

Report From Agency

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

CR 07-114

The Wisconsin Department of Transportation proposes an order to repeal TRANS 131.02(3), (4), (11), (14), (16), (27), (30), (32), (33), (43), (47) and (49), 131.03(6)(a)3., (b), Table 2, (c), (d)6., 7. and 9., (7), (9), (10)(b)1., (d)2., (11)(a) and (g) to (i), (13)(b) to (d), (15)(a)9. to 11., 18. and 27., 131.04(2)(a), 131.05(2), and 131.11(2)(a) and (b); to amend TRANS 131.01(2), 131.02(6), (6r), (10), (22), (25), (34), (35), (50m), (53) and (54), 131.03(title), (1)(a), (c), (d)(note), (2)(intro.) and (a), (b)(note), (3)(intro.), (d) and (h), (4), (6)(d)1., 3., 5., 8. and 10., (10)(a)2., (b)2., (11)(m) to (o), (12), (13)(a), (14), (15)(a)(intro.), (a)14. and 23., (b) and (c), 131.04(1)(intro.), (a), (b), and (c)1. and 2, 131.05(3), 131.07(1)(intro.), (a) and (2), 131.09(3), 131.11(1)(a) and (2)(e), 131.12(3), 131.13(1)(a), (a)6., (2), (5)(a) and (b), and (6)(c), 131.14(1), (2)(a), (4) and (5)(f), and 131.16(2)(b), (c) and (3); to repeal and recreate TRANS 131.02(8), 131.03(5) and (6)(d)2., and 131.12(2); and to create TRANS 131.02(1m) and (56m), and 131.04(2)(d), relating to vehicle emission inspection program.

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

This report is submitted to the chief clerks 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:

JOE MAASSEN
Attorney
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building

P. O. Box 7910
Madison, WI 53707-7910
(608) 266-7364

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 110.20 and 285.30, Stats.

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

Explanation of agency authority: The Wisconsin Department of Transportation (WisDOT) is required to provide an emissions inspections program of nonexempt vehicles customarily kept in a number of counties in Wisconsin. WisDOT is required to promulgate rules specifying procedures for inspection of vehicles, including the method of measuring emissions and the types of equipment that may be used in such measurement. The procedures and methods used must be capable of being correlated with procedures established under federal law.

Related statute or rule: Section 110.20, Stats., Ch. Trans 131, Wis. Adm. Code.

Plain language analysis: This rule amendment conforms ch. Trans 131 to statutory changes in the vehicle inspection and maintenance program, enacted in 2007 Wis. Act 20. The program is changed to:

- Eliminate emission inspection of vehicles model year 1995 and earlier (previously, vehicles model year 1968 and newer required testing).
- Add emission inspection of vehicles model year 2007 and later up to 14,000 lbs. gross vehicle weight rating while limiting vehicles model year 2006 and earlier to 8,500 lbs gross vehicle weight rating (previously, all vehicles up to 10,000 lbs had required testing).
- Add emission inspection of vehicles model year 2007 and later that are powered by diesel fuel.
- Allow the Department to establish methods for emission testing, and delivery of testing services in addition to the previously established method of a single contractor under contract to the Department.

In this proposed rule, the Department establishes as the testing method the second-generation on-board diagnostic test (OBD II), and establishes as the service delivery method a possibility of a contractor who performs the test at its own facilities, or by subcontracted testing at subcontractors' facilities, or at self-service facilities where a vehicle owner may test the vehicle; and transmission of test results and repair information to the Department electronically in a format specified by the Department.

This proposed rule eliminates the previously-established idle and transient tailpipe testing methods, and the emission equipment inspection, leaving only the OBD II method. This amendment repeals references in the rule related to these now eliminated testing methods.

In addition, this proposed rule eliminates the evaporative emission test (“gas cap test”), which was previously required but is no longer necessary with OBD II technology.

The proposed rule clarifies that to obtain a waiver of compliance on the basis of statutory repair cost limit, the vehicle must pass a waiver emission equipment inspection.

Under law, emission testing is required based on where a vehicle is customarily kept, as stated by the vehicle owner or lessee. This proposed rule makes clear that the Department may determine whether a vehicle domicile as stated is consistent with the vehicle owner or lessee address or other information. The purpose is to deter statement that the vehicle is not customarily kept in the emission area in order to avoid the emission test requirement.

In addition, the adoption of Trans 131 will give the Department the authority to use federal standards by which test procedures are governed. The Attorney General’s office has consented to the incorporation by reference of the USEPA publication “Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program,” dated June 2001, under the provision of § 227.21(2), Stats.

Summary of, and preliminary comparison with, existing or proposed federal regulation: The vehicle emission inspection and maintenance program exists to comply with federal law and regulations under the Clean Air Act and amendments. The Wisconsin Department of Natural Resources (DNR) has established the inspection and maintenance program as one of several measures to reduce air pollution. DNR has received approval from the federal Environmental Protection Agency (USEPA) for all Wisconsin’s air pollution reduction measures. The program change enacted in 2007 Wisconsin Act 20 and in this rule amendment has been approved by USEPA, and this proposed rule conforms to federal regulations.

Comparison with Rules in the Following States:

Michigan: Michigan has no vehicle inspection and maintenance program, and consequently no rules addressing such.

Minnesota: Minnesota has no vehicle inspection and maintenance program, and consequently no rules addressing such. State rules prohibit motorists from:

- Permitting vehicles to emit visible air contaminants for more than 10 consecutive seconds (non-diesel cycle engines) or more than 20 consecutive seconds (diesel cycle engines), and
- Removing, altering, or otherwise rendering inoperative any vehicle air pollution control system.

Illinois: Emissions testing is prescribed under the Illinois Vehicle Emissions Inspection Law [625 Illinois Compiled Statutes 5/13C (2005)]. The Inspection Law

requires biennial inspection of 1996 and newer model year light-duty vehicles, light-duty trucks, and heavy-duty vehicles. Diesel-powered vehicles, motorcycles and other specified vehicle/registration types are exempt from inspection. Vehicles do not require inspection until they are four model years old.

Per the Inspection Law, the emissions test(s) to be performed on each vehicle consists of one of the following alternatives:

1. On-board diagnostics test.
2. Idle exhaust and gas cap pressure test.

The former applies to all OBD II-equipped vehicles; the latter to remaining testable vehicles.

Iowa: Iowa has no vehicle inspection and maintenance program, and consequently no rules addressing such.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The program change enacted in 2007 Wis. Act 20 and in this proposed rule results from a joint study by the Wisconsin DNR and DOT. The agencies studied the age of the Wisconsin vehicle fleet, the existence and efficacy of OBD II technology on vehicles, and the costs and benefits of various methods of emission testing. The agencies concluded that sufficient numbers of newer model year vehicles, equipped with OBD II technology, now exist in the vehicle fleet that it is cost-effective to eliminate testing of older vehicles and eliminate tailpipe testing, and the overall air pollution reduction level is maintained.

Analysis and supporting documentation used to determine effect on small businesses: In establishing the new emission program design, DOT and DNR studied the age of the Wisconsin vehicle fleet. The agencies have determined that most vehicles in the fleet are within the 1996-current model year range, and that older vehicles have largely been removed from the fleet. The likelihood is that small businesses own newer vehicles, equipped with OBD II technology. As a result, while more vehicles are made subject to emission testing under the new law, the cost per vehicle to comply should be reduced. To the extent that small businesses still own older vehicles, those vehicles are no longer subject to testing and repair.

Effect on small business: Section 285.30, Stats., as amended by 2007 Wis. Act 20, eliminates the testing requirement for vehicles model year before 1996. To the extent that small businesses own older vehicles, the law eliminates the need for those vehicles to be tested. The law also requires diesel-powered vehicles of model year 2007 and newer, and vehicles model year 2007 and newer up to 14,000 lbs gross vehicle weight rating to undergo OBD II emission testing. On the other hand, these vehicles are manufactured with OBD II equipment and software, and maintaining the vehicles' emission systems is a reasonable expectation, and thus not unduly burdensome. The statute provides for enforcement of emission testing through vehicle registration denial. 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: Section 285.30, Stats., as amended by 2007 Wis. Act 20, eliminates the testing requirement for vehicles model year before 1996. To the extent that local governments own older vehicles, the law eliminates the need for those vehicles to be tested and repaired. The law also requires diesel-powered vehicles of model year 2007 and newer, and vehicles model year 2007 and newer up to 14,000 lbs gross vehicle weight rating to undergo OBD II emission testing. On the other hand, these vehicles are manufactured with OBD II equipment and software, and maintaining the vehicles' emission systems is a reasonable expectation, and thus not unduly burdensome. The statute provides for enforcement of emission testing through vehicle registration denial.

Anticipated costs incurred by private sector: Section 285.30, Stats., as amended by 2007 Wis. Act 20, eliminates the testing requirement for vehicles model year before 1996. To the extent that state or private sector entities own older vehicles, the law eliminates the need for those vehicles to be tested and repaired. The law also requires diesel-powered vehicles of model year 2007 and newer, and vehicles model year 2007 and newer up to 14,000 lbs gross vehicle weight rating to undergo OBD II emission testing. On the other hand, these vehicles are manufactured with OBD II equipment and software, and maintaining the vehicles' emission systems is a reasonable expectation, and thus not unduly burdensome. The statute provides for enforcement of emission testing through vehicle registration denial.

Contact person and copies of proposed rule: Copies of the proposed rule can be obtained, without cost, by writing to Steve Hirshfeld, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7909, Madison, WI 53707-7909. You may also contact Steve Hirshfeld by phone at (608) 266-2267 or via e-mail: stephen.hirshfeld@dot.state.wi.us.

PART 2
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 database 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 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.

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

SECTION 2. Trans 131.02(1m) is created to read:

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

SECTION 3. Trans 131.02(3) and (4) are repealed.

SECTION 4. Trans 131.02(6) and (6r) are amended to read:

Trans 131.02(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 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.

(6r) “DTC” means diagnostic trouble code stored by a vehicle’s OBD II system.

SECTION 5. Trans 131.02(8) is repealed and recreated to read:

Trans 131.02(8) “Electronic reporting,” “electronically reported” or “reported electronically” means reported directly to the department or its contractor electronically in a format specified by the department.

SECTION 6. Trans 131.02(10) is amended to read:

Trans 131.02(10) “Emission test” means the ~~transient emission test or 2-speed idle test described in the federal rule, used to determine compliance with applicable vehicle exhaust emission limitations for carbon monoxide, hydrocarbons, and oxides of nitrogen~~ OBD II test.

SECTION 7. Trans 131.02(11), (14) and (16) are repealed.

SECTION 8. Trans 131.02(22) and (25) are amended to read:

Trans 131.02(22) “Inspection” means the mandatory vehicle emission inspection required by s. 110.20, Stats., consisting of an ~~emission test or~~ OBD II inspection.

(25) “Inspector” means the individual who performs the vehicle emission inspection for the contractor or subcontractor.

SECTION 9. Trans 131.02(27), (30), (32) and (33) are repealed.

SECTION 10. Trans 131.02(34) to (35) are amended to read:

Trans 131.02(34) "OBD II" means the on-board diagnostic system installed on 1994 ~~1996~~ and newer vehicles by the manufacturer that meets the regulations promulgated by the USEPA under 42 USC 7401-7671q.

(34m) "OBD inspection" or "OBD II 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.

(35) "Performance monitoring" means the system of evaluating automotive repair facilities' performance by collecting and reporting the repair data as recorded on the vehicle inspection report or as reported electronically, upon performance of the repair.

SECTION 11. Trans 131.02(43), (47) and (49) are repealed.

SECTION 12. Trans 131.02(50m), (53) and (54) are amended to read:

Trans 131.02(50m) "USEPA technical guidance" means the USEPA publication "IM 240 & Evap Technical Guidance Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," dated ~~August, 1998,~~ June, 2001, 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: Copies are on file with the ~~Revisor of Statutes~~ Legislative Reference 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 ~~8947 7909,~~ Room ~~266 253,~~ Madison, WI 53707-~~89477909~~ and can be accessed on the internet at ~~http://www.epa.gov/otaq/regs/im.htm~~ http://www.epa.gov/otaq/regs/im/obd/r01015.pdf

(53) "Vehicle inspection notice" means a document mailed to vehicle owners as a result of failing a remote sensing test indicating that the nonexempt vehicle has been inspected in accordance with the provisions of s. Trans 131.14 and, if necessary, shall

be presented at an inspection station or other authorized inspection facility for inspection under s. 110.20 (6) (a) 4, Stats.

(54) “Vehicle inspection report” means a serially numbered document issued at an inspection station or 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.

SECTION 13. Trans 131.02(56m) is created to read:

Trans 131.02(56m) “Waiver” means a conditional one-cycle exemption from emission testing that may be granted to a vehicle owner or lessee.

SECTION 14. Trans 131.03(title), (1)(a), (c), (d)(note), (2)(intro.) and (a), (b)(note), (3)(intro.), (d) and (h) and (4) are amended to read:

Trans 131.03 Emission test, ~~emission equipment inspection, evaporative emission test, OBD inspection, and reinspection.~~ (1) GENERAL. (a) All nonexempt vehicles that are customarily kept in counties certified under s. 110.20 (5) (a), Stats., or in a county whose county board adopts a resolution under s. 110.20 (5) (b), Stats., shall be inspected at an inspection station as provided in this chapter. Penalty for failure to comply with this section consists of either denial of registration renewal or suspension of vehicle registration as set forth in s. 341.63 (1) (e), Stats. ~~To reinstate vehicle registration, a fee prescribed by s. 341.36 (1), Stats., is required.~~

(c) ~~Following initial registration of a new vehicle by a retail purchaser, a minimum of one model year shall elapse prior to the vehicle becoming~~ A vehicle is first subject to the requirements of this chapter when the vehicle is 4 model years old.

Note: For example, a ~~1993~~ 2004 model year vehicle shall be considered as being more than ~~5~~ 4 model years old commencing January 1, ~~1998~~ 2008.

(2) WHEN INSPECTION REQUIRED. Nonexempt vehicles subject to an inspection shall have the inspection completed ~~at an inspection station~~ as provided in this chapter when any of the following apply:

(a) No more than 180 days prior to renewal of annual registration. ~~In the 2nd year after the nonexempt vehicle's model year~~ This requirement applies when the vehicle is 4 model years old and every 2 years thereafter.

Note: For example, a ~~1996~~ 2004 model year vehicle shall be considered as being more than ~~5~~ 4 model years old commencing January 1, ~~2004~~ 2008.

(3) DOCUMENT REQUIREMENTS. Each vehicle presented for inspection at an inspection station or at an authorized inspection facility shall be accompanied by at least one of the following documents which identifies the vehicle by make, model year, VIN, and license plate number:

(d) A vehicle inspection report if a reinspection, unless repair performance data has, upon performance of the repair, been reported electronically.

(h) A properly completed voluntary inspection request form, obtainable from the manager at each of the inspection stations or at other authorized inspection facilities as determined by the department.

(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 II inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.~~

SECTION 15. Trans 131.03(5) is repealed and recreated to read:

Trans 131.03(5) EMISSION STANDARDS. (a) Vehicles that meet any of the following conditions shall fail the inspection:

1. The DLC is missing, has been tampered with, or is otherwise inoperable.
2. The MIL does not illuminate at all when the ignition key is turned to the “key on, engine off” position.
3. The MIL illuminates continuously or flashes when the vehicle is in the “key on, engine running “ condition, even if no DTCs are present.
4. A scan tool indicates that any DTCs are present and that the vehicle’s MIL status is commanded on.

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

SECTION 16. Trans 131.03(6)(a)3., (b), TABLE 2 and (c) are repealed.

SECTION 17. Trans 131.03(6)(d)1. is amended to read:

Trans 131.03(6)(d) *OBD inspection procedures.* 1. An OBD II 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 section 85.2222 of the federal rule.

SECTION 18. Trans 131.03(6)(d)2. is repealed and recreated to read:

Trans 131.03(6)(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 for issuance of a technical waiver of compliance as provided in s. Trans 131.04(1)(b).

SECTION 19. Trans 131.03(6)(d)3. and 5. are amended to read:

Trans 131.03(6)(d)3. The inspector shall connect the test system to the vehicle by connecting the vehicle's DLC to the ~~lane~~ OBD II 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)~~ required to leave the test station, pursue a means of completing on-board tests, and return for testing.

5. If the ~~lane~~ test 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)~~ retested with an OBD II test in a separate inspection facility test lane.

SECTION 20. Trans 131.03(6)(d)6. and 7. are repealed.

SECTION 21. Trans 131.03(6)(d)8. is amended to read:

Trans 131.06(d)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.

SECTION 22. Trans 131.03(6)(d)9. is repealed.

SECTION 23. Trans 131.03(6)(d)10. is amended to read:

Trans 131.03(6)(d)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 24. Trans 131.03(7) to (9) are repealed.

SECTION 25. Trans 131.03(10)(a)2. is amended to read:

Trans 131.03(10)(a)2. The vehicle shall be accompanied by its previous vehicle inspection reports. Repair information, as completed by the person performing the repairs, shall be indicated in the space provided on the reports, unless it is reported electronically, upon performance of the repair. The completed repair section on the vehicle inspection report, or the data reported electronically, shall indicate all of the following:

SECTION 26. Trans 131.03(10)(b)1. is repealed.

SECTION 27. Trans 131.03(10)(b)2. is amended 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~~:

a. All applicable on-board tests are complete for the component for which the vehicle failed its prior inspection, and

b. All applicable on-board tests are complete except as allowed under sub. (6)
(d).

Note: For example, a catalytic monitor must be ready after a catalyst is repaired.

SECTION 28. Trans 131.03(10)(d)2. is amended to read:

Trans 131.03(10)(d)2. If the vehicle does not meet applicable emission ~~limitations test standards,~~ the owner or lessee may apply for a waiver of compliance from ~~emission test these~~ standards in accord with s. Trans 131.04.

SECTION 29. Trans 131.03(11)(a) and (g) to (i) are repealed.

SECTION 30. Trans 131.03(11)(m) to (o), (12) and (13)(a) are amended to read:

Trans 131.03(11)(m) Upon a reinspection, the vehicle operator fails to provide a properly completed repair form to the inspector, unless the repair information is reported electronically, upon performance of the repair.

(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.

(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).~~

(12) RECONSTRUCTED AND HOMEMADE VEHICLES. Any nonexempt vehicle registered as reconstructed or homemade under s. 341.268, Stats., shall be inspected for compliance with ~~both the exhaust emission standards and emission equipment~~ requirements applicable to the model year of the vehicle as indicated on the vehicle's registration documents, unless the owner both requests that the vehicle be inspected by engine year and provides a completed MV2588, exchanged engine certification form, to the waiver investigator. In addition, the vehicle owner shall locate the engine number on the engine for purposes of engine year verification by the waiver investigator.

(13) VEHICLES WITH EXCHANGED ENGINES. (a) A motor vehicle with an exchanged engine shall be ~~inspected for compliance with the emission standards~~

~~applicable to the model year of the vehicle~~ subject to OBD II inspection compliance standards established in s. Trans 131.03(5).

SECTION 31. Trans 131.03(13)(b) to (d) are repealed.

SECTION 32. Trans 131.03(14) and (15)(a)(intro.) are amended to read:

Trans 131.03(14) TRUCKS AND VANS. All trucks and vans shall be inspected in accord with the ~~exhaust emission standards, emission equipment and evaporative emission~~ standards applicable to the manufacturer's GVWR as indicated either in the vehicle's identification number or on the vehicle's doorpost. If there is no manufacturer's GVWR available, then the vehicle shall be inspected according to the registered GVWR as indicated on the vehicle's entry document described in sub. (3).

(15) VEHICLE INSPECTION REPORT. (a)(intro.) The operator of each vehicle inspected shall receive a vehicle inspection report, ~~MVD~~ MV 2470, at the conclusion of the inspection. The vehicle inspection report data may also be reported electronically. The inspection report, or the vehicle inspection report data reported electronically, shall indicate:

SECTION 33. Trans 131.03(15)(a)9. to 11. are repealed.

SECTION 34. Trans 131.03(15)(a)14. is amended to read:

Trans 131.03(15)(a)14. Instructions indicating that the inspection report, together with the vehicle, shall be returned to any inspection station or other authorized inspection facility for reinspection to occur.

SECTION 35. Trans 131.03(15)(a)23. is amended to read:

Trans 131.03(15)(a)23. Inspection station or other authorized inspection facility number, and inspector ~~numbers~~ number if the test is performed by an inspector.

SECTION 36. Trans 131.03(15)(a)27. is repealed.

SECTION 37. Trans 131.03(15)(b) and (c) are amended to read:

Trans 131.03(15)(b) Each operator of a vehicle failing ~~any portion of~~ the inspection shall receive an inspection report supplement containing repair, reinspection and waiver application instructions, as well as information on the possible causes of failure found during the inspection.

(c) Each operator of a vehicle failing ~~any portion of~~ the initial inspection shall receive a list of registered automotive emission repair facilities by ~~emission inspection station~~ area which includes information required under s. Trans 131.15. This listing may include other consumer information useful in obtaining vehicle emission repair service.

SECTION 38. Trans 131.04(1)(intro.), (a), (b) and (c)1. and 2. are amended to read:

Trans 131.04(1)(intro.) ELIGIBILITY. A vehicle which fails ~~to pass the designated emission test standards or OBD inspection upon an~~ the 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:

(a) For all ~~1984~~ 1996 and newer model year vehicles which have not exceeded the terms of the manufacturer's emission performance or defect warranty coverage at the time of the scheduled emission inspection, the operator shall either present a written statement from a vehicle dealership or other manufacturer's designated agent declaring that the vehicle is not eligible for emission control system warranty work, or present a dated invoice indicating that the vehicle has received eligible emission control system warranty work.

(b) The emission related repairs and adjustments made to the vehicle's emission control system, including cost for parts and labor, have been performed on the vehicle within 180 days prior to renewal of annual registration or within 180 days of vehicle ownership change registration and such repairs and adjustments are indicated in the space provided on the vehicle inspection report by the person performing the repairs, unless the repair information is reported electronically, upon performance of the repair. If the labor for vehicle repair is performed without charge or cost, only the cost of replacement parts shall be indicated. An itemized receipt indicating the parts, labor cost, and date of purchase shall be provided to the waiver investigator.

(c)1. For all ~~1981 and newer model year~~ vehicles which have exceeded the terms of the manufacturer's emission performance or defect warranty coverage at the time of the scheduled emission inspection, the owner shall have emission related repairs performed on the vehicle at a recognized repair facility as defined in s. Trans 131.02 (39) or by a recognized automotive emission repair technician as defined in s. Trans 131.02 (38). The operator shall present a vehicle inspection report with the repair information section completed according to s. Trans 131.03 (13), unless it is reported electronically, upon performance of the repair. The statement shall contain the actual cost of emission related repairs performed on the vehicle including itemized costs for parts and labor. If the labor for vehicle repair is performed without charge or cost, only the cost of replacement parts shall be indicated. An itemized receipt indicating the parts, labor cost and date of repair shall be provided to the waiver investigator.

2. ~~Through the period ending November 30, 1997, proof~~ Proof of recognized automotive emission repair technician training shall consist of either ~~National Institute for Automotive Excellence (ASE) certification in level 6, 8, L1, or valid documentation~~

~~indicating successful completion of a Wisconsin emission technician training (WISETECH) course under s. Trans 131.16, or an equivalent program as determined by the department. After November 30, 1997, proof of this training shall consist of either ASE certification in level L1, or valid documentation indicating successful completion of a WISETECH course under s. Trans 131.16 or an equivalent program as determined by the department.~~

SECTION 39. Trans 131.04(2)(a) is repealed.

SECTION 40. Trans 131.04(2)(d) is created to read:

Trans 131.04(2)(d) If the owner is in compliance with the requirements set forth in s. 110.20(13), Stats., the department shall issue a waiver of compliance as required by s. 110.20(13), Stats.

SECTION 41. Trans 131.05(2) is repealed.

SECTION 42. Trans 131.05(3) is amended to read:

Trans 131.05(3) CONSEQUENCES. Vehicles failing the waiver emission equipment inspection shall not receive a waiver of compliance or acceptance for voluntary testing under s. Trans 131.07 until the failing emission equipment items are either repaired or replaced, ~~except as allowed by s. Trans 131.03 (12) or (13).~~

SECTION 43. Trans 131.07(1)(intro.), (a) and (2) are amended to read:

Trans 131.07(1)(intro.) CRITERIA. The contractor shall inspect any nonexempt vehicle presented for inspection at an inspection station or other authorized inspection facility provided:

(a) The vehicle operator provides a properly completed request for voluntary emission inspection form, obtainable from the manager at each of the emission

inspection stations or at other authorized inspection facilities as determined by the department.

(2) EFFECT. The voluntary presentation of a vehicle for inspection in accordance with sub. (1) shall not impose any requirement upon a vehicle owner to comply with this chapter ~~except for the repair or replacement of any failing emission equipment inspection items as required under s. Trans 131.03 (7) (c).~~

SECTION 44. Trans 131.09(3) is amended to read:

Trans 131.09(3) ISSUANCE. Upon ~~receipt of the fee under s. 341.36 (1), Stats.,~~ and approval of the application, the department shall issue a temporary license plate to the vehicle owner or lessee. Such plate shall contain the date of expiration. The owner or lessee shall affix the temporary license plate to the vehicle in accord with the requirements of s. 341.09 (5), Stats.

SECTION 45. Trans 131.11(1)(a) is amended to read:

Trans 131.11(1)(a) All contractor inspection functions, including those occurring at the inspection stations, other authorized testing facilities, technical assistance centers 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.

SECTION 46. Trans 131.11(2)(a) and (b) are repealed.

SECTION 47. Trans 131.11(2)(e) is amended to read:

Trans 131.11(2)(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 operation until such

time as the equipment is properly repaired and documentation of corrective actions is available for review by the department.

SECTION 48. Trans 131.12(2) is repealed and recreated to read:

Trans 131.12(2) SPECIFICATIONS. Equipment used to perform OBD inspections shall meet the most current version of each of the following SAE International standards: J1850, J1962, J1978, and J1979.

SECTION 49. Trans 131.12(3) is amended to read:

Trans 131.12(3) QUALITY CONTROL. All equipment used in the emission testing process shall be ~~calibrated and maintained according to the procedures specified in the federal rule and USEPA technical guidance sections 85.2234 and 85.2235~~ maintained according to all manufacturer specifications.

SECTION 50. Trans 131.13(1)(a), (a)6., (2), (5)(a) and (b), and (6)(c) are amended to read:

Trans 131.13(1) TRAINING. (a) All contractor employees and all employees of any authorized inspection facility subcontractor 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:

6. Test equipment operation, ~~calibration~~ and maintenance.

(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

employee so licensed shall be maintained both at the contractor's headquarters and at the employee's primary inspection station or other authorized inspection facility.

(5) PENALTIES. (a) Failure of either the contractor or any of its employees or of any authorized inspection facility subcontractor or its 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 or subcontractor 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 employee. Failure of the department to hold a hearing within 14 days when requested shall cause the suspension to lapse.

(c) Results of the technical assistance center inspection shall supersede the results of the contested station lane or other authorized inspection facility inspection.

SECTION 51. Trans 131.14(1), (2)(a), (4) and (5)(f) are amended to read:

Trans 131.14 Remote sensing. (1) GENERAL. The contractor shall use remote sensing to measure the in-use vehicle emissions in any county identified under s. 110.20 (5), Stats. Any nonexempt vehicle that has passed its last emission reinspection under s. Trans 131.03 (11), and fails the remote sensing test by exceeding the remote emission standards under sub. (4), shall have an ~~enhanced~~ emission inspection under s. 110.20 (9) (g), Stats. Penalty for failure to comply with this section

consists of suspension of vehicle registration as set forth in s. 341.63 (1) (e), Stats. To ~~reinstate vehicle registration, a fee prescribed by s. 341.36 (1), Stats., is required.~~

(2) WHEN INSPECTION REQUIRED. (a) The owner or lessee of a nonexempt vehicle that fails the remote sensing test shall have an ~~enhanced~~ emission inspection within 45 days of notification of a remote sensing test failure.

(4) EMISSION STANDARDS. Vehicles that exceed the standards shown in Table 1 shall fail the remote sensing test:

TABLE 1

MODEL YEAR	GVWR	REMOTE SENSING STANDARD		
		HC(ppm)	CO(%)	NO _x (%)
1992 <u>1996</u> and newer	All	400	2.0	Reserved
1988 — 1991	All	450	3.0	Reserved
1981 — 1987	All	650	5.0	Reserved
1975 — 1980	All	1300	7.0	Reserved
1968 — 1974	All	1700	8.0	Reserved

(5)(f) Instructions indicating that the report, together with the vehicle, shall be brought to any inspection station or other authorized inspection facility to receive an inspection as required under s. Trans 131.14 (2), if required.

SECTION 52. Trans 131.16(2)(b), (c) and (3) 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.~~

(3) EQUIPMENT. Both private and public facilities offering WISETECH designated automotive emission repair training courses shall have available, and maintain in good working condition, tools and equipment necessary for the proper diagnosis, adjustment and repair of all nonexempt vehicles. All equipment utilized in the training courses shall be ~~calibrated and~~ maintained according to the manufacturer's specifications.

(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 ____ day of February, 2008.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 07-114

ANALYSIS OF FINAL DRAFT OF TRANS 131

(a) **Basis and Purpose of Rule.** This rule amendment conforms ch. Trans 131 to statutory changes in the vehicle inspection and maintenance program, enacted in 2007 Wis. Act 20. The Department is required to provide an emissions inspections program of nonexempt vehicles customarily kept in a number of counties in Wisconsin. WisDOT is required to promulgate rules specifying procedures for inspection of vehicles, including the method of measuring emissions and the types of equipment that may be used in such measurement. The procedures and methods used must be capable of being correlated with procedures established under federal law.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on February 4, 2008. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered at the hearing:

Ron Kuehn, Attorney, Envirotest Systems, Inc., Madison, WI – spoke for information.

Joan Loden, State Manager, CVR, Cerritos, CA – registered for information.

Muhammed R. Islam, Emissions Control Engineer, Department of Natural Resources, Madison, WI – registered for information.

Charles C. Rhodes, WisDOT I/M Supervisor, Milwaukee, WI – registered for information.

(d) **Summary of Public Comments and Agency Response to those Comments:** A summary of public comments and the Department's response to those comments is as follows:

Ron Kuehn, Attorney, Envirotest Systems, Inc., Madison, WI – Mr. Kuehn registered concern regarding the draft rule provisions that accommodate the use of one or more subcontractors to perform emissions inspections. He read aloud a question that Envirotest had submitted in response to the Department's request for proposals (RFP) for a new emissions inspection contract: "Will the contractor be in legal compliance if it uses PIFs [private inspection facilities], as Section 5.4.10 [of the RFP] appears to violate Section 110.20(8)(am), Stats. (which prohibits emissions testing contractors from being engaged in the business of selling, maintaining or repairing motor vehicles or selling motor vehicle replacement repair parts)?" Mr. Kuehn also read the Department's official response to this question as part of the RFP process: "Yes. The cited language in s.

110.20(8)(am), Stats., refers only to officers, directors, and employees (not subcontractors) of the Contractor.”

Mr. Kuehn expressed Envirotest’s concern that -- should it elect to submit an RFP proposal including the use of PIFs and subsequently be awarded the contract -- the award would be challenged legally on the grounds that the contract violates provisions of Section 110.20(8)(am), Stats. He argued that the contractor-subcontractor relationship, taken to an extreme wherein subcontractors perform most or all emissions inspections, could be reasonably interpreted to be a joint venture. At this point, he continued, any subcontractors could be subject to the statutory prohibition.

Agency Response: The final rule draft implements and conforms to statutory requirements, as required. Mr. Kuehn’s concern refers to the RFP, which falls outside the scope of the final draft rule. (With regard to the RFP, however, the Department’s response to the Envirotest question quoted above remains unchanged. Further, the Department notes that the RFP contains specific provisions that would not permit the scenario Mr. Kuehn described in his testimony.)

The written comment period was extended to February 11, 2008. Written comments were received from:

Tom Walker, Director of Government Affairs, Wisconsin Transportation Builders Association, Madison, WI. Mr. Walker’s comments express WTBA’s belief that 2007 Wis. Act 20 intended to provide alternatives to centralized emissions inspections (i.e., an inspection network in which a single entity conducts or oversees all emissions inspections), and that the final draft rule – by referring to a contractor – fails to meet that intent. He suggests that the draft rule creates a “de facto monopoly” because the incumbent contractor has an inherent advantage over other RFP proposers – it already owns a network of centralized inspection facilities.

Mr. Walker’s comments note that 2007 Wis. Act 20 required the Department to consider the use of remote testing and testing by certified motor vehicle dealers. Additionally, he cites WTBA’s belief that a decentralized network of certified motor vehicle dealers would provide more convenient, less expensive inspection services without compromising the integrity of the Wisconsin vehicle emissions inspection program.

Mr. Walker’s comments ask that the rule state more explicitly what actions the Department and its “own contractors” will take, and clarify the role of the contractor in sub-contracting self-service testing.

Finally, Mr. Walker’s comments ask that the Department:

- Submit its required study of future options to the Legislature as soon as possible;
- Extend the existing inspection services contract until the rule is approved; and

- Include any program charges in the Department's 2009 biennial budget recommendations.

Agency Response: The proposed rule implements the statutory requirements as they are written. Furthermore, the Department believes that the rule is very clear in its intent that a single contractor will be responsible for day-to-day program operations.

The proposed rule reflects a thorough Department assessment of other state emissions inspection program network structures – centralized, decentralized, and hybrid; remote testing methods; and feasible network alternatives for Wisconsin, given the Department's program staffing level, the program's history of customer service, and the acceptability of different inspection methods and motorist payment options.

With regard to program structure, the Department found no evidence that decentralized programs cost less than centralized programs. To the contrary, we found that decentralized programs usually cost more – and often considerably more. This is because inspection fees are market-driven in decentralized programs. This cost structure is necessary to induce widespread industry participation in the program. Among current decentralized OBDII-only programs in the U.S., motorists may expect to pay as much as \$64 per inspection.

Regarding remote testing methods – including self-service kiosk-based inspection – the Department found no states in which these alternatives, independently or in conjunction, are used to conduct a significant fraction of fleet-wide inspections. Several states (including Wisconsin through its current RFP) are pursuing wider use of one or both alternatives, but transponder-based remote testing methods continue to face technical and cost barriers outside of commercial and municipal fleet applications. Likewise, no state – nor any vendor – has sufficient experience with self-service kiosks to demonstrate that these devices can serve a majority of motorists effectively. Instead, the prevailing opinion in the industry today is that kiosks offer a “supplemental” inspection method to shave demand from full-service inspection facilities.

Regarding program structure, the Department concluded that the use of a decentralized program would present numerous significant implementation issues in Wisconsin. One, as noted above, is the cost structure for decentralized testing. Given Wisconsin's program history, the Department would anticipate a significant public acceptance problem in changing to a “motorist pays” inspection system.

A second implementation problem with a decentralized program would be the level of state auditing required. The presumed benefit of decentralized programs is motorist convenience, but surpassing the convenience of a centralized or hybrid inspection network would require a large number of decentralized inspection facilities. Meanwhile, decentralized networks have higher incidence of inspector fraud than centralized networks. Thus, the convenience benefit of such a program could be recognized only with an increase in Department audit staff size that presently is infeasible.

A third significant implementation problem would be the provisions of Section 110.20(8)(am), Stats., prohibiting emissions testing contractors from being engaged in the business of selling, maintaining or repairing motor vehicles or selling motor vehicle replacement repair parts.

WTBA's comments refer in part to the inspection program RFP and in part to the Department's biennial budget, both of which fall outside the scope of this proposed rule. (With regard to the RFP, however, the Department notes that cost is secondary to vendor qualifications and technical proposal in terms of proposal scoring.)

In response to Mr. Walker's explicit requests:

- The Department will submit its study of future options to the Legislature before the required May 1, 2008 deadline.
- The Department already is in the process of extending its existing contract for one year, with a series of Department-controlled three-month extension options.
- The Division of Motor Vehicles, as a matter of practice, advances vehicle emissions inspection program recommendations to the Department's executive office as part of its biennial budget development. These recommendations stem from changes in federal program requirements, technological developments, assessments of program efficiency, and new or modified policy objectives.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** The plain language analysis is changed to eliminate the wording implying that more than a single contractor might operate emission testing. The rule, and the Department's intention, is that service delivery may be provided by the contractor through subcontracted testing services; however, there will always be a single contractor, not multiple contractors.

(f) **Response to Legislative Council Recommendations.**

2. Rule language has been amended to establish in a definition the attributes of acceptable electronic reporting, eliminating repeated statements to that effect.

4. Adopted.

5.a. The deadline for submission of comments in the rule analysis states the public record will be held open until close of business the day of the hearing. The reference to the year 2007 should have been stricken.

5.b. Wording is added to clarify that the Department's decision is final only with respect to Department decision, and does not eliminate general appeal rights.

5.c. Adopted.

(g) **Final Regulatory Flexibility Analysis.** Section 285.30, Stats., as amended by 2007 Wis. Act 20, eliminates the testing requirement for vehicles model year before 1996. To the extent that small businesses own older vehicles, the law eliminates the need for those vehicles to be tested. The law also requires diesel-powered vehicles of model year 2007 and newer, and vehicles model year 2007 and newer up to 14,000 lbs gross vehicle weight rating to undergo OBD II emission testing. On the other hand, these vehicles are manufactured with OBD II equipment and software, and maintaining the vehicles' emission systems is a reasonable expectation, and thus not unduly burdensome. The statute provides for enforcement of emission testing through vehicle registration denial.