§ 19-0320. Emissions inspections of heavy duty vehicles.

1. When used in this section:

a. "Heavy duty vehicle" means any vehicle powered by diesel fuel and having a gross vehicle weight of greater than eight thousand five hundred pounds, except that those vehicles defined in sections one hundred one, subparagraph two of paragraph E and subparagraph (a) of paragraph F of subdivision seven of section four hundred one of the vehicle and traffic law, and vehicles specified in subdivision thirteen of section four hundred one of the vehicle and traffic law, and farm type tractors and all terrain type vehicles used exclusively for agricultural or mowing purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site, and timber harvesting equipment such as harvesters, wood chippers, forwarders, log skidders, and other processing equipment used exclusively off highway for timber harvesting and logging purposes, shall not be deemed heavy duty vehicles for purposes of this section.

b. "Roadside program" means a roadside examination program conducted pursuant to the heavy duty vehicle emissions reduction act for the inspection of emissions and emission control equipment, at any public or quasi-public location as designated by the commissioner of transportation with the concurrence of the department and, where appropriate, the New York state thruway authority.

c. "Annual inspection program" means a program in which heavy duty vehicles registered or required to be registered in counties in the state designated as being in serious, severe or extreme non-attainment of the National Ambient Air Quality Standard for ozone pursuant to the 1990 amendments of the federal Clean Air Act (42 U.S.C. 7511) are annually inspected in accordance with this article.

2. The department, jointly with the departments of motor vehicles and transportation, shall develop a program for the inspection of emissions

from heavy duty vehicles. Such inspection program shall consist of an annual inspection program and a roadside program. The annual inspection program developed in accordance with this section shall be limited to heavy duty vehicles registered or required to be registered in counties in the state designated as being in serious, severe or extreme non-attainment of the National Ambient Air Quality Standard for ozone pursuant to the 1990 amendments of the federal Clean Air Act (42 U.S.C. 7511). Under no circumstances shall such program require heavy duty vehicles to meet emission standards more stringent than the new vehicle emission standards to which such vehicles were certified pursuant to the federal Clean Air Act. The department shall, with the department of transportation and, where appropriate, the New York state thruway authority, jointly develop criteria for roadside program site selection and procedures for the control of traffic and operation of such sites.

3. The department, jointly with the departments of motor vehicles and transportation, shall adopt rules and regulations establishing test standards, method, and equipment for the period of effectiveness of this section. The department shall adopt such rules and regulations and implement such program by June first, nineteen hundred ninety-nine. The department shall consider establishing a hardship waiver based on an evaluation of fleet size and cost of effective repair, and shall consider exempting from the roadside inspection vehicles that successfully pass an annual inspection as approved by the commissioner.

4. Notwithstanding the provisions of title twenty-one of article seventy-one of this chapter, operation of a heavy duty vehicle which, when tested, exceeds emission levels set forth in regulations promulgated pursuant to this section shall be a violation, and the following penalties shall apply to any violation found as a result of roadside emissions inspections:

a. First violation: $ 700.00
Second and subsequent violations: $1300.00.

b. The penalties set forth in paragraph a of this subdivision shall be reduced to one hundred fifty dollars for the first violation and five

hundred dollars for the second and subsequent violations by the court or administrative tribunal before which the summons or appearance ticket is returnable if the violation set forth in the summons or appearance ticket is corrected not later than thirty days after the issuance of the summons or appearance ticket and proof of such correction, as defined in paragraph c of this subdivision, is submitted to the court or administrative tribunal. The penalties described in this section shall not apply to vehicles defined by section one hundred forty-two of the vehicle and traffic law or owned by a county, town, city, or village for a first violation provided the vehicle is repaired within thirty days of ticket issuance.

c. Acceptable proof of repair or adjustment shall be submitted to the court or administrative tribunal on or before the return date of the summons or appearance ticket in a form and manner prescribed by regulations adopted pursuant to this section.

5. Notwithstanding the provisions of title twenty-one of article seventy-one of this chapter, operation of any heavy duty vehicle registered or required to be registered in this state without a certificate of inspection resulting from an annual inspection as required by regulations adopted pursuant to this section shall be a violation, and the following violation structure shall apply to such violations:

a. First violation: $ 700.00
Second and subsequent violations: $1300.00.

b. The penalties defined in paragraph a of this subdivision shall be reduced to three hundred fifty dollars for the first violation and seven hundred fifty dollars for second and subsequent violations, provided that the vehicle in question bears a certificate which was valid within the last thirty days. The penalties described in this section shall not apply to vehicles defined by section one hundred forty-two or owned by a county, town, city, or village of the vehicle and traffic law for a first violation provided the vehicle is repaired within thirty days of ticket issuance.

6. Vehicles found in violation of applicable emission standards implemented pursuant to this program shall not be subject to impoundment or otherwise prevented from engaging in commerce as a result of this program.

6-a. Notwithstanding the provisions of this section, no penalty shall be imposed pursuant to this section where the operator of such vehicle has been convicted of the same violation arising from the same incident pursuant to section three hundred one-b of the vehicle and traffic law.

7. The department shall, to the extent practicable, coordinate with appropriate agencies in the states in the northeast ozone transport region and which have proposed or adopted heavy duty emission inspection programs to promote regional consistency in such programs.