

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Motor Vehicles

RULE CITATION: 19A NCAC 03D .0522

**DEADLINE FOR RECEIPT: Thursday, October 6, 2016**

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*On the Submission for Permanent Rule Form, Box 1, you state the rulemaking agency is the Department of Transportation. However, all cited authority in the History Note of the Rule is for the Commissioner of Motor Vehicles. As I understand it, the grant of authority to the Commissioner is distinct from the Department. If my understanding is correct, please list the correct authority and confirm the Commissioner adopted this change.*

*Where the terms are used, why are "Safety Equipment License" and "Safety Equipment Exhaust Emission Inspection Station License" capitalized? Are these terms defined anywhere? I see that they are used in Section .0500, so is it that your regulated public understands the terms?*

*It is important that I understand the definition of these terms in light of G.S. 20-183.8D, which sets different conditions for the suspension or revocation of the safety inspection station license and the emissions inspections stations license.*

*In (a), lines 5 - 6, and (b), lines 10-11, the citation should be "G.S. 20, Article 3A, Part 2"*

*On lines 6-7, please define "as soon as practicable." Alternatively, you could delete it, in light of the statutory directive in 20-183.4B(a).*

### **§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.**

(a) Application. - An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. **If the applicant**

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does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

*On line 7, I suggest rewriting the sentence to be clearer and state who is acting here. "An applicant who submits fraudulent or fictitious information with the application shall be denied a license."*

*In (b)(1), line 10, "Rules" should be lowercase to be consistent with the rest of the Rule.*

*On line 11, do you mean "subject to" or that the license shall be suspended?*

*On line 14, define or delete "immediately"*

*Also on line 14, my understanding of Article 3A is that inspection stickers are no longer used. I am aware of G.S. 20-183.2, which retains reference to the stickers:*

**§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.**

(c) Definitions. – The following definitions apply in this Part:

- (1) Electronic inspection authorization. – An inspection authorization that is generated electronically through the electronic accounting system that creates a unique nonduplicating authorization number assigned to the vehicle's inspection receipt upon successful passage of an inspection. The term "electronic inspection authorization" shall include the term "inspection sticker" during the transition period to use of electronic inspection authorizations.

(1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386; 1973, c. 679, s. 2; 1975, c. 683; c. 716, s. 5; 1979, c. 77; 1989, c. 467; 1991, c. 394, s. 1; c. 761, s. 7; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 10; 1997-29, s. 12; 1999-328, s. 3.11; 2000-134, ss. 7, 7.1, 9, 11; 2001-504, ss. 4, 5, 6, 10; 2004-167, s. 10; 2004-199, s. 59; 2006-255, s. 1; 2007-503, s. 2; 2008-172, s. 1; 2009-570, s. 33; 2011-95, s. 3; 2011-206, s. 3; 2012-199, s. 1; 2012-200, s. 12(b); 2013-410, s. 5; 2015-264, s. 9.)

*But isn't this the controlling statute?*

**§ 20-183.4D. Procedure when a vehicle is inspected.**

- (a) Receipt. – When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.
- (b) Electronic Inspection Authorization. – When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must issue an electronic inspection authorization to the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic

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performing the inspection **must issue an electronic inspection authorization** to the vehicle at the place designated by the Division.

(c), (d) Repealed by Session Law 2007-503, s. 6, effective October 1, 2008.

(e) When Electronic Inspection Authorization Expires. – An electronic inspection authorization issued under this Part expires at midnight of the last day of the month designated by the vehicle registration sticker of the following year. (1993 (Reg. Sess., 1994), c. 754, s. 1; 2007-503, s. 6.)

*At this time, are you still issuing these stickers to require the surrender of them?*

*On lines 14-15, why not state “and the licensee shall not inspect...”?*

*In (b)(2), lines 19 and 24, delete the commas after “has” and “Commissioner” and replace “which” with “that”*

*On line 20, delete “to the satisfaction of the Commissioner” or define how that is met.*

*On line 20, please add “or her” after “his”*

*On line 21, define “adequate knowledge”*

*On line 21, I take it that “safety equipment or safety equipment exhaust emission inspection” is not being used as a proper noun and thus, doesn’t need to be capitalized to be consistent with the rest of the rule?*

*On line 22, please change “these” to “the” before “rules in this Section”*

*On line 23, define “proper”*

*On lines 23-24, I take it the “Inspection Mechanic License” is the license set forth in Rule 19A 03D .0520?*

*On line 26, replace “must” with “shall” Also, are there cross-references you can insert for this course and testing required? If not, how does one access the list of these trainings and find out how to take the test?*

*Also, so that I am clear - the individual can present this proof to any DMV representative?*

*I am confused as to why (b)(3) is in this Rule. Up to this point, the Rule deals with only licensees who perform the inspection, but now you address motorists. For the purposes of future rulemaking, consider making this its own rule or putting this elsewhere in your Chapter.*

*I take it you are relying upon G.S. 20-183.8A for this Subparagraph? If so, please add this to the History Note.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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1 19A NCAC 03D .0522 is amended without notice pursuant to G.S. 150B-21.5(a)(3) and (4) as follows:  
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3 **19A NCAC 03D .0522 DENIAL, SUSPENSION OR REVOCATION OF LICENSES**

4 (a) Denial of License: The Commissioner shall deny the application of any applicant for a Safety Equipment or Safety  
5 Equipment Exhaust Emissions Inspection Station License who fails to meet the qualifications set out in G.S. 20, Part 2,  
6 Article 3A or the rules in this Section. Applicants disapproved for licensing shall be notified by mail as soon as is  
7 practicable. An application received with fraudulent or fictitious information shall be denied. Persons who are denied a  
8 license shall be allowed a hearing in accordance with G.S. ~~20-183.8E~~, 20-183.8G.

9 (b) Suspension or Revocation of License:

10 (1) The license of any inspection station violating the Rules in this Section or G.S. 20, Part 2, Article 3A  
11 shall be subject to suspension or revocation. The license of any inspection station shall be subject to  
12 suspension or revocation at any time when any of its personnel conducting inspections do not meet the  
13 rules in this Section. Any person, firm, or corporation whose license is suspended or revoked shall  
14 immediately surrender all unused inspection stickers to the Division of Motor Vehicles and no such  
15 licensee shall inspect vehicles while its license is suspended or revoked. Every licensee whose license  
16 is suspended or revoked or who is assessed a civil penalty or who receives a warning letter from the  
17 Division shall be allowed a hearing in accordance with G.S. ~~20-183.8E~~, 20-183.8G.

18 (2) Prior to the reinstatement of license of any Safety Equipment or Safety Equipment Exhaust Emissions  
19 Inspection Station License which has, by order of the Commissioner, been revoked or suspended, the  
20 applicant shall demonstrate to the satisfaction of the Commissioner or his duly authorized agent that its  
21 employees have adequate knowledge of the safety equipment or safety equipment exhaust emission  
22 inspection procedures and requirements described in these rules in this Section and that the location is  
23 mechanically equipped to carry out proper inspections. Prior to the reinstatement of any Inspection  
24 Mechanic License which has, by order of the Commissioner, been revoked or suspended, the applicant  
25 shall attend a training session in Safety Equipment or Safety Equipment Exhaust Emission Inspection.  
26 Proof of course attendance and passing a written test must be presented to a Division of Motor  
27 Vehicles representative.

28 (3) Motorists assessed civil penalties or fines shall be allowed a hearing in accordance with G.S. ~~20-~~  
29 ~~183.8E~~, 20-183.8G. Motorists requesting a hearing shall mail a written hearing request to the  
30 Commissioner of Motor Vehicles, ~~1100 New Bern Avenue~~, 3101 Mail Service Center, Raleigh, NC  
31 ~~27697~~, 27699-3101.

32  
33 *History Note: Authority G.S. 20-2; 20-39; 20-183.8D; ~~20-183.8E~~; 20-183.8G;*  
34 *Eff. October 1, 1994.*  
35 *Amended Eff. November 1, 2016.*