



Division of Air Pollution Control

Response to Comments Draft Rule Language Comment Period

Rule: OAC rule 3745-26 Vehicle Inspection/Maintenance (I/M) Program
Agency Contact for this Package

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Ohio EPA provided a 30 day comment period which ended on October 24, 2014. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

None

Rule 3745-26-01, "Definitions"

Comment 1: OAC 3745-26-01(E) "Compliance" or "comply" means a vehicle has passed all aspects and parameters of the anti-tampering, ~~basic,~~ enhanced ~~or opt-in enhanced~~ vehicle inspection and maintenance program, ~~whichever is~~ required under ~~these~~ ~~rules~~ [this chapter](#). A compliance certificate will be issued to the owner or lessee whose vehicle has successfully passed the inspection. *(P. Taylor note: Should ", whichever is" be removed? Alternatively, should "whichever" be changed to "which"?)*

Response 1: The Ohio EPA agrees with the comment and will make the change.

Comment 2: [\(MM\) Referenced materials. This chapter includes references to certain subject matter or materials. The text of the referenced](#)

materials is not included in the rules contained in this chapter. Information on the availability of the referenced materials as well as the date of and the particular edition or version of the material is included in this rule. For materials subject to change, only the specific version specified in this rule are incorporated referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not referenced unless and until this rule has been amended to specify the new dates. (P. Taylor note: For the highlighted wording, Insert the word "or" between "incorporated" and "referenced"; also insert a space between the words "referenced" and "unless".)

Response 2: The Ohio EPA agrees with the comment and will make the change.

Rule 3745-26-10 "Requirements for contractors in the, enhanced vehicle inspection and maintenance program"

Comment 3: (C) (3) The amount of time a vehicle must wait within the confines of the queuing area shall not exceed a daily average of fifteen minutes; (P. Taylor note: Ohio EPA's last RFP and the current contract says twenty minutes for this requirement.)

Response 3: The particular citation in the RFP on page 25 that has twenty minutes is a typo and it should be stated "average queuing times in excess of (15) fifteen minutes per day..." vs (20) minutes". Wherever it is stated as an average it should be 15. The other citations where it is (20) minutes is as an individual vehicle should wait no more than a total of 20 minutes, without averaging.

Rule 3745-26-12 "Requirements for vehicle owners in the enhanced vehicle inspection and maintenance program"

Comment 4: (A) (2) Unless otherwise exempt pursuant to division ~~(F)(3)~~ (B)(3) of section 3704.14 of the Revised Code, each twenty-five year-old or more recent motor vehicle whose owner or lessee resides in a county that is part of a designated program area, and each twenty-five year-old or more recent motor vehicle that is part of a fleet operated in a county that is part of a designated

program area, is subject to biennial inspection for the **opt-in enhanced or enhanced** programs. *(P. Taylor note: "Opt-in enhanced" wording has been removed almost everywhere else. Is it left here intentionally or should it be removed?)*

Response 4: The Ohio EPA agrees with the comment and will make the change.

Comment 5: (A) (2) (c) Federal installations located in a designated program area shall provide documentation of proof of compliance with test requirements to the director of Ohio EPA. Documentation shall include a list of subject vehicles and be updated **annually biennially**. *(P. Taylor note: The word "annually" should be struck.)*

Response 5: The Ohio EPA agrees with the comment and will make the change.

Comment 6: (A) (7) Foreign imported **grey**-market vehicles that have been issued documents of . . . *(P. Taylor note: Spelled "gray" instead of "grey" elsewhere in the rules/regulations.)*

Response 6: The Ohio EPA agrees with the comment and will make the change.

Comment 7: (B) (5) (d) (iv) The motor vehicle owner or lessee provides a written estimate of seventy-five dollars or more for vehicle emission repairs, parts or services, including diagnostic fees, related to the failure. If a motor vehicle owner or lessee intends to perform the necessary services or repairs **themselves**, the written estimate shall include only the cost of emission related parts. The written estimate shall not include any costs associated with any motor vehicle emission related recall that has been or is to be paid by a manufacturer or dealer. *(P. Taylor note: Perhaps a silly question, but what if the repairs are performed by a friend, family member, etc? Could that potentially be interpreted as not performing the work "themselves"? I'd suggest referencing a "Repair Facility" since that is being added as a newly defined term in the definitions section of the revised rules. For example, "If a motor vehicle owner or lessee intends to perform the necessary services or repairs **themselves rather than having the work done by a Repair Facility**, the written estimate shall include only the cost of emission related parts.")*

Response 7: The Ohio EPA does not think that further clarification is necessary.

Comment 8: (C) Permanent exemptions.

Effective January 1, 1996 the following motor vehicles are permanently exempt from the emissions inspection required in the designated program area:

(1) Vehicles that are older than twenty-five years, as determined by vehicle model year;

(2) Passenger, noncommercial and commercial vehicles with gross vehicle weight ratings of more than ten thousand pounds, ~~except for urban buses which shall be tested~~ after a onetime visual verification and inspection by an Ohio EPA representative.

(P. Taylor note: Is Ohio EPA really going to require all vehicles over 10,000 lbs GVWR to receive a one-time visual verification and inspection in order to be exempt from testing? That's a lot of 18-wheelers, delivery trucks and other large vehicles. I'm not sure that's really what the Agency intended here, but that's what the new wording seems to say.)

Response 8: The Ohio EPA will make the following changes “(2) ~~Passenger, noncommercial and commercial~~ vehicles with gross vehicle weight ratings...”. This will eliminate commercial vehicles more than 10,000 pounds from needing a onetime visual verification and still requires commercial vehicles 10,000 pounds or less to still be tested.

Comment 9: (D) Inspection procedures and repair requirements.

(8) Any vehicle owner or lessee may perform repairs necessary to prepare the vehicle for reinspection, however, only actual costs of emissions related parts, not labor costs, incurred by an owner or lessee in performing self repairs upon vehicles shall be applied towards a waiver.

(P. Taylor note: Again perhaps a silly question, but what if the repairs are performed by a friend, family member, etc? Could that potentially be interpreted as not performing “self repairs”? I'd again suggest referencing a “Repair Facility” since that is being added as a newly defined term in the definitions section of the revised rules. For example, “Any vehicle owner or lessee may perform repairs necessary to prepare the vehicle for

reinspection, however, *if the repairs are not performed by a Repair Facility, only actual costs of emissions related parts, not labor costs, incurred by an owner or lessee in performing self repairs upon vehicles shall be applied towards a waiver.*")

Response 9: The Ohio EPA does not think that further clarification is necessary.

Comment 10: (D)(9) If a motor vehicle failing the *opt-in enhanced or* enhanced test is covered by a valid and unexpired emission performance warranty as provided under section 207 (B) of the Clean Air Act *Amendments of 1990, 104 Stat. 2399, 42 USCA section 7401, as amended*, the vehicle owner or lessee shall have any repairs necessary for the vehicle to pass inspection performed on the vehicle under that warranty. Such a vehicle is not eligible for a waiver under this rule. Costs incurred under warranty repairs shall not be applied towards a waiver. *(P. Taylor note: "Opt-in enhanced" wording has been removed almost everywhere else. Is it left here intentionally or should it be removed?)*

Response 10: The Ohio EPA agrees with the comment and will make the change.

Comment 11: (E) Waivers.
(1) To qualify for a waiver certificate, a motor vehicle owner or lessee ~~must~~ shall provide all of the following:
~~(c)~~(b) Emission-related Repair receipts including itemized costs from a repair facility, or costs of parts if repairs are performed by an owner or lessee, to bring the vehicle into compliance with the required emission inspection. This amount shall not include the cost of repairing or replacing tampered emissions control equipment, and shall include only the cost of parts if the repairs are performed by the vehicle owner or lessee themselves.
(P. Taylor note: Similar to prior notes, what if the repairs are performed by a friend, family member, etc? Could that potentially be interpreted as not performing the work "themselves"? I'd again suggest referencing a "Repair Facility" since that is being added as a newly defined term in the definitions section of the revised rules. For example, "This amount shall not include the cost of repairing or replacing tampered emissions control equipment, and shall include only the cost of parts if the repairs are performed by the vehicle owner or lessee themselves rather than having the work done by a Repair Facility.")

Response 11: The Ohio EPA does not think that further clarification is necessary.

Comment 12: (2) The vehicle owner or lessee ~~must~~ shall demonstrate that ~~he or she has spent~~ an amount equal to or greater than the "waiver limit" ~~specified as defined in rule 3745-26-01 of the Administrative Code section 3704.14 of the Revised Code has been spent~~ on emission-related repairs and diagnostic fees. This amount shall not include the cost of repairing or replacing tampered emissions control equipment, ~~nor shall it include the cost of a low emission tune-up,~~ and ~~it~~ shall include only the cost of parts if the repairs are performed by the vehicle owner or lessee themselves. If the vehicle owner or lessee demonstrates that the "waiver limit" has been spent, the vehicle shall be inspected and the documentation reviewed to establish ~~both of~~ the following: *(P. Taylor note: As noted above, I'd again suggest referencing a "Repair Facility" since that is being added as a newly defined term in the definitions section of the revised rules. For example, "This amount . . . shall include only the cost of parts if the repairs are performed by the vehicle owner or lessee themselves rather than having the work done by a Repair Facility.")*

Response 12: The Ohio EPA does not think that further clarification is necessary.

Comment 13: (F) Test fees.
(1) ~~Pursuant to section 3704.14 of the Revised Code, the director shall establish non-taxable fees for biennial inspections and reinspections. The inspection and reinspection fees shall not differ in amount and shall not exceed twenty-five dollars for the opt-in enhanced or enhanced program. The contractor shall refund the inspection costs for one pass per vehicle incurred by a motor vehicle dealer so that the dealer may provide inspection certificates to an individual purchasing a motor vehicle from the dealer when that individual resides in a county that is subject to the motor vehicle inspection and maintenance program.~~ *(P. Taylor note: The current process followed in the E-Check program is that a refund is automatically sent to the dealer only IF the vehicle tested is ultimately registered in an E-Check county. Does this new regulatory wording mean that a refund for "one pass per vehicle" should be made to the dealer regardless of whether or not the vehicle is ultimately registered in an E-Check county? This language can be interpreted that*

way if that is not the intent. And if that is the intent, why not just eliminate the requirement for dealers to purchase vouchers?)

Response 13: The Ohio EPA will change the wording to the following:
The contractor shall refund the inspection costs for one pass per vehicle incurred by a motor vehicle dealer. These refunds shall apply to vehicles that become registered in a county that is subject to the motor vehicle inspection and maintenance program.

OAC rule 3745-26-15 Waiver repair certification procedures, requirements and obligations.

Comment 14: (B) For applicants who meet or continue to meet the criteria for ~~licensing~~certifying as a waiver repair facility, the director shall issue an initial or a renewal ~~license~~certification to the facility for a period not to exceed three years. Any renewal application not received within ten days after the last day of the renewal date shall be considered evidence that the facility does not intend to renew their application for a ~~license~~certificate. For any voluntary relinquishment or abandonment of license (*P. Taylor Note: Should "license" be replaced with "certification"?*), or cessation of operation of the facility, it is the responsibility of the ~~licensee~~applicant to notify the director, at least seven days in advance, of the exact date the station will cease conducting waiver repairs. The director ~~or his representative~~ shall reclaim all state-owned or state-provided property.
(P. Taylor Notes: 1. Recommend changing the word "station" to "facility" in order to avoid potential confusion among the public since "station" is normally thought of as one the E-Check testing locations. 2. Does the facility actually have to "cease conducting waiver repairs" or do they really only have to give up their "certified" designation? Repair shops don't have to be "certified" in order to conduct repairs that potentially qualify a vehicle owner for a waiver.)

Response 14: The Ohio EPA agrees "license" should be replaced with "certification" and "station" with "facility". Concerning the number 2 comment, "cease conducting waiver repairs", the Ohio EPA has added the following clarifying language, "will cease ~~conducting waiver repairs~~ **to meet the criteria as a certified waiver repair facility.**" This allows the facility to continue its operations but without the certification.

Comment 15: (C) The license shall be valid only for the following: (P. Taylor Note: Should "license" be replaced with "certificate" or "certification"?)

Response 15: The Ohio EPA agrees with the comment and will make the change.

Comment 16: (D) The director may include terms and conditions as part of any license issued, to ensure compliance with this chapter. (P. Taylor Note: Should "license" be replaced with "certificate" or "certification"?)

Response 16: The Ohio EPA agrees with the comment and will make the change.

Comment 17: (E) Each waiver repair facility shall have a minimum of one certified waiver repair technician, as certified in accordance with rule 3745-26-16 of the Administrative Code. The ~~licensee~~applicant shall notify the director within seven calendar days, in writing, when an employee, who is a certified waiver repair technician, resigns, is dismissed, or otherwise leaves employment at the facility. If a certified waiver repair technician resigns, is dismissed, or otherwise leaves employment at the facility resulting in no certified technicians currently at the facility, the facility may not conduct waiver repairs. (P. Taylor Note: Does the facility actually have to stop conducting waiver repairs or do they really only have to give up their "certified" designation? Repair shops don't have to be "certified" in order to conduct repairs that potentially qualify a vehicle owner for a waiver.)

Response 17: The Ohio EPA will clarify and add that the facility will cease to meet the criteria as a certified waiver repair facility. The facility can still conduct repairs they just will not be on the Ohio EPA certified list.

Comment 18: (G) Waiver repair facilities shall not conduct waiver repairs unless the following items are on its premises and are in full operating condition: (P. Taylor Note: Suggest changing "shall not conduct waiver repairs" to "cannot be certified" since repair shops don't have to be "certified" in order to conduct repairs that potentially qualify a vehicle owner for a waiver.)

Response 18: The Ohio EPA will clarify that the facility will lose their certification as a certified waiver repair facility verses “shall not conduct waiver repairs”. The facility can still conduct repairs they just will not be on the Ohio EPA certified list.

Comment 19: (J) The owner or operator of each ~~licensed~~certified waiver repair facility shall display the official sign issued ~~to it,~~ by the director. The official waiver repair facility sign shall be displayed in full view of the public and shall not be altered in any way. The sign shall remain the property of the Ohio EPA and, upon discontinuance as a waiver repair facility, shall be surrendered by the licenseeapplicant to an authorized representative of the Ohio EPA when so ordered by the director. *(P. Taylor Note: Suggest inserting the word “certified” before the words “waiver repair facility”).*

Response 19: The Ohio EPA agrees with the comment and will make the change.

Comment 20: ~~(O)~~(K) Each waiver repair facility shall contact the director at least thirty days prior to a change of ownership, business name, or location. Upon notice of a change of a facility owner or location, the director shall issue a certificate under the subsequent facility name, owner, or location, provided the facility meets or continues to meet the minimum criteria as a waiver repair facility. ~~In the event of any changes, the subsequent owner or the current owner of a subsequent facility location must submit a new licensing application to the director.~~ *(P. Taylor Note: Suggest inserting the word “certified” before the words “waiver repair facility”).*

Response 20: The Ohio EPA agrees with the comment and will make the change.

OAC rule 3745-26-16 Requirements for certified waiver repair technicians and approved technician trainers.

Comment 21: (B) Certification as a waiver repair technician shall be valid for two years. Each certified technician may conduct or otherwise perform waiver repairs only at a licensed waiver repair facility. *(P. Taylor Note: Should “licensed” be replaced with “certified”?)*

Response 21: The Ohio EPA agrees with the comment and will make the change.

Comment 22: (D) Certified waiver repair technicians who change their place of employment from one **licensed** waiver repair facility to another may continue to conduct waiver repairs so long as their certification is valid. *(P. Taylor Note: Should "licensed" be replaced with "certified"?)*

Response 22: The Ohio EPA agrees with the comment and will make the change.

End of Response to Comments