contractor to the owner or operator at the time of each inspection. Space for the following must be provided on the report: license plate number; vehicle identification number (VIN); model year of vehicle; model year of engine; make of vehicle; vehicle type; odometer reading (in thousands of miles); maximum allowable

exhaust emission concentrations; exhaust emission measurements for hydrocarbons as hexane, carbon monoxide and carbon dioxide; statement of pass-fail, valid-not valid, or waiver and reasons therefore, if applicable; inspection/reinspection number for subject vehicle; date and time of inspection; serial number of report; inspection station number, lane, inspector, and analyzer number; the reason for test termination before completion of test, if appropriate; a description of the low emission adjustments which are likely to reduce hydrocarbon and/or carbon monoxide emissions; and description and results of the tampering inspection.

Space specific to failed vehicles must also be provided on the vehicle inspection report as follows: serial number of previous test reports; warranty short test certification for post-1980 model year vehicles, if applicable; for a nonfleet vehicle, the name or identification number of the individual who either performed the test or has actual knowledge of the test (in the case of a fleet vehicle, the signature of the individual who performed the test); and diagnostic information as appropriate.

Space must also be provided, in case repairs were performed, for the following information: itemization of the repairs performed; cost of the emission related repairs or estimated cost of the emission related repairs, if the repairs exceed the maximum specified repair cost; cost of the low emission adjustment; analyzer serial or identification number (if used by the individual performing the repairs); idle exhaust emission concentrations of hydrocarbons as hexane, and carbon monoxide (if an analyzer is used when making repairs); complete name, address, telephone number, and federal identification number or

social security number of the business or person making the repairs; and date and signature of person performing the repairs.

The information contained on the vehicle inspection report is necessary in order to establish a complete record of the tampering inspection and exhaust emission test results for that vehicle. It is reasonable to require this complete information in order to inform both the vehicle owner and the Agency of the results of the inspection and the basis for the inspector's conclusions. In addition, the vehicle inspection report will provide the owner of a vehicle that has failed the tampering inspection or the exhaust emission test with diagnostic information and a list of emission or emission related parts that may have contributed to the vehicle's inability to pass the inspection or the test. The owner or mechanic may use this information as a guide for repairs. Space is also provided on the form for the owner or mechanic to itemize all repairs and repair costs (or estimated cost, if applicable). It is reasonable to include cost of repairs on the vehicle inspection report form because the waiver surveillance inspector needs this information to determine whether a vehicle should receive a waiver because the cost of repair exceeds the appropriate repair cost limit.

Subpart 2 assigns to the contractor the responsibility for the completion of items A through R above for all nonfleet vehicles. The person performing the repairs or making the cost estimates is responsible for the completion of items S through X of the vehicle inspection report. It is reasonable to require the contractor to complete items A through R on the vehicle inspection report because those items are details specific to the tampering inspection or the exhaust emission test conducted by the contractor.

It is reasonable to require the owner or mechanic to complete items S through X because those items pertain to actions taken by the owner or mechanic after a vehicle has failed the tampering inspection or exhaust emission test.

Subpart 3 states that if a vehicle fails the inspection, the owner or operator will receive an inspection report supplement containing the repair cost limit for emission related repairs; a description of the low-emission adjustment list; the probable causes of noncompliance if diagnostic information is provided; and instructions for waiver applications if the vehicle has failed reinspection. Requiring an inspection report supplement to be provided to the owner or operator is reasonable because it provides the owner or operator with guidance on what to do when his or her vehicle fails the inspection and provides instruction on the waiver process.

Part 7005.5045, Certificate of Compliance.

This part states that a certificate of compliance must be issued by an inspection station or the fleet inspection station as appropriate, when a vehicle has passed the tampering inspection and exhaust emission test. In order to be issued a certificate of compliance, the owner or operator of the vehicle must present the vehicle inspection report indicating that the vehicle is in compliance with parts 7005.5010 to 7005.5105. The certificate shall be a design approved by the Department and the Commissioner and shall contain, at a minimum, the date of the test and the vehicle's identification number to uniquely identify the vehicle. The rule also requires the owner to present the certificate to the Department when making application for registration renewal.

It is reasonable to issue a certificate of compliance so the owner has written documentation, to be provided to the registrar when applying for vehicle registration renewal, that the vehicle has passed the inspection. It is also reasonable to include the vehicle's identification number and the date of the test to uniquely identify the vehicle to the Agency and the Department and to establish a history of the inspection in the event that a waiver is sought. It is reasonable for the design of the certificate of compliance to be approved by the Commissioner and the Department in order to insure compatibility between the two State agencies. It is reasonable to require the owner to present the certificate of compliance to the Department when renewing the vehicle registration so that the Department will have evidence that the vehicle has been inspected, is in compliance with these rules, and is eligible to have its registration renewed.

Part 7005.5050. Vehicle Noncompliance and Repair

Subpart 1 states that if a subject vehicle fails the tampering inspection or reinspection, the contractor shall issue an inspection report that indicates noncompliance. The failed vehicle shall not be eligible to have its registration renewed unless the owner replaces or repairs the fuel inlet restrictor and/or replaces the catalytic converter, as appropriate. In addition, the person making the repairs must complete and sign the repair portion of the vehicle inspection report form. Finally, the vehicle must pass the tampering reinspection.

This subpart is reasonable because it provides for evidence to the owner that the vehicle has failed the tampering inspection and describes the

requirements to pass a reinspection. It is reasonable to make a vehicle ineligible to have its registration renewed until it passes the tampering inspection because this requirement is consistent with Minn. Stat., section 116.61 subd. 1 (c). The statute states that the registration of a vehicle may not be renewed unless the vehicle has been inspected and received a certificate of compliance or certificate of waiver. It is reasonable to require the person making the repairs complete and sign the repair portion of the vehicle inspection report in order to verify that the repairs have been completed.

Subpart 2 states that if a subject vehicle fails the exhaust emission test or retest, the contractor shall issue an inspection report that indicates noncompliance. The failed vehicle shall not be eligible to have its registration renewed until items A through D have been completed or a certificate of waiver has been issued under part 7005.5055. Under items A through D, the owner must make the repairs or adjustments to the vehicle in accordance with the inspection report or its supplement, have the person making the repairs complete and sign the repair portion of the vehicle inspection report form and the vehicle must pass the exhaust emission retest.

This subpart is reasonable because it provides for evidence to the owner that the vehicle has failed the exhaust emission test and describes the requirements to pass a retest. It is reasonable to make a vehicle ineligible to have its registration renewed until it either passes the emission inspection or receives a waiver because, as discussed previously, this requirement is consistent with Minn. Stat., section 116.61 subd. 1 (c). It is reasonable to require the person making the repairs complete and sign the repair portion of

the vehicle inspection report form in order to verify that the repairs have been completed.

Part 7005.5055, Certificate of Waiver.

Subpart 1 states that each vehicle, including a fleet vehicle, which has failed its initial exhaust emission test and at least one exhaust emission retest is eligible for a certificate of waiver if it meets the criteria listed below. The certificate of waiver shall be valid for no longer than the annual registration period. Subpart 1 is reasonable because provisions for waivers are required to be an element of the Inspection/Maintenance program by Minn. Stat., section 116.62. subd. 5 (1988). It is reasonable to require a vehicle to fail the initial inspection and at least one exhaust emission retest in order to be eligible for a waiver because the reinspection will allow the owner to determine whether repairs made, as appropriate according to the results of the inspection, were effective and whether the vehicle will pass inspection. It is in the State's best interest to determine whether repairs made are effective and to have as many vehicles pass the inspection as possible. It is reasonable to limit the validity of the certificate of waiver to the period of annual registration in order for the Agency to assure that the vehicle will be annually inspected as required by Minn. Stat., section 116.61, subd. 1 (1988). The criteria for a waiver are listed in items A through H. These criteria are discussed below.

Item A provides that the vehicle has failed to meet the appropriate standards of compliance for hydrocarbon as hexane or carbon monoxide emissions on its initial test and at least one retest after repair of the vehicle. As

discussed above, it is reasonable to limit the waiver to vehicles that have failed the initial emission test and at least one retest because it's in the State's best interest to give the owner an additional opportunity to pass the inspection before granting a waiver from the exhaust emission test.

Item B provides that for all post-1980 model year vehicles whose mileage is less than 50,000 miles and whose age is less than five years, the vehicle owner must provide a signed statement from an appropriate new car dealer that the vehicle is not eligible for emission control system warranty work. It is reasonable to make a vehicle ineligible for a waiver if the needed repairs could be done at no cost to the owner because the State's interest is in seeing that as many vehicles as possible will be repaired. If the owner is eligible for warranty repairs, the owner should be required to have those repairs done by the car dealership. This is not costly to the owner but will help improve air quality.

Item C provides that the owner or mechanic has diagnosed and attempted to repair the vehicle to pass reinspection, including interrogation of appropriate onboard diagnostic systems. This is reasonable to make a vehicle ineligible for a waiver unless repairs have at least been attempted, or otherwise some vehicle owners may choose to ask for a waiver instead of getting the vehicle repaired. This is contrary to the intest of the Inspection/Maintenance program and would be unfair to owners who comply in good faith.

Item D provides that, except as provided in item E, the owner presents satisfactory evidence to the waiver surveillance inspector that a low emission

adjustment, as appropriate according to the exhaust emission test results, has been performed on the vehicle after the initial exhaust emission test and within 90 days before renewal of registration. It is reasonable to make a vehicle ineligible for a waiver unless a low emission adjustment has been made because low emission adjustments will be low-cost, easy-to-make repairs that will improve the vehicle's emissions without unduly burdening the vehicle owner. Requiring these minimal repairs will have a beneficial effect on air quality even though full repairs will not be required if the vehicle owner obtains a waiver. It is reasonable to require low emission adjustments to be made within 90 days before renewal of registration because it gives the vehicle owner a reasonable amount of time to complete one of the items needed to obtain a certificate of waiver and meet the requirements of Minn. Stat., section 116.61, subds. 1 (b) and 1 (c). The statute requires that inspections take place within 90 days before re-registration and that registration may not be renewed unless the owner has obtained a certificate of compliance or a certificate of waiver. Examples of items that other States include on a low emission adjustment list for carbon monoxide failure are the air filter, choke, and thermostatic air cleaner. Examples of items that other States include on a low emission adjustment list for hydrocarbon failure are vacuum hoses, spark plugs and distributor. As discussed below, item E provides an exception to the low emission adjustment.

Item E provides that the owner must present satisfactory evidence to the waiver surveillance inspector that either of the following exceeds the repair cost limit: (1) the actual cost of the low emission adjustment as appropriate to the emission test results on the inspection report form; or (2) the requirements of item E. (1) plus the actual or estimated cost of additional

repairs or adjustments necessary to bring the vehicle into compliance with the maximum allowable emission standards. This item is reasonable because it is consistent with the requirements of Minn. Stat., section 116.62, subd. 5 (a) (2), which requires that a vehicle be eligible for a waiver if the repair cost limit will be exceeded.

Item F provides that the owner must comply with evidence requirements under part 7005.5065. The evidence requirements include legible and itemized receipts. This item is reasonable because legible and itemized receipts will serve as written evidence to the waiver surveillance inspector of the cost of repairs. The waiver surveillance inspector will use the information to judge whether or not a waiver should be granted.

Item G provides that the person performing the repairs or preparing the estimate must complete all parts of the repair portion of the vehicle inspection report form and sign it. This is reasonable because it provides the waiver surveillance inspector with evidence that the repair cost information is accurate. This information needs to be accurate so that the waiver surveillance inspector can use this information to judge whether the owner shall receive a certificate of waiver.

Item H states that the vehicle must pass the tampering inspection under parts 7005.5025 or 7005.5035, and the emission control equipment inspection under part 7005.5060. The reasonableness of requiring a vehicle to pass the tampering inspection in order to be eligible to have its registration renewed has been discussed previously; the same considerations make this provision reasonable with respect to eligibility for a certificate of waiver, since

issuance of a certificate of waiver makes a vehicle eligible for renewal of its registration. It is reasonable to require the vehicle to pass the emission control equipment inspection because it assures that the vehicle's pollution control equipment is in place and in operating condition. While the legislature has set a repair cost limit, it has specifically excluded from the repair cost limit "costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative." Minn. Stat., section 116.62, subd. 5 (b) (1988).

Subpart 2 discusses waivers following repairs by persons other than mechanics. Item A provides that when a person other than a mechanic (including the owner) attempts to repair a vehicle, that person must take the actions indicated on the low emission adjustment list as are appropriate to the exhaust emission test results and attempt to diagnose and perform repairs necessary to bring the vehicle into compliance just as he or she would if the vehicle were repaired by a mechanic. Item B provides that when a person other than a mechanic attempts repair or where there is no charge for the labor, the repair cost limits of $75 and $200 shall be reduced solely by the expenditure for emission related repairs and parts including those parts listed on the low emission adjustment list. The owner must provide legible and itemized receipts for parts replaced provided those costs relate to the emission control system.

It is reasonable to allow self repairs so the owner of a vehicle that has failed the inspection can make the repairs without the added expense of a mechanic. Subpart 2 is reasonable because it offers a choice for the owner of a vehicle that has failed the inspection to make self repairs or have a

mechanic make repairs. It is reasonable to only take the cost of parts into account in determining whether the repair cost limit has been exceeded because there has been no cost incurred by the person making self repairs except the cost of the parts.

Subpart 3 describes the duties of the waiver surveillance inspector in reviewing waiver requests. The inspector has the duties set forth in items A through E.

Item A provides that the waiver surveillance inspector shall deny the issuance of a waiver to a vehicle unable to pass the emission control equipment inspection. This is reasonable because under part 7000.5055, subp. 1, item H, a vehicle is ineligible to receive a waiver if it fails to pass the emission control equipment inspection.

Item B provides that the waiver surveillance inspector shall determine whether the vehicle should qualify for warranty repairs under applicable federal law. If so, the waiver surveillance inspector shall determine whether the owner has a signed statement from an appropriate new car dealership (the manufacturer's authorized repair facility) stating that the vehicle is not eligible for emission control system warranty work. The Agency is required to distribute and require the use of a standard form for this purpose. The statement must be dated after the vehicle failed its initial inspection and must identify the vehicle and the dealership. If the owner has such a statement, the inspector will continue with the waiver process. If the owner does not have a statement, no waiver shall be issued.

This item is reasonable because it requires the waiver surveillance inspector to check for one of the items needed by the vehicle owner to prove that the vehicle is eligible for a waiver in that it meets the criterion established in subp. 1, item B. It is reasonable for the Agency to develop a standardized form to be used for this evidence because the existence of such a form will promote consistency of reporting techniques and will be convenient for both the public and the car dealerships. It is reasonable to require the statement to be signed and dated subsequent to the date the vehicle failed its initial inspection to determine whether items that may have contributed to the vehicle failing the inspection are covered by any warranty. It is reasonable for the waiver surveillance inspector to deny a waiver to an owner who does not have a signed statement from the new car dealership because it is in the State's interest to have as many vehicles as possible repaired. If the repairs are covered by the warranty, it is not unduly burdensome to require the owner to go to the new car dealership for authorized warranty repairs.

Item C provides that the waiver surveillance inspector shall verify that the repair and waiver documentation presented by the owner is properly completed and that the documents indicate that the waiver criteria have been met. The inspector shall also verify that the repair facility name and location are legible. This is reasonable because it assures that certificates of waiver are issued only where the owner has presented proper evidence of eligibility for and completion of requirements for obtaining a waiver.

Item D provides that the waiver surveillance inspector shall issue a certificate of waiver if all waiver criteria have been met. It is reasonable to issue a certificate of waiver to serve as evidence that all conditions of

waiver have been met. The certificate of waiver serves as evidence to the registrar that the vehicle's registration may be renewed.

Item E provides that if all criteria have not been met, the inspector shall explain to the owner what criteria are not satisfied, how the criteria may be met, and provide the owner with a printed explanation of the waiver process and waiver criteria. It is reasonable for the inspector to present information to help the owner understand the criteria to be met and steps necessary to obtain a certificate of waiver because this will help the owner correct any problems so that the vehicle may be registered by the Department.

Subpart 4 states that the owner of a vehicle granted a waiver shall receive a certificate of waiver, which will be proof that the vehicle has met the requirements of the Inspection/Maintenance rules. Each certificate must contain, at a minimum, the date of the test and the vehicle's identification number. The certificate of waiver and the vehicle inspection report may be combined into a single form. The owner shall present the certificate of waiver to the Department when making application for registration renewal.

This item is reasonable because the certificate provides evidence to the registrar that a certificate of waiver has been granted. It is also reasonable to require the certificate to contain the date of the test and the vehicle's identification number in order to uniquely identify the vehicle and document the test date. It is reasonable to combine a certificate of waiver and the vehicle inspection report form because a combined form will reduce the cost of the program and make it more convenient for the public.

Subpart 5 allows the waiver surveillance inspector to issue a waiver for any vehicle that cannot be inspected because of technical difficulties inherent in the manufacturer's design or construction of the vehicle. A copy of the waiver shall be retained for the Agency's use. Subpart 5 also states that any fleet vehicle that, in the opinion of a mechanic employed by a fleet station, cannot be inspected because of technical difficulties inherent in the manufacturer's design or construction, excluding tampering or because of limitations of the fleet station's inspection equipment, shall be referred to the waiver surveillance inspector. The waiver surveillance inspector shall sign the vehicle inspection report if he or she concurs that a waiver should be issued for the vehicle. The fleet mechanic will then issue a certificate of waiver.

Subpart 5 is necessary in order to accommodate special cases in which there are technical reasons why a vehicle cannot pass an exhaust emission test. It is also reasonable to require the concurrence of the waiver surveillance inspector for the fleet station mechanic to issue a certificate of waiver in order to assure consistency and fairness between vehicles inspected at public inspection stations and those inspected at fleet inspection stations.

Subpart 6 states that the waiver surveillance inspector shall issue a temporary waiver valid for no more than 30 days to allow time for repair and reinspection after the vehicle's registration renewal date. If the vehicle is not issued a certificate of waiver or certificate of compliance within the 30 day period, the Commissioner shall send a notice requesting the Department to cancel the vehicle's registration. This item is reasonable because it provides additional time for repair and reinspection of the vehicle. It is further

reasonable because it is consistent with Minn. Stat., section 116.62, subd 5 (d) (1988), which authorizes the Agency to grant temporary certificates of waiver. It is reasonable for the Commissioner to request the Department to cancel the vehicle's registration if the owner fails to comply with the conditions of the temporary waiver because it is consistent with Minn. Stat., section 116.61, subd. 1 (c), which states that a vehicle's registration may not be renewed unless the owner has received a (valid) certificate of waiver.

Part 7005.5060, Emission Control Equipment Inspection as a Condition of Waiver.

Subpart 1 states that if a certificate of waiver is requested, the vehicle shall undergo an emission control equipment inspection conducted by the waiver surveillance inspector. The inspection is designed to allow the detection of visual or obvious tampering and allows for no removal or disassembly of parts. At a minimum the inspector will check whether or not any elements of the factory installed pollution control system are missing, modified, altered, or damaged in such a manner as to decrease the vehicle's efficiency or effectiveness in the control of air pollution in violation of part 7005.1190 or Minn. Stat., section 325E.0951.

This subpart is reasonable because it assures that a vehicle, for which a certificate of waiver from exhaust emission testing has been requested, has original, factory-installed emission control equipment that is in place and effective. In enacting Minn. Stat., section 116.62, subd. 5 (b), the legislature has evidenced its intention that needed air pollution control equipment repairs would not be excused nor a certificate of waiver granted if the repair was necessary to repair or replace "any emission control equipment

that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative in violation of Minn. Stat., section 325E.0951." It is reasonable to reference Minn. Rule 7005.1190 in this rule because it is the Agency's anti-tampering rule and thus is relevant to this part. It is reasonable to have a waiver surveillance inspector conduct the emission control equipment inspection because the waiver surveillance inspector has the authority to grant waivers.

Subpart 2 states that, except for vehicles described in part 7005.5025, items C or D (relating to gray-market vehicles and show cars) if any of the vehicle's factory installed pollution control equipment is not in place or has been modified, altered or damaged in such a manner to decrease its efficiency or effectiveness in the control of air pollution the vehicle shall fail the emission control equipment inspection. Subpart 2 is reasonable because, as discussed above, the legislature has expressed its intention in Minn. Stat., section 116.62, subd. 5 (b) that tampered vehicles cannot be registered until the tampering has been remedied. It is reasonable to reference Minn. Stat., section 325E.0951 and Minn. Rules part 7005.1190 in the rule because this statute and rule provide standards to determine when tampering has occurred.

Subpart 3 states, except for vehicles described in part 7005.5025, items C or D (relating to gray-market vehicles and show cars), an owner must repair or replace applicable elements of the factory installed emission control system if the owner has failed the emission control equipment inspection. Subpart 3 is reasonable and necessary to assure that vehicles that have failed the emission control equipment inspection will have the original, factory-installed pollution control equipment in place before a waiver will be

granted from the exhaust emission test. At a minimum, a vehicle must be brought into compliance with its original factory-installed pollution control requirements, unless the owner provides documentation that it is a gray-market vehicle or a show car. As previously discussed, the legislature has expressed its intention in Minn. Stat., section 116.62, subd. 5 (b) that tampered vehicles must be repaired.

Subpart 4 allows a vehicle owner or operator to leave the inspection area to seek proof that the vehicle has not been tampered with. The owner or operator must return to the same inspection station, with documentation within 20 days, and continue with the emission control equipment inspection. The contractor shall not bill the Agency for this return visit. This subpart is reasonable because it allows the owner or operator to provide documentation showing that the vehicle has not been tampered with. Subpart 4 also allows an adequate time period, 20 days, to provide the documentation of non-tampering. It is reasonable that the contractor should not bill the Agency for the return visit because the vehicle owner or operator has not completed the inspection but is continuing with it. Therefore, additional charges should not be made.

Part 7005.5065, Repair Cost Limit and Low Emission Adjustment.

Subpart 1 states that the repair cost limit is $75 for vehicles of model years before 1981 and $200 for vehicles of 1981 and later model years. As stated in part 7005.5055, subp. 1, item E, the cost limits are applicable as a condition of waiver and only those costs associated with emission related repairs, with the exception of tampered items, will be credited towards the

cost limit. This subpart is reasonable because it sets forth the repair cost limits as required in Minn. Stat., section 116.62, subp. 5 (c) (1988).

Subpart 2 excludes certain costs when determining the cost of repairs and adjustments applied to the repair cost limit. Excluded are the costs covered by warranty and costs to repair or replace any emission control part or parts which have been removed, dismantled or rendered inoperative in violation of part 7005.1190 or Minn. Stat., section 325E.0951. It is reasonable to exclude these costs because these costs are excluded from the repair cost limit by Minn. Stat., section 116.62, subd. 5 (b) (1988). It is reasonable to include references to Minn. Rules part 7005.1190 and Minn. Stat., section 325E.0951 because these authorities provide the standards to determine when tampering has occurred.

Subpart 3 states that, except as provided in part 7005.5055, subp. 2, item B, the cost of repair or estimate of the cost of repair is eligible to be credited to the repair cost limit when applying for a waiver if the owner presents, to the waiver surveillance inspector, a legible and itemized receipt for parts replaced and labor, provided that the costs relate to the emission control system. The receipt must have a legible date and the date must be after the vehicle failed its initial inspection and within 90 days prior to the vehicle's registration expiration. The waiver surveillance inspector shall be responsible for examining receipts for such items and determining which costs are eligible to be credited towards the repair cost limit. The eligible total cost must be contained on the vehicle inspection report form.

It is reasonable to require the owner to present evidence of repair costs that are eligible to be considered towards the repair cost limit because without this evidence the waiver surveillance inspector cannot determine whether the cost of repairs will exceed the repair cost limit. It is reasonable to require that the receipt be dated after the vehicle failed its initial inspection and within 90 days prior to the vehicle's registration expiration because this insures that repairs or adjustments made are appropriate to the results of the inspection. The owner or operator should not obtain credit for repairs made prior to the inspection because those costs were not associated with the vehicle failing the inspection and therefore should not be credited towards the repair cost limit as a condition of waiver. It is appropriate for the waiver surveillance inspector to review documentation because the waiver surveillance inspector has the authority to grant waivers. It is reasonable to require that the eligible total cost be indicated on the vehicle inspection form so there is written documentation that the waiver surveillance inspector can use in determining whether a certificate of waiver should be granted.

Subpart 4 states that the Commissioner shall establish a list of diagnostic and repair procedures that are likely to reduce a vehicle's carbon monoxide and hydrocarbon exhaust emissions. This list shall be called the low emission adjustment list and will be updated periodically by the Commissioner to reflect changes in motor vehicle technology. The purpose of the low emission adjustment list is to determine those low cost, easy to make repairs that will be required to be done as a condition to obtain a certificate of waiver under part 7005.5055, subp. 1, item D. As discussed previously, examples of items that other States include on a low emission adjustment list

for carbon monoxide failure are the air filter, choke, and thermostatic air cleaner. Examples of items that other States include on a low emission adjustment list for hydrocarbon failure are vacuum hoses, spark plugs and distributor.

It is reasonable to have a low emission adjustment list in order to offer guidance to the vehicle owner or operator on the probable reasons the vehicle failed the exhaust emission test. It is reasonable to provide the owner or operator with guidance on the repairs likely to improve the vehicle's emissions. It is also reasonable to periodically update the low emission adjustment list in order to remain current with changes in the automotive repair industry.

Part 7005.5070, Letter of Temporary Extension and Letter of Annual Exemption.

Subpart 1 of this part pertains to the letter of temporary extension and consists of items A to I.

Item A states that if a subject vehicle will not be available for inspection due to the vehicle's absence or storage, or the owner's absence or illness, during the 90 day period prior to the vehicle's registration renewal date the owner may apply in writing to the Commissioner for a letter of temporary extension. This item is reasonable because it provides a mechanism for an owner, who is ill or absent or whose vehicle is absent or stored, to meet the requirements of this rule and obtain registration renewal for the vehicle. Also, so long as the vehicle is not being operated in the metropolitan area, it is not contributing air emissions in the area. With a

letter of temporary extension, the owner may renew the vehicle's registration but must have the vehicle inspected when the owner is present again or the vehicle is used again in the seven county metropolitan area. The Commissioner is the appropriate person to which an owner may apply for a letter of temporary extension because the Commissioner represents the responsible governmental unit (the Agency) with the authority to issue a letter of temporary extension.

Item B states that the owner shall provide the reason for requesting a letter of temporary extension, certify that the vehicle will not be available for inspection during the 90 day period prior to registration renewal, and state when the vehicle will be operated again within the seven county metropolitan area. The owner shall sign the application and certify that the information contained in the application is correct. Item B is necessary because it tells the owner what type of information and documentation is necessary in order to apply for a letter of temporary extension. The owner's signature is required in order for the Agency to authenticate the application. It is reasonable to require this information so the Commissioner can verify that the automobile will not be operated in the area and that the owner has a valid excuse for not seeking an inspection in the originally required time period.

Item C states that upon approval of the application by the Commissioner, a letter of temporary extension shall be issued to the vehicle owner. The letter shall allow the owner to proceed with vehicle registration renewal prior to vehicle inspection. It is reasonable for the Commissioner to issue a letter of temporary extension to serve as the owner's evidence to the

Department that the owner may proceed with registration renewal for the vehicle.

Item D gives the owner three options once the owner has received a letter of temporary extension. The owner may have the vehicle inspected within the metropolitan area within 90 days prior to the vehicle's registration renewal date; the owner may have the vehicle inspected by an inspection station outside Minnesota that in the judgment of the Commissioner performs inspections equivalent to those required by these rules; or the owner may have the vehicle inspected within 30 days of when the vehicle is again operated within the metropolitan area. This item is reasonable because it gives the owner flexibility by providing three options for fulfilling the inspection requirements.

Item E directs the owner to complete and sign the affidavit portion of the letter of temporary extension and submit it to the registrar when making application for registration renewal. A letter of temporary extension shall be valid for no longer than the annual registration period. The registrar shall forward all affidavits to the Agency within 10 days after the end of the calendar month in which the affidavits are received.

It is reasonable to require the owner to authenticate, by signature, the information in the application for the letter of temporary extension in order to assure that the information is accurate. It is reasonable to limit the validity of the letter of extension to the period of annual registration in order for the Agency to assure that the vehicle will be inspected annually as required by Minn. Stat., section 116.61, subd. 1 (1988). It is reasonable for

the registrar to forward all affidavits of extension to the Agency so the Agency has a record of registrations renewed pursuant to extensions issued by the Commissioner.

Item F states that if the owner of a vehicle who has received a letter of temporary extension has the vehicle inspected at an inspection station outside of Minnesota, then the owner shall submit evidence of such inspection to the Commissioner within 30 days of commencement of the operation of the vehicle in the seven county metropolitan area. This item is reasonable because it allows the Commissioner to verify that the owner has implemented one of the inspection options allowed by part 7005.5070, subp. 1, item D. This item is also reasonable because it provides an adequate time period, 30 days, for an owner to notify the Commissioner that his or her vehicle has been inspected and tested in another State.

Item G states that if the owner of a vehicle fails to comply with items D through F as discussed above, the Agency shall request the Department to revoke the owner's registration. It is reasonable to establish a sanction for failure to comply with the inspection requirements specified in Minn. Stat., sections 116.60 to 116.65 and these rules to serve as incentive for the holder of a letter of extension to get the vehicle inspected. In addition, Minn. Stat., section 116.61, subd. 1 (c) (1988) states that registration may not be renewed unless the vehicle has been inspected and received a certificate of compliance or certificate of waiver.

Item H states that if the owner fails to comply with items D through F, then the owner shall not be eligible to receive another letter of temporary

extension for the next annual registration period. This provision is necessary in order to ensure that the owner has the vehicle inspected and obtains a certificate of compliance or certificate of waiver. Elimination of eligibility for a letter of temporary extension establishes a reasonable penalty for failure to have a subject vehicle inspected and may reduce any potential misuse of the extension process.

Item I provides a mechanism by which the owner may dispute the revocation of his or her vehicle registration because of the owner's failure to comply with items D through F. Evidence may be presented within 30 days to the Commissioner who has the authority to approve or disapprove a letter of temporary extension. This is reasonable because it establishes a process by which the owner can gather evidence to reconcile a dispute within a reasonable time period after registration revocation.

Subpart 2 states that an owner whose vehicle is customarily domiciled outside of the metropolitan area may apply in writing to the Commissioner for a letter of annual exemption from vehicle inspection. Subpart 2 also states that an owner must complete and sign the affidavit portion of the letter of annual exemption and present it to the registrar when making application for registration renewal. The letter shall be valid for no longer than the annual registration period.

This item is reasonable because it acknowledges that an owner may register a vehicle in the metropolitan area, but customarily domicile the vehicle outside the seven county metropolitan area. If a vehicle is not operated in the metropolitan area, it is not contributing emissions to the

metropolitan area. Therefore, it is reasonable that an owner residing in the metropolitan area, but keeping and using a vehicle outside the area, not be required to transport the vehicle to the metropolitan area for the sole purpose of having the vehicle inspected. The Commissioner is the appropriate person to which an owner may apply for a letter of annual exemption because the Commissioner represents the responsible governmental unit (the Agency) with the authority to issue a letter of annual exemption. It is reasonable to require the owner to authenticate the application, by signature, in order to assure that the application for a letter of annual exemption does not contain false information.

Part 7005.5075, Evidence of Meeting State Inspection Requirements.

This part states that a certificate of compliance or certificate of waiver issued by an inspection station or a fleet inspection station or a letter of annual exemption issued by the Commissioner will be accepted by the Department, the Agency and the registrar as evidence that a subject vehicle has successfully complied with the requirements of the Inspection/Maintenance rules, unless there is reason to believe that these documents are false documents. The certificate of compliance, certificate of waiver, or letter of annual exemption are the written documents that demonstrate that a vehicle has either passed the inspection or has been waived or exempted from those requirements. Therefore, it is reasonable that the Department, the Agency and the registrar accept them as such. This is also reasonable so the registrar will know that a vehicle is eligible to have its registration renewed.

Part 7005.5080, Fleet Inspection Station Permits, Procedures and Inspections.

Subpart 1 states that a fleet owner with 50 or more subject vehicles may apply to the Agency for a permit to establish a fleet inspection station. Two or more fleet owners each owning 25 or more subject vehicles may also apply jointly for a fleet inspection station permit. Fleet owners commonly have many vehicles registered to them which could require inspection within a short period of time. It is reasonable to allow, through a permit process, fleet owners to establish their own inspection station in order for them to inspect a large number of fleet vehicles within a short period of time. It is anticipated this would decrease the amount of time that a fleet vehicle would be out of service. This portion of the proposed rule is reasonable because it is consistent with Minn. Stat., section 116.62, subd. 4 (1988).

The rule allows the Agency to issue a fleet inspection station permit only if it finds that the applicant meets the requirements of items A to C.

Item A states that applicants must provide a facility with a building or portion of a building devoted principally to maintaining or repairing the fleet's vehicles on a regular basis. The facility must be of sufficient space to conduct maintenance or repair of at least one fleet motor vehicle. This is reasonable because the applicant should be capable of repairing fleet vehicles that have failed either the tampering inspection or the exhaust emission test in order to assume the additional responsibility of self inspection and testing.

Item B states that at a minimum, applicants must own or lease and maintain in good working condition an ignition timing light with a timing advance tester, ignition operated tachometer, dwell meter, positive crankcase ventilation tester and tools necessary to complete the low emission adjustment requirements. Without these basic tools or test devices, the applicant would be unable to provide self inspection and testing. Therefore, it is reasonable to require the applicant to have these items.

Item C states that the applicant must obtain an emission analyzer to measure hydrocarbons as hexane, and carbon monoxide that meets or exceeds the analyzer specifications in 40 C.F.R. section 85.2215 as amended and employ a mechanic or enters into an agreement with the Agency's contractor to have the required inspection and tests performed. Only the equipment required to inspect and repair the types of vehicles in the fleet inventory are required in the fleet station. The rule requires the Commissioner to maintain a list of acceptable analyzers.

Under the proposed Inspection/Maintenance contract, the Agency's contractor will be required to obtain an emissions analyzer that meets the requirements of 40 C.F.R. section 85.2215 as amended. It is reasonable to also require the applicant to obtain the same type of analyzer. This will insure that all exhaust emission tests will be conducted with similar analyzers producing similar results. It is reasonable to require the Commissioner to maintain a list of acceptable analyzers because such a list will make it easy for applicants to quickly determine what types of analyzers will fulfill the requirements of 40 C.F.R. section 85.2215.

It is reasonable for the proposed rule to allow applicants to choose between employing their own mechanics or contract with the Agency's contractor to conduct inspections. Fleet permittees may have specific circumstances where they are unable to self inspect, as in the case of equipment failure. The fleet permittee could also find it economically beneficial to enter into a contract with the Agency's contractor to inspect the fleet vehicles. The proposed rule accommodates these needs.

Subpart 2, items A through L set forth the requirements that must be met for the Agency to issue a permit to a fleet owner.

Item A states that an application fee of $200 must be paid to the Agency and an inspection of the premises shall be made by the Agency. Fleet inspection licensing fees are required by Minn. Stat., section 116.62, subd. 4 (1988). A fee is necessary to pay for the Agency's anticipated expenses for processing and issuing the permit, to track compliance of the permit and to provide quality assurance audits of both analyzers and inspected vehicles. The fee is reasonable because fleet inspection stations will not be paying for inspections on a per vehicle basis as the general public. It is reasonable to require an Agency inspection of the premises so the Agency can determine that the fleet inspection station will be providing reliable inspections and that the fleet inspection station is meeting the permit conditions.

The amount of the fee may underestimate the Agency's cost for these functions because the number of fleet inspection stations is unknown. It may become necessary to change the permit fee, through the rulemaking process, once the number of fleet inspection stations and the Agency's costs are known.

Item B states that a fleet inspection station permit shall expire after one year. It is reasonable to have the permit expire after one year so the Agency can reassess the fleet owner's performance of its obligations under the permit. Corrections, if necessary, can then be made and the permit reissued if all the permit conditions have been met.

Item C states that a fleet inspection station shall only inspect vehicles that are owned by the fleet station permittee. The intent of the fleet station permit is to allow fleet station permittees to test fleet vehicles at their convenience and not to offer testing services to other vehicle owners. Therefore, it is reasonable to allow a permitted fleet inspection station to test only their vehicles. The proposed rule is reasonable because it is consistent with Minn. Stat., section 116.62, subd. 4 (d) (1988).

Item D states that the permit renewal application must be submitted to the Agency at least 45 days before the permit expires. This requirement is necessary and reasonable in order to allow the Agency adequate time to process the renewal application and issue the new permit.

Item E states that the permit shall only be applicable to the fleet's inspection facility located at the address shown on the permit. If a fleet owner wishes to inspect vehicles at more than one address, separate permits must be obtained. This requirement is reasonable so the Agency knows the location of each fleet inspection station conducting the inspection in order to periodically inspect each location.

Item F states that a permit is not transferable. This is reasonable so the Agency is assured that each fleet station permittee issued a permit by the Agency for the operation of a fleet inspection station is meeting the requirements of that permit and that the Agency can maintain up-to-date and accurate records.

Item G states that if a permittee desires to change the name or address on a permit and the changes do not involve a change of ownership, the permit shall be returned to the Agency. The Agency shall cancel the permit, require a new application, application fee and issue a new permit. This requirement is reasonable so the Agency can maintain up-to-date and accurate records and that the permit for a fleet inspection station contains accurate information. It is reasonable to require payment of another application fee because the Agency will incur a cost to process and issue the new permit.

Item H states that if a permit has been revoked, suspended, or has expired, the fleet inspection station shall immediately stop all activities requiring a permit. This requirement is reasonable and necessary to avoid inspections being performed without authority or approval from the Agency.

Item I states that if a permit is lost, destroyed or mutilated the permittee may obtain a duplicate, after showing proof of the fact, from the Agency. If the original permit is recovered at a later date, it must be surrendered to the Agency. This is reasonable because the permittee will then always have in its possession a valid permit authorizing the facility to perform inspections. To avoid confusion and duplication, it is reasonable to

require the return of any original permits recovered after a duplicate has been issued.

Item J states that if a fleet inspection station does not employ a mechanic it shall immediately stop operating as a fleet inspection station and notify the Agency. It is reasonable to require the fleet inspection station to immediately cease operating as a fleet inspection station if it loses its mechanic because the mechanic is the person who performs the inspection and without the mechanic, the fleet inspection station would not be operating under the conditions of the permit. It is reasonable to require the fleet inspection station to notify the Agency so the Agency can maintain up-to-date and accurate records.

Item K states that when a fleet inspection station permit is surrendered, suspended or revoked, all unused vehicle inspection report forms must be returned to the Agency. This is reasonable because the facility that surrenders its permit or has its permit suspended or revoked would not have the authority to issue inspection report forms. In addition, it would decrease the likelihood that unused forms will be lost or misused.

Item L states that surrender, suspension or revocation of a permit shall not prevent the Agency from carrying out investigative or enforcement actions against the permittee for violations of State statutes, rules, or conditions of the permit. This is reasonable to protect the Agency against operation of a fleet inspection facility in violation of these rules and/or the permit, and to allow the Agency to investigate any alleged violation of these rules and/or the permit.

Subpart 3, items A through D sets forth the requirements for equipment and record keeping.

Item A states that all test equipment and instrumentation must be maintained in good condition. Calibration and maintenance shall be performed in accordance with the 40 C.F.R. section 85.2217 as amended. Recommendations by the Commissioner for calibration and intervals between calibration shall be a condition of a fleet inspection station permit and shall supersede all conflicting recommendations.

This requirement is necessary so all test equipment and instrumentation will be properly maintained and in good working order. It is reasonable to require calibration and maintenance to be conducted consistent with EPA regulations in the C.F.R. as amended in order to insure that instrumentation is operating properly and will produce reliable test results.

Item B states that a record of calibrations performed on each instrument shall be maintained by the fleet inspection station. The record must include the date and signature of the technician performing the calibration. This requirement is reasonable in order to provide documentation that each analyzer has been calibrated and is producing accurate test results. The signature of the person performing the calibration authenticates this process and allows the Agency to check the calibration record of an analyzer if necessary.

Item C states that the fleet inspection station equipment, span gases, records, and premises shall be subject to scheduled and unscheduled checks for

accuracy and condition by an Agency representative. This requirement is necessary and reasonable so the Agency can check that all conditions of the permit are being met and the fleet inspection station is providing accurate test results consistent with the permit conditions.

Item D states that the applicant or permittee shall provide information relevant to the operation of the fleet inspection station to the Agency if requested by the Commissioner. It is reasonable to have this requirement so the Agency can obtain any additional information that would be needed to process a permit application or judge compliance with an existing permit and these rules.

Subpart 4 requires fleet vehicles to be inspected by the fleet station mechanic according to the schedule in part 7005.5015. That proposed rule provides that if the fleet vehicle is nontax-exempt, it shall be inspected within 90 days prior to the vehicle's registration renewal. If the vehicle is tax-exempt, the vehicle shall be inspected at a time designated by the Commissioner. The schedule for tax-exempt vehicles is reasonable because these vehicles are not subject to registration renewal therefore, it is reasonable for the Commissioner to establish a separate schedule for inspections.

Subpart 5 states that the tampering inspection and exhaust emission test shall be conducted on fleet vehicles by a fleet inspection station mechanic under parts 7005.5015 to 7005.5030 with the exception of part 7005.5030, subp. 6. If the fleet vehicle fails the exhaust emission test, the vehicle shall be preconditioned according to part 7005.5030, subp. 6, or if the fleet inspection station does not have a dynamometer, part 7005.5030, subp. 9.

The idle speed of each tested vehicle shall be adjusted to manufacturer's specifications if it deviates from the specified value by more than plus or minus 75 revolutions per minute. Subpart 5 is reasonable because it provides for the same tampering inspection and exhaust emission test for both fleet and non-fleet vehicles with the exception of preconditioning. Fleet inspection stations may not be equipped with a chassis dynamometer therefore, it is reasonable to establish an alternative preconditioning method that does not require the use of a chassis dynamometer. Because the alternative preconditioning method, under part 7005.5030, subp. 9, will adequately precondition a vehicle, the additional cost of a chassis dynamometer can be avoided. It is also reasonable for the fleet inspection station to adjust the idle to within manufacturer's specifications in order to insure that the inspection will be accurate.

Subpart 6, items A through H set forth the requirements for the vehicle inspection reports issued and processed by fleet inspection stations.

Item A states that a vehicle inspection report shall be completed, marked "passed" and issued for each vehicle passing the tampering inspection and the exhaust emission test. The vehicle inspection report serves as evidence that the vehicle has met the requirements of this rule and that the owner is eligible to renew the vehicle's registration. Therefore, it is reasonable to have an inspection report issued for vehicles inspected and tested by a fleet inspection station.

Item B states that corrections to vehicle inspection reports shall be authenticated and initialed by the mechanic conducting the inspection. The

voided or unusable reports and certificates shall be returned to the Agency. When corrections are necessary, it is reasonable to have those corrections authenticated by the mechanic to verify that the reports originally contained incorrect information but have been corrected. It is reasonable to require return of all reports and certificates because they are void and no longer usable, and return of the reports and certificates should eliminate the potential that they will be altered and misused.

Item C states that only the fleet station mechanic shall sign the vehicle inspection report except when the permittee is using the services of the Agency's contractor. When the fleet station mechanic performs the inspection, it is reasonable to require him or her to affirm that inspection of the fleet vehicle was completed in accordance with the rule.

Item D states that after completion of the tampering inspection, exhaust emission test and the vehicle inspection report, the original copy of the completed fleet vehicle inspection report shall be forwarded to the Agency within two weeks after completion of the inspection. This is reasonable so the Agency can maintain records on which fleet vehicles have completed the inspection. Two weeks is a reasonable time period for this requirement because it allows ample time for the fleet inspection station to provide the Agency with documentation.

Item E states that a legible copy of all completed vehicle inspection report forms shall be retained by the fleet station for at least 24 months. This requirement is necessary to provide a history for each fleet vehicle. Retention of this information will make it possible to reconstruct the history

of inspection of any fleet vehicle if necessary. Requiring retention of this information for two years is reasonable because it is not overly burdensome to the fleet inspection station permittees.

Item F states that the completed vehicle inspection report marked "passed" or "waived" shall be accepted as evidence that the vehicle is a fleet inspected vehicle and has met the requirements of this rule if the vehicle registration has not expired. This item is reasonable because it certifies that the vehicle has been subjected to the requirements of this rule and has passed the inspection, which consists of both the tampering inspection and the exhaust emission test. This evidence may then be used as part of an application to renew the vehicle's registration.

Item G states that the vehicle inspection report forms must be obtained from the Agency at a cost of $1.50 each. If there are excess forms, they may be used in later years or be returned to the Agency. The fee is reasonable so the Agency can recover the anticipated cost associated with issuing the vehicle inspection report forms.

Item H states that the fleet inspection station permittee is responsible for the security and accountability of the vehicle inspection report forms. If the reports are lost or stolen, the fleet inspection station permittee must notify the Agency of the number of reports lost and their serial numbers within 24 hours in writing. Failure to do this shall be grounds for revoking the fleet inspection station's permit. It is reasonable for the Agency to require that it be notified as soon as possible when vehicle inspection report forms are lost or stolen so the Agency may void the use of

those forms. Otherwise, there is a potential for misuse of the forms. It is reasonable for violation of this requirement to constitute grounds for revocation of a fleet inspection station permit so the Agency can minimize potential for misuse of the forms.

Subpart 7 states that upon the request of the Commissioner, a fleet inspection station permittee shall submit vehicles designated by the Commissioner numbering five percent of the fleet or five motor vehicles annually, whichever is greater, but no more than 25 vehicles, for inspection at inspection stations run by the contractor. It is reasonable to submit a representative number of fleet vehicles for inspection at the contractor's inspection station because it's in the State's interest to ensure that the fleet vehicles are being tested accurately and that the results are accurately reported to the Agency. This would be a quality assurance audit for fleet inspection stations. It is reasonable for the Commissioner to designate which fleet vehicles are to be subjected to this inspection in order to have a random sample of vehicles to be inspected.

Subpart 8 states that analyzers used by fleet inspection stations cannot be used for an exhaust emission test if it does not register the Agency's field audit gases within the tolerances prescribed in part 7005.5090, if there is a leak in the sampling system or the calibration port, or if the sampling handling system is restricted. This will be determined by a quality assurance audit conducted by the Agency. If the analyzer does not meet the requirements of this proposed rule, the Agency's representative shall hang a tag on the analyzer indicating that the analyzer is not to be used for testing.

The analyzer must not be used until the tag is removed by an Agency representative.

The tag must contain a brief statement that the analyzer does not meet the Agency's operating requirements for exhaust emission test purposes; why the analyzer was tagged; the values of the Agency's field audit gases and the analyzer readings obtained; date of the audit and the signature of the Agency representative who tagged the analyzer. The tag must be affixed to the analyzer in a manner so that the tag cannot be removed without breaking a seal or mutilating the tag.

This subpart is reasonable because it prevents a fleet inspection station from using analyzers that are not producing accurate and reliable test results. The quality assurance audit procedures contemplated by the proposed rule are reasonable because they will insure that analyzers are operating within specifications and will produce accurate test results. It is also reasonable for the Agency representative to hang a tag with the specific information discussed earlier on the analyzer so there is no question that the analyzer is not performing according to specifications and is not capable of producing accurate test results.

Part 7005.5085, Inspection Stations Acting as Fleet Inspection Stations.

Item A allows an inspection station operated by the Agency's contractor to provide inspection services to a holder of a fleet inspection station permit under a separate agreement between the contractor and the fleet inspection station. This is reasonable because it allows flexibility for a permitted

fleet inspection station to have its fleet vehicles inspected in the event that the fleet inspection station's equipment is damaged, or not operating according to specifications or as a matter of convenience.

Item B prohibits the contractor from billing the Agency for inspection services provided by the contractor to fleet inspection station permittees. Inspection fees paid for the inspection of fleet vehicles are paid by the fleet vehicle permittee directly to the contractor. This item is reasonable because the contractor is providing a service for the fleet vehicle permittee and not for the Agency.

Item C states that vehicle inspection reports shall be filled out at the time of inspection by an inspection station operating as a fleet inspection station in a manner similar to that required for nonfleet vehicles. This item is reasonable because it provides for the same accountability and documentation for fleet vehicles that are required for nonfleet vehicles. The same vehicle inspection report may then be used for both fleet and nonfleet vehicles.

Item D states that the holder of the fleet inspection station permit shall be responsible for maintaining the same records and reports as an inspection station serving nonfleet vehicles is required to maintain. This is reasonable in order to maintain consistent accountability and conformity between inspection stations and inspection stations acting as fleet inspection stations.

Part 7005.5090, Exhaust Gas Analyzer Specifications.

This part provides the specifications with which exhaust gas analyzers used at inspection stations and fleet inspection stations must comply. These specifications are based on 40 C.F.R. part 85 and the Bureau of Automotive Repair (BAR 84) requirements. The specifications contained in 40 C.F.R. part 85 are included in this part because these specifications are federal specifications for inspection and maintenance programs. The specifications contained in the Bureau of Automotive Repair (BAR 84) are included in this part because these specifications are federally approved specifications for inspection and maintenance programs.

Item A states that the hydrocarbon analyzer shall have an accuracy of plus or minus 15 parts per million at 200 to 220 parts per million concentration of hydrocarbons, measured as hexane; the carbon monoxide analyzer shall have an accuracy of plus or minus 0.10 percent carbon monoxide from 1.0 percent to 1.2 percent concentration; and the carbon dioxide analyzer shall have an accuracy of plus or minus 0.5 percent carbon dioxide from 5.0 percent to ten percent carbon dioxide concentration. These requirements are necessary and reasonable to assure that the results from the analyzer used for exhaust emission testing are accurate.

Item B states that the response time of the analyzer shall be 15 seconds to 95 percent of the final reading. The response time is the time the analyzer takes to reach 95 percent of the final reading. A 15 second response time is reasonable because it is consistent with the response time criteria contained in 40 C.F.R. section 85.2215 (b) (2), as amended.

Item C states that the analyzer drift (up-scale and down-scale zero and span wander) shall not exceed plus or minus 0.1 percent carbon monoxide, plus or minus 15 parts per million of hydrocarbons, measured as hexane, and plus or minus 0.5 percent carbon dioxide on the lowest range capable of reading 1.0 percent carbon monoxide, 200 parts per million hydrocarbons, measured as hexane or five percent carbon dioxide during a one-hour period. Analyzer drift demonstrates the stability of the analyzer while measuring a known concentration of gas over a one-hour period. These drift requirements are necessary and reasonable to assure that the analyzer is stable while operating and that accurate test results will be obtained.

Item D states that the analyzer shall have the capability of being calibrated electronically or by gas. In order to assure that analyzers can have their measuring ability checked or calibrated, it is reasonable to require analyzers to have this capability.

Item E states that the analyzer shall be operated within manufacturer's specifications for sample flow. The sampling system shall be equipped with a visual and audible warning when sample flow is not within operating requirements. Sample flow (rate) must be maintained by the analyzer in order to assure that the analyzer is operating properly. Therefore, it is reasonable to require that the manufacturer's specifications for flow be maintained by a visual and audible warning system.

Item F states that sampling the following concentrations of interfering gases shall not cause the hydrocarbon as hexane, reading to change plus or minus ten parts per million: 15 percent carbon dioxide in nitrogen, ten

percent carbon monoxide in nitrogen, 3,000 parts per million nitrogen oxide in nitrogen, ten percent oxygen in nitrogen, and three percent water vapor in air. Interfering gases may cause the analyzer to produce inaccurate results therefore, it is reasonable to test the effect of known concentrations of interfering gases and monitor the results. If the results are within the required specifications then the analyzer is considered to be free from the effects of interference. These specifications are necessary and reasonable because they will assure that the analyzer is operating free from interference and will produce accurate test results.

Item F also provides that sampling the following concentrations of interfering gases shall not cause the carbon monoxide reading to change plus or minus 0.05 percent: 15 percent carbon dioxide in nitrogen, 1,600 parts per million hydrocarbons in nitrogen, 3,000 parts per million nitrogen oxide in nitrogen, ten percent oxygen in nitrogen and three percent water vapor in air. Interfering gases may cause the analyzer to produce inaccurate results therefore, it is reasonable to test the effect of known concentrations of interfering gases and monitor the results. If the results are within the required specifications then the analyzer is considered to be free from interference gases. These specifications are necessary and reasonable because they will assure that the analyzer is operating free from interference and will produce accurate test results.

Item F also provides that sampling the following concentrations of interfering gases shall not cause the carbon dioxide reading to change plus or minus 0.5 percent: 1,600 parts per million hydrocarbons in nitrogen, ten percent carbon dioxide in nitrogen, 3,000 parts per million nitrogen oxide in

nitrogen, ten percent oxygen in nitrogen and three percent water vapor in air. Interfering gases may cause the analyzer to produce inaccurate results therefore, it is reasonable to test the effect of known concentrations of interfering gases and monitor the results. If the results are within the required specifications then the analyzer is considered to be free from interference gases. The specifications required are necessary and reasonable because they will assure that the analyzer is operating free from interference and will produce accurate test results.

Item G states that the repeatability of the exhaust analyzer shall be within plus or minus ten parts per million hydrocarbons as hexane; plus or minus 0.05 percent carbon monoxide; and plus or minus 0.2 percent carbon dioxide during five successive measurements of the same sample. Repeatability is necessary to assure that analyzer results are accurate.

Item H states that the analyzer sensitivity shall be ten parts per million hydrocarbon as hexane, 0.05 percent carbon monoxide and 0.2 percent carbon dioxide. Sensitivity is the degree of resolution that the analyzer is capable of producing. The degree of sensitivity in item H is necessary and reasonable because it will assure that the analyzer can test at an appropriate resolution in order to result in accurate testing.

Item I states that the analyzer shall be capable of meeting all specifications from zero to eighty-five percent relative humidity and 35 to 110 degrees Fahrenheit temperature. Because changing temperature and humidity conditions can change an analyzer's ability to measure accurately, it is

reasonable to require that analyzers have the capacity to accommodate these conditions.

Item J states that the analyzer shall have a range of zero to 2,000 parts per million hydrocarbons, as hexane, zero to ten percent carbon monoxide, and zero to at least ten percent carbon dioxide. These requirements are necessary to assure that the analyzer will be able to detect the entire range of concentrations of the gases that may be present in a vehicle's exhaust. Gases to be measured by the analyzer are expected to be within the ranges specified in item J.

Part 7005.5095, Test Equipment Calibration.

This part states that calibration procedures at least as stringent as those required for the federal warranty short test set forth in 40 C.F.R. section 85.2217, as amended, shall be performed on test equipment by the inspection station contractor and fleet inspection stations, unless an alternative equivalent procedure has been approved by the Commissioner. In the absence of appropriate procedures, all equipment shall be calibrated and maintained according to the manufacturer's specifications. This part is reasonable because it provides for the calibration of the emission analyzers to insure accurate emission measurements. The procedures contained in 40 C.F.R., section 85.2217 are included in this part because these procedures are federal standards for inspection and maintenance programs.

Item A states that exhaust analyzers shall be warmed up for at least 30 minutes prior to performing any test or equipment calibration, span or zero

checks. This item is reasonable because it insures that the exhaust analyzers have reached the appropriate operating temperature and have stabilized before being used.

Item B states that if, during an exhaust emission test, the sampling flow restriction indicator becomes activated, the test shall be stopped and restarted after the necessary repairs to the analyzer have been completed. Because maintaining constant sampling flow rate is critical to the proper operation of the analyzer, it is reasonable to stop testing if that flow rate has been disrupted. Once the analyzer flow rate has been restored to the proper value, testing may again continue.

Item C states that the exhaust analyzer shall not be used to test vehicles unless a multipoint calibration has been performed within the last 30 hirty days. A multipoint calibration is a means of demonstrating that an analyzer will respond accurately over the dynamic range of the analyzer. It is reasonable to require multipoint calibration to assure that the analyzer is producing accurate data and therefore that the emission test is valid.

Item D states that a multipoint calibration shall be performed before the analyzer is used for testing following replacement of an optical or electrical component that can cause a variation in the analyzer reading. Replacement of these components may change the analyzer's calibration, therefore it is reasonable to perform a multipoint calibration after these components have been replaced to ensure that the analyzer is producing accurate results.

Item E states that complete records shall be kept for maintenance, repair and calibration of all testing equipment. The purpose of this item is to have adequate information available to the Agency on the accuracy of all testing equipment. It is reasonable to maintain this information so the Agency can verify the validity of all tests conducted on an analyzer.

Part 7005.5100, Public Notification.

Item A states that prior to registration renewal, the owner will be notified by the Department that the vehicle will be required to satisfy the requirements of the Inspection/Maintenance rules. The Agency shall attempt to notify the owners of nonregistered tax-exempt vehicles that inspection of these vehicles will be required. Item A is reasonable because it provides advanced notification to the owner that the vehicle must be inspected prior to registration renewal. It is also reasonable to require the Department to do the notification because the Department can incorporate the notification for inspection into the notification process for vehicle registration renewal. It is also reasonable that the Agency attempt to notify nonregistered tax-exempt vehicle owners because these vehicles are not registered by the Department and not a part of the Department's existing registration renewal process. These vehicles include State and local law enforcement vehicles that do not display numbered license plates.

Item B states that the Agency or the contractor shall establish a system to respond to inquiries from members of the public regarding the compliance status of a subject vehicle including its last inspection date, whether a certificate of compliance or certificate of waiver has been issued

and the reason for a certificate of waiver if issued. This item is reasonable because it provides a mechanism to keep the public informed and specifies who the public may contact for information regarding the status of a vehicle.

Part 7005.5105, Inspection Fees.

Subpart 1 states that, starting with the effective date of this rule, the fee for inspection at an inspection station shall be no more than $10.00 paid to the registrar for subject vehicles at the time of reregistration. Thereafter, the Commissioner shall annually establish the inspection fee at an amount not more than $10.00. This fee shall be established by October 1 for the subsequent year and 30 days notice shall be given to the registrar of changes in the fee. Deputy registrars are required to report to the Department letters of extension along with registrations made and inspection fees collected in the same manner it currently is required to report vehicle registration information.

Subpart 1 is reasonable because it establishes a fee for inspection that is projected to cover the administrative costs and costs to perform the inspection. The fee is consistent with inspection programs in other States and with the fee structure established in the State legislation authorizing the Inspection/Maintenance program (Minn. Stat., section 116.64, subd. 1 (1988). In order to keep the cost for inspections less than $10.00, but still provide sufficient funding to cover the expenses of the Agency and the Department, it is reasonable to annually reassess the fee structure and adjust the fees consistent with the $10.00 maximum specified in the legislation. Deputy registrars currently conduct vehicle registration and are required to report

registration information to the Department. Therefore, it is reasonable to require them to also report information, such as letters of extension, along with registrations made and inspection fees collected, because the Inspection/Maintenance documentation will now be part of the registration process.

Subpart 2 states that the fee will entitle the owner to an initial inspection and two reinspections. Additional reinspections that are necessary to meet the requirements of this rule will be available for a fee to be established by the Commissioner. Also, elective inspections not required by this rule shall be allowed with the approval of the Commissioner for a fee established by the Commissioner. All elective inspection fees shall be no more than $10.00. Subpart 2 is reasonable because it tells the owner the number of inspections he or she is entitled to for the fee paid. However, the owner is not limited to the initial inspection and two reinspections, but may pay for additional inspections if necessary. Owners whose vehicles are not subject to inspection may request to be inspected for a fee: elective inspections are subject to approval by the Commissioner. Because there will be costs associated with additional and elective inspection of vehicles, it is reasonable for the Agency to assess a fee. It is reasonable for the maximum cost to be no more than the $10.00 inspection fee which is set by Minn. Stat., section 116.64, subd. 1 (1988).

Subpart 3 establishes fees for fleet inspection stations. These fees will be $200 for the permit to operate as a fleet inspection station, $100 for each permit renewal and $1.50 for each vehicle inspection report form used by the fleet inspection station. The permit fees are reasonable because the fees

are necessary to meet the Agency's estimated costs to process and renew fleet inspection station permits. As discussed previously, the number of fleet vehicles is unknown and the Agency cannot project with certainty the cost to provide quality assurance and technical assistance to fleet inspection stations.

The $1.50 fee for vehicle inspection reports is also reasonable because the fee is necessary to meet the Agency's estimated cost to provide quality assurance and technical assistance to the fleet inspection stations as well as the cost to provide the forms. The $1.50 fee may underestimate the Agency's cost for these functions.

In setting the fee for inspection report forms, the Agency considered that about $1.00 would be collected at inspection stations for the general public to cover the Agency's cost to administer the program. The Agency added fifty cents to this amount to cover the additional cost of providing quality assurance and technical assistance to the fleet inspection stations. As the Agency gains experience in operating the proposed Inspection/Maintenance program, it may become necessary to change, through the rulemaking process, the fee for the inspection report forms once the number of fleet inspection stations becomes known.

Subpart 4 states that fees collected under this part shall be deposited to the Vehicle Emission Inspection Account. This subpart is reasonable because those revenues are required to be deposited in the Vehicle Emission Inspection Fund by Minn. Stat., section 116.65, subd. 2 (1988). The rule also provides that fees collected by deputy registrars will be subject to

deposit requirements in Minn. Stat., section 168.33, subd. 2. This is reasonable because it does not change the law already applicable to deputy registrars.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat., section 14.115, subd. 2 (1988) requires the Agency, when proposing rules which may affect small businesses, 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.

In proposing the rule the Agency considered the feasibility of establishing lesser requirements for inspection of vehicles owned by small businesses but concluded that, because air pollutant emissions from vehicles owned by small business have an equally deleterious impact on air quality as any other vehicles, the purposes of the rules would be defeated by such a measure. The proposed rules are not expected to have a significant impact on small businesses because the inspection fee is low ($10 per vehicle). The proposed rule will most likely affect certain small businesses in a positive manner. Because of the repairs required for those vehicles that fail the inspection, the Inspection/Maintenance program will provide more business for small businesses involved in the automotive repair business. Also, no requirements were placed on the equipment necessary to repair vehicles which could have placed a financial burden on this type of small business.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat., section 116.07, subd. 6 (1988) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the 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 rules governing the Inspection/Maintenance Program, the Agency has given due consideration to available information as to any economic impacts the proposed rule would have.

No significant adverse economic impacts are anticipated to result from the adoption of the proposed rule. Businesses and municipalities that own vehicles subject to this rule will be charged a fee of up to $10.00 per year to have their vehicles inspected at an inspection station. In the same manner, vehicles owned by the general public will also pay the same fee for inspection at an inspection station. However, some minor impacts which can be expected are discussed below.

Fleet vehicle owners (businesses, governments, and educational institutions that maintain a fleet of vehicles) may be inconvenienced if all or several of their vehicles are scheduled to be inspected within a short period of time. To make the Inspection/Maintenance program as convenient as possible, fleet vehicles may be self-inspected under the direction of the Agency. This will reduce the amount of time a fleet vehicle will be out of service and therefore reduce potential economic burdens resulting from the temporary loss of use of those vehicles.

There may be some beneficial economic impacts from the proposed rule. Vehicles that fail the inspection must be repaired before being reinspected. This may create additional business for automotive repair facilities. It is likely this would result in better gas mileage and longer vehicle life due to more frequent maintenance. In addition, some economic benefit will be gained

by the employment of people that a private contractor will hire to implement the Inspection/Maintenance program.

VII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules, parts 7005.5010 to 7005.5105 are both needed and reasonable.

Dated: 4/19, 1989

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner