

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-001

AN ORDER to repeal Trans 131.03 (6) (b) 8. and (8) (g); to renumber Trans 131.03 (10) (b) and 131.11 (2) (d); to amend Trans 131.01 Note, 131.02 (11), (15) Note, (22), (32), (50m) and (58), 131.03 (title), (4), (6) (b) 3., (7) (a) (intro.) and (c), (9) (g) and (15) (a) 12., 131.04 (1) (intro.), 131.05 (1) (j), 131.11 (3) (b), 131.13 (1) (a) (intro.), (2), (5) (a) and (b) and 131.16 (2) (b) and (c); and to create Trans 131.02 (6m), (6r), (26), (34m) and (37m), 131.03 (6) (d), (10) (b) 2. and (11) (o), 131.11 (2) (d) and 131.12 (2) (d), relating to a motor vehicle emissions inspection program.

Submitted by **DEPARTMENT OF TRANSPORTATION**

01-11-01 RECEIVED BY LEGISLATIVE COUNCIL.
02-05-01 REPORT SENT TO AGENCY.

RS:DLL:jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 01-001

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 131.02 (37m), the second sentence of the definition of "readiness monitors" or "readiness codes" is substance, which should be placed in the main body of the rule. Also, why are two different terms given the same meaning? If they indeed mean the same thing, then one term should be chosen and used in the rule.

b. It needs to be made more clear that s. Trans 131.03 (6) (a) to (c) apply to one set of vehicles and s. Trans 131.03 (6) (d) applies to a separate set of vehicles. This might be done most clearly by numbering the new par. (d) as a separate subsection (sub. (6m)). If this is done, it would be appropriate to change the title of sub. (6) and add an introductory provision specifying the vehicles to which it applies and creating a parallel introductory provision in sub. (6m). In addition, it appears that sub. (4) is unnecessary and could be repealed, rather than expanding it to refer to OBD inspections.

c. Section Trans 131.03 (11) (o) should begin with the phrase: "Vehicles subject to the OBD inspection under sub. (6) (d)"

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Trans 131.03 (6) (d) 2. refers to vehicles exempt from inspection by the U.S. Environmental Protection Agency. What exemptions does this refer to? Could the exemptions be specified by cross-reference? Also, in subd. 1., the notation prior to "85.2222" should be "s."

b. It appears that the reference to "s. Trans 131.03 (6)" in s. Trans 131.03 (6) (d) 3. should refer to "par. (b)."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The "D" in "OBD" stands for "diagnostic"; therefore, the word "diagnostic" in the term "OBD diagnostic inspection" is redundant. The term should simply be "OBD inspection."

b. In s. Trans 131.03 (6) (d) 4., a comma should be inserted after the phrase "monitors in question."

PART 4
CR 01-001

ANALYSIS OF FINAL DRAFT OF TRANS 131

(a) **Need for Amended Rule.** Ch. Trans 131 specifies the procedures used in the administration of the Wisconsin Motor Vehicle Inspection and Maintenance (I/M) Program. The proposed rule amendments specify testing procedures and failure criteria for the use of on-board diagnostic inspections for newer model year vehicles. The new testing procedures result from recent USEPA regulation which requires the use of on-board diagnostic inspections in all areas that operate I/M programs.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on February 20, 2001. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons registered in favor of the proposed rule:

Susan Krueger, Public Information Manager, Envirotest Wisconsin, Inc., 7930 West Clinton Avenue, Milwaukee, WI 53223.

Steve Stoltz, General Manager, Envirotest Wisconsin, Inc., 7930 West Clinton Avenue, Milwaukee, WI 53223.

Daniel E. White, Quality Assurance & Training Manager, Envirotest Systems Corporation, 7930 West Clinton Avenue, Milwaukee, WI 53223.

Charles C. Rhodes, DOT Program Supervisor, I/M District, Division of Motor Vehicles, Bureau of Vehicle Services, Third Party Section, 1150 N. Alois Street, Milwaukee, WI 53208.

Muhammed R. Islam, Vehicle Emission Control Engineer, WisDNR, P. O. Box 7921, Madison, WI 53707.

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council comments have been incorporated into the proposed rule, with the exception of the following:

2.b. It appears that the amendment as drafted would be correct given the introductory language added to s. Trans 131.03(4). Subsection (4) indicates that a tailpipe emission test will be given to a certain set of vehicles and an OBD inspection will be given to a different set. Since sub. (6)(a) to (c) describe inspection procedures, inserting the OBD inspection procedure as par. (d) seems sufficiently clear.

4.a. The USEPA has publicly stated that they will provide a list of those vehicles which, because of manufacturer design or other conditions, should not receive an OBD inspection. However, they have not yet published an official document that lists these vehicles, so a cross-reference is not possible at this time.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule will have no adverse impact on small businesses.

The Wisconsin Department of Transportation proposes an order to repeal TRANS 131.03(6)(b)8. and (8)(g); renumber TRANS 131.03(10)(b) and 131.11(2)(d); amend TRANS 131.01(note), 131.02(11), (15)(note), (22), (32), (50m) and (58), 131.03(title), (4), (6)(b)3., (7)(a)(intro.) and (c), (9)(g) and (15)(a)12., 131.04(1)(intro.), 131.05(1)(j), 131.11(3)(b), 131.13(1)(a)(intro.), (2), (5)(a) and (b), and 131.16(2)(b) and (c); and create TRANS 131.02(6m), (6r), (26), (34m) and (37m), 131.03(6)(d), (10)(b)2. and (11)(o), 131.11(2)(d) and 131.12(2)(d), relating to a motor vehicle emissions inspection program.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.06, 110.20(9) and 227.11(2), Stats., and interpreting s. 110.20, Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **20th** day of **February**, 2001, at **10:00 AM**, to consider the amendment of chapter Trans 131, Wisconsin Administrative Code, relating to a motor vehicle emissions inspection program.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business February 22, 2001, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Jerry Medinger, Department of

Transportation, Bureau of Vehicle Services, Third Party Programs Section, Room 253,
P. O. Box 7909, Madison, WI 53707-7909.

Parking for persons with disabilities and an accessible entrance are available on
the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.06, 110.20(9) and 227.11(2), Stats.
STATUTES INTERPRETED: s. 110.20, Stats.

General Summary of Proposed Rule. Ch. Trans 131 specifies the procedures used in the administration of the Wisconsin Motor Vehicle Inspection and Maintenance (I/M) Program. The proposed rule amendments specify testing procedures and failure criteria for the use of on-board diagnostic inspections for newer model year vehicles. The new testing procedures result from recent USEPA regulation which requires the use of on-board diagnostic inspections in all areas that operate I/M programs.

The current emission testing procedure consists of operating a vehicle on a dynamometer to simulate on-road operation. The hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) emissions discharged from the tailpipe are measured and compared to allowable limitations for that particular model year and weight class of vehicle. The maximum allowable limitations are set by the Wisconsin Department of Natural Resources. Vehicles that emit pollutants in excess of the allowable limits are required to be repaired and returned for reinspection.

The procedural changes described in the rule amendments specify how the Department will conduct the on-board diagnostic inspections on model year 1996 and newer vehicles which are equipped with on-board diagnostic, version II (OBD II) systems. The on-board diagnostic inspections will be used in place of the current tailpipe test.

Vehicle manufacturers have designed OBD II systems to monitor the electronic emission control components on automobiles and light-duty trucks. These OBD II systems continually check that the emission control systems are operating according to programmed specifications. If serious problems occur, the OBD II systems alert the driver by means of a malfunction indicator lamp (MIL) or "check engine" light.

The on-board diagnostic inspection consists of an interrogation of the vehicle's OBD II computer system to verify that all of the emission controls are functioning properly. The inspection is performed by connecting a cable from the vehicle to the test-lane computer system. The test-lane computer system checks to see that the vehicle's OBD II

system is functioning and ready for an information download. The OBD II computer sends information to the test-lane computer, and the motorist receives a printout containing the result of that communication. If the vehicle communicates that there is a malfunctioning emission component, the motorist is required to have the vehicle reinspected after repair.

The proposed rule amendments also include some minor changes for either grammatical purposes or to reflect current practice.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Jerry Medinger, Third Party Programs Section, P. O. Box 7909, Madison, WI 53707-7909, or by calling (608) 266-2267. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.06, 110.20(9) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

SECTION 1. Trans 131.01(note) is amended to read:

Note: Forms used in this chapter are MVD 2016, substitute renewal notice; MVD 2470, vehicle inspection report; MVD 2472, application for letter of temporary exemption from emission test requirements; ~~MVD 2473, fleet station inspection permit~~; MV 2588, exchanged engine certificate; MV 2594, quality assurance inspection report. Copies can be obtained from the Wisconsin Department of Transportation, Vehicle Emission Section, P. O. Box 8917 7909, Madison, WI 53707-8917 7909.

SECTION 2. Trans 131.02(6m) and (6r) are created to read:

Trans 131.02(6m) "DLC" means data link connector on a vehicle equipped with an OBD II system.

(6r) "DTC" means diagnostic trouble code stored by a vehicle's OBD system.

SECTION 3. Trans 131.02(11), (15)(note) and (22) are amended to read:

Trans 131.02(11) "Evaporative emission test" means the combination of an evaporative emission integrity (pressure) test and an evaporative system purge test of a vehicle's evaporative emission control system, or a combination of both.

(15)(note) All references made to the Federal Rule in this document are to 40 CFR Part 51, Subpart S Inspection/Maintenance Program Requirements; Final Rule dated November 5, 1992, as amended on November 9, 1993 and June 23, 1994 through January 1, 2001.

(22) "Inspection" means the mandatory vehicle emission inspection required by s. 110.20, Stats., consisting of an emission test or OBD diagnostic inspection.

SECTION 4. Trans 131.02(26) is created to read:

Trans 131.02(26) "MIL" means malfunction indicator lamp.

SECTION 5. Trans 131.02(32) is amended to read:

Trans 131.02(32) "NO_x" means nitric oxides of nitrogen.

SECTION 6. Trans 131.02(34m) and (37m) are created to read:

Trans 131.02(34m) "OBD diagnostic inspection" means an emissions related test in which the vehicle's on-board computer is accessed to evaluate the status of the vehicle's emission control system.

(37m) "Readiness monitors" or "readiness codes" means the tests performed internally by a vehicle's OBD II system that determine if an emission component is

ready to be checked by the on-board vehicle computer. A vehicle needs to be operated under conditions defined by the manufacturer to allow completion of all applicable on-board tests so that all readiness monitors or readiness codes can be set.

SECTION 7. Trans 131.02(50m) and (58) are amended to read:

Trans 131.02(50m) "USEPA technical guidance" means the USEPA publication "~~High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications Revised~~ IM 240 & Evap Technical Guidance", dated ~~April, 1994~~ August, 1998, which is incorporated herein by reference. Any alternative test procedures or changes in procedural details shall be approved by the USEPA administrator prior to use.

NOTE: ~~All references made to the USEPA Technical Guidance in this document are to High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications Revised Technical Guidance dated April, 1994.~~ Copies are on file with the Revisor of Statutes Bureau and the Attorney General's office. These procedures are available in published form from the Wisconsin Department of Transportation, Bureau of Field Services, P. O. Box 8917, Room 266, Madison, WI 53707-8917 and can be accessed on the Internet at <http://www.epa.gov/otaq/regs/im/im24f98.pdf>.

(58) "Waiver investigator" means the department employe employee or designated contractor representative, who approves or disapproves applications for waivers.

SECTION 8. Trans 131.03(title), (4) and (6)(b)3. are amended to read:

Trans 131.03 (title) **Emission test, emission equipment inspection, evaporative emission test, on-board diagnostic checks** OBD diagnostic inspection, and reinspection.

(4) SCOPE AND NATURE OF TEST. The vehicle emission test shall consist of sampling the exhaust emissions from the tailpipe or tailpipes, and measuring the

hydrocarbons, carbon monoxide, carbon dioxide and oxides of nitrogen. For 1996 and newer vehicles equipped with OBD II systems, the test shall consist of an OBD diagnostic inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.

(6)(b)3. ~~Vehicles queued in the inspection lane for more than 20 minutes~~ which fail the transient emission test cycle at or below ~~4.5~~ 2.0 times the emission limitations shall receive a second chance emission test.

SECTION 9. Trans 131.03(6)(b)8. is repealed.

SECTION 10. Trans 131.03(6)(d) is created to read:

Trans 131.03(6)(d) *OBD diagnostic inspection procedures.* 1. An OBD diagnostic inspection shall be performed on all model year 1996 and newer vehicles equipped with OBD II systems. The OBD diagnostic inspection shall be performed according to the procedures specified in § 85.2222 of the federal rule.

2. If the vehicle's DLC cannot be located, the lane software is unable to communicate with the vehicle, or the vehicle is exempted from the OBD diagnostic inspection by the USEPA, the vehicle shall be tested according to the procedures specified in par. (b).

3. The inspector shall connect the test system to the vehicle by connecting the vehicle's DLC to the lane test system. The test system shall determine what readiness monitors are supported by the vehicle's OBD II system, and perform a readiness evaluation for applicable readiness monitors in accordance with the USEPA technical guidance. If the readiness evaluation indicates that any on-board tests are not

complete, the vehicle shall be rejected from testing. Vehicles rejected because on-board tests are not complete shall be tested according to the procedures specified in s. Trans 131.03(6).

4. An exception is allowed for model year 1996 to model year 2000 vehicles, with 2 or fewer unset readiness monitors, and for model year 2001 and newer vehicles with no more than one unset readiness monitor. Vehicles from those model years which would otherwise pass the OBD diagnostic inspection, but for the unset readiness monitors in question may be issued a passing certificate without being required to operate the vehicle in such a way as to activate those particular readiness monitors. Vehicles from those model years with unset readiness monitors which also have DTCs stored resulting in the MIL to be commanded on shall fail the OBD diagnostic inspection.

5. If the lane computer system is not able to download the vehicle OBD II records, the OBD diagnostic inspection shall be aborted, and the vehicle shall be tested according to the procedures specified in par. (b).

6. If the MIL is not commanded to be illuminated, the vehicle shall pass the OBD diagnostic inspection, even if DTCs are present.

7. If the DLC of model year 1996 and newer vehicles so equipped is missing, has been tampered with, or is otherwise inoperable, the vehicle shall fail the OBD diagnostic inspection.

8. If the malfunction indicator status indicates that the MIL has been commanded to be illuminated, the vehicle shall fail the OBD diagnostic inspection and

the test system shall record all DTCs resulting in MIL illumination in the vehicle test record.

9. If the MIL does not illuminate at all when the vehicle is in the key-on/engine-off, or KOEO, condition, the vehicle shall fail the OBD diagnostic inspection, even if no DTCs are present and the MIL has not been commanded on.

10. Failing the OBD diagnostic inspection is considered the same as failing the inspection. Vehicles failing the OBD diagnostic inspection may not be reregistered within the state of Wisconsin until such failing items have been repaired or replaced if necessary as required by s. 285.30(6), Stats.

SECTION 11. Trans 131.03(7)(a)(intro.) and (c) are amended to read:

Trans 131.03(7)(a)(intro.) An emission equipment inspection shall be performed on nonexempt vehicles customarily kept in a county identified in s. 110.20(5), Stats., whenever a nontransient emissions inspection, other than an OBD diagnostic inspection, is performed. This emission equipment inspection is designed to detect either tampering or disrepair on the vehicle. This emission equipment inspection, conducted by the contractor to determine the presence, if originally equipped, of all of the following:

(c) Failing the emission equipment inspection is considered the same as failing the inspection. Vehicles failing the emission equipment inspection shall may not be reregistered within the state of Wisconsin until such failing items have been repaired or replaced if necessary as required by s. 285.30(6), Stats.

SECTION 12. Trans 131.03(8)(g) is repealed.

SECTION 13. Trans 131.03(9)(g) is amended to read:

Trans 131.03(9)(g) ~~During the first 24 months of transient emission testing conducted under this section, the~~ The department may either phase in or temporarily omit the evaporative emission purge test.

SECTION 14. Trans 131.03(10)(b) is renumbered Trans 131.03(10)(b)1.

SECTION 15. Trans 131.03(10)(b)2. and (11)(o) are created to read:

Trans 131.03(10)(b)2. A vehicle that fails the OBD diagnostic inspection shall be reinspected after repair provided a readiness evaluation indicates that all applicable on-board tests are complete except as allowed under sub. (6)(d).

(11)(o) Model year 1996 and newer vehicles subject to the OBD diagnostic inspection shall be rejected from testing if a scan of the vehicle's OBD II system reveals a "not ready" status for 3 or more readiness monitors on model year 1996 through model year 2000 vehicles, or for 2 or more readiness monitors on model year 2001 and newer vehicles, as provided in 40 CFR 85.2222(c)(2). Vehicles rejected from testing for this reason shall be tested according to the provisions of sub. (6)(b).

SECTION 16. Trans 131.03(15)(a)12. is amended to read:

Trans 131.03(15)(a)12. The results of any OBD ~~or OBD II test~~ diagnostic inspection.

SECTION 17. Trans 131.04(1)(intro.) is amended to read:

Trans 131.04(1) ELIGIBILITY. (intro.) A vehicle which fails to pass the designated emission test standards or OBD diagnostic inspection upon an initial inspection, and which after repair or adjustment, or both, again fails to pass the

emission inspection or OBD diagnostic inspection, shall be eligible for a waiver of compliance valid until the next required inspection of the vehicle provided the following conditions are met:

SECTION 18. Trans 131.05(1)(j) is amended to read:

Trans 131.05(1)(j) An operational and non-active "~~check engine~~" MIL or other emission service indicator light.

SECTION 19. Trans 131.11(2)(d) is renumbered Trans 131.11(2)(e).

SECTION 20. Trans 131.11(2)(d) is created to read:

Trans 131.11(2)(d) Equipment used to perform OBD diagnostic inspections shall be audited according to written procedures either established or approved by the department.

SECTION 21. Trans 131.11(3)(b) is amended to read:

Trans 131.11(3)(b) Contractor ~~employes~~ employees, removed from inspection duties through either suspension or revocation of their inspection license as a result of a department audit, may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of receipt of a written request by the ~~employe~~ employee. Failure to hold a hearing within 14 days when requested shall cause the suspension or revocation to lapse.

SECTION 22. Trans 131.12(2)(d) is created to read:

Trans 131.12(2)(d) Equipment used to perform OBD diagnostic inspections shall be capable of testing all model year 1996 and newer, OBD II-equipped light-duty

vehicles and light-duty trucks and meet the requirements of 40 CFR part 51, subpart S and 40 CFR part 85, subpart W, s. 85.2231.

SECTION 23. Trans 131.13(1)(a)(intro.), (2) and (5)(a) and (b) are amended to read:

Trans 131.13(1)(a)(intro.) All contractor ~~employes~~ employees who perform any official inspection functions shall have a license issued by the contractor. No person may either receive a license or have a license renewed as an inspector unless the person demonstrates to the department, by training and examination, proficiency in all of the following:

(2) LICENSING. Upon completion of training and all other licensing requirements, the contractor shall issue a photo identification badge containing the inspector's photograph, name, unique, non-transferable inspector number and the expiration date of the inspector's license. Training and licensing records for each ~~employe~~ employee so licensed shall be maintained both at the contractor's headquarters and at the ~~employe's~~ employee's primary inspection station.

(5)(a) Failure of either the contractor or any of its ~~employes~~ employees to pass any portion of an overt or covert audit shall result in the imposition of a penalty. These penalties, established in the penalty schedule section of the contract, may require that the contractor either suspend or revoke inspector licenses or incur liquidated damages, or both.

(b) Contractor ~~employes~~ employees who are removed from inspection duties through either suspension or revocation of their inspection license as a result of a

department audit may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of the department's receipt of a written request by the employe employee. Failure of the department to hold a hearing within 14 days when requested shall cause the suspension to lapse.

SECTION 24. Trans 131.16(2)(b) and (c) are amended to read:

Trans 131.16(2)(b) Application of emission control theory and diagnostic data to the diagnosis and repair of vehicles failing the transient emission test, OBD diagnostic inspection and the evaporative system functional checks.

(c) Utilization of diagnostic information on systematic or repeated failures observed in both the transient emission test, OBD diagnostic inspection and the evaporative system functional checks.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 11 day of January, 2000.

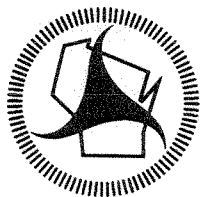


TERRENCE D. MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

JAN 12 2001



Wisconsin Department of Transportation

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The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

January 11, 2001

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to a **motor vehicle emissions inspection program**, Trans 131

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

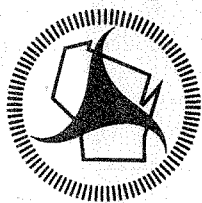
A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Alice Morehouse
Mike Goetzman
Roger D. Cross
Carson Frazier
Barb Wehrle
Jerry Medinger

MAR 01 2001



Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum
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The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

February 27, 2001


The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 131**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 01-001

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **01-001**, relating to a **motor vehicle emissions inspection program**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,


Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Roger Cross/Carson Frazier/Jerry Medinger/Barb Wehrle

CR 01-001

The Wisconsin Department of Transportation proposes an order to repeal TRANS 131.03(6)(b)8. and (8)(g); renumber TRANS 131.03(10)(b) and 131.11(2)(d); amend TRANS 131.01(note), 131.02(11), (15)(note), (22), (32), (50m) and (58), 131.03(title), (4), (6)(b)3., (7)(a)(intro.) and (c), (9)(g) and (15)(a)12., 131.04(1)(intro.), 131.05(1)(j), 131.11(3)(b), 131.13(1)(a)(intro.), (2), (5)(a) and (b), and 131.16(2)(b) and (c); and create TRANS 131.02(6m), (6r), (26), (34m) and (37m), 131.03(6)(d), (10)(b)2. and (11)(o), 131.11(2)(d) and 131.12(2)(d), relating to a motor vehicle emissions inspection program.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.06, 110.20(9) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 110.20, Stats.

General Summary of Proposed Rule. Ch. Trans 131 specifies the procedures used in the administration of the Wisconsin Motor Vehicle Inspection and Maintenance (I/M) Program. The proposed rule amendments specify testing procedures and failure criteria for the use of on-board diagnostic inspections for newer model year vehicles. The new testing procedures result from recent USEPA regulation which requires the use of on-board diagnostic inspections in all areas that operate I/M programs. The offices of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of the USEPA Technical Guidance under the provision of § 227.21(2), Stats.

The current emission testing procedure consists of operating a vehicle on a dynamometer to simulate on-road operation. The hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) emissions discharged from the tailpipe are measured and compared to allowable limitations for that particular model year and weight class of vehicle. The maximum allowable limitations are set by the Wisconsin Department of Natural Resources. Vehicles that emit pollutants in excess of the allowable limits are required to be repaired and returned for reinspection.

The procedural changes described in the rule amendments specify how the Department will conduct the on-board diagnostic inspections on model year 1996 and newer vehicles which are equipped with on-board diagnostic, version II (OBD II) systems. The on-board diagnostic inspections will be used in place of the current tailpipe test.

Vehicle manufacturers have designed OBD II systems to monitor the electronic emission control components on automobiles and light-duty trucks. These OBD II systems continually check that the emission control systems are operating according to programmed specifications. If serious problems occur, the OBD II systems alert the driver by means of a malfunction indicator lamp (MIL) or "check engine" light.

The on-board diagnostic inspection consists of an interrogation of the vehicle's OBD II computer system to verify that all of the emission controls are functioning properly. The inspection is performed by connecting a cable from the vehicle to the test-lane computer system. The test-lane computer system checks to see that the vehicle's OBD II system is functioning and ready for an information download. The OBD II computer sends information to the test-lane computer, and the motorist receives a printout containing the result of that communication. If the vehicle communicates that there is a malfunctioning emission component, the motorist is required to have the vehicle reinspected after repair.

The proposed rule amendments also include some minor changes for either grammatical purposes or to reflect current practice.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Jerry Medinger, Third Party Programs Section, P. O. Box 7909, Madison, WI 53707-7909, or by calling (608) 266-2267. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2 **TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.06, 110.20(9) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

SECTION 1. Trans 131.01(note) is amended to read:

Note: Forms used in this chapter are MVD 2016, substitute renewal notice; MVD 2470, vehicle inspection report; MVD 2472, application for letter of temporary exemption from emission test requirements; ~~MVD 2473, fleet station inspection permit~~; MV 2588, exchanged engine certificate; MV 2594, quality assurance inspection report. Copies can be obtained from the Wisconsin Department of Transportation, Vehicle Emission Section, P. O. Box 8917 7909, Madison, WI 53707-8917 7909.

SECTION 2. Trans 131.02(6m) and (6r) are created to read:

Trans 131.02(6m) "DLC" means data link connector on a vehicle equipped with an OBD II system.

(6r) "DTC" means diagnostic trouble code stored by a vehicle's OBD system.

SECTION 3. Trans 131.02(11), (15)(note) and (22) are amended to read:

Trans 131.02(11) "Evaporative emission test" means the ~~combination of an~~ evaporative emission integrity (pressure) test and an evaporative system purge test of a vehicle's evaporative emission control system, or a combination of both.

(15)(note) All references made to the Federal Rule in this document are to 40 CFR Part 51, Subpart S Inspection/Maintenance Program Requirements; Final Rule dated November 5, 1992, as amended ~~on November 9, 1993 and June 23, 1994~~ through January 1, 2001.

(22) "Inspection" means the mandatory vehicle emission inspection required by s. 110.20, Stats., consisting of an emission test or OBD inspection.

SECTION 4. Trans 131.02(26) is created to read:

Trans 131.02(26) "MIL" means malfunction indicator lamp.

SECTION 5. Trans 131.02(32) is amended to read:

Trans 131.02(32) "NO_x" means ~~nitric~~ nitric oxides of nitrogen.

SECTION 6. Trans 131.02(34m) and (37m) are created to read:

Trans 131.02(34m) "OBD inspection" means an emissions related test in which the vehicle's on-board computer is accessed to evaluate the status of the vehicle's emission control system.

(37m) "Readiness monitors" means the tests performed internally by a vehicle's OBD II system that determine if an emission component is ready to be checked by the on-board vehicle computer.

SECTION 7. Trans 131.02(50m) and (58) are amended to read:

Trans 131.02(50m) "USEPA technical guidance" means the USEPA publication "~~High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications Revised~~ IM 240 & Evap Technical Guidance", dated April, 1994 August, 1998, which is incorporated herein by reference. Any alternative

test procedures or changes in procedural details shall be approved by the USEPA administrator prior to use.

~~NOTE: All references made to the USEPA Technical Guidance in this document are to High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications Revised Technical Guidance dated April, 1994. Copies are on file with the Revisor of Statutes Bureau and the Attorney General's office. These procedures are available in published form from the Wisconsin Department of Transportation, Bureau of Field Services, P. O. Box 8917, Room 266, Madison, WI 53707-8917 and can be accessed on the Internet at <http://www.epa.gov/otaq/regs/im/im24f98.pdf>.~~

(58) "Waiver investigator" means the department employe employee or designated contractor representative, who approves or disapproves applications for waivers.

SECTION 8. Trans 131.03(title), (4) and (6)(b)3. are amended to read:

Trans 131.03 (title) **Emission test, emission equipment inspection, evaporative emission test, ~~on-board diagnostic checks~~ OBD inspection, and reinspection.**

(4) SCOPE AND NATURE OF TEST. The vehicle emission test shall consist of sampling the exhaust emissions from the tailpipe or tailpipes, and measuring the hydrocarbons, carbon monoxide, carbon dioxide and oxides of nitrogen. For 1996 and newer vehicles equipped with OBD II systems, the test shall consist of an OBD inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.

(6)(b)3. ~~Vehicles queued in the inspection lane for more than 20 minutes~~ which fail the transient emission test cycle at or below 4.5 2.0 times the emission limitations shall receive a second chance emission test.

SECTION 9. Trans 131.03(6)(b)8. is repealed.

SECTION 10. Trans 131.03(6)(d) is created to read:

Trans 131.03(6)(d) *OBD inspection procedures*. 1. An OBD inspection shall be performed on all model year 1996 and newer vehicles equipped with OBD II systems. The OBD inspection shall be performed according to the procedures specified in s. 85.2222 of the federal rule.

2. If the vehicle's DLC cannot be located, the lane software is unable to communicate with the vehicle, or the vehicle is exempted from the OBD inspection by the USEPA, the vehicle shall be tested according to the procedures specified in par. (b).

3. The inspector shall connect the test system to the vehicle by connecting the vehicle's DLC to the lane test system. The test system shall determine what readiness monitors are supported by the vehicle's OBD II system, and perform a readiness evaluation for applicable readiness monitors in accordance with the USEPA technical guidance. If the readiness evaluation indicates that any on-board tests are not complete, the vehicle shall be rejected from testing. Vehicles rejected because on-board tests are not complete shall be tested according to the procedures specified in par. (b).

4. An exception is allowed for model year 1996 to model year 2000 vehicles, with 2 or fewer unset readiness monitors, and for model year 2001 and newer vehicles with no more than one unset readiness monitor. Vehicles from those model years which would otherwise pass the OBD inspection, but for the unset readiness monitors in question, may be issued a passing certificate without being required to operate the vehicle in such a way as to activate those particular readiness monitors. Vehicles from

those model years with unset readiness monitors which also have DTCs stored resulting in the MIL to be commanded on shall fail the OBD inspection.

5. If the lane computer system is not able to download the vehicle OBD II records, the OBD inspection shall be aborted, and the vehicle shall be tested according to the procedures specified in par. (b).

6. If the MIL is not commanded to be illuminated, the vehicle shall pass the OBD inspection, even if DTCs are present.

7. If the DLC of model year 1996 and newer vehicles so equipped is missing, has been tampered with, or is otherwise inoperable, the vehicle shall fail the OBD inspection.

8. If the malfunction indicator status indicates that the MIL has been commanded to be illuminated, the vehicle shall fail the OBD inspection and the test system shall record all DTCs resulting in MIL illumination in the vehicle test record.

9. If the MIL does not illuminate at all when the vehicle is in the key-on/engine-off, or KOEO, condition, the vehicle shall fail the OBD inspection, even if no DTCs are present and the MIL has not been commanded on.

10. Failing the OBD inspection is considered the same as failing the inspection. Vehicles failing the OBD inspection may not be reregistered within the state of Wisconsin until such failing items have been repaired or replaced if necessary as required by s. 285.30(6), Stats.

SECTION 11. Trans 131.03(7)(a)(intro.) and (c) are amended to read:

Trans 131.03(7)(a)(intro.) An emission equipment inspection shall be performed on nonexempt vehicles customarily kept in a county identified in s. 110.20(5), Stats.,

whenever a nontransient emissions inspection, other than an OBD inspection, is performed. This emission equipment inspection is designed to detect either tampering or disrepair on the vehicle. This emission equipment inspection, conducted by the contractor to determine the presence, if originally equipped, of all of the following:

(c) Failing the emission equipment inspection is considered the same as failing the inspection. Vehicles failing the emission equipment inspection shall may not be reregistered within the state of Wisconsin until such failing items have been repaired or replaced if necessary as required by s. 285.30(6), Stats.

SECTION 12. Trans 131.03(8)(g) is repealed.

SECTION 13. Trans 131.03(9)(g) is amended to read:

Trans 131.03(9)(g) ~~During the first 24 months of transient emission testing conducted under this section, the~~ The department may either phase in or temporarily omit the evaporative emission purge test.

SECTION 14. Trans 131.03(10)(b) is renumbered Trans 131.03(10)(b)1.

SECTION 15. Trans 131.03(10)(b)2. and (11)(o) are created to read:

Trans 131.03(10)(b)2. A vehicle that fails the OBD inspection shall be reinspected after repair provided a readiness evaluation indicates that all applicable on-board tests are complete except as allowed under sub. (6)(d).

(11)(o) Vehicles subject to the OBD inspection under sub. (6)(d) shall be rejected from testing if a scan of the vehicle's OBD II system reveals a "not ready" status for 3 or more readiness monitors on model year 1996 through model year 2000 vehicles, or for 2 or more readiness monitors on model year 2001 and newer vehicles, as provided in

40 CFR 85.2222(c)(2). Vehicles rejected from testing for this reason shall be tested according to the provisions of sub. (6)(b).

SECTION 16. Trans 131.03(15)(a)12. is amended to read:

Trans 131.03(15)(a)12. The results of any OBD ~~or OBD-II test~~ inspection.

SECTION 17. Trans 131.04(1)(intro.) is amended to read:

Trans 131.04(1) ELIGIBILITY. (intro.) A vehicle which fails to pass the designated emission test standards or OBD inspection upon an initial inspection, and which after repair or adjustment, or both, again fails to pass the emission inspection or OBD inspection, shall be eligible for a waiver of compliance valid until the next required inspection of the vehicle provided the following conditions are met:

SECTION 18. Trans 131.05(1)(j) is amended to read:

Trans 131.05(1)(j) An operational and non-active "check engine" MIL or other emission service indicator light.

SECTION 19. Trans 131.11(2)(d) is renumbered Trans 131.11(2)(e).

SECTION 20. Trans 131.11(2)(d) is created to read:

Trans 131.11(2)(d) Equipment used to perform OBD inspections shall be audited according to written procedures either established or approved by the department.

SECTION 21. Trans 131.11(3)(b) is amended to read:

Trans 131.11(3)(b) Contractor ~~employees~~ employees, removed from inspection duties through either suspension or revocation of their inspection license as a result of a department audit, may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of receipt of a written request by the

employe employee. Failure to hold a hearing within 14 days when requested shall cause the suspension or revocation to lapse.

SECTION 22. Trans 131.12(2)(d) is created to read:

Trans 131.12(2)(d) Equipment used to perform OBD inspections shall meet the requirements of the USEPA technical guidance, s. 85.2231.

SECTION 23. Trans 131.13(1)(a)(intro.), (2) and (5)(a) and (b) are amended to read:

Trans 131.13(1)(a)(intro.) All contractor employes employees who perform any official inspection functions shall have a license issued by the contractor. No person may either receive a license or have a license renewed as an inspector unless the person demonstrates to the department, by training and examination, proficiency in all of the following:

(2) LICENSING. Upon completion of training and all other licensing requirements, the contractor shall issue a photo identification badge containing the inspector's photograph, name, unique, non-transferable inspector number and the expiration date of the inspector's license. Training and licensing records for each employe employee so licensed shall be maintained both at the contractor's headquarters and at the employe's employee's primary inspection station.

(5)(a) Failure of either the contractor or any of its employes employees to pass any portion of an overt or covert audit shall result in the imposition of a penalty. These penalties, established in the penalty schedule section of the contract, may require that the contractor either suspend or revoke inspector licenses or incur liquidated damages, or both.

(b) Contractor ~~employees~~ employees who are removed from inspection duties through either suspension or revocation of their inspection license as a result of a department audit may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of the department's receipt of a written request by the ~~employe~~ employee. Failure of the department to hold a hearing within 14 days when requested shall cause the suspension to lapse.

SECTION 24. Trans 131.16(2)(b) and (c) are amended to read:


Trans 131.16(2)(b) Application of emission control theory and diagnostic data to the diagnosis and repair of vehicles failing the transient emission test, OBD inspection and the evaporative system functional checks.

(c) Utilization of diagnostic information on systematic or repeated failures observed in both the transient emission test, OBD inspection and the evaporative system functional checks.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 26th day of February, 2001.



TERRENCE D. MULCAHY, P.E.
Secretary
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