

Clearinghouse Rule 10-088

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to amend TRANS 131.01(2), 131.02(1m), (6), (10), (34m), (50m), (54) and (56m), 131.03(title), (4), (6)(title), (a)1., 2. and 4., (d)2., 3., 5. and 8., (10)(a)3., (d)2., (11)(title), (n) and (o), (15)(a)1., 2., 12., 23., 24. and 29., 131.04(2)(b) and (c), 131.05(1), (1)(j) and (3), 131.06(2)(b), 131.07(1)(b), 131.11(1)(intro.), (a) and (e), 131.12(3), 131.13(1)(a)4. and 6., and (6)(b) and (c), 131.14(3)(title), (5)(a), (b) and (e), and 131.15(1), relating to the vehicle emission inspection process

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 110.20, Stats.

Statutory authority: ss. 110.06, 110.20(9) and 227.11(2), Stats.

Explanation of agency authority: Section 110.20, Stats., requires the Wisconsin Department of Transportation to administer a motor vehicle emission inspection and maintenance program to verify that vehicles customarily kept in a 'non-attainment' county meet motor vehicle emission standards. Most private automobiles are subject to the emission limits, although certain newer and older vehicles are exempt. A non-attainment county is one that has air pollution that exceeds the federal Clean Air Act standards. Section 110.20(13), Stats., requires the Department to waive compliance with emission standards if the vehicle owner proves that despite attempted repairs the vehicle cannot meet the standards and that the actual costs of repairs exceeded the repair cost limit. In general, a vehicle is tested every two years. The waiver is valid for 2 years, after which additional repairs may be required as a condition of registration. Current law at s. 110.20(9)(b), Stats., requires the Department to promulgate rules prescribing a procedure for determining whether the cost of necessary repairs and adjustments exceeds the limit under sub. (13). The Department of Natural Resources determines the repair cost limits in an amount required by the federal Clean Air Act.

Related statute or rule: Sections 110.20, 285.30, Stats., and chs. NR 485 and Trans 131.

Plain language analysis: Current law requires vehicles registered in counties that do not meet federal Clean Air Act standards to be tested to ensure they meet pollutant emission limitations. In general, vehicles that are required to be tested and emit too many air pollutants cannot be registered. Chapter Trans 131 governs the vehicle emission inspection process. If a vehicle does not meet emission standards after repairs--up to

the maximum cost required under law--the vehicle owner may request from the Department of Transportation a waiver of compliance that allows the polluting vehicle to be registered and used. When an owner requests a waiver to register a polluting vehicle, the vehicle must be inspected for evidence of tampering or disrepair. Section Trans 131.05 establishes the items that must be inspected, and their condition, that may show evidence of tampering. If tampering is evident, the Department may not issue a waiver of compliance from emission test standards.

Trans 131.05(1)(j) requires that to pass an anti-tampering inspection a Malfunction Indicator Light (MIL) must be operational and non-active (that is, not lit). It is expected that an adequate vehicle repair will cause the MIL to turn off, since the underlying condition triggering illumination of the MIL is corrected. In prior years, the Department inspected vehicles by direct tailpipe emission sampling, regardless of the MIL status. However, the Department now administers only the OBD II test, which reads engine performance and pollutant output through the vehicle's on-board diagnostic computer with no direct sampling of tailpipe emissions. The rule that prohibits issuing a repair cost waiver whenever a MIL is illuminated effectively prevents issuing a cost waiver to all tested vehicles, regardless of the amount spent on repairs. This is because a vehicle that cannot be repaired to meet pollutant emission standards under the repair-cost limit is polluting, and a properly functioning MIL should be illuminated to indicate those emissions. This creates a circularity problem: only a polluting vehicle will need a waiver from compliance, but if the vehicle's computer knows it is polluting and the MIL is lit, the waiver cannot be issued.

This proposed rule making amends s. Trans 131.05(1)(j) to allow a "cost waiver" (a waiver of emission inspection based on the vehicle owner having spent an amount of money for repairs exceeding cost thresholds established in NR 485.045 and the vehicle still failing emission inspection) even if a vehicle's MIL is unable to be turned off.

This rule making makes two other clarifications to the rule. First, ch. Trans 131 refers to the vehicle emission inspection also as an "emission test." The proposed rule changes reference to "inspection," and reserves the term "test" to refer to the vehicle's internal computer check of diagnostic codes. In addition, the term "test" continues in the reference to the "remote sensing test" method of assessing vehicle emissions. Second, the proposed rule expands reference to the functions of the Technical Assistance Center to clarify that those functions may be performed by an inspector that the Department designates who may issue waivers of compliance. This is because program operations in the future may not simply rely on a physical location called a Technical Assistance Center for these functions to be carried out.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Wisconsin's vehicle emission inspection program complies with U.S. Environmental Protection Agency (EPA) law and regulation. Wisconsin Department of Natural Resources (DNR) manages program compliance with EPA rules and laws through the Wisconsin State Implementation Plan. DNR administrative rule establishes the repair cost limit in accordance with EPA guidance for adjusting the repair cost limit.

Comparison with Rules in the Following States:

Michigan: Michigan does not have a vehicle emission inspection and maintenance program at this time.

Minnesota: Minnesota does not have a vehicle emission inspection and maintenance program at this time.

Illinois: Illinois performs the OBD II inspection. Illinois allows a vehicle owner to receive a “cost waiver” if, after certain expenditure, the vehicle still is non-compliant. Illinois allows a cost waiver even if the MIL cannot be turned off.

Iowa: Iowa does not have a vehicle emission inspection and maintenance program at this time.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Trans 131.05(1)(j) requires that to pass an anti-tampering inspection a Malfunction Indicator Light (MIL) must be operational and non-active (that is, not lit). It is expected that an adequate vehicle repair will cause the MIL to turn off, since the underlying condition is corrected. In prior years, the Department also provided an alternative test allowing a vehicle to be inspected regardless of the MIL status. However, now that the Department administers only the OBD II test, the Department’s Office of General Counsel has determined that Trans 131.05(1)(j) is contrary to the availability of repair cost waivers required in s. 110.20(13), Stats., since the rule prevents issuing a cost waiver to all tested vehicles, regardless of the amount spent on repairs.

The proposed rule clarifies that the functions performed by the Technical Assistance Center need not be performed simply in a particular physical location, so that program operation may have flexibility in performing those functions. The proposed rule also makes some changes in language for consistency of reference to the vehicle emission inspection without making any substantive change.

Analysis and supporting documentation used to determine effect on small businesses: The proposed amendment codifies the Department’s policy and practice to issue a cost waiver even if the MIL is unable to be turned off. Since the Department is following this policy currently, the proposed amendment will not affect small business. If, however, the Department’s current policy were not in effect, this proposed rule would have the effect of potentially reducing cost for small business, as well as any other vehicle owner, since without this proposed rule, no cost waiver would be possible.

The proposed rule clarifies that the function performed by the Technical Assistance Center need not be performed in a particular physical location. This clarification has no effect on small business or any other vehicle owner. The functions will continue to be carried out.

Finally, language changes to refer to the vehicle emission inspection consistently throughout the rule have no substantive effect on small business or any other vehicle owner.

Effect on small business: The proposed rule will have no effect on small business. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: 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, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 131.01(2) is amended to read:

Trans 131.01(2) APPLICABILITY. This chapter applies to all nonexempt vehicles customarily kept in those counties certified by the department of natural resources under s. 110.20 (5) (a), Stats. It also applies to all nonexempt vehicles customarily kept in any county whose board of supervisors has adopted a resolution under s. 110.20 (5) (b), Stats., requesting the department establish an inspection and maintenance program, and applies to any nonexempt vehicle which a person presents for a voluntary inspection at an inspection station pursuant to s. 110.20 (7), Stats., and s. Trans

131.07. For purposes of determining where a vehicle is customarily kept, the county of domicile as indicated by the vehicle owner and contained in the department's title data base shall be used. In the absence of an indicated county of domicile, the owner or lessee's post office address shall be used to determine county of domicile. The department may determine whether the vehicle domicile location is consistent with the owner or lessee's post office address or with other information that indicates the customary location of the vehicle. The department may change a vehicle domicile location in department title records to make it consistent with the results of its determination, and may require the vehicle to undergo emission ~~testing~~ inspection as required in this chapter. If the vehicle owner or lessee disputes the department's determination, the vehicle owner or lessee may present evidence satisfactory to the department of the correct vehicle domicile location. The department decision as to correct vehicle domicile location shall be the final decision of the department.

SECTION 2. Trans 131.02(1m), (6), (10), (34m), (50m), (54) and (56m) are amended to read:

Trans 131.02(1m) "Authorized inspection facility" means a self-service inspection facility, or a private ~~testing~~ inspection facility, or an inspection station or facility operated by the department, or by a contractor or subcontractor authorized by the department to perform emission ~~testing~~ inspections.

(6) "Contractor" means a person with whom the department has a contract that provides for the operation of one or more inspection stations or for the performance of emission ~~testing~~ inspection at an authorized inspection facility other than an inspection

station or for the performance of a service related to the Wisconsin vehicle emission inspection program.

(10) “Emission ~~test~~ inspection” means the OBD II ~~test~~ inspection.

(34m) “OBD inspection” or “OBD II inspection” means an emissions related ~~test~~ inspection in which the vehicle’s on-board computer is accessed to evaluate the status of the vehicle’s emission control system.

(50m) “USEPA technical guidance” means the USEPA publication “Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program,” dated June, 2001, which is incorporated herein by reference. Any alternative ~~test~~ inspection procedures or changes in procedural details shall be approved by the USEPA administrator prior to use.

(54) “Vehicle inspection report” means a serially numbered document issued at an inspection station or authorized inspection facility or technical assistance center or by an inspector designated by the department to perform the functions of a technical assistance center at the time of vehicle inspection, indicating that the vehicle has been inspected in accordance with the provisions of this chapter, and may include data reported electronically.

(56m) “Waiver” means a conditional one-cycle exemption from emission ~~testing~~ inspection that may be granted to a vehicle owner or lessee.

SECTION 3. Trans 131.03(title), (4), (6)(title), (a)1., 2. and 4., (d)2., 3., 5. and 8., (10)(a)3., (d)2., (11)(title), (n) and (o), (15)(a)1., 2., 12., 23., 24. and 29. are amended to read:

Trans 131.03(title) Emission ~~test~~ inspection and reinspection.

(4)(title) SCOPE AND NATURE OF ~~TEST~~ INSPECTION. The vehicle emission ~~test~~ inspection shall consist of an OBD II inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.

(6)(title) EMISSION ~~TESTING~~ INSPECTION. (a) *General requirements.*

1. Vehicles shall be ~~tested~~ inspected in an as-received condition. Prior to ~~testing~~ inspection, the engine shall be operating at the manufacturer's recommended engine idle speed without excessive smoke, at normal operating temperature, not overheating, as indicated by gauge, warning light or boiling radiator, and with all accessories off.

2. The vehicle shall be nearly level when ~~tested~~ inspected in order to prevent abnormal fuel distribution.

4. Vehicles that are designed to operate with more than one type of fuel shall be ~~tested~~ inspected on the fuel in use at the time of inspection.

(d)2. If the vehicle's DLC cannot be located, or is located such that an inspector cannot reasonably access it during the course of a vehicle inspection, the vehicle shall receive a waiver equipment inspection as provided in s. Trans 131.05 and, pending the outcome of this inspection, be referred to a technical assistance center or other facility or inspector designated by the department to perform the functions of a technical assistance center for issuance of a technical waiver of compliance as provided in s. Trans 131.04 (1) (b).

3. The inspector shall connect the ~~test~~ inspection system to the vehicle by connecting the vehicle's DLC to the OBD II ~~test~~ inspection system. The ~~test~~ inspection system shall determine what readiness monitors are supported by the vehicle's OBD II system, and perform a readiness evaluation or 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 inspection. Vehicles rejected because on-board tests are not complete shall be required to leave the ~~test~~ inspection station, pursue a means of completing on-board tests, and return for ~~testing~~ inspection.

5. If the ~~test~~ inspection computer system is not able to download the vehicle OBD II records, the OBD inspection shall be aborted, and the vehicle shall be ~~retested~~ reinspected with an OBD II ~~test~~ inspection in a separate inspection facility ~~test~~ inspection lane.

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

(10)(a)3. The vehicle is not prohibited from ~~testing~~ inspection pursuant to sub. (11).

(d)2. If the vehicle does not meet applicable emission ~~test~~ inspection standards, the owner or lessee may apply for a waiver of compliance from these standards in accord with s. Trans 131.04.

(11)(title) ~~TESTING~~ INSPECTION PROHIBITED.

(n) The vehicle exhibits any condition which is recognized as a safety hazard by the contractor, or any condition that appears to the contractor as making the vehicle unsafe for ~~testing~~ inspection.

(o) Vehicles shall be rejected from ~~testing~~ inspection 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).

(15) (a)1. ~~Test~~ Inspection serial number.

2. Date of the ~~test~~ inspection.

12. The results of the ~~the~~ any OBD inspection.

23. Inspection station or other authorized inspection facility number, and inspector number if the ~~test~~ inspection is performed by an inspector.

24. Emission ~~test~~ inspection start time and the time of final emissions result determination.

29. A statement certifying that the ~~test~~ inspection is performed in accordance with applicable federal regulations.

SECTION 4. Trans 131.04(2)(b) and (c) are amended to read:

Trans 131.04(2)(b) Technical difficulties in the manufacturer's design or construction of the vehicle or restrictions imposed by the department on the operation of vehicles registered under s. 341.14 (1m), Stats., prevent emission ~~testing~~ inspection of the vehicle.

(c) After repairs are performed by a recognized automotive emission technician, a complete, documented, physical and functional diagnosis and inspection performed at ~~one of the~~ a technical assistance center by the master automotive technician or at another facility by an inspector designated by the department to perform the functions of a technical assistance center shows that no additional emission related repairs could produce a passing result.

SECTION 5. Trans 131.05(1), (1)(j) and (3) are amended to read:

Trans 131.05 **(1) PURPOSE.** When a vehicle owner or lessee requests a waiver of compliance from emission test inspection standards, the emission equipment shall be inspected by the waiver investigator. This waiver emission equipment inspection is designed to detect either tampering or disrepair on the vehicle. The waiver emission equipment inspection does not include removal or disassembly of parts except for removal of the fuel cap. The waiver investigator shall determine both the presence and proper connection, if originally equipped, of the following:

(1)(j) An operational MIL or other emission service indicator light, regardless of whether the MIL or emission service indicator light is illuminated.

(3) CONSEQUENCES. Vehicles failing the waiver emission equipment inspection shall not receive a waiver of compliance or acceptance for voluntary ~~testing~~ inspection under s. Trans 131.07 until the failing emission equipment items are either repaired or replaced.

SECTION 6. Trans 131.06(2)(b) is amended to read:

Trans 131.06(2)(b) An entry on the department's data records indicating the vehicle license number, VIN, ~~test~~ inspection serial number, and the notation "passed" or "waived."

SECTION 7. Trans 131.07(1)(b) is amended to read:

Trans 131.07(1)(b) The vehicle is not prohibited from ~~testing~~ inspection under s. Trans 131.03 (11).

SECTION 8. Trans 131.11(1)(intro.), (a) and (e) are amended to read:

Trans 131.11(1) GENERAL. Representatives of the department or its designated agent shall conduct audits of ~~testing~~ inspection equipment, procedures, personnel and records as follows:

(a) All contractor inspection functions, including those occurring at the inspection stations, other authorized ~~testing~~ inspection facilities, technical assistance centers or other facility by an inspector designated by the department to perform the functions of a technical assistance center, and vehicles used to conduct remote sensing, shall be audited on an unscheduled basis, at a minimum, according to the frequency established in the federal rule.

(e) If equipment fails to operate within contractually specified tolerance during an overt or covert audit, the department's quality assurance auditor shall immediately re-audit the failing equipment. If the equipment fails again, the department's quality assurance auditor shall require the station manager to close the affected lane or other authorized inspection facility or emission ~~test~~ inspection operation until such time as the equipment is properly repaired and documentation of corrective actions is available for review by the department.

SECTION 9. Trans 131.12(3) is amended to read:

Trans 131.12(3) QUALITY CONTROL. All equipment used in the emission ~~testing~~ inspection process shall be maintained according to all manufacturer specifications.

SECTION 10. Trans 131.13(1)(a)4. and 6., and (6)(b) and (c) are amended to read:

Trans 131.13(1)(a)4. ~~Test~~ Inspection procedures and rationale for their design.

6. ~~Test~~ Inspection equipment operation and maintenance.

(6)(b) The department's quality assurance representative shall investigate the complaint. If the results of that investigation indicate that the inspection may have occurred incorrectly or that fraud or abuse may have influenced the results of the inspection, the department's quality assurance representative shall arrange for a reinspection at the technical assistance center or other facility by an inspector designated by the department to perform the functions of a technical assistance center at a time convenient to all parties.

(c) Results of the technical assistance center inspection or inspection by an inspector designated by the department to perform the functions of a technical assistance center shall supersede the results of the contested station lane or other authorized inspection facility inspection.

SECTION 11. Trans 131.14(3)(title), (5)(a), (b) and (e) are amended to read:

Trans 131.014(3)(title) SCOPE AND NATURE OF REMOTE SENSING TEST.

(5)(a) ~~Test~~ Remote sensing test serial number.

(b) Date, location and time of the remote sensing test.

(e) Emission remote sensing test results and standards for the vehicle.

SECTION 12. Trans 131.15(1) is amended to read:

Trans 131.15(1) GENERAL. The department, through its emission ~~testing~~ inspection contractor, shall both collect emission repair data and inform the public and automotive repair industry regarding repair efficacy.

(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)(intro.), Stats.

Signed at Madison, Wisconsin, this 7th day of **July**, 2010.

/s/

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation