

NC Division of Motor Vehicles & NC Office of Administrative Hearings



Study of Transferring Vehicle Dealer License & Safety and Emissions
Inspection Hearings from the Division of Motor Vehicles to the Office of
Administrative Hearings

03/31/2022



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Executive Summary

Session Law 2021-134, subsequently modified by Session Law 2021-185, directed the Division of Motor Vehicles (DMV) and the Office of Administrative Hearings (OAH) to study the transfer of hearings affecting Dealer License and Safety and Emission Inspection Hearings from DMV to OAH. The language is as follows:

DMV/STUDY TRANSFERRING VEHICLE DEALER LICENSE AND SAFETY AND EMISSIONS INSPECTION HEARINGS FROM DMV TO OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 2. (a) The Division of Motor Vehicles and the Office of Administrative Hearings, in consultation with the Attorney General, shall study the feasibility of transferring

- (i) dealer license hearings pursuant to G.S. 20-296 and
- (ii) safety and emissions inspection hearings pursuant to Article 3A of Chapter 20 of the General Statutes from the Division of Motor Vehicles to the Office of Administrative Hearings.

The study shall:

- (1) Provide a five-year history of the number of dealer license and safety and emissions inspection hearings conducted by the Division, including annually collected receipts.
- (2) Identify personnel requirements for these hearings, including the total number of Division staff assigned to the hearings and the educational and professional requirements associated with all assigned positions.
- (3) Provide an itemized estimate of costs incurred by the Division when conducting these hearings.
- (4) Describe the Division's current procedures for administrating these hearings, including the appeals process.
- (5) Propose new procedures for administrating these hearings if they are transferred, including the new fee structure and appeals process. This proposal shall clearly highlight the differences between the current administrative procedures and the proposed new procedures.
- (6) Evaluate the advantages and disadvantages of the current administrative procedures and the proposed new procedures.
- (7) Examine the applicable federal and State law, noting any due process implications.
- (8) Provide a plan for implementing the transfer of hearings. The plan shall address:
 - (i) anticipated workload changes;
 - (ii) anticipated changes to staffing needs for any entity affected by the transfer;
 - (iii) estimated one-time and annual costs to the Division or any other State agency resulting from the transfer;
 - (iv) estimated cost savings for the Division or any other State agency resulting from the transfer;
 - (v) changes in revenue for the Division or any other State agency resulting from the transfer;
 - (vi) legislative changes necessary to implement the plan; and
 - (vii) an estimated timeline for implementation, including steps required to facilitate the transfer.
- (9) Provide separate statements from the Division, the Attorney General, and the Office of Administrative Hearings indicating whether they are in favor of or opposed to implementing the transfer.
- (10) Explore any other issue deemed relevant.

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

SECTION 2. (b) By March 31, 2022, the Division of Motor Vehicles shall submit the findings of the study to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

The study considers two over-arching hearing types currently conducted by DMV and the efficacy of transferring them to OAH. The study first identifies those hearings affecting the licensure of motor vehicle dealers and manufacturers (dealers) and held under North Carolina General Statute 20-296. Additionally, it considers those hearings affecting vehicle safety and emission inspection program held under Article 3A of GS Chapter 20.

Pursuant to GS 20-296, before DMV may deny, suspend, revoke, place on probation or refuse renewal of any dealership and its business entity, the business should be notified of any complaint and advised of a hearing with at least 10-days written notice. These hearings consider whether the dealer has violated one of the 13 enumerated offenses in GS 20-294, which range from making material misstatements on applications or documents to using unfair methods of competition and deceptive acts or practices. Any action is stayed pending the outcome of the hearing.

Pursuant to GS 20-183.8G, before DMV denies, suspends, revokes a safety and emission license or station license, assesses a civil penalty against a safety and emission inspection or station, or cancels a person's motor vehicle registration, the licensee has a right to an administrative hearing. The hearing must be held within 30 days of the request unless there is good cause to continue the matter. Any proposed action by DMV is stayed pending the outcome of the hearing.

Dealer and inspection and emission hearings are currently conducted throughout the state by two hearing officers and supported by one administrative specialist. License and Theft inspectors for DMV, who are certified law enforcement officers, are responsible for bringing charges. They are the material witnesses for the state in these hearings and present the charges to the hearing officers.

The respondents, whether dealers or safety emission inspectors, are noticed via certified mail of any hearing proceeding. They must appear in person and may have legal representation. Hearings are held at specified local drivers license offices where sufficient space and resources are available.

Requirement 1: Provide a five-year history of the number of dealer license and safety and emissions inspection hearings conducted by the Division, including annually collected receipts.

| FY Hearing Held by Type | | | | | | |
|-----------------------------------|------------|------------|-----------|-----------|-----------|--------------|
| Hearing Type | 2016-2017* | 2017-2018* | 2018-2019 | 2019-2020 | 2020-2021 | 5-Year Total |
| Dealer License Violation | 68 | 46 | 29 | 69 | 38 | 250 |
| Dealer License Denial | 5 | 6 | 4 | 0 | 0 | 15 |
| Salesman Violation | 27 | 21 | 23 | 18 | 22 | 111 |
| Salesman License Denial | 54 | 59 | 39 | 7 | 0 | 159 |
| Inspection Station Violation | 27 | 32 | 28 | 14 | 10 | 111 |
| Technician Violations | 14 | 14 | 13 | 7 | 1 | 49 |
| Inspection Station License Denial | 0 | 1 | 0 | 0 | 0 | 1 |
| Technician License Denial | 13 | 18 | 0 | 2 | 0 | 33 |
| Annual Total | 208 | 197 | 136 | 117 | 71 | |

| FY Hearing Fees Collected by Hearing Type | | | | | | |
|---|------------|------------|-----------|-----------|-----------|--------------|
| Hearing Type | 2016-2017* | 2017-2018* | 2018-2019 | 2019-2020 | 2020-2021 | 5-Year Total |
| Dealer License Violation** | \$0 | \$0 | \$2,200 | \$4,400 | \$3,600 | \$10,200 |
| Dealer License Denial | \$0 | \$0 | \$1,400 | \$400 | \$1,400 | \$3,200 |
| Salesman Violation** | \$0 | \$0 | \$2,000 | \$1,600 | \$400 | \$4,000 |
| Salesman License Denial | \$0 | \$0 | \$11,400 | \$1,400 | \$0 | \$12,800 |
| Inspection Station Violation | \$0 | \$0 | \$8,600 | \$4,200 | \$12,600 | \$25,400 |
| Technician Violation | \$0 | \$0 | \$2,000 | \$2,300 | \$5,400 | \$9,700 |
| Inspection Station License Denial | \$0 | \$0 | \$200 | \$0 | \$0 | \$200 |
| Technician License Denial | \$0 | \$0 | \$3,200 | \$200 | \$0 | \$3,400 |
| Annual Total | \$0 | \$0 | \$31,000 | \$14,500 | \$23,400 | |

* Hearing fees were implemented January 1, 2018.

**NC Administrative Code (19A NCAC 03K.0102) requires that the fee be paid after the hearing is held.

Note: Some hearings fees are collected in the fiscal year preceding a hearing, and others in the fiscal year after the hearing occurs, so the hearings fees will not match the numbers of hearings in any single fiscal year.

Requirement 2: Identify personnel requirements for these hearings, including the total number of Division staff assigned to the hearings and the educational and professional requirements associated with all assigned positions.

The Division of Motor Vehicles has four positions within Customer Compliance Services (CCS) that directly assist with dealer hearings and safety and inspection hearings. This includes two hearing officers, one program assistant and one program supervisor.

The hearing officers are Program Coordinators III, which are classified as GN09. Position 60031115 is currently located in western North Carolina with dedicated office space at the Huntersville DMV Office. This position is vacant. Position 60031112 is in eastern North Carolina with dedicated office space at the Avent Ferry Drivers License Office in Raleigh. This position has an anticipated vacancy from retirement of April 1, 2022. These two positions require a bachelor's degree from an appropriately accredited institution and two years of experience related to the area of assignment, or an equivalent combination of training and experience. DMV management prefers applicants with an NC drivers license with no active points and no suspensions or revocations in the last ten years.

The program assistant is an Administrative Specialist I, which is classified as GN06. Position 60038092 is housed at the Rocky Mount headquarters. This position has an anticipated vacancy of April 18, 2022 because of promotion. This position requires a high school diploma or General Educational Development (GED) diploma and two years of related administrative experience, or equivalent combination of education and experience.

The Program Supervisor II (Chief Hearing Officer) position is classified as a GN12. Position 60031375 is located at the Rocky Mount headquarters and is currently vacant. This position requires a bachelor's degree from an appropriately accredited institution and five years of experience related to the area of assignment, or an equivalent combination of training and experience. The person must have an NC drivers license with no active points and no suspensions or revocations in the last ten years.

A sample job description can be found in the Appendix.

Requirement 3: Itemized Costs for the Division of Motor Vehicles

| Classification | Program Supervisor II | Program Coordinator III | Program Coordinator III | Admin Specialist I |
|--------------------------------|-----------------------|-------------------------|-------------------------|--------------------|
| Salary | \$69,311 | \$54,922 | \$56,649 | \$38,000 |
| Social Security | \$5,302 | \$4,202 | \$4,334 | \$2,907 |
| TSER | \$13,654 | \$10,820 | \$11,160 | \$7,486 |
| Health Insurance | \$6,106 | \$4,839 | \$4,991 | \$3,348 |
| Total- All Salary Lines | \$94,374 | \$74,782 | \$77,133 | \$51,741 |
| | | | | |
| Direct Operating Costs | \$10,629 | \$10,629 | \$10,629 | \$5,721** |
| | | | | |
| Total Costs | \$105,003 | \$85,411 | \$87,763 | \$57,462 |

| FY 21-22 Benefits | Rates |
|-------------------|--------|
| Social Security | 7.65% |
| TSER Retirement | 19.70% |
| Health Insurance | 8.81% |

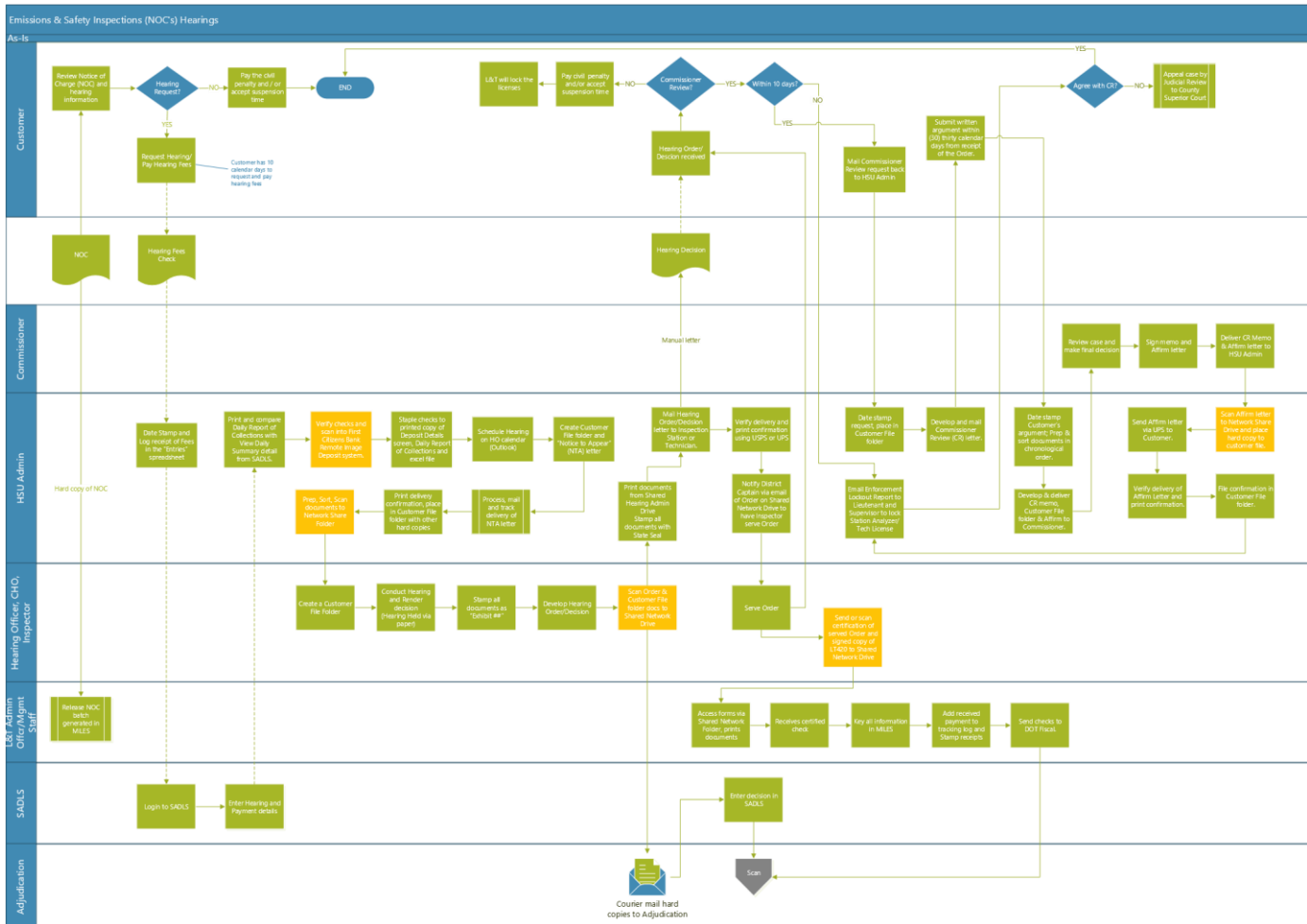
| Direct Operating Costs | Per FTE |
|------------------------|----------|
| State Vehicle | \$4,908 |
| Office Supplies | \$4,767 |
| Telephone | \$489 |
| Jet Pack | \$465 |
| Total | \$10,629 |

Total Annual Reccurring costs: \$335,639

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

Requirement 4: Describe the Division's current procedures for administrating these hearings, including the appeals process.

Emissions & Safety Inspections Hearings



| Function | Emissions & Safety Inspections Hearings | | |
|-----------|---|-----|--|
| | From | To | Description |
| INSPHRG-1 | Inspector | | Conducts an audit either overt, covert, or remote or receives a complaint about a non-licensed station or technician. |
| INSPHRG-2 | Inspector | | Completes (LT-301) or if it is a complaint about a non-licensed station or technician, assigns to L&T Auditor program and completes (LT-312) |
| INSPHRG-3 | Inspector | VID | If there is a violation, Inspector logs violation in the Violation Information Database (VID); if there is no violation, go to INSPHRG-5 |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| | | | |
|-----------|-----------|------------|--------------------------------|
| INSPHRG-4 | Inspector | Supervisor | Notify Supervisor of violation |
|-----------|-----------|------------|--------------------------------|

| Function | Emissions & Safety Inspections Hearings | | |
|------------|---|-------------------------------|--|
| INSPHRG-5 | Inspector | Client | Issues LT-356 to Station within 5 business days |
| INSPHRG-6 | Inspector | Shared Network Drive | Scan forms and put in network shared folder for Administrative Officer to review File name includes the type of violation If non-licensed station or technician, file hard copies. |
| INSPHRG-7 | Emissions Lieutenant | | Releases NOC batch to be generated. |
| INSPHRG-8 | Admin Officer | Emissions Staff | Releases NOC batch to staff to prep for Commissioner's signature of approval |
| INSPHRG-9 | DMV Commissioner | Admin Officer Emissions Staff | Provides hand-written signature of approval on NOC |
| INSPHRG-10 | Admin Officer Emissions Staff | Customer | Process and mail the NOC's via certified mail within Delivery.com website to Customer |
| INSPHRG-11 | Admin Officer | HSU Admin Support | Deliver hard copies of NOC's with firmbook from Delivery.com website to HSU Admin to track delivery and start time to enforce an Enforcement Lockout. |
| INSPHRG-12 | Customer | | Reviews forms (LT-356,312) and Hearing details <i>Customer has 10 calendar days to request a hearing and pay fees. If NOC results in suspension type (i.e., Type I violations and SR Type II violations) the station/tech should request hearing and/or pay hearing fees.</i> |
| INSPHRG-13 | Customer | HSU Admin | Submit Hearing Request (HF-009) and Fees to DMV <i>If Customer fails to request a hearing/pay fee within the 10 calendar days, HSU sends an Enforcement Lockout Report to Lieutenant and Supervisor. This Enforcement Lockout will lock the station's analyzer and tech licenses whereby they are no longer allowed to operate/inspect vehicles. Go to INSPHRG-75</i> |
| INSPHRG-14 | HSU Admin | MS Excel | Review document(s) for completeness. Date stamp Hearing Request and check/money order Log in excel file "Entries" |
| INSPHRG-15 | HSU Admin | SADLS | Log into SADLS |
| INSPHRG-16 | HSU Admin | SADLS | Go to Hearing Main Menu (DL720) Enter opt [11] to Collect Hearing Fee (DL150M1) |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| | | | |
|-----------------|--|-------|---|
| INSPHRG-17 | HSU Admin | SADLS | Enter opt [9] to Open New Business Day Enter date. |
| Function | Emissions & Safety Inspections Hearings | | |
| INSPHRG-18 | HSU Admin | SADLS | Enter opt [7] to Receive Miscellaneous Fees (DL172M1) Enter or Paste Customer ID/DL# |

| | | | |
|------------|-----------|-------|--|
| INSPHRG-19 | HSU Admin | SADLS | Enter “X” next to appropriate Hearing Type |
| INSPHRG-20 | HSU Admin | SADLS | Press [ENTER] and Enter “Y” to Collect Fee now |
| INSPHRG-21 | HSU Admin | SADLS | Press [ENTER] then [F10] to confirm. |
| INSPHRG-22 | HSU Admin | SADLS | Go to “Miscellaneous Receipts” (DL170M1) and enter the last 4 digits of the check/money order Press [ENTER] |
| INSPHRG-23 | HSU Admin | SADLS | Press [F3] to go to Main Menu |
| INSPHRG-24 | HSU Admin | SADLS | Enter opt [2] to view Examiner Comments (DL760) |
| INSPHRG-25 | HSU Admin | SADLS | Enter “Y” next to “Add New Comments” |
| INSPHRG-26 | HSU Admin | SADLS | Copy appropriate Comment from “Sticky Notes” on desktop or file in network share folder Paste Comment and modify the check/money order information and hearing type code to match Customer. |
| INSPHRG-27 | HSU Admin | SADLS | Press [ENTER] then [F10] to confirm. |
| INSPHRG-28 | HSU Admin | SADLS | Press [F3] to go to Main Menu |
| INSPHRG-29 | HSU Admin | SADLS | Press [F5] and enter opt [11] to go to “Fee Management Menu” (DL150M1) |
| INSPHRG-30 | HSU Admin | SADLS | Enter opt [1] to “View Daily Summary” for all check transactions for the day. |
| INSPHRG-31 | HSU Admin | SADLS | Verify the check transactions on the report with excel file and process checks |
| INSPHRG-32 | HSU Admin | SADLS | Once complete, print Deposit Details screen, Daily Report of Collections and excel spreadsheet Staple checks to printed copy of excel file, the Daily Report of Collections along with the printed copy of the Deposit Details screen and file. |
| INSPHRG-33 | HSU Admin | | Determine Hearing Location based on Customer County <i>Hearing Regions: (East, West)</i> |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Emissions & Safety Inspections Hearings | | |
|------------|---|--------------------------------|---|
| INSPHRG-34 | HSU Admin | MS Outlook | Create Outlook Invite to schedule Hearing. Verify schedules for L&T District management, CHO East & West, L&T Hearing Officer and L&T Inspector. Copy Outlook Invite language template from “Sticky Notes” on desktop and paste in invite. |
| INSPHRG-35 | HSU Admin | MS Outlook | Send invite. Allow all to accept or decline invite. If declined, find another date and repeat step above. Create Customer File Folder to hold hard copies of all documents. |
| INSPHRG-36 | HSU Admin | MS Word ConfirmDelivery.com | Create <i>Notice to Appear</i> (NTA) letter using MS Word. Create certified barcode using ConfirmDelivery.com for each letter and print Firmbook. |
| INSPHRG-37 | HSU Admin | ConfirmDelivery.com | Insert certified barcode along with NTA in each Customer’s envelope to be mailed. Bundle the envelopes to mailed with Firmbook attached. Deliver bundle to mail station to be mailed out to customer. |
| INSPHRG-38 | HSU Admin | ConfirmDelivery.com | Track delivery. Print delivery confirmation sheet and place in Customer File Folder. |
| INSPHRG-39 | HSU Admin | MFP | Prep and sort documents in chronological order. Scan customer documents (NOC, NTA, delivery confirmation and any other documents provided by the customer, attorney or L&T Inspector). Name the document scanned with the Station Name. |
| INSPHRG-40 | Emissions Staff | Shared Network Drive | Upon request from Hearing Officer or Inspector, if needed, access FAF/IWPM to view and print documents to upload to L&T Shared Drive |
| INSPHRG-41 | HSU Admin | Shared Network Drive | Copies customer file to Shared Network Drive for Hearing Officers and L&T for Inspectors |
| INSPHRG-42 | Hrg Officer Inspector | Shared Network Drive | Pick up customer documents from Shared Network Drive Create a Customer File Folder |
| INSPHRG-43 | Hrg Officer Inspector | Inspection Station Technician | Conduct Hearing and render decision |
| INSPHRG-44 | Hrg Officer Inspector | | Stamp all documents as “Exhibit ##” |
| INSPHRG-45 | Hrg Officer | MS Word | Develop Hearing Order/Decision letter via MS Word and put in customer file Complete decision to suspend inspection license and/or require probation and/or fees to be paid |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| | | | |
|------------|-------------|-----|--|
| INSPHRG-46 | Hrg Officer | MFP | Scan order and customer file to Shared Hearing Admin Drive |
|------------|-------------|-----|--|

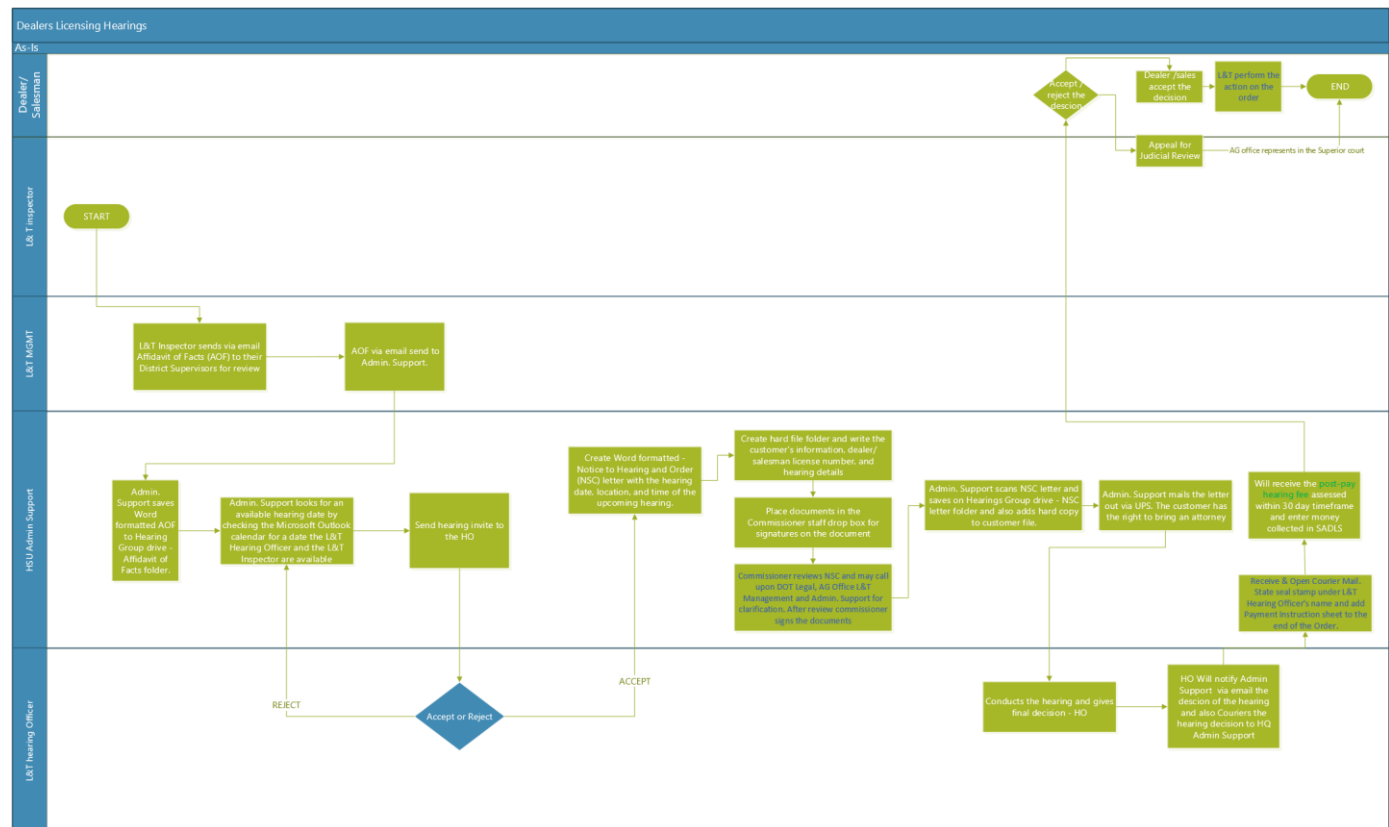
| Function | Emissions & Safety Inspections Hearings | | |
|------------|---|-------------------------------|---|
| INSPHRG-47 | Hrg Officer | Hearing Support Unit Staff | Courier mail hard copies of customer file to Hearing Support Staff at Raleigh HQ to be dispersed to the L&T Inspection Unit |
| INSPHRG-48 | Hearing Support Unit Staff | SADLS | Key Hearing Decision and forward to Inspection Unit for enforcement of the order |
| INSPHRG-49 | Hearing Support Unit Staff | FAF/IWPM | <i>Go to "Scanning" process</i> See SCANNING |
| INSPHRG-50 | HSU Admin | Shared Hearing Admin Drive | Print documents from Shared Hearing Admin Drive Stamp all documents with State Seal |
| INSPHRG-51 | HSU Admin | Inspection Station Technician | Mail Hearing Order/Decision letter to Inspection Station or Technician. |
| INSPHRG-52 | HSU Admin | UPS USPS | Verify delivery and print confirmation using USPS or UPS to track the time allotted for Commissioner Review and/or Enforcement Lockout Reporting. |
| INSPHRG-53 | Customer | Admin Officer | Mails certified check if required |
| INSPHRG-54 | Admin Officer | | Access forms via Shared Network Folder, prints documents, and move documents to a separate folder. |
| INSPHRG-55 | Admin Officer | | Checks to make sure forms (LT-301,312,356) are complete. If not complete, emails client requesting forms to be completed. |
| INSPHRG-56 | Customer | Admin Officer | Complete forms and Email completed forms to Admin Officer. |
| INSPHRG-57 | Admin Officer | | Receives email forms & certified check if required |
| INSPHRG-58 | Admin Officer | | Repeat step INSDLRHRG-15. |
| INSPHRG-59 | Admin Officer | MILES | Key all information in MILES Add received payment to tracking log |
| INSPHRG-60 | Admin Officer | | Stamp receipts |
| INSPHRG-61 | Admin Officer | DOT Fiscal | Send checks to DOT Fiscal. |
| INSPHRG-62 | Admin Officer | FAF/IWPM | Scan documents. <i>Go to "Scanning" process See</i> SCANNING |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Emissions & Safety Inspections Hearings | | |
|------------|---|---------------------------------|--|
| INSPHRG-63 | HSU Admin | | <p>Customer requests a Commissioner's Review.</p> <p><i>No or not within 10 calendar days: An Enforcement Lockout Report is sent to Lieutenant and Supervisor, which will lock the station's analyzer and tech licenses.</i></p> <p>Yes: Date stamp request (HF-010) and place in Customer File folder</p> |
| INSPHRG-64 | HSU Admin | Customer | <p>Develop Commissioner Review (CR) letter.</p> <p>Repeat INSPHRG-37-39 for CR Letter.</p> <p><i>Letter contains information on hearing date, station/tech customer name, address, station/tech license numbers. Customer must submit an argument within 30 days.</i></p> |
| INSPHRG-65 | Customer | HSU Admin | <p>Submit written argument within (30) thirty calendar days from receipt of the Order.</p> <p><i>If fail to submit within 30 calendar days, the CR process continues without the customer's argument.</i></p> |
| INSPHRG-66 | HSU Admin | | <p>Date stamp Customer's argument.</p> <p>Prep and sort documents in chronological order.</p> |
| INSPHRG-67 | HSU Admin | Commissioner | <p>Develop memo CR with decision blocks and summary description of station/tech violation case along with N.C.G.S. Suspension Affirm letter.</p> <p>Deliver Customer File folder with memo and Affirm to Commissioner.</p> |
| INSPHRG-68 | Commissioner | HSU Admin | <p>Review case and make final decision.</p> <p>Sign memo and Affirm letter.</p> <p>Deliver to HSU Admin.</p> |
| INSPHRG-69 | HSU Admin | | <p>Scan Affirm letter to Network Share Drive and place hard copy to customer file.</p> |
| INSPHRG-70 | HSU Admin | | <p>Send Affirm letter via UPS to Customer.</p> <p>Verify delivery of Affirm Letter and print confirmation.</p> <p>File confirmation in Customer File folder.</p> <p><i>Customer has 10 calendar days before suspension begins.</i></p> |
| INSPHRG-71 | HSU Admin | Emissions Lieutenant Supervisor | <p>On the morning of day 10, send an Enforcement Lockout Report to Lieutenant and Supervisor to lock the Station Analyzer and/or Technician License. <i>If Customer does not agree with decision, they may appeal the case by Judicial Review to their county's Superior Court.</i></p> |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

Dealers Licensing Hearings



| Function | Dealers Licensing Hearings | | |
|----------|-----------------------------|-----------------------------|---|
| | From | To | Description |
| DLRHRG-1 | Inspector | Dealer | Conducts an audit either overt, covert, or remote or receives a complaint about a dealer. |
| DLRHRG-2 | Inspector | District L&T Management | Develop violation Affidavit of Facts (AOF) via MS Word. Sign AOF along with a witness. Email signed AOF to Supervisor |
| DLRHRG-3 | District L&T Management | HQ L&T Lieutenant & Captain | Review AOF and email AOF to HQ L&T Lieutenant & Captain. |
| DLRHRG-4 | HQ L&T Lieutenant & Captain | HSU Admin | Forward email of AOF to HSU Admin. |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Dealers Licensing Hearings | | |
|-----------|----------------------------|-----------------------------|---|
| DLRHRG-5 | HSU Admin | HQ L&T Lieutenant & Captain | <p>Reply to email</p> <p>Log AOF (District, Inspector, Customer Name, County) in Dealer/Salesman spreadsheet for quick look customer record and statistical purposes.</p> |
| DLRHRG-6 | HSU Admin | Network Share Drive | Save AOF (word version) to Hearing Group drive - Affidavit of Facts folder. |
| DLRHRG-7 | HSU Admin | | Determine Hearing Location based on Customer County <i>Hearing Regions: (East, West)</i> |
| DLRHRG-8 | HSU Admin | MS Outlook | <p>Create Outlook Invite to schedule Hearing.</p> <p>Verify schedules for L&T District management, CHO East & West, L&T Hearing Officer and L&T Inspector.</p> <p>Copy Outlook Invite language template from “Sticky Notes” on desktop and paste in invite.</p> |
| DLRHRG-9 | HSU Admin | MS Outlook | <p>Send invite.</p> <p>Allow all to accept or decline invite. If declined, find another date, and repeat step above.</p> <p>Create Customer File Folder to hold hard copies of all documents.</p> |
| DLRHRG-10 | HSU Admin | Commissioner | <p>Once all accept Invite, create <i>Notice of Hearing/Order to Show Cause</i> (NTC) letter using MS Word.</p> <p>Deliver Customer File folder with NOH (Notice of Hearing)/OTSC (Order to Show Cause) to Commissioner to sign.</p> |
| DLRHRG-11 | Commissioner | HSU Admin | <p>Review case and make decision.</p> <p>Sign NOH (Notice of Hearing)/OTSC (Order to Show Cause).</p> <p>Deliver to HSU Admin.</p> |
| DLRHRG-12 | HSU Admin | ConfirmDelivery.com | Create certified barcode using ConfirmDelivery.com for each letter and print Firmbook. |
| DLRHRG-13 | HSU Admin | ConfirmDelivery.com | <p>Insert certified barcode along with NTA in each Customer’s envelope to be mailed.</p> <p>Bundle the envelopes to mailed with Firmbook attached.</p> <p>Deliver bundle to mail station to be mailed out to customer.</p> |
| DLRHRG-14 | HSU Admin | MFP | <p>Track delivery.</p> <p>Print delivery confirmation sheet and place in Customer File Folder.</p> |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Dealers Licensing Hearings | | |
|-----------|----------------------------|--|---|
| DLRHRG-15 | HSU Admin | MFP | <p>Prep and sort documents in chronological order.</p> <p>Scan customer documents (NOH (Notice of Hearing)/OTSC (Order to Show Cause), delivery confirmation and any other documents provided by the customer, attorney, or L&T Inspector).</p> <p>Name the document scanned with the Dealer Name and/or Salesman Name.</p> |
| DLRHRG-16 | Hearing Admin | Shared Network Drive | Copies customer file to Shared Network Drive for Hearing Officers and L&T for Inspectors |
| DLRHRG-17 | Hrg Officer | Shared Network Drive | Pick up customer documents from Shared Network Drive |
| DLRHRG-18 | Hrg Officer | Dealer Salesman | Conduct Hearing and render decision |
| DLRHRG-19 | Hrg Officer | | Stamp all documents as "Exhibit ##" |
| DLRHRG-20 | Hrg Officer | | <p>Develop Hearing Order/Decision letter via MS Word and put in customer file.</p> <p>Complete decision to suspend inspection license and/or require probation and/or fees to be paid.</p> |
| DLRHRG-21 | Hrg Officer | MFP | Scan order and customer file to Shared Hearing Admin Drive |
| DLRHRG-22 | Hrg Officer | Hearing Support Unit | Courier mail hard copies of customer file to Hearing Support Unit at Raleigh HQ to scan |
| DLRHRG-23 | HSU Admin | Shared Hearing Admin Drive | <p>Print documents from Shared Hearing Admin Drive</p> <p>Stamp all documents with State Seal</p> |
| DLRHRG-24 | HSU Admin | District Captain | Notify District Captain via email of Order on Shared Network Drive to have Inspector serve Order |
| DLRHRG-25 | Inspector | Customer | Serve Order |
| DLRHRG-26 | Inspector | Shared Drive HSU Admin Admin Officer | Scan certification of served Order and signed copy of LT420 to Shared Drive and email to HSU Admin and Admin Officer |
| DLRHRG-27 | Admin Officer | STARS | Enter Order for Civil Penalty in STARS |
| DLRHRG-28 | Customer | HSU Admin Admin Officer | Mails certified check if required to HSU Admin for Administrative Hearing Fee and/or to Admin Officer for Civil Penalty Fee |
| DLRHRG-29 | Admin Officer | STARS | Enter receipt of Civil Penalty Fee in STARS and scan check to Banking System |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Dealers Licensing Hearings | | |
|-----------|---|---|--|
| DLRHRG-30 | Admin Officer | EDIM | Scan transaction barcode separator sheet, copy of Certification of Served Order and copy of check using EDIM. |
| DLRHRG-31 | Customer (Dealership/Salesman/Attorney) | Attorney Clerk of Superior Court | <p><i>If Customer does not agree with decision, they may appeal the case by Judicial Review to their county's Superior Court or accept the final decision from the Division.</i></p> <p>The customer/attorney files a Civil Summons and a Petition for Judicial Review along with a motion for TRO (Temporary Restraining Order) and a motion for STAY (which stays the Division's actions). The paperwork is stamped by the County Clerk of Superior Court with a file date and Case File Number.</p> |
| DLRHRG-32 | Customer (Dealership/Salesman/Attorney) | Commissioner | Send Civil Summons and a Petition for Judicial Review along with a motion for TRO (Temporary Restraining Order) and a motion for STAY to Commissioner's Office. |
| DLRHRG-33 | Commissioner | Attorney General L&T Management HSU Admin | Date stamp, scan, and email a copy (Civil Summons, Petition for Judicial Review, motion for TRO (Temporary Restraining Order and motion for STAY) to Special Deputy Attorney General (Chris Brooks), L&T Management and HSU Admin. |
| DLRHRG-34 | HSU Admin | Commissioner | Pick up the original served papers to begin the appeal process. |
| DLRHRG-35 | Attorney General | HSU Admin | Request documentation from HSU Admin to review based on the Civil Summons received |
| DLRHRG-36 | HSU Admin | Transcription Vendor | Request recording to be transcribed and forward request form with hearing information |
| DLRHRG-37 | Transcription Vendor | HSU Admin | Forward completed hearing transcript(s) and billing invoice |
| DLRHRG-38 | HSU Admin | MFP | Scan hearing exhibits and confirmations to forward via email. |
| DLRHRG-39 | HSU Admin | Attorney General | Forward official Hearing Decision/Order with service/delivery confirmations, and hearing exhibits to Attorney General Office. |
| DLRHRG-40 | Attorney General | | Review the information and prepare for a preliminary hearing. |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Dealers Licensing Hearings | | |
|-----------|----------------------------|--|---|
| DLRHRG-41 | Attorney General | L&T Management L&T Admin Officer VS Dealer Supervisor HSU Admin | <p>Inform L&T and VS Dealers Unit of Hearing results and if the TRO/STAY is granted by email.</p> <p><i>If the TRO/STAY is granted, the customer can go back into business and/or continue to sale motor vehicles. Continue with DLRHRG-45.</i></p> <p><i>If TRO/STAY denied, the L&T Hearing Officer's decision remains, and the customer will be prohibited to do business/continue to sale motor vehicles. The case now begins in court and can remain open anywhere from 3 months to 4 years. Go to DLRHRG-46</i></p> |
| DLRHRG-42 | VS Dealer Unit Supervisor | STARS EDIM | <p>Enter Enforcement Actions and comments in STARS.</p> <p>Scan documents into EDIM Scan Plus Capture module to be viewed by L&T via SharePoint.</p> |
| DLRHRG-43 | Attorney General | HSU Admin | Send Email request to prepare the index record. |
| DLRHRG-44 | HSU Admin | | <p>Create Administrative Record Coversheet for file.</p> <p><i>Each item within the file will be indexed/numbered and entered on this coversheet along with the Customer Name, Customer ID/DL# and Superior Court File Number.</i></p> |
| DLRHRG-45 | HSU Admin | EDIM | <p>Prepare Customer file/record.</p> <p><i>Print the scanned entire file/record from EDIM. Number each item in chronological order. Make (3) three copies of the entire record. One copy stays at HQ in case lost</i></p> |
| DLRHRG-46 | HSU Admin | DMV Mail Courier Attorney General | <p>Send Customer file/record to AG Office via Courier and inform AG Office of delivery.</p> <p><i>Original indexed record is divided by Plastic Clear Tab Divider Sheets (numbered by each item) and (2) two copies.</i></p> |
| DLRHRG-47 | Attorney General | Superior Court Judge | <p>Attend Superior Court along with Customer/Attorney.</p> <p><i>Case can be held up in court and remain open anywhere from 3 months to 4 years.</i></p> <p><i>Superior Court Judge renders decision.</i></p> |

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| Function | Dealers Licensing Hearings | | |
|-----------|----------------------------|--|---|
| DLRHRG-48 | Attorney General | L&T Management L&T Admin Officer VS Dealer Supervisor HSU Admin | <p>Email either a Closing Memo or a Compromise Settlement Agreement stating the outcome of the case to L&T and VS Dealers Unit.</p> <p><i>VS Dealer Unit Supervisor:</i> Repeat DLRHRG-45; <i>L&T:</i> Enforce court decision.</p> |
| DLRHRG-49 | HSU Admin | | <p>Print the Closing Memo/Compromise Settlement Agreement.</p> <p>Place all hard copies including Closing Memo/Compromise Settlement Agreement in chronological order within the Customer file/record. Update information spreadsheet. Retain and follow developed retention process</p> <p>END</p> |

Hearings staff uses a manual that provides step-by-step instructions for the hearings process.

Requirement 5: Proposed new procedures for administering these hearings if they are transferred, including the new fee structure and appeals process. This proposal shall clearly highlight the differences between the current administrative procedures and the proposed new procedures.

Should the General Assembly choose to transfer the hearings under consideration from DMV to OAH, this study proposes the following process.

DMV would make a final agency decision using the hearings process currently in place. Thereafter, DMV would issue a notice of that determination under GS 150B-23(f) including the place, time limit, procedure, and service requirement for appeals to OAH. Should an applicant or licensee choose to contest the decision, the appeal would be to the Office of Administrative Hearings through the provisions of GS 150B, Article 3, as well as standard OAH hearing procedures adopted by rule.

Until late 2019, DMV decided the denials of licenses for dealers, salesmen and technicians through a hearing. Subsequently, they are decided by an internal review board. These decisions would also be subject to appeal through GS 150B, Article 3.

Upon filing of a timely appeal, a DMV final agency decision to suspend or revoke a license is stayed until the OAH conducts a hearing and issues a final ruling, except in the case of summary suspension described below. In no case would an appeal require DMV to issue a temporary license to an applicant pending the appeals process.

OAH would issue a final decision in accordance with GS 150B-34 including findings of fact and conclusions of law, as in other Article 3 contested cases.

In the event the applicant or licensee failed to appeal the final agency decision within the time permitted, the DMV decision would stand.

Appeals

Either party (DMV or the licensee/applicant) may file a Petition for Judicial Review appealing the OAH Final Decision under the provisions of Article 4 of Chapter 150B.

Under the proposed Article 3 process, DMV would have a new tool to take immediate emergency action against a licensee. Per GS 150B-3(a), DMV may find that the actions of a licensee require emergency action to protect the public health, safety, or welfare and may summarily suspend a license while incorporating such findings into its order of summary suspension. The summary suspension would be effective upon service, and proceedings would be brought promptly before OAH as required by GS 150B-3(c).

The order of summary suspension as served on the licensee would contain the appeal rights set forth under GS 150B-23(f) including the place, time limit, procedure, and service requirement for appeals to OAH. The burden of proof for showing emergent circumstances would be on DMV by a preponderance of the evidence standard. The provisions of GS 150B, Article 3 would apply to such hearings, as well as standard OAH hearing procedures adopted by rule.

OAH would issue a final decision in accordance with N.C.G.S. 150B-34 including findings of fact and conclusions of law, as in other Article 3 contested cases.

Requirement 6: Evaluate the advantages and disadvantages of the current administrative procedures and the proposed new procedures.

Current Procedure

The three main advantages to the current structure are cost, process and staff expertise.

Under the current structure, the cost associated with this process is lower than the change outlined in Requirement 5. The addition of hearings at OAH will require greater involvement by attorneys that represent DMV from the Department of Justice (*see memo from DOJ in Requirement 9*). The overall cost to the Department of Transportation would increase, as DMV funds the cost of these attorneys.

Under the current process, the DMV acts as a first level review for all actions by the agency. The person being adversely affected may petition to have the action reviewed by the agency before being enacted. If the Division's action is upheld, appeal rights are given to the person to have the action externally reviewed by the judicial system. This current technique is common and can be found in other areas of DMV and in other departments and divisions such as the Department of Health and Human Services, the Industrial Commission, and the Employment Security Commission.

The DMV License and Theft Bureau and Customer Compliance Services staff have been trained on their respective areas of the law. All License and Theft inspectors are sworn law enforcement officers and received Basic Law Enforcement Training. They also attend an 8-week Inspector Academy as part of their training with the division. Hearing Officers with Customer Compliance Services have a background in administrative proceedings and receive a three-month training on conducting administrative hearings. They also attend annual in-service school on updates and legislative changes affecting hearings. This additional training is invaluable when conducting dealer and vehicle inspection hearings, as it allows them to understand the nuance and technical requirements of these programs.

The main disadvantage to the current procedure is perception. Under the current procedures, the administrative action is brought by the agency and the hearing is held within the agency, creating an assumption that the hearing officer is favorably biased toward the agency's action and the petitioner will receive an unfavorable decision. This is exacerbated by the fact that hearings fees are paid to DMV.

In addition, because the hearing officers are not required to be attorneys, it creates a perception that the due process afforded a person is insufficient. The concern is that proper consideration was not given to the legal arguments made and that the results are incorrect. In fact, DMV is represented by the Attorney General's office and has in-house legal staff, and the hearing officers receive regular in-service training as described above. However, this administrative process has been reviewed by the courts and found not to be a violation of a person's due process (*see Requirement 7*).

New Procedure

An appeal hearing before an independent administrative law judge will alleviate any petitioner perceptions that the final decision was pro forma or biased. All hearings will be conducted by an administrative law judge licensed to practice law in North Carolina and familiar with the rules of evidence and due process.

OAH hearings pursuant to Chapter 150B will yield a robust record upon which any subsequent appeal can be based following a rigorous discovery process.

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

Petitioners seeking a contested case hearing will incur a filing fee of \$125.00 pursuant to GS 150B-23.2, which is less than DMV hearings fees. However, petitioners who choose to retain counsel will have to pay the costs of attorneys for depositions and hearings, which would increase overall costs to them. DMV staff time for License and Theft officers to attend hearings will increase, which will limit time they spend on other responsibilities.

Requirement 7: Examine the applicable federal and State law, noting any due process implications.

Emission and Inspection station hearings are subject to the following state laws:

- GS 20-183.7A violations for mechanics and inspection stations, safety violations
- GS 20-183.8B violations for mechanics and inspection stations, emission violations
- GS 20-183.8D Suspension or revocation of license
- GS 20-183.8F Notice requirements
- GS 20-183.8G Administrative and judicial review.

GS 20-183.2 specifies vehicles that are subject to inspection of Federal Motor Carrier Act under 49 CFR Part 396 are not subject to inspection with North Carolina.

Dealer and Salesman Hearings are subject to the following state laws:

- GS 20-287 Licenses required; penalties.
- GS 20-288 Application for license; license requirements; expiration of license; bond.
- GS 20-294 Grounds for denying, suspending, placing on probation, or revoking licenses.
- GS 20-296 Notice and hearing upon denial, suspension, revocation, placing on probation, or refusal to renew license.
- GS 20-300 Appeals from actions of Commissioner.
- GS 20-301 Powers of Commissioner.
- GS 20-305 Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.
- GS 93B-1 Occupational Licensing Boards – Definitions.
- GS 93B-8.1 Use of criminal history records.
- GS 150B-1 Policy and scope (Specifically, the provision under paragraph e, subparagraph 8)

Additionally, the North Carolina Administrative Code 19A NCAC 03 may need to be modified to reflect any changes.

In Montgomery v. N.C. Dep't of Motor Vehicles, 455 F. Supp. 338(W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979), the federal district court case held that DMV's procedures for the willful refusal of chemical analysis cases does not violate the due process clause. These hearings are substantially and procedurally similar in that the trier of fact is the agency and is considering actions by the agency prior to such act.

In Edwards v. N.C. Division of Motor Vehicle, the North Carolina Court of Appeals reversed a lower court decision the DMV's willful refusal hearings were unconstitutional and a denial of Due Process. Thus, the division's current process is affirmed.¹ Hearing Officers have an obligation to find the truth, give a fair hearing to all and show no biases to either party involved.

¹ OAH neither affirms nor denies that the current DMV process meets due process requirements as the cases cited are inapposite.

Requirement 8: Provide a plan for implementing the transfer of hearings

Anticipated workload

The five-year average is 107 dealer hearings per year and 39 inspection and emission hearings per year. Each hearing type can include multiple violations and counts against the petitioner. It is impossible to know how many applicants and licensees would choose to appeal to OAH. However, a hearing at OAH will increase workload for Department of Justice attorneys representing DMV, as they are not directly involved in individual hearings at DMV (*see DOJ memo in Requirement 9*).

Anticipated changes to staffing needs for any entity affected by the transfer

OAH Changes: OAH does not anticipate any substantial increase in its comparative workload and will not require any additional staff in the absorption of the hearings.

AG Changes: Pursuant to the memo dated May 21, 2021, the Attorney General's office has identified it will need 10 additional attorneys, one paralegal and one administrative specialist II. However, such number is based upon an average of 143 new cases a year and would vary depending on the number of cases.

Estimated one-time and annual costs to the Division or any other State agency resulting from the transfer

DOT will have to absorb additional costs from increased DOJ staffing.

Estimated cost savings for the Division or any other State agency resulting from the transfer

Under the process proposed, DMV does not anticipate any cost savings.

Changes in revenue for the Division or any other State agency resulting from the transfer

The number of DMV hearings has waned over the past two years, presumably because of the Covid pandemic. Taking an average of the preceding three years yields 180 cases per year. On the high end, OAH's revenues would increase by roughly \$22,500 on average; however, it is anticipated that not all licensees would petition OAH for a hearing.

Legislative changes necessary to implement the plan

DMV may need authority to promulgate rules. In addition, the following statutes may need changing depending on the final legislative directive:

GS 150B-1(e)(8) Exemption From Contested Case Provisions.

GS 20-295 Action on Application.

GS 20-296 Current Agency Hearing Procedures.

GS 150-25.1 Burden of proof for hearings.

GS 20-183.8F Notice requirements.

GS 20-183.8G Administrative and judicial review.

GS 93B-8.1 Use of criminal history records.

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

An estimated timeline for implementation, including steps required to facilitate the transfer

From the time the General Assembly passed legislation directing a change to the process, the estimated timeline for implementation is the following:

| Step or Requirement | Responsible Party | Estimated Timeline |
|--------------------------------------|--------------------------|---------------------------|
| Internal Development of Agency Rules | DMV, OAH | 90 Days |
| Adoption of Rules (if necessary) | OAH | 210 Days |
| L&T Training for OAH | DMV | 30-60 Days |

Requirement 9: Provide separate statements from the Division, the Attorney General, and the Office of Administrative Hearings indicating whether they are in favor of or opposed to implementing the transfer.

Statement from Division of Motor Vehicles

DMV Commissioner Goodwin and the agency recognize that the legislative directive prompting this report is to address how the transfer of all DMV hearings to OAH would occur, if the North Carolina General Assembly ultimately chooses to make that legislative policy decision and statutorily enact that change. While DMV would not support the full removal of the hearings function from DMV, the agency does not oppose the addition of an appeals hearing at OAH.

Although DMV recognizes that some individuals or other entities who have appeared before the DMV disagreed with their hearing results, DMV respectfully contends that a hearings process at either DMV or OAH will provide opportunities for affected parties to be heard and evidence received and weighed, and then for appeals to be made and ruled upon, if so requested.

Statement from Attorney's General Office

The Attorney General's Office takes no position on the full transfer of the DMV hearings in the above cited matters and/or the addition of an intermediary appeal to OAH after entry of the DMV administrative decision, as long as the notice and due process rights of the affected persons/entities are protected and the associated expenditures for any implemented changes are budgeted for in the imposition of such modifications to the General Statutes and/or Administrative Code.

JOSH STEIN
ATTORNEY GENERAL



MOTOR VEHICLES SECTION
TELEPHONE: (919) 716-6650
FACSIMILE: (919) 716-6708

–MEMORANDUM–

TO: Chuck Church, Legislative and Operations Officer

CC: Torre Jessup, Commissioner; Drew Marsh, Senior General Counsel

FROM: Christopher W. Brooks
Special Deputy Attorney General

DATE: May 21, 2021

SUBJECT: DOJ Expenses for HB 650

With HB 650, the Division of Motor Vehicle (DMV) hearings conducted under N.C.G.S. § 20-183.8G, N.C.G.S. § 20-295, and N.C.G.S. § 20-296 would be transferred from DMV administrative hearings to Office of Administrative Hearings (OAH). These hearing include the denial of a license to operate a car dealership, denial of salesman's license for the car dealership, administrative action towards a previously issued dealership or sales license, denial of inspection stations or technician license, and administrative action towards that previously issued inspection license. For cases involving administrative action for car dealership/salesman license, DMV would be required to initiate action at OAH. With inspection station/mechanic case, DMV would be the responding party to the action initiated by the affected person/entity. With all cases concerning the denial of a license, DMV would be the responding party to the action initiated by the affected person/entity. With the transfer of these hearings, there would be the requirement of expanding the Attorney General (AG) staff needed to support this legislative proposal. AG are not involved at DMV hearings, but would be representing DMV at hearings at OAH.

In the last 6 years, there has been an average of 143 hearings held by DMV subject to the bill. (93 hearings in 2020, 127 hearing in 2019, 107 hearings in 2018, 238 hearings in 2017, 160 hearings in 2016, and 134 hearings in 2015). Going on an average of 143 cases, below is a general summary of the hours needed for AG staff under this bill.

Section 1 Interview with DMV on case, whether to proceed, what charges to proceed on, and the number of charges to proceed on at a hearing. Expenses for travel should also be incorporated. **AVERAGE 4 hours (1/2 day)**

Section 2 Interview with witnesses, including but not limited to the License and Theft agent(s), employees of the car dealers/inspection station, members of the public affected by the action, employees of the local license plate agency that was presented registration documentation, and other required DMV employees to establish a violation. Expenses for travel across the State should also be incorporated. **AVERAGE 20 hours (2 ½ days)** Initiating action with

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

OAH for car dealer/sales case, filing Petition, filing Prehearing Statements, etc. and/or filing Response to action filed at OAH for inspection related cases **AVERAGE 10 hours (1¼ days)**

Section 3 Discovery and discovery responses. **AVERAGE 32 (4 days)**

Section 4 Motions, including Response to Motions **AVERAGE 20 hours (2½ days)**

Section 5 Hearing, including prep, travel, and actual hearing. **AVERAGE 40 hours (5 days)**

Section 6 Order preparation **AVERAGE 4 hours (1/2 day)**

Section 7 If against Division, appeal by PJR to superior court **AVERAGE 24 hours (3 days)** (not accounted in numbers)

Average total hours per case. $4+20+10+32+20+40+4 = 130$ **(16¼ days)** (not including any DMV appeals to superior court)

Average hours per case time average number of cases. $130 \times 143 = 18,590$ **HOURS**

Total hours divided by hours for FTE for total FTE needed. $18,590/1,920 = 9.7$ **(rounding up 10) FTE** that are licensed attorneys. A Paralegal II and Admin. II will be needed to support that legal staff.

Working with 10 attorneys ((2) Attorney Is, (5) Attorney IIs, and (3) Attorney IIIs, (1) Paralegal II, and (1) Admin II), the numbers breakdown as follows:

| Classification | ATTORNEY I | ATTORNEY II | ATTORNEY III | PARALEGAL II | ADMIN SPECIAL II |
|--------------------------|------------|-------------|--------------|--------------|------------------|
| Salary Grade | AT03 | AT04 | AT05 | GN11 | GN07 |
| Salary (at Midpoint) | \$ 92,909 | \$ 104,058 | \$ 116,544 | \$ 58,845 | \$ 47,458 |
| Social Security | \$ 7,108 | \$ 7,961 | \$ 8,916 | \$ 4,502 | \$ 3,631 |
| TSER Retirement | \$ 20,143 | \$ 22,560 | \$ 25,267 | \$ 12,758 | \$ 10,289 |
| Health Ins | \$ 6,326 | \$ 6,326 | \$ 6,326 | \$ 6,326 | \$ 6,326 |
| Total - All Salary Lines | \$ 126,486 | \$ 140,905 | \$ 157,053 | \$ 82,431 | \$ 67,704 |
| Direct Operating Costs | \$ 2,760 | \$ 2,760 | \$ 2,760 | \$ 2,760 | \$ 2,460 |
| Total Cost | \$ 129,246 | \$ 143,665 | \$ 159,813 | \$ 85,191 | \$ 70,164 |

| Direct Operating Costs | PER FTE |
|-------------------------|----------|
| Software | \$ 635 |
| Telephone | \$ 600 |
| Telecom | \$ 525 |
| Office Supplies | \$ 200 |
| Data Supplies | \$ 100 |
| Computer Replacement | \$ 400 |
| Legal Research Services | \$ 300 |
| Total | \$ 2,760 |

| FY 20-21 Benefit Rates | FY 20-21 |
|------------------------|----------|
| Social Security | 7.65% |
| TSER Retirement | 21.68% |
| Health Insurance | \$6,326 |

Accordingly, the costs are:

- Attorney 1 = $\$129,246 \times 2 =$ **\$258,492**
- (5) Attorney 2 = $\$143,665 \times 5 =$ **\$718,325**
- (5) Attorney 3 = $\$159,813 \times 3 =$ **\$479,439**
- (1) Paralegal II = $\$85,191 \times 1 =$ **\$85,191**
- (1) Admin II = $\$70,164 \times 1 =$ **\$70,164**

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

| | |
|------------------------|--------------------|
| Total recurring | \$1,611,611 |
|------------------------|--------------------|

Under N.C.G.S. § 114-4.2, the expense for the Assistant AG should be paid from the General Highway Fund. Also, this memo does not include the loss of hearing fees that are currently being paid to DMV.

Study to Transfer Dealer and Inspection Hearings from DMV to OAH

Statement from Office of Administrative Hearings

The Office of Administrative Hearings (“OAH”) supports transferring hearings pursuant to GS 20-296 and the safety and emissions inspection hearings pursuant to Article 3A of Chapter 20 to OAH. If moved to OAH, dealer licensure hearings and safety and emissions inspection hearings would proceed as “contested case hearings” under GS 150B, Article 3. Contested case hearings are conducted by independent administrative law judges and proceed under North Carolina’s rules of evidence, procedure, and due process. OAH will then issue a final decision with a formal, legally sufficient record to ensure appropriate appellate review as necessary. OAH does not anticipate any significant increase in workload or costs as a result of the transfer of hearings and the transfer will not require an increase in staff at OAH.

Requirement 10: Additional Relevant Issues

There are two additional topics for consideration of this implementation.

Training should be a significant consideration in any transfer. While the administrative law judges are certainly capable of presiding over any administrative process, it would greatly benefit them to receive DMV training, especially on inspection station matters. These are very technical and involve a significant amount of technical language and jargon as it relates to a vehicle, inspection equipment and detection of violations. CCS anticipates that this would be needed annually as part of a continuing education requirement.

The DMV proposes the transfer of hearings held under GS 20-305 to the Office of Administrative Hearings. This statute specifically references hearings held when there is a dispute among automobile dealerships and automobile manufacturers. This includes the coercion of dealerships to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession. Parties to these hearings file motions with DMV to determine the appropriate action; each motion costs \$600. Given the gravity and the financial impact of the dispute, parties are represented by legal counsel, and these hearings may take months or years before conclusion. The agency's final decision may be appealed to Superior Court.

The OAH finds that the transfer of hearings held pursuant to GS 20-305 exceeds the commission provided to the DMV and OAH. Further, the OAH lacks sufficient information to endorse or oppose transfer of the hearings propounded by DMV. Accordingly, the OAH does not have a recommendation.

Appendix

DEPARTMENT OF TRANSPORTATION

PeopleAdmin Position Description Guide

| | | | |
|--|---|--|--|
| *Working Title of Position Program Coordinator I | | *Beacon Position Number 60038092 | |
| *Department/Agency CUSTOMER COMPLIANCE SERVICES | *Division NC DIVISION OF MOTOR VEHICLES | *Section/Unit HEARINGS SUPPORT UNIT | |
| Clone of Existing Position? | | If Yes, List University or Beacon Position Number | |
| *Position Justification / Reasons for Classification Action Request | | | |
| Present Classification Title / Salary Grade or Banded Level | | Proposed Classification Title / Salary Grade or Banded Level | |
| *Name of Immediate Supervisor | | *Supervisor's Position Title and Number PROGRAM SUPERVISOR II (60031375) | |
| Work Schedule MONDAY THROUGH FRIDAY | | Work Hours 8:00 AM TO 5:00 PM | |
| *Primary Purpose of the Organizational Unit | | | |
| *Primary Purpose of the Position <p>The primary purpose of this Hearings Support Unit is to receive, and process hearing requests related to those areas governed by License & Theft. These hearings are held on behalf of the Commissioner of Motor Vehicles in accordance with Chapter 20 of the North Carolina General Statutes and all applicable policies and procedures. These hearings include those related to inspection emission stations and technicians, automobile dealers, salespersons, mechanics and automobile manufacturers. The purpose of this unit is to provide great customer service, schedule License & Theft administrative hearings, process hearing requests and the associated hearing fees, maintain files, process documents, prepare reports, prepare court records and participate in public record information requests. This employee is a member of the Hearings Support Unit and is characterized as a Subject Matter Expert (SME). They will be called upon daily for their knowledge and skills in this specialized area and program. The Administrative Specialist I employee requires specialized knowledge in processing and reviewing and maintain hearing statistics for the program. The SME demonstrates multiple complex tasks and duties such as: verifying reports/data, records/file management, reviewing hearing requests, hearing fees and affidavit of facts for License & Theft violations.</p> | | | |
| *Knowledge, Skills, and Abilities Recommended in this Position <p>Appendix A. Knowledge of the administrative hearing procedures for License and Theft Bureau. Appendix B. The ability to operate and perform within the Microsoft 365 Suite and Outlook. Appendix C. The ability to operate and perform within mainframe/session SADLS and STARS systems. Appendix D. The ability to operate and perform within the Motor Vehicle Inspection and Law Enforcement database (MILES). Appendix E. The knowledge and ability to demonstrate a proficiency with Microsoft Excel (for reporting and maintaining records/files) and Microsoft Word (for daily correspondence, letters, emails, etc.). Appendix F. The ability to record, log, summarize and analyze data. Appendix G. The ability to read and understand General Statutes pertaining to motor vehicle laws within Chapter 20. Appendix H. The ability to apply hearing administrative code rules, policies and procedures. Appendix I. The ability to interpret, explain and follow departmental policies and procedures. Appendix J. The ability to plan, coordinate, work independently and exercise good judgment in appraising situations and decision-making skills.</p> | | | |

| |
|--|
| <p>Appendix K. The ability to provide high quality (GREAT) customer service to various internal and external customers/citizens/petitioners, management and License & Theft personnel.</p> <p>Appendix L. The ability to sit and operate a computer for prolonged periods of time.</p> <p>Appendix M. The ability to kneel, bend, reach and maintain files and walk to various units throughout the day.</p> |
| <p>*Education and Experience Recommended <i>(Use N/A if not changing)</i></p> <ul style="list-style-type: none"> • High School diploma and demonstrated possession of knowledge, skills, and abilities gaining through at least four years of office assistant/secretarial experience; or an equivalent combination of training and experience. • Demonstrated ability to type a minimum of 45 WPM. • Demonstrated experience with customer service skills by phone and/or in person with customers. • Demonstrated experience in completing reports and maintaining records/files. |
| <p>*License or Certification Required by Statute or Regulation NONE</p> |
| <p>*Initiator</p> |
| <p>*Description of Work – Describe in detail the major functions of this position as well as the duties and responsibilities required for each of those functions. Indicate the percentage of time the employee spends in each functional element using “percent” or “pct” rather than “%” to avoid an error in PeopleAdmin. The percentage amounts should add up to 100%. In addition, indicate whether it is an essential duty/function as defined by the Americans with Disabilities Act with an asterisk (*). The description of work should include the following:</p> <ul style="list-style-type: none"> • Describe thinking, analysis, and judgments required to perform assigned tasks. • Consequences of errors. • Supervision received and directions provided. • Supervision given. • Describe decision-making authority. • Variety and purpose of personal contacts. • Work environment and conditions (hazards, physical effort, specialized training requirements, machines, tools, systems, instruments, equipment). |
| <p><u>70 Percent - PROVIDE GREAT CUSTOMER SERVICE AND SCHEDULING HEARINGS:</u></p> <p>The Administrative Specialist I position within Hearings Support Unit provides supportive services for the License & Theft Bureau and Field Hearings, which includes administrative hearings related to inspection stations, inspections technicians, auto dealers and their salesmen, mechanics, as well as franchise hearings. This employee is responsible for scheduling License and Theft Hearings, determining appropriate actions and response for cases, preparing correspondence, communicating with all parties via email and telephone, providing great customer service, maintaining hearing data, tracking all incoming and outgoing mail and files, and preparing reports. This employee’s main purpose is to give Great customer service while adhering to due process requirements.</p> <p>This employee will schedule hearings and invites via Microsoft Outlook for the Hearing Officer, License & Theft Bureau Inspector/Agent, and the L&T managers.</p> <p>This employee will assist petitioners, attorneys, hearing officers, License & Theft personnel both sworn and non-sworn, DMV management, DMV Commissioner and Deputy Commissioners, and staff in the Commissioner’s Office via email, telephone and in-person in accordance with established guidelines, policies and procedures on a daily basis. This employee will also assist in the determination of appropriate action and responses to internal and external customers.</p> |

This employee communicates daily with License & Theft Bureau Inspector/Agents and non-sworn personnel across North Carolina providing great customer service to state personnel (internal customers) in all 100 counties throughout the state.

This employee also prepares various correspondence and letters on behalf of the Commissioner. This employee will compose correspondence to petitioners and/or attorneys daily with responses from the Division concerning their hearing request. This includes correspondence to the customer such as: notice to appear letters, notice to show cause orders, 30-day Commissioner review, hearing status updates, official hearing decision and orders, and decision outcomes. The employee also reviews letters regarding the suspension of licenses and revocation letters to emission/safety inspection stations, prior to their mailing.

This employee also creates/sends reports to License & Theft section and maintains all files and data regarding hearings for all the types of License & Theft hearings mentioned above. They are responsible for distribution of case files to the appropriate staff for use and ensuring return upon their disposition. This employee will mail notices and documents via UPS and USPS certified mail to allow for tracking and delivering confirmation of mail pieces, logs and files.

10 Percent - PROCESSING OF HEARING REQUESTS AND HEARING FEES:

The Administrative Specialist I position within Hearings Support Unit processes follows the Administrative Code and guidelines for hearing fees that was implemented effective January 1, 2018. This employee processes, reviews, and collects all associated hearing fees (pre and post-pay) related to License & Theft administrative hearings. This includes the following tasks:

- Process and review all incoming hearing documents/requests, index, file, and scan into SADLS/IWPM.
- Process and schedule all hearing requests within the statutory timeframe and place hearing assignments.
- Process, collects and apply hearing fees in SADLS according to the ASU SOP for Cash Handling policies and procedures for all License & Theft pre and post pay hearings, and franchise motor vehicle dealer petitions/motions.
- Completes a review of SADLS daily report summary and follow filing documents policies and procedures by submitting fees with the appropriate online banking system.
- Update License & Theft Administrative hearing request forms and cancellation hearing forms.

10 Percent - MAINTAINING HEARING FILES AND PROCESSING FRANCHISE DOCUMENTS:

This Administrative Specialist I position within Hearings Support Unit maintains all files and data regarding hearings for all types of License & Theft hearings (inspection emission stations and technicians, automobile dealers, salespersons, mechanics and automobile manufacturers. inspection emission stations and technicians, automobile dealers, salespersons, mechanics and automobile manufacturers).

This employee of the unit also files stamp and forwards all franchise dealer documents to all parties involved including the Chief Hearing Officer (CHO) and Hearing Officer (HO) assigned to the case. These documents include the following: petitions, responses, contested proposed issues, stipulations, notices, pro hac vice admissions, motions, scheduling of conference orders received by CHO and/or HO assigned, dismissals and hearing orders. This Administrative Specialist I employee also logs and creates hard files, makes copies, creates letters, emails, and makes contact via email or by phone to parties involved in the franchise case. This support unit mails out documents via certified mail and UPS and tracks all mailing (time sensitive documents for waiting periods that may result in CHO and/or HO submitting a decision to close case based on time limits not being met).

10 Percent - REPORTING/PREPARING APPEAL RECORDS/PUBLIC RECORD INFO REQUESTS:

This Administrative Specialist I position within Hearings Support Unit also prepares indexed administrative records/entire files for the North Carolina Department of Justice Attorney General Office regarding all emissions/safety inspection, dealer/salesman and franchise dealer appeals. This Hearing Support Unit is also tasked with transcribing License & Theft administrative hearings at the request of the Attorney General's office.

This employee also prepares reports and statistics for legislative requests from NCDOT/NCDMV.

This employee of the Hearing Support Unit also creates/sends data reports to License & Theft regarding (inspection emission stations and technicians, automobile dealers, salespersons, mechanics and automobile manufacturers. inspection emission stations and technicians, automobile dealers, salespersons, mechanics and automobile manufacturers).

This employee compiles data and documents related to public information requests/contact us information requests from DMV Communications Officers pertaining to all emissions/safety inspection, dealer/salesman and franchise dealer manufacturers.

*** = Required**

Physical Activity

YES NO

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Climbing. <i>Ascending or descending ladders, stairs, scaffolding, ramps, poles and the like, using feet and legs and/or hands and arms. Body agility is emphasized. This factor is important if the amount and kind of climbing required exceeds that required for ordinary locomotion.</i> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Balancing. <i>Maintaining body equilibrium to prevent falling when walking, standing or crouching on narrow, slippery or erratically moving surfaces. This factor is important if the amount and kind of balancing exceeds that needed for ordinary locomotion and maintenance of body equilibrium.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Stooping. <i>Bending body downward and forward by bending spine at the waist. This factor is important if it occurs to a considerable degree and requires full use of the lower extremities and back muscles.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Kneeling. <i>Bending legs at knee to come to a rest on knee or knees.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Crouching. <i>Bending the body downward and forward by bending legs and spine.</i> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Crawling. <i>Moving about on hands and knees or hands and feet.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Reaching. <i>Extending hand(s) and arm(s) in any direction.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Standing. <i>Particularly for sustained periods of time.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Walking. <i>Moving about on foot to accomplish tasks, particularly for long distances or moving from one work site to another.</i> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Pushing. <i>Using upper extremities to press against something with steady force in order to thrust forward, downward or outward.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Pulling. <i>Using upper extremities to exert force in order to drag, haul, or tug objects in a sustained motion.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Lifting. <i>Raising objects from a lower to a higher position or moving objects horizontally from position-to-position. This factor is important if it occurs to a considerable degree and requires the substantial use of the upper extremities and back muscles.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fingering. <i>Picking, pinching, typing, writing or otherwise working, primarily with fingers rather than with the whole hand or arm as in handling.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grasping. <i>Applying pressure to an object with the fingers and palm.</i> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Feeling. <i>Perceiving attributes of objects, such as size, shape, temperature or texture by touching with skin, particularly that of the fingertips.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Talking. <i>Expressing or exchanging ideas by means of the spoken word. Those activities in which they must convey detailed or important spoken instructions to other workers accurately, loudly or quickly.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Hearing. <i>Perceiving the nature of sounds at normal speaking levels with or without correction. Ability to receive detailed information through oral communication, and to make fine discriminations in sound.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Repetitive motions. <i>Substantial movements (motions) of the wrists, hands, and/or fingers.</i> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Smelling. |

Physical Requirements (*choose one*)

- ☒ **Sedentary work:** Exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull or otherwise move objects, including the human body. Sedentary work involves sitting most of the time. Jobs are sedentary if walking and standing are required only occasionally, and all other sedentary criteria are met.
- ☐ **Light work:** Exerting up to 20 pounds of force occasionally and/or up to 20 pounds of force frequently, and/or a negligible amount of force constantly to move objects. If the use of arm and/or leg controls requires exertion of forces greater than that for Sedentary Work and the worker sits most of the time, the job is rated for Light Work.
- ☐ **Medium work:** Exerting up to 50 pounds of force occasionally, and/or up to 20 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.
- ☐ **Heavy work:** Exerting up to 100 pounds of force occasionally, and/or up to 50 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.
- ☐ **Very heavy work:** Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently and/or in excess of 10 pounds of force constantly to move objects.

Visual Acuity Requirements (*choose one*)

- ☒ **A** The worker is required to have close visual acuity to perform an activity such as: preparing and analyzing data and figures, transcribing; viewing a computer terminal; extensive reading; visual inspections involving small defects, small parts, and/or operation of machines (including inspection); using measurement devices; and/or assembly or fabrication of parts at distances close to the eyes.
- ☐ **B** The worker is required to have visual acuity to perform an activity such as: operated machines such as lathes, drill presses, power saws and mills where the seeing job is at or within arm's reach; performs mechanical or skilled trades tasks of a non-repetitive nature such as carpenters, technicians, service people, plumbers, painters, mechanics, etc.
- ☐ **C** The worker is required to have visual acuity to operate motor vehicles or heavy equipment.
- ☐ **D** The worker is required to have visual acuity to determine the accuracy, neatness, and thoroughness of the work assigned (i.e., custodial, food services, general laborer, etc.) Or to make general observations of facilities or structures (i.e., security guard, inspection, etc.).

Working Conditions

- | Yes | No | |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | The worker is subject to inside environmental conditions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to outside environmental conditions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to both environmental conditions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to extreme cold |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to extreme heat |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to noise |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to vibration |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to hazards |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to atmospheric conditions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is subject to oils |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is required to wear respirator. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is frequently in close quarters, crawl space, shafts, manholes, small, enclosed rooms, small sewage and water line pipes, and other areas which could cause claustrophobia. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is required to function in narrow aisles or passageways. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is exposed to infectious diseases. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is required to function around prisoners or mental patients. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | None: The worker is not substantially exposed to adverse environmental conditions (such as in typical office or administrative work). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The worker is exposed to blood borne pathogens. |

Cognitive/Mental Capabilities

(Choose one in each category)

Comprehension

- ☐ Understand and apply routine verbal and/or written instructions
- ☐ Understand and apply non-routine verbal and/or written instructions
- ☒ Understand complex problems and collaborate to explore alternative solutions

Organization

- ☐ Organize actions to complete sequential and/or routine tasks
- ☒ Organize and prioritize individual work schedule to manage multiple tasks and/or projects
- ☐ Organize and prioritize the work schedules of others to manage multiple tasks and/or projects

Decision Making

- ☒ Make decisions that have an impact on the individual's work
- ☐ Make decisions that have an impact on the immediate work unit's operations and/or services
- ☐ Make decisions that have an impact on a department's credibility, operations, and/or services

Communication

- ☐ Communicate and exchange routine/basic information
- ☐ Communicate and explain a variety of information

- ☒ *Communicate in-depth information for the purpose of interpreting and/or negotiating*

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