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Re: Proposed amendments to regulations governing motor vehicle inspection rules
From: Sal Risalvato, Executive Director, New Jersey Gasoline, C-Store, Automotive Association (NJGCA)

NJGCA represents hundreds of independent small businesses in the auto repair trade. These shops are the quintessential small business of America. For nearly eighty years, this association has advocated to every facet of State government on their behalf. For the last six years, much of this effort has been focused on the State's emissions inspection program. Over half of the private inspection facilities (PIFs) in this state are NJGCA members, and many NJGCA members that are not presently enrolled in the PIF program would be potential clients to enroll as PIFs in the future.

Finally, after years of waiting, of delays, of procrastination, and of promises, the Administration has finally unveiled its proposed changes and while the "next generation program" is an improvement on the current program, it still falls dramatically and crushingly short of what it should be and could have been.

Rather than embrace the type of good government, small business and taxpayer friendly policies that almost every other state in the nation has long embraced; rather than heed the advice of virtually every professional association, inspection contractor, technical expert, independent business owner, and even the official report of the Governor's Privatization Task Force (2010, page 34); the State has instead opted to take the shortsighted and politically convenient position of continuing to operate the central inspection facilities (CIFs). Based on the new contract, it will be as long as a decade before this mistake can be rectified.

In fact an RFP was issued and MVC commissioned a study to report on the best and most economical and efficient methods to perform emissions inspections in any future inspection program. The award was made to Eastern Research Group (ERG) back in 2011 as an RFP for the next generation inspection program was supposed to be issued (and anticipated) in 2012.

Although we have never been permitted to review the final ERG recommendations, we believe that the report recommends that CIFs be closed and the properties be sold off and that all emissions inspections be conducted entirely at PIFs. NJGCA believes that the Administration has made a significant and costly error with regard to the taxpayers of NJ.

As such, NJGCA's position on the various proposed rule changes are listed below.

SUPPORT: Exempting vehicles MY 1995 and older (13:20-7.2)

NJGCA supports the end of emissions inspections for vehicles Model Year (MY) 1995 and older. These vehicles, which do not have on-board diagnostic (OBD) systems, require a more costly and time consuming form of inspection, the two-speed idle (TSI) test.

Motor vehicle inspectors are trained technical professionals, and every minute of their time has a clear, concrete, and expensive value. The act of performing a TSI test will therefore always cost significantly more simply for that reason. Beyond the extra cost in man hours, the purchase of these workstations is also significantly more expensive (approximately three times). The current TSI workstations being used are reaching the end of their natural lifespan, and though most are still functioning it is highly unlikely they will continue functioning for the 6 year period the new inspection contract will last, much less the additional 4 years of extensions allowed by the contract. Further, the cost of maintenance of a TSI machine is also much higher than an OBD workstation (under the current contract the monthly payment is twice as high).

Add this all up and it results in a high cost per inspection as business owners try to earn back the cost in labor, the cost of the maintenance fee, and the high cost of the initial investment in the TSI workstation.

If a PIF could count on performing multiple TSI inspections per day then this would not present a particularly insurmountable problem. However, even now there are many PIFs who perform only one or two TSI inspections per month. With such a small universe of vehicles, the high cost of these inspections must be amortized over a very small number of consumers, driving up the price substantially. This is also not a static number of vehicles, but a shrinking pool. Approximately 3,500 of these vehicles leave the roadways every month simply through natural attrition. If that trend were to continue at that same rate then these vehicles would be off the roads in about 5 years (of a six to ten year contract). Even the handful that would remain would all become so old that they could in theory qualify for historic plates (depending on their usage) at that point.

There simply is not, and would not be, enough potential revenue available to make TSI inspections worth the upfront and ongoing investment for a PIF. While over half of PIFs

currently have a TSI machine, it is hard to imagine more than a handful choosing this option again in the new program, if it were offered. If the State were to overcompensate for this problem by mandating that all PIFs purchase a TSI machine, it is NJGCA's analysis that most current PIFs would simply abandon the program, greatly inconveniencing all motorists and driving up costs for the State.

From an environmental standpoint, the miniscule benefit to the environment from continuing these inspections is nowhere near the cost and the burden that would be involved in maintaining TSI inspection requirements, not now and certainly not six or ten years from now. It should of course be pointed out that this change will not mean 200,000 perfectly functioning cars will suddenly become massive polluters with this change. The vast majority will continue to work as well as they currently do, and those that do suffer some form of malfunction will increase the chances that the owner will finally make the decision to upgrade to a car manufactured in the last twenty years, and therefore OBD capable and required to receive regular emissions inspections.

SUPPORT: Commercial vehicles can only be inspected at PIFs (13:20-7.3, 32.2)

NJGCA strongly supports having all eligible commercial vehicle inspections be performed at PIFs. Commercial vehicles, unlike passenger vehicles, are still required to undergo an annual safety inspection. In addition to the tremendous societal benefit that comes from having these vehicles inspected for safety reasons, independent auto repairers also benefit. The main benefit from a safety inspection to an auto repairer is not the fee incurred for the actual task of inspecting the vehicle, it is the pressure point created from being able to deny an inspection sticker unless necessary safety repairs are completed.

Since the elimination of safety inspections for passenger vehicles in 2010, NJGCA members have universally noted a distinct increase in the number of vehicles coming into their shops for routine maintenance in violation of numerous state safety statutes and regulations. In the past, these issues would be pointed out to the consumer, and the repairer would also point out that if a repair was not made, the motorist would fail their next vehicle inspection. That fear of a failure, and the inconvenience that comes with it, was often a more powerful motivator than appealing to their conscience or their respect for the rule of law or any fear of getting a traffic ticket. Since a vehicle will not fail an inspection even when in violation of these safety laws, there is a disturbingly significant number of motorists who forgo safety related repairs in order to save themselves an immediate expense, choosing to delay repairs, thereby endangering not only themselves but everyone else on the road.

Having commercial inspections performed only at PIFs also ensures that the inspections are performed by professionals who deal with these issues on a daily basis, and can watch as usage slowly wears down a particular vehicle, in a way similar to how a doctor can come to know a

patient over years of examinations. If something is found to be in violation of safety or emissions standards, a PIF will also be able to make the appropriate fix, getting the vehicle back into service more quickly. When an issue is discovered at a CIF, the owner must make a separate appointment and separate trip to an auto repairer to get it fixed. The longer a commercial vehicle is out of service, the more it costs the owner.

By increasing the amount of inspections performed at PIFs, small businesses will have an opportunity to prosper; and when small businesses prosper we all prosper, tax revenue increases, jobs are created and maintained; jobs which are good paying and satisfying. Allowing CIFs to eliminate all the equipment required for a full safety inspection will also lower the cost to the State of operating the inspection program, thereby benefiting all taxpayers.

SUPPORT: All re-inspections to be performed at PIFs (13:20-7.3, 32.2)

NJGCA supports the requirement for all re-inspections to be performed at PIFs. This is a change that NJGCA had advocated to MVC as early on as 2010; to make in the interim before a new program was designed, which would have ideally eliminated CIFs completely.

Though there are more re-inspections performed at CIFs every year than commercial inspections, we cannot be as enthusiastic about this change as we are for commercial inspections. In addition to the lack of a safety inspection, the fees that can be charged for a re-inspection are capped. While this change will mean more volume, it will not necessarily result in a meaningful increase in profits at the small business.

The real advantage to this change will simply be the opportunity to get new customers in the door, and hopefully establish a relationship and a degree of trust that will result in this motorist becoming a regular customer.

Another benefit to this change is that there will no longer be certain motorists taking advantage of the taxpayer by getting multiple "free" re-inspections in the hope that they can slip through an imaginary crack and avoid having to pay for emissions repairs. As we know, there is no such thing in life as a free lunch, and every one of those "free" re-inspections is costing the State money that must be balanced out somewhere else. The savings to the State from this change will no doubt be put to better societal use.

It should be noted that often times, especially when a motorist presents a vehicle for re-inspection that has not been repaired at the admitting PIF, the actual service of performing the re-inspection is actually a nuisance, since the economic value comes from making the repair and not the re-inspection. However, PIFs have concluded that they will make the best effort to gain new

customers as mentioned above, and that this is a demonstration of doing their part to help lower the cost of the overall inspection program to the state.

SUPPORT: PIF classification changes (13:20-33.1, 43.1, 44.2)

NJGCA supports the various changes to simplify the licensing classifications for PIFs. Moving from five classes to three is inherently simpler for both the State and for current and prospective PIFs. NJGCA is also pleased by the fact that Class I facilities, which currently only perform OBD inspections on light duty vehicles, will now be able to perform them on heavy duty vehicles.

AMEND: Changes in definitions of vehicle types (13:20-7.1, 32.1, 33.1, 43.1, 44.2)

NJGCA is concerned with the vagueness of the new term: "passenger vehicle transportation", specifically that the term is too similar to "passenger vehicle", the requirements for which are of course substantially different. It is understandable why there would be a desire to have one term apply to a variety of similar vehicles types (taxicab, limousine, jitney, etc.), but we fear this specific verbiage may not be the best way. More than anything we would like clarification that both the registration and the license plate will still read "limousine", "taxicab", etc. If future registrations list the vehicle as being "passenger vehicle transportation", some inspectors could be tripped up, thinking the vehicle is a "passenger vehicle". The result being them not doing an annual safety and emissions inspection but instead a biennial emissions only inspection. This honest error would then incur fines and penalties, which should be avoided.

NJGCA would also have preferred if MVC had used the opportunity presented by these regulatory changes to close a dangerous loophole that has exposed itself just in the last two years. The definitions should have been written to include, or a new term should have been created ("transportation network vehicle" has been used in some proposed legislation) to cover passenger vehicles now being used by the owner to provide ridesharing services for pay, most commonly through the Uber and Lyft apps.

These vehicles are being operated at least some of the time as commercial vehicles. This means they are on the road more, experience more wear-and-tear, and therefore, for the safety of the riders, who are actually paying customers, should undergo more than a biennial emissions inspections (only after the vehicle is five years old at that).

As taxis and limos are subjected to, passenger vehicles now being used for commercial purposes should also be required to undergo an annual safety check, with no five year exemption. The business model of these ridesharing apps allows the driver to work as often as they would like to. As a result, depending on the owner of the vehicle, it is certainly conceivable that some vehicles

currently treated as a passenger vehicle are traveling more miles transporting paying customers than some taxicabs and limousines are. It is clear that MVC has the authority to make this fix and it is also clear that it should not wait on the state Legislature to act.

OPPOSE: Self inspections expansion (13:20-7.2, 26.2, 43.2)

NJGCA strongly opposes the amendments to allow self inspection for diesel vehicles with a GVWR over 8,500 pounds (down from 10,000), gas and bi-fueled MY 2007 or older with a GVWR 8,500 to 14,000; and gas and bi-fueled MY 2013 or older with a GVWR 14,000 pounds and greater.

Self inspection is not just somewhat ineffective; it may be the single most ineffective aspect of the entire inspection program. Experience has shown that self inspection means no inspection at all. The diesel vehicles 10,000-18,000 pounds who have already been cleared for self inspection have over the last several years proven to be the most frequent and egregious violators of inspection laws. And why not? There is little point in having a law if there is no one and no way to enforce it. Theoretically all passenger vehicles are required to self inspect for safety since various safety statutes still apply, yet as discussed we are seeing many simply ignore the laws rather than pay to comply with them. This is not a new experience, as James Madison famously said, "if men were angels, no government would be necessary". This is not the case and we cannot expect that everyone will obey the laws simply because it is the right thing to do. The lack of compliance that already results from self inspection, and the increased lack of compliance that will result from expanding the qualifications for self inspection, will lower compliance with the law and damage air quality throughout the State, and all for no meaningful benefit.

It is our belief that these regulatory changes should have moved in the opposite direction and included changes to close this failed loophole and eliminate self-inspections for diesel vehicles with a GVWR of 10,000-18,000 pounds. Instead, the State is doubling down on the mistake and expanding this failed policy to even more vehicles. These vehicles are among the largest and potentially most lethal vehicles on the road, the vehicles that if the emissions technology fails, will pollute the air far worse than if it fails on a typical passenger vehicle.

SUPPORT: OBD testing for certain heavy duty vehicles (13:20-43.8)

NJGCA supports the expansion of OBD testing for gas and bi-fueled vehicles MY 2008 and newer with a GVWR 8,501-14,000 pounds, gas and bi-fueled vehicles MY 2014 and newer with a GVWR over 14,000 pounds, and diesel vehicles MY 2014 and newer with a GVWR over 14,000 pounds. OBD testing is convenient for the motorist and the inspector, and the most effective form of emissions testing. The more vehicles tested with it the better for all.

AMEND: CIFs will only be allowed to perform an initial emissions inspection of a passenger vehicle (13:20-7.3, 32.2)

While NJGCA does support this amendment, our issue is that it does not go far enough. It remains, and will continue to remain our position that New Jersey should follow the example of almost all other states, including our neighbors Pennsylvania and New York, and permanently close all CIFs, send all inspections to the PIF network, and then sell off the current CIF facilities in order to realize the capital (cash) gain that can then be used elsewhere in the state budget (perhaps to help make a pension payment).

Such a move will substantially benefit hundreds of small businesses throughout the state who would see a six-fold increase in their inspection business, and would still be a three-fold increase over the changes that will result from what is actually proposed in these regulations and in the next generation program laid out in the recent Request for Proposal. It would save the State over \$40 million annually, plus provide one shot revenue from the selling off of the inspection facilities (prime commercial real estate) that would undoubtedly amount to hundreds of millions of dollars.

A fully decentralized program would work well in New Jersey, even with the number of PIFs currently licensed. This is not pure speculation, in New Jersey approximately 2.4 million inspections are performed per year total, and there are around 1,100 licensed PIFs. In Georgia, around 2.5 million inspections are performed per year with a PIF network of approximately 900. In Massachusetts, 5.1 million inspections are performed per year (including safety inspections) by fewer than 1,800 PIFs. With the exception of a few sparsely populated geographical areas that would need more licensed PIFs, the current number of PIFs would be more than sufficient to handle a fully decentralized program.

Even still, market forces would create a significant increase in demand for shops to become licensed PIFs. Less than a third of independent auto repair shops are PIFs, meaning there is plenty of room for growth, if the demand for more inspections was allowed to exist. Any laid off workers from CIFs would be in demand since they would not require training and are already licensed, and could begin work immediately at PIFs, with expertise and experience.

Instead the State will pay for and oversee, for up to a decade, an outdated ineffective hybrid model system that has been widely abandoned throughout the country. The State will attempt to split the difference between two models and as a result will arguably wind up not with the best of both worlds but the worst of each.

OPPOSE: Changes to temporary authorization certificate rules (13:20-7.4)

NJGCA opposes the policy laid out in this proposed "change". Many members over the last few years have had customers come to them with a vehicle they recently purchased from out of state, understanding they can go to a CIF for no charge but instead preferring their local PIF to perform the inspection for a fee. They are willing to pay for a convenience, but inspectors have had to tell them no, they cannot be helped.

A PIF charging to inspect a used vehicle under 5 years old is not an injustice and has no victim. On several occasions motorists have not been relieved to learn of some previously unknown savings, but on the contrary they have been angered at the unwanted inconvenience of going to a CIF. They are willing to pay a small business owner to alleviate this inconvenience but this amendment removes that option from them. Motorists should be allowed the freedom of an informed choice, as all citizens should be allowed in a free society.

NJGCA would suggest as a compromise that if a motorist in this position goes to a PIF and chooses to pay, they must sign a waiver informing them they could get a completely free sticker at a CIF, but are instead choosing to pay at the PIF. Such a simple provision would benefit all parties involved.

Furthermore, NJGCA is confused by the presumption that this is even a change, and is not already the effective policy of MVC. In previous discussions between NJGCA and MVC officials, staff was told that it was not legal for PIFs to give out inspection stickers in this scenario, and that they are required to refer them to CIFs. Several members, including members of the NJGCA Board of Directors, have reported being told by MVC auditors that they were unable to provide this service even when a customer demanded it.

Additionally, we do support the subsequent paragraph saying that commercial vehicles in this scenario can only go to a PIF. The existence of this provision seems to only strengthen the case that passenger vehicles should be allowed the option of doing so as well. Clearly it is possible, and clearly it can be done if it is going to be mandated for all commercial vehicles.

SUPPORT: Anti-tampering check (13:20-32.20, 33.20)

NJGCA supports an explicit requirement that passenger vehicles, commercial vehicles, and passenger vehicle transportation must all receive an anti-tampering exhaust check. Any change that reduces fraud on the part of motorists, and that increases awareness of fraud by licensed inspectors is welcome.

SUPPORT: Check for multiple catalytic converters (13:20-43.14)

NJGCA supports requiring that a vehicle under inspection be checked for multiple catalytic converters. When these regulations were originally written it was essentially and understandably unthought-of for vehicles to possess multiple catalytic converters. With this change in technology, it is only proper for the State to adapt its regulations as well and ensure that all emissions systems are properly installed and functioning.

SUPPORT: Greater clarity in safety failings that can cause an inspection to be ceased and the vehicle failed (13:20-32.2, 33.2)

NJGCA supports listing specific examples of safety related issues that would actually cause an inspection to be ceased and the vehicle failed. We would point out the strangeness that an inspector can say a vehicle is too unsafe to fully conduct an emissions inspection but that it can still be permitted on the road. Rather than waiting for mechanical issues to become so horrendous that an emissions inspection cannot occur, it would be better policy to have regular inspections for safety and mechanical issues to ensure that proper vehicle maintenance occurs.

SUPPORT: Replicas and kit vehicles are not collector vehicles (13:20-43.1, 43.2A)

NJGCA supports the formal codification into law that replicas of collector vehicles are not actually collector vehicles and should not be treated as such by the laws of the state. The suggestion otherwise has simply been a foolish attempt to exploit an imagined loophole in order to circumvent a variety of legal requirements, including inspections.

STRENUOUS REQUEST: Repairs conducted by non-ERFs

NJGCA is disappointed to see that an outstanding issue about which we and our members have discussed with MVC on multiple occasions was left out of this regulatory change. It is our position that current regulations must always be followed and enforced, and unfortunately the regulations that require that all emissions repairs be performed at a certified Emissions Repair Facility (ERF) by a certified Emissions Repair Technician (ERT) are being ignored, and the result is an unsustainable paradox that can and should be fixed.

If the motorist has failed an inspection, and returns to a PIF with a repair that has been completed either by themselves, or worse by a non-licensed ERF, there is a dilemma in which the PIF is being asked to vouch for the fact that the repair was done correctly by someone else, someone they do not know, whose competence they cannot trust and should not trust given that the shop in question could not be bothered, or was incapable, of becoming an actual certified ERF.

Since the PIF cannot undo the repairs that have been done (they cannot strip out the part and ask the motorist to come back after the fix has been made at an ERF), a change should be made so that the PIF can charge the motorist to inspect and certify the repair before re-inspecting it. This certification process should not negate the charge of the re-inspection as is done when an ERF/PIF shop repairs and then re-inspects a vehicle. This would also encourage more PIFs to become ERFs and more ERFs to become PIFs. It is after all a stated goal of this rule proposal to increase the number of PIFs that are ERFs.

Without this change why should a shop go through with the effort of becoming an ERF if they can do all the repairs either way with no downside? Honest independent repairers should not be conned into paying to participate in a pointless ERF program with no real-world advantages to them. There must be penalties for repair shops that perform emissions inspections that have not met the standards and requirements of an ERF.

Additional enforcement of this law is required. One way to help would be to have the new inspection workstation have the ability, when the "certification" process is being done, to report the name, address, and phone number of the unlicensed shop that illegally performed the repair so that MVC can immediately and easily act to enforce compliance. Without this change, the system risks falling apart, because those that are trying to do the right thing and follow the law are being treated like chumps for doing so.

CONCLUSION

In conclusion, the changes proposed to the State's inspection program represents a missed opportunity of historic proportions. While certain changes are beneficial, it seems that for the two steps forward made by these changes there is one step back. The biggest failure of this new program is not what is in it but what was left out. Hopefully a future Administration, one less bogged down by half-measures and inertia, will correct these mistakes and make the bold reforms to government the state so desperately needs and which once seemed so tantalizingly possible.