APPENDIX A

Wisconsin Statutes and Administrative Code Revisions

1. **Chapter 110 Wis. Stats. – Motor Vehicles**
2. **Revisions to Section 110.20, Wis. Stats.**
3. **Chapter 285 Wis. Stats. – Air Pollution**
4. **Revisions to Section 285.30, Wis. Stats.**
5. **Chapter NR 485, Wis. Adm. Code –Control of Emissions from Motor Vehicles.**
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7. **Chapter Trans 131, Wis. Adm. Code – Motor Vehicle I/M Program (MVIP)**
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Electronic reproduction of 2009–10 Wis. Stats. database, current through 2011 Wis. Act 39 and July 25, 2011.

CHAPTER 110

MOTOR VEHICLES

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110.001 Definitions. In this chapter:

(1) "Department" means department of transportation.

(1m) "Law enforcement officer" has the meaning given in s. 967.02 (5).

(2) "Secretary" means secretary of transportation.

History: 1977 c. 29; 1993 a. 25.

110.01 Definitions. Words and phrases defined in chs. 340 to 349 have the same meaning in this chapter unless a different meaning is expressly provided or the context clearly indicates a different meaning.

History: 1975 c. 120.

110.015 Facsimile signature. The secretary and division administrators of the department of transportation, through their authorized employees, may execute or affix their signature, by facsimile signature with a stamp, reproduction print or other similar process to all licenses, notices, orders, administrative letters, contracts, permits, offers to purchase, appraisals, certifications of records, service of legal papers or process on the administrators, and other legal instruments under the statutes which the secretary and division administrators are authorized or required to administer.

110.05 Inspection of human service vehicles. (1) The department shall adopt and enforce such rules as the department deems necessary in the interests of the safety of persons being transported to cover the design, construction, equipment, inspection and operation of human service vehicles.

(2) The owner of the human service vehicle shall have the vehicle inspected at least annually by the department or a certified law enforcement officer for compliance with the requirements of s. 110.075, ch. 347 and any rules promulgated under this section.

(3) Vehicles required to be inspected under sub. (2) which were in service prior to March 28, 1984, need only be in compliance with the requirements of ch. 347, 1981 stats.

(4) Any person violating this section, or rules promulgated pursuant thereto, may be required to forfeit not less than $50 nor more than $200.

History: 1983 a. 175 ss. 2, 25.

Cross-reference: See also ch. Trans 301, Wis. adm. code.

110.06 Rules; school bus presale inspection; penalties. (2) The secretary shall adopt and enforce such rules as he or she deems necessary in the interests of safety to cover the design, construction, inspection and operation of school buses. Such rules may, but need not, be uniform for each type of bus designated in s. 340.01 (56) (a) and (am).

(3) (a) Any person intending to purchase a motor vehicle to be used as a school bus shall prior to purchase give the seller notice in writing of the intended use.

(b) Prior to the use of a motor vehicle as a school bus, the seller shall obtain a presale inspection of the vehicle by the department verifying compliance with the rules relating to design and construction prescribed by the department under sub. (2). A copy of the presale inspection report shall be provided to the purchaser at the time of delivery.

(c) The seller of any such vehicle who fails to obtain a presale inspection prior to delivery shall be liable to the purchaser for all repairs and improvements required by the department to bring the vehicle into compliance with the rules relating to design and construction prescribed by the department under sub. (2) for a period of one year after the delivery.

(d) Notwithstanding par. (b), the purchaser may agree to obtain the presale inspection provided that notice of the agreement is included in the offer to purchase and is agreed to by the seller. The seller is liable for any repairs and improvements necessary to comply with the rules relating to design and construction prescribed by the department under sub. (2).

(e) Any person violating par. (b) shall forfeit $100 for the first offense and $200 for the 2nd and each subsequent offense.

(4) Violations of those orders, determinations and rules pertaining to chs. 115 to 118, 120, 121 and 341 to 349 shall be punished as provided by s. 341.04 (3) and those pertaining to ch. 194 as provided by s. 194.17.

(5) The orders, determinations and rules made by the secretary are subject to review in the manner provided in ch. 227.

History: 1975 c. 429; 1977 c. 29 ss. 1047, 1654 (7) (a), (c); 1977 c. 325; 1979 c. 154; 1983 a. 175, 538; 1985 a. 287.

Cross-reference: See also chs. Trans 131 and 300, Wis. adm. code.

110.063 Inspection of motor buses. (1) The department shall promulgate and enforce such rules as the department deems necessary in the interests of the safety of persons being transported to cover the design, construction, equipment, inspection and operation of motor buses.

(2) (a) Except as provided in par. (c), the owner of the motor bus shall have it inspected annually by the department for compliance with the requirements of s. 110.075 and ch. 347 and rules promulgated thereunder and any rules promulgated under this section.

(b) The department shall specify by rule a fee for the inspection required under this subsection equal to the cost of the inspection.

(c) Paragraph (a) does not apply to a motor bus which is operated by an urban mass transit system, as defined in s. 85.20 (1) (L), if all of the following conditions are satisfied:

1. The urban mass transit system regularly inspects the motor bus at least annually.

2. The urban mass transit system submits the record of inspection of the motor bus to the department annually for examination.

3. Review of the record of inspection of the motor bus by the department indicates that the motor bus is in compliance with the requirements of s. 110.075 and ch. 347 and rules promulgated thereunder and any rules promulgated under this section.

(3) Any person who violates this section or rules promulgated under this section may be required to forfeit not less than $50 nor more than $200.

History: 1987 a. 235.

Cross-reference: See also chs. Trans 300 and 330, Wis. adm. code.

2009–10 Wis. Stats. database updated and current through 2011 Wis. Act 39 and July 25, 2011. Statutory changes effective on or prior to 9–1–11 are printed as if currently in effect. Statutory changes effective after 9–1–11 are designated by NOTES. See Are The Statutes on this Website Official?

110.064 Motor buses used for pupil transportation. **(1)** (a) Notwithstanding s. 340.01 (56) (b) 4., no motor bus operated under contract as provided in s. 121.55 (1) (a) or (d) may be used for the purpose of transporting pupils to or from a public or private school as provided in s. 340.01 (56) (a) 1. and no motor bus otherwise operated on a special route for the purpose of transporting pupils to or from a public or private school as provided in s. 340.01 (56) (a) 1. may be used for that purpose unless the motor bus satisfies safety and operation standards specified by the department under par. (b).

(b) The department shall promulgate and enforce a rule requiring that a motor bus under par. (a) satisfy safety standards providing an equivalent level of safety as the safety standards specified by the department for a school bus having the same gross vehicle weight rating and operation standards specifying that the rear door of a motor bus under par. (a) may not be used for the entry or exit of pupils, except in an emergency, except that the department may not promulgate a rule which is in conflict with federal law, which requires the motor bus to be painted in accordance with s. 347.44 (1) or which requires the motor bus to be equipped with flashing red warning lights as specified in s. 347.25 (2).

(2) Any person who violates this section or rules promulgated under this section may be required to forfeit not less than $50 nor more than $200.

History: 1987 a. 235.

Cross-reference: See also chs. Trans 300 and 330, Wis. adm. code.

110.065 Traffic academy. The secretary may establish and operate an academy for the training of state, county and local traffic patrol officers and other related personnel and make rules and regulations for the conduct thereof. The secretary shall establish and periodically revise a reasonable scale of tuition charges. The tuition for personnel other than employees of the department shall be paid by their respective departments or governing bodies and shall be deposited in the appropriation account under s. 20.395 (5) (dh). The secretary shall consult appropriate state, county and local authorities concerning the establishment and operation of the academy and the determination of tuition charges. State agencies shall cooperate with the secretary in providing information and instructional services for the academy.

History: 1977 c. 29 s. 1654 (1), (7) (a), (c); 1997 a. 27.

110.07 Traffic officers; powers and duties. **(1)** (a) The secretary shall employ not more than 399 traffic officers. The state traffic patrol consists of the traffic officers, the person designated to head them whose position shall be in the classified service and, if certified under s. 165.85 (4) (b) 1. as qualified to be a law enforcement officer, the division administrator who is counted under s. 230.08 (2) (e) 12. and whose duties include supervising the state traffic patrol. The division administrator may not be counted under this paragraph. Members of the state traffic patrol shall:

1. Enforce and assist in the administration of this chapter and chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b), 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders or rules issued pursuant thereto.

2. Have the powers of sheriff in enforcing the laws specified in subd. 1. and orders or rules issued pursuant thereto.

3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof.

(b) All municipal judges, judges, district attorneys and law enforcement officers shall assist in enforcing this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 351, and orders or rules issued pursuant thereto and shall report to the department the disposition of every uniform traffic citation issued for cases involving those chapters.

(2) The traffic officers employed pursuant to this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways.

(2m) In addition to the primary powers granted by subs. (1) and (2), any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. A state traffic officer shall at all times be available as a witness for the state but may not conduct investigations for crimes under chs. 939 to 948 other than crimes relating to the use or operation of vehicles. The primary duty of a state traffic officer shall be the enforcement of chs. 340 to 351 or of any other law relating to the use or operation of vehicles upon the highway. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor shall any such officer be required to serve civil process. The department may assign state traffic officers to safeguard state officers or other persons.

(3) The secretary may employ inspectors who may not wear the uniform of the state patrol, whose duties shall be to enforce and assist in administering s. 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, s. 23.33, the inspection requirements of s. 121.555 (2) (b) and the requirements under s. 346.45 (4) for vehicles being used to transport hazardous materials. Such inspectors, in the performance of these duties, shall have the powers and authority of state traffic officers. For the purpose of death, disability and retirement coverage, such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub. (5), the secretary may clothe and equip inspectors as the interest of public safety and their duties require.

(4) In addition to the primary powers granted by sub. (3), any inspector shall have the powers of a peace officer under s. 59.28, except that the inspector shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. An inspector shall at all times be available as a witness for the state but may not conduct investigations for crimes under chs. 939 to 948 other than crimes relating to the use or operation of vehicles. The primary duty of an inspector shall be the enforcement of the provisions specified in sub. (3). No inspector may be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor may an inspector be required to serve civil process. The department may assign inspectors to safeguard state officers or other persons.

(5) (a) In this subsection, "bulletproof garment" means a vest or other garment designed, redesigned, or adapted to prevent bullets from penetrating through the garment.

(b) Upon request of an officer of the state traffic patrol under sub. (1) or inspector under sub. (3), the department shall make available to the traffic officer or inspector a bulletproof garment that may be used in the performance of his or her duties under this section. The department shall equip a traffic officer or inspector with a bulletproof garment as soon as practicable after receipt of the request from the traffic officer or inspector under this paragraph.

(6) The division administrator who is counted under s. 230.08 (2) (e) 12. and whose duties include supervising the state traffic patrol shall be designated superintendent of the state traffic patrol, if he or she is certified under s. 165.85 (4) (b) 1. as qualified to be a law enforcement officer.

History: 1971 c. 40, 125; 1973 c. 90, 146; 1975 c. 297; 1977 c. 29 ss. 1048, 1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390; 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341; 1999 a. 9, 85; 2001 a. 68, 109; 2009 a. 42.

Cross-reference: See also Trans 327, Wis. adm. code.

While it is clear that ss. 110.07 and 110.075 authorize the traffic officers of the state patrol and DOT to make stops and inspections and perhaps arrests for equipment

violations, nothing in these statutes limits local law enforcements officers' powers to do so. A city police officer is a traffic officer under a. 340.01 (70), and because s. 110.075 provides that any traffic officer can stop and inspect vehicles for violations of ch. 110 or rules issued pursuant to ch. 110, and because s. 349.02 (2) permits a police officer to enforce a city ordinance violation upon a reasonable basis to believe a violation has occurred, a city officer had authority to make a stop for violation of an ordinance adopting a safety rule. State v. Bailey, 2009 WI App 140, 321 Wis. 2d 350, 773 N.W.2d 488, 08–3153.

110.075 Motor vehicle inspection. (1) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is not in conformity with the requirements of this section.

(2) When directed by any traffic officer or motor vehicle inspector, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine whether it meets the requirements of this section, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of ss. 110.05, 110.06, 110.063 and 110.064, ch. 347, or rules issued pursuant thereto. Such inspection shall be made with respect to the brakes, lights, turn signals, steering, horns and warning devices, glass, mirrors, exhaust system, windshield wipers, tires, and other items of equipment designated by the secretary.

(3) Upon determining that a motor vehicle is in conformity with sub. (2), traffic officers or motor vehicle inspectors shall issue to the operator an official inspection sticker which shall be in such form as the secretary prescribes. The official inspection sticker issued following an inspection shall exempt the inspected vehicle from vehicle inspection for a period of one year.

(4) When any motor vehicle is found to be unsafe for operation, traffic officers or motor vehicle inspectors may order it removed from the highway and not operated, except for purposes of removal and repair, until it has been repaired pursuant to a repair order as provided in sub. (5).

(5) When any motor vehicle is not in compliance with sub. (2) a repair order may be issued, in such form and containing such information as the secretary prescribes, to the owner or driver of the motor vehicle. The owner or driver shall thereupon obtain such repairs as are required.

(6) The secretary shall set standards and adopt rules to establish a plan of inspection to implement the inspection program provided by this section. Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 393 and 396 are applicable to, or enforceable with respect to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

(7) Any person producing, manufacturing or using an inspection sticker or causing the same to be done to subvert the provisions of this section shall forfeit not less than $100 nor more than $500. Any persons otherwise violating this section, s. 110.06, ch. 347 or rules issued pursuant thereto, unless otherwise provided by statute, shall forfeit not less than $10 nor more than $200.

History: 1973 c. 90; 1977 c. 29 ss. 1049, 1654 (7) (c); 1977 c. 273, 325; 1979 c. 154; 1983 a. 175; 1987 a. 235; 2005 a. 65.

Cross-reference: See also Trans 327, Wis. adm. code.

A corporate employer may be liable for violation of this section. Town of East Troy v. A–1 Service Co., Inc. 196 Wis. 2d 120, 537 N.W.2d 126 (Ct. App. 1995), 94–0610.

While it is clear that ss. 110.07 and 110.075 authorize the traffic officers of the state patrol and DOT to make stops and inspections and perhaps arrests for equipment violations, nothing in these statutes limits local law enforcements officers' powers to do so. A city police officer is a traffic officer under a. 340.01 (70), and because s. 110.075 provides that any traffic officer can stop and inspect vehicles for violations of ch. 110 or rules issued pursuant to ch. 110, and because s. 349.02 (2) permits a police officer to enforce a city ordinance violation upon a reasonable basis to believe a violation has occurred, a city officer had authority to make a stop for violation of an ordinance adopting a safety rule. State v. Bailey, 2009 WI App 140, 321 Wis. 2d 350, 773 N.W.2d 488, 08–3153.

110.08 State operator's license examiner system. (1) The department shall employ a sufficient number of operator's license examiners. The department may contract for specialists in driver's license examining to augment the department's training program for examiners.

(1m) Each operator's license examiner shall receive informational training on the powers and duties of the department relating to organ donor information under s. 343.175 once every 2 years and, for operator's license examiners hired after January 1, 1997, prior to initial assignment to operator's license examining activities. The informational training under this subsection shall be developed by all organ procurement organizations, as defined in s. 340.01 (41k), in cooperation with the department.

(2) Except as provided under sub. (5) (b) and s. 343.16 (1) (b) to (c), all examinations for operator's licenses and permits shall be given by state examiners.

(3) The department shall employ state examiners, driver improvement personnel and clerical personnel at local examining centers, under the classified service.

(4) The department shall employ, train and assign sufficient driver improvement personnel to carry out an intensive driver improvement program including the reexamination and personal interview of problem drivers.

(5) (a) The department shall provide in each county, directly or by contract as described in par. (b), at least 20 hours per week of services relating to operator's licenses and identification cards.

(b) The department shall provide the services required under par. (a) by the most cost–effective means possible, which may include contracting with counties or other local governments to provide these services. Notwithstanding any provision of ss. 343.14 and 343.16, a contract between the department and a county or other local government under this paragraph may authorize an employee of the county or local government to conduct any examination for an operator's license except a driving skills test. The department may require any employee of a county or local government who provides services under a contract entered into under this paragraph to satisfy any requirement under s. 110.09 that would be required of an employee of the department.

History: 1971 c. 164; 1977 c. 29 ss. 1050, 1654 (7) (a); 1989 a. 31; 1991 a. 32; 1995 a. 113, 446; 2007 a. 20; 2009 a. 28; 2011 a. 32.

110.09 Background investigations of certain persons. (1) (a) Notwithstanding ss. 111.321, 111.322, and 111.335, the department of transportation, with the assistance of the department of justice, shall conduct a background investigation of any person who has been selected to fill a position within the division of the department of transportation responsible for issuing operator's licenses and identification cards. This background investigation may include requiring the person to be fingerprinted on 2 fingerprint cards each bearing a complete set of the person's fingerprints, or by other technologies approved by law enforcement agencies. The department of justice shall submit any such fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(b) Notwithstanding ss. 111.321, 111.322, and 111.335, at any interval determined appropriate by the department, the department may conduct, in the manner specified in par. (a), additional background investigations of any person for whom an initial background investigation has been conducted under par. (a) and background investigations of other persons employed by the department within the division of the department responsible for issuing operator's licenses and identification cards.

(c) The department shall promulgate rules governing confidentiality of information obtained under this subsection.

(2) Notwithstanding ss. 111.321, 111.322, and 111.335, the department shall require, as a precondition to allowing access to any information system in which is stored information maintained by the division of the department responsible for issuing operator's licenses and identification cards, that any person to whom access is granted submit to a background investigation as provided in this subsection. Notwithstanding ss. 111.321, 111.322,

and 111.335, the department shall require the employer, including any state agency, of any person to whom the information will be made available to conduct the background investigation in a manner prescribed by the department. The department may require, as part of this background investigation, that the person be fingerprinted in the manner described in sub. (1) (a) and that these fingerprints be provided to the department of justice for submission to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions. Notwithstanding ss. 111.321, 111.322, and 111.335, the department shall require that the employer certify the results of the background investigation and, based upon these results, may deny or restrict access to any information requested. In addition to the initial background investigation required under this subsection, the department may require on a periodic basis subsequent background investigations consistent with this subsection for persons with ongoing access to information. Any cost associated with the requirements under this subsection is the responsibility of the employer. For purposes of this subsection, "employer" includes a self–employed person. The department shall promulgate rules governing background investigations, and confidentiality of information obtained, under this subsection.

History: 2007 a. 20.

110.10 Ignition interlock device program. The department shall promulgate rules providing for the implementation of an ignition interlock device program that will be conveniently available to persons throughout this state. The rules shall include provisions regarding all of the following:

(1) The selection of persons to install, service and remove ignition interlock devices from motor vehicles.

(2) The periodic review of the fees charged to the owner of a vehicle for the installation, service and removal of an ignition interlock device.

(3) Requiring ignition interlock device providers operating in this state to establish pilot programs involving the voluntary use of ignition interlock devices.

(4) Requiring ignition interlock device providers operating in this state to provide the department and law enforcement agencies designated by the department with installation, service, tampering and failure reports in a timely manner.

(4m) Requiring ignition interlock device providers operating in this state to accept, as payment in full for equipping a motor vehicle with an ignition interlock device and for maintaining the ignition interlock device, the amount ordered by the court under s. 343.301 (3) (b), if applicable.

(5) Requiring ignition interlock device providers to notify the department of any ignition interlock device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory. Upon receiving notice described in this subsection, the department shall immediately provide the notice and data to the assessment agency that is administering the violator's driver safety plan.

History: 1999 a. 109, 186; 2009 a. 100.

Cross–reference: See also ch. Trans 313, Wis. adm. code.

110.20 Motor vehicle emission inspection and maintenance program. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(ac) "Air pollution control equipment" has the meaning given in s. 285.30 (6) (a) 1.

(am) "Federal act" means the federal clean air act, 42 USC 7401 et seq., and regulations issued by the federal environmental protection agency under that act.

(b) "Nonexempt vehicle" means any motor vehicle as defined under s. 340.01 (35) which is owned by the United States or which is required to be registered in this state and to which one or more emission limitations adopted under s. 285.30 (2) applies.

(c) "Nontransient emissions inspection" means an emissions inspection conducted on a vehicle without the use of a chassis dynamometer to vary vehicle engine loads.

(2) PROGRAM ESTABLISHED. The department shall establish an inspection and maintenance program as provided in this section.

(3) PURPOSE. (a) The inspection and maintenance program shall be designed to determine compliance with the emission limitations promulgated under s. 285.30 (2) and compliance with s. 285.30 (6).

(c) The inspection and maintenance program may be designed to provide information on the fuel efficiency of nonexempt vehicles.

(d) The inspection and maintenance program shall be designed and operated to comply with the requirements of the federal act.

(4) DEPARTMENTAL COOPERATION. The department shall consult and cooperate with the department of natural resources in order to efficiently and fairly establish and administer the program established under this section.

(5) COUNTIES. The department shall operate the inspection and maintenance program in each of the following counties:

(a) Any county identified in a certification under s. 285.30 (3). The department shall terminate the program in the county when the county is withdrawn under s. 285.30 (4). If the program is being operated under contract, termination shall occur at the end of the contractual period in effect.

(b) Any county whose board of supervisors has adopted a resolution requesting the department to establish an inspection and maintenance program in the county for the purpose of improving ambient air quality beyond the standards mandated by section 7409 of the federal act. The department shall terminate the program in the county when the county board adopts a resolution requesting termination of the program. If the program is being operated under contract, termination shall occur at the end of the contractual period in effect.

(6) MANDATORY INSPECTION. (a) The program shall require an emissions inspection under sub. (11) of any nonexempt vehicle customarily kept in a county identified in sub. (5) as follows:

1. For a nonexempt vehicle required to be registered on an annual or other periodic basis in this state, within the period of time specified by the department under sub. (9) (d) prior to renewal of registration in the 4th year after the nonexempt vehicle's model year and every 2 years thereafter, except as provided in sub. (9) (j).

2. For a nonexempt vehicle required to be registered on an annual or other periodic basis in this state, within the period of time specified by the department under sub. (9) (d) of registration other than renewal if the year of registration is at least 6 years after the nonexempt vehicle's model year.

3. For a nonexempt vehicle that is registered under s. 341.26 (2m), owned by the United States or subject to one–time registration, at any time during the 4th year following the nonexempt vehicle's model year and every 2 years thereafter.

4. For a nonexempt vehicle, whenever the owner of the vehicle is notified under sub. (9) (g) that an emissions inspection must be performed.

(b) The program shall require an air pollution control equipment inspection to determine compliance with s. 285.30 (6) of any nonexempt vehicle customarily kept in a county identified in sub. (5) whenever a nontransient emissions inspection is performed or at the time of application for a waiver under sub. (13).

(6m) PROHIBITED INSPECTIONS. The department may not require an emissions inspection of any vehicle prior to the inspection of the vehicle scheduled under sub. (6) (a) 1. or (9) (d) or (j) if an interest in the vehicle is transferred to a surviving spouse under s. 342.17 (4).

(7) VOLUNTARY INSPECTIONS. The inspection and maintenance program shall require inspection of any nonexempt vehicle which a person presents for inspection at an inspection station or

at any other location where, as established under sub. (8) (bm), the vehicle may be inspected.

(8) CONTRACTORS AND OTHER INSPECTION METHODS. (am) 1. The emissions test and equipment inspection of nonexempt vehicles may be performed by persons under contract with the department. Each such contract shall require the contractor to operate inspection stations, which may be permanent or mobile, for a minimum of 3 years and shall provide for equitable compensation to the contractor if the operation of an inspection and maintenance program within any county is terminated within 3 years after the inspection and maintenance program in the county is begun. No officer, director or employee of the contractor may be an employee of the department. The department may contract with any person, including any person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts. The department shall require the contractor to operate a sufficient number of inspection stations, permanent or mobile, to ensure public convenience in those counties identified under sub. (5).

1m. Each contract under subd. 1. may authorize or require the contractor to install and operate self–service inspection stations and may allow the use of different methods for emissions testing and equipment inspection, consistent with methods established under par. (bm), than those used at inspection stations that are not self–service.

2. The department may require the contractor to test the fuel efficiency of nonexempt vehicles during emission inspections.

3. The department may delegate to the contractor specified registration functions of the department under ch. 341. The department may direct the contractor to perform specified registration functions under ch. 341.

4. The department may delegate to the contractor functions associated with the issuance of a temporary operating permit under sub. (10) (b) or the waiver of compliance under sub. (13) (a) or both.

5. No inspection station may be established within 0.5 mile of an air monitoring station which reported a violation during the period from 1976 to 1979 of the carbon monoxide primary national ambient air quality standard as defined by the department of natural resources.

6. The contractor shall collect, maintain and report data as the department requires. The department shall reserve the right to enter and inspect test station premises, equipment and records at all reasonable times in the discharge of its administrative duties.

7. Each contract under subd. 1. may authorize the contractor to enter into subcontracts for the performance of any of the contractor's functions or duties under the contract. In performing any such function or duty, a subcontractor shall comply with all requirements applicable to the contractor. With the department's approval, the contractor may subcontract with any person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts.

8. Each contract under subd. 1. shall require that, if an emissions inspection is performed by a contractor or subcontractor engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts and the inspection shows that the vehicle does not comply with applicable emission limitations, the contractor or subcontractor shall advise the vehicle owner as specified in sub. (12).

(bm) The emissions test and equipment inspection of nonexempt vehicles may be performed by the department or by persons who are not under contract with the department but who are otherwise authorized by the department to perform such testing and inspection. The department may establish methods for emissions testing and equipment inspection by the department or other authorized persons of nonexempt vehicles, in addition to testing and inspection by contractors. These methods may include the installation and operation by the department or other authorized persons of self–service inspection stations and the utilization of any technology related to emissions or data transmission with which motor vehicles may be equipped, including reading and reporting diagnostic codes stored in any on–board diagnostic system capable of monitoring all emission–related engine systems or components. The department may establish methods for emissions testing and equipment inspection specifically applicable to self–service inspection stations, which methods shall apply equally to self–service inspection stations operated by contractors under par. (am) 1m. and self–service inspection stations operated under this paragraph.

(c) 1. Notwithstanding subs. (5), (6), and (9) (d), the department of transportation may, with concurrence of the department of natural resources, grant a temporary exemption for nonexempt vehicles during any period in which the department of transportation is unable to operate an inspection and maintenance program. An exemption granted under this subdivision is valid until the next required inspection of the vehicle required under sub. (6), or until the time given by the department of transportation to complete inspection of the vehicle, whichever occurs first. Notwithstanding subs. (7) and (10m), the department of transportation may deny requests for inspection during any period in which exemptions are granted under this subdivision.

2. For purposes of ss. 341.04 (1), 341.09 (2m) (a) 1. b. and 2. and (9), and 341.65 (2) (e) 2m., an inspection under this section is not required during any period in which a temporary exemption is granted under subd. 1. For purposes of ss. 341.09 (5), 341.10 (10) (intro.), 341.26 (2m) (am), and 341.63 (1) (e), a vehicle does not require inspection under sub. (6) during any period in which a temporary exemption is granted under subd. 1.

(9) RULES. The department shall promulgate rules which:

(a) Specify procedures for the inspection of vehicles, including the method of measuring emissions, the types of equipment which may be used in performing the measurements and the calibration requirements for the equipment. The procedures and methods shall be capable of being correlated with the federal test procedures established under section 7525 of the federal act.

(b) Prescribe a procedure for determining whether the cost of necessary repairs and adjustments exceeds the limit under sub. (13).

(c) Specify procedures under which a vehicle may be refused inspection for safety reasons or for defects which would result in inaccurate measurement of emissions.

(d) Specify a period of time during which an emissions inspection must be performed for a nonexempt vehicle subject to sub. (6) (a) 1. or 2.

(e) Prescribe a procedure for conducting all federally required performance audits of inspection and maintenance program operations and personnel and all enforcement against contractors, and other persons authorized by the department to perform testing and inspection, required by 40 CFR 51.364.

(f) Establish a performance monitoring system to inform the public regarding repair efficacy.

(g) Prescribe a procedure for remote sensing of not less than 0.5% of nonexempt vehicles and, for such vehicles that grossly exceed applicable emission limitations, as determined by the department, notifying vehicle owners by mail that an emissions inspection must be performed under sub. (6) (a) 4.

(h) Provide procedures for identifying any nonexempt vehicle subject to a recall by the manufacturer of the vehicle that is related to emissions and ensuring motorist compliance with the recall.

(i) Provide a procedure for detecting and preventing the fraudulent classification of any nonexempt vehicle as a vehicle that is not a nonexempt vehicle.

(j) Prescribe an annual frequency for inspection for any model year subset of nonexempt vehicles if the department determines annual inspection to be appropriate after additional program evaluation.

(k) Prescribe a procedure for any method for emissions testing and equipment inspection established under sub. (8) (bm).

(L) Prescribe procedures for authorizing persons other than contractors, subcontractors of contractors, or the department to perform emission testing and equipment inspection as provided under sub. (8) (bm).

(m) Require each person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts, in a county identified in sub. (5), that performs emissions inspections to collect and periodically report to the department information related to vehicle repairs and reinspections after the vehicle has failed an inspection test, including the repairs performed, any technician recommended repairs not performed at the owner's request, the name and address of the facility that performed the repairs, the name of the individual who performed the repairs, and, if applicable, the identification number of the recognized repair facility or recognized automotive emission repair technician, or both, that performed the repairs. The reports shall also include compiled information containing the number of vehicles submitted for reinspection and percentages indicating the number of vehicles that passed, failed, and received waivers after repair following a failed inspection test. The department shall make information gathered from these reports available to the public.

(n) Prescribe procedures for granting temporary exemptions under sub. (8) (c) 1.

(10) RECIPROCITY; TEMPORARY OPERATING PERMIT AND EXEMPTIONS. The department may promulgate rules which:

(a) Authorize the acceptance of an inspection performed in another state instead of an inspection required under this section if the inspection in the other state was performed under procedures, requirements and standards comparable to those required under this section and it satisfies the requirements of the federal act.

(b) Authorize the issuance of a temporary operating permit, valid for not more than 30 days, to allow time for inspection and necessary repairs and adjustments of any motor vehicle subject to inspection under sub. (6).

(c) Permit a temporary exemption for nonexempt vehicles absent from an emissions inspection area.

(d) Authorize the issuance of a certificate of compliance for nonexempt vehicles that fail the inspection tests under sub. (11) (a) for applicable emission limitations but complete a comprehensive physical and functional diagnostic inspection which indicates that no adjustments or repairs will bring the vehicle into compliance with applicable emissions limitations.

(10m) REINSPECTION. The owner of a nonexempt vehicle inspected under this section is entitled, if the inspection determines that any applicable emission limitation is exceeded, to one reinspection of the same vehicle at any inspection station within this state operated by a contractor under sub. (8) (am), or at any other location where, as established under sub. (8) (bm), the vehicle was initially inspected, if the reinspection takes place within 30 days after the initial inspection or the owner presents satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection.

(11) INSPECTION TESTS; RESULTS. (a) A contractor shall perform the tests required under the federal act, and any testing and inspection method established under sub. (8) (bm) shall include the tests required under the federal act. The tests shall include one of the approved short tests required by the federal act to determine compliance with applicable emission limitations for carbon monoxide, hydrocarbons and oxides of nitrogen. The department may require contractors to provide information on the fuel efficiency of the motor vehicle.

(b) The department shall require each contractor to furnish the results of the emissions inspection in writing to the person presenting the vehicle for inspection before he or she departs from the inspection station. For emissions inspections not conducted by a contractor, the department shall require any testing and inspection method established under sub. (8) (bm) to include the contemporaneous furnishing of the results of the emissions inspection in writing to the person having the vehicle inspected. If the inspection shows that the vehicle does not comply with one or more applicable emissions limitations, the results shall include, to the extent possible, a description of the noncompliance and the adjustments or repairs likely to be needed for compliance.

(12) REPAIRS. Repairs or adjustments necessary to bring a vehicle into compliance with applicable emissions limitations are the responsibility of the vehicle owner and may be made by the owner or any person selected by the owner. If the emissions inspection is performed in a county identified in sub. (5) by a person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts and the vehicle fails the inspection test, then after the failed test the person shall advise the vehicle owner that the owner is not required to have any repair or adjustment necessary to bring the vehicle into compliance made by, or to purchase any necessary service or part from, the person and has the right to select a vendor of the owner's own choice. For a nonexempt vehicle with a model year of 1981 or later, only repairs performed by automotive repair technicians, as defined by the department by rule, shall be valid for the issuance of a waiver of compliance under sub. (13).

(13) REPAIR COST LIMIT. (a) The department shall issue a waiver of compliance valid until the next required inspection of the vehicle under sub. (6) if the owner presents satisfactory evidence to the department that the actual costs of repairs performed on a vehicle in accordance with an inspection report under sub. (11) (b) exceeded the repair cost limit established under par. (b).

(b) The department of natural resources shall, by rule, establish the amount of the repair cost limit to equal the amount required under 42 USC 7511a (b) 4. or (c) (3) (C).

(c) In determining the costs of repairs and adjustments included in the repair cost limit, the following costs shall be excluded:

1. Costs covered by any warranty.

2. Costs necessary to repair or replace any emissions control system or mechanism which has been removed, dismantled or rendered inoperative in violation of s. 285.30 (6) or rules promulgated under that section.

(14g) USE OF STATE SUPPORTED REVENUE BORROWING. The department may not use state supported revenue borrowing for the inspection and maintenance program without the approval of the joint committee on finance.

(15) PENALTY. Any person who violates this section or rules promulgated under this section may be required to forfeit not more than $500.

History: 1979 c. 274; 1981 c. 20; 1983 a. 27; 1987 a. 27, 218; 1989 a. 56; 1991 a. 39, 302; 1993 a. 16, 288, 491; 1995 a. 227; 1997 a. 46; 2001 a. 16; 2003 a. 220; 2005 a. 49; 2007 a. 20; 2009 a. 228.

Cross-reference: See also ch. Trans 131, Wis. adm. code.

110.21 Education and training related to motor vehicle emissions. The department and its contractors under s. 110.20 (8) (am) shall conduct a program of public education related to the motor vehicle emission and equipment inspection and maintenance program established under s. 110.20 (6). The program under s. 110.20 (6) may include a pilot project of motor vehicle emissions inspections for those owners who elect to present their motor vehicles for inspection.

History: 1979 c. 274; 1987 a. 27; 1991 a. 39; 1993 a. 288; 2007 a. 20.

110.215 Motor vehicle emission control equipment grant program. From the appropriation under s. 20.395 (5) (hq), the department shall, in consultation with the department of natural resources, develop and administer a program to provide grants for the purchase and installation of oxidation catalyst mufflers on school buses customarily kept in counties identified in s. 110.20 (5). The department shall adopt rules to implement and

administer this section, including procedures, standards, and criteria for awarding and distributing the grants.

History: 2003 a. 220.

Cross-reference: See also ch. Trans 135, Wis. adm. code.

110.22 Repaired salvage vehicle inspector training. From the appropriation under s. 20.395 (5) (cq), the department shall provide training on the examination of repaired salvage vehicles to inspectors or persons eligible to be authorized as inspectors by the department under s. 342.07 (2).

History: 1993 a. 16.

state, within ~~90 days~~ the period of time specified by the department under sub. (9) (d) prior to renewal of registration in the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter, except as provided in sub. (9) (j).

SECTION 2606. 110.20 (9) (d) of the statutes is amended to read:

110.20 **(9)** (d) Specify a period of time during which an emissions inspection must be performed for a nonexempt vehicle subject to sub. (6) (a) 1. or 2.

SECTION 2606m. 111.335 (1) (cv) of the statutes is created to read:

111.335 **(1)** (cv) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position in the classified service, in a position described in s. 230.08 (2) (k), or as a corps enrollee with the Wisconsin conservation corps under s. 106.215 (1) (c) a person who has been convicted under 50 USC, Appendix, section 462 for refusing to register with the selective service system and who has not been pardoned.

SECTION 2609j. 111.70 (1) (j) of the statutes is amended to read:

111.70 **(1)** (j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, family care district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state, that engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of the person's authority, express or implied, but specifically does not include a local cultural arts district created under subch. V of ch. 229.

Vetoed In Part

SECTION 2609L. 111.70 (1) (nc) 1. d. of the statutes is created to read:

111.70 **(1)** (nc) 1. d. A proposal to maintain all conditions of employment as the conditions existed on the 90th day prior to the expiration of the previous collective bargaining agreement between the parties or the 90th day prior to commencement of negotiations if there is no previous collective bargaining agreement between the parties.

SECTION 2609m. 111.70 (1) (nc) 1. e. of the statutes is created to read:

111.70 **(1)** (nc) 1. e. A proposal to maintain any provision relating to a subject of collective bargaining on which the municipal employer was not required to bargain that existed in the previous collective bargaining agreement between the parties or that existed on the 90th day prior to the expiration of the previous collective bargaining agreement between the parties.

SECTION 2609p. 111.70 (4) (cm) 5s. of the statutes is amended to read:

111.70 **(4)** (cm) 5s. 'Issues subject to arbitration.' In a collective bargaining unit consisting of school district professional employees, the municipal employer or the labor organization may petition the commission to determine whether the municipal employer has submitted a timely qualified economic offer. The commission shall appoint an investigator for that purpose. If the investigator, using the methodology prescribed under subd. 8t., finds that the municipal employer has submitted a timely qualified economic offer, the investigator shall determine whether a deadlock exists between the parties with respect to all economic issues. If the municipal employer submits a timely qualified economic offer applicable to any period beginning on or after July 1, 1993, no economic issues are subject to interest arbitration under subd. 6. for that period, except that only the impact of contracting out or subcontracting work that would otherwise be performed by municipal employees in the collective bargaining unit is subject to interest arbitration under subd. 6. In such a collective bargaining unit, economic issues concerning the wages, hours or conditions of employment of the school district professional employees in the unit for any period prior to July 1, 1993, are subject to interest arbitration under subd. 6. for that period. In such a collective bargaining unit, noneconomic issues applicable to any period on or after July 1, 1993, are subject to interest arbitration after the parties have reached agreement and stipulate to agreement on all economic issues concerning the wages, hours or conditions of employment of the school district professional employees in the unit for that period. In such a collective bargaining unit, if the commission's investigator finds that the municipal employer has submitted a timely qualified economic offer and that a deadlock exists between the parties with respect to all economic issues, the municipal employer may implement the qualified economic offer. On the 90th day prior to expiration of the period included within the qualified economic offer, if no agreement exists on that day, the parties are deemed to have stipulated to the inclusion in a new or revised collective bargaining agreement of all provisions of any predecessor collective bargaining agreement concerning economic issues, or of all provisions of any existing collective bargaining agreement concerning economic issues if the parties have reopened negotiations under an existing agreement, as modified by the terms of the qualified economic offer and as otherwise modified by the parties. In such a collective bargaining unit, on and after that 90th day, a municipal employer that refuses to bargain collectively with respect to the terms of that stipulation, applicable to the 90-day period prior to expiration of the period included within the qualified economic offer, does not violate sub. (3) (a) 4. Any such unilateral implementation after August 11, 1993, during the 90-day period prior to expiration of the period included within a qualified economic offer, operates as a full, final and complete settlement of all economic issues between the parties for

Vetoed In Part

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the period included within the qualified economic offer. The failure of a labor organization to recognize the validity of such a lawful qualified economic offer does not affect the obligation of the municipal employer to submit economic issues to arbitration under subd. 6. If the investigator determines that the municipal employer has not submitted a timely qualified economic offer, either the municipal employer or the labor organization may petition for arbitration under subd. 6. to resolve any dispute relating to economic issues.

SECTION 2609L. 111.70 (4) (cm) 8t. of the statutes is created to read:

111.70 **(4)** (cm) 8t. 'Methodology for determining qualified economic offers.' The commission shall prescribe by rule a methodology to be used in determining whether a collective bargaining proposal submitted by a municipal employer to a labor organization constitutes a qualified economic offer and whether such an offer is timely.

SECTION 2610. 111.70 (4) (jm) 4. k. of the statutes is created to read:

111.70 **(4)** (jm) 4. k. Establish a system for conducting interrogations of members of the police department that is limited to the hours between 7 a.m. and 5 p.m. on working days, as defined in s. 227.01 (14), if the interrogations could lead to disciplinary action, demotion, or dismissal, but one that does not apply if the interrogation is part of a criminal investigation.

SECTION 2615ag. 111.81 (7) (f) of the statutes is created to read:

111.81 **(7)** (f) Instructional staff employed by the board of regents of the University of Wisconsin System who provide services for a charter school established by contract under s. 118.40 (2r) (cm).

SECTION 2615b. 111.81 (9m) of the statutes is created to read:

111.81 **(9m)** "Instructional staff" has the meaning given in rules promulgated by the department of public instruction under s. 121.02 (1) (a) 2.

SECTION 2615bm. 111.815 (1) of the statutes is amended to read:

111.815 **(1)** In the furtherance of this subchapter, the state shall be considered as a single employer and employment relations policies and practices throughout the state service shall be as consistent as practicable. The department shall negotiate and administer collective bargaining agreements. To coordinate the employer position in the negotiation of agreements, the department shall maintain close liaison with the legislature relative to the negotiation of agreements and the fiscal ramifications thereof. Except with respect to the collective bargaining units specified in s. 111.825 (1m) and (2) (f), the department is responsible for the employer functions of the executive branch under this subchapter, and shall coordinate its collective bargaining activities with operating state agencies on matters of agency concern. The legislative branch shall act upon those portions of tentative agreements negotiated by the department which require legislative action. With respect to the collective bargaining units specified in s. 111.825 (1m), the University of Wisconsin Hospitals and Clinics Board is responsible for the employer functions under this subchapter. With respect to the collective bargaining unit specified in s. 111.825 (2) (f), the governing board of the charter school established by contract under s. 118.40 (2r) (cm) 1. is responsible for the employer functions under this subchapter.

SECTION 2615h. 111.815 (2) of the statutes is amended to read:

111.815 **(2)** In the furtherance of the policy under s. 111.80 (4), the secretary of the department shall establish a collective bargaining capability within the department outside of the division of merit recruitment and selection and shall, together with the appointing authorities or their representatives, represent the state in its responsibility as an employer under this subchapter except with respect to negotiations in the collective bargaining units specified in s. 111.825 (1m) and (2) (f). The secretary of the department shall establish and maintain, wherever practicable, consistent employment relations policies and practices throughout the state service.

SECTION 2615j. 111.825 (2) (f) of the statutes is created to read:

111.825 **(2)** (f) Instructional staff employed by the board of regents of the University of Wisconsin System who provide services for a charter school established by contract under s. 118.40 (2r) (cm).

SECTION 2615L. 111.84 (2) (c) of the statutes is amended to read:

111.84 **(2)** (c) To refuse to bargain collectively on matters set forth in s. 111.91 (1) with the duly authorized officer or agent of the employer which is the recognized or certified exclusive collective bargaining representative of employees specified in s. 111.81 (7) (a) in an appropriate collective bargaining unit or with the certified exclusive collective bargaining representative of employees specified in s. 111.81 (7) (b) ~~or (c)~~ to (f) in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

SECTION 2615n. 111.91 (4) of the statutes is amended to read:

111.91 **(4)** The secretary of the department, in connection with the development of tentative collective bargaining agreements to be submitted under s. 111.92 (1) (a), shall endeavor to obtain tentative agreements with each recognized or certified labor organization representing employees or supervisors of employees specified in s. 111.81 (7) (a) and with each certified labor organization representing employees specified in s. 111.81 (7) (b) ~~or (c)~~ to (e) which do not contain any provision for the

The department shall award the grants to eligible recipients who qualify for the grants in the order in which the grant applications are received by the department.

SECTION 3207p. 281.73 of the statutes is created to read:

281.73 Wastewater and drinking water grant. The department of natural resources shall provide a grant from the appropriation under s. 20.370 (6) (bk) to the Town of Swiss, Burnett County, and the St. Croix Band of Chippewa for design, engineering, and construction of wastewater and drinking water treatment facilities.

Vetoed In Part

SECTION 3207v. 281.74 of the statutes is created to read:

281.74 Land spreading reduction pilot program. If the Elcho Sanitary District charges not more than $30 per thousand gallons to accept septic tank waste for treatment and not more than $6 per thousand gallons to accept holding tank waste for treatment, the department shall provide the funds available under s. 20.370 (6) (dc) to the Elcho Sanitary District.

SECTION 3208. 281.75 (4) (b) 3. of the statutes is amended to read:

281.75 **(4)** (b) 3. An authority created under ch. 231, 233 ~~or~~, 234, or 237.

SECTION 3211. 283.33 (1) (b) of the statutes is amended to read:

283.33 **(1)** (b) A discharge of storm water from a municipal separate storm sewer system serving an incorporated area with a population of 100,000 or more, as determined by the 1990 federal census.

SECTION 3212. 283.33 (1) (c) of the statutes is created to read:

283.33 **(1)** (c) A discharge of storm water from a municipal separate storm sewer system serving an area located in an urbanized area, as determined by the U.S. bureau of the census based on the latest decennial federal census.

SECTION 3213. 283.33 (1) (cg) of the statutes is created to read:

283.33 **(1)** (cg) A discharge of storm water from a municipal separate storm sewer system serving an area with a population of 10,000 or more and a population density of 1,000 or more per square mile, if the system is designated by the department to be regulated under this section based on an evaluation of whether the storm water discharge results in, or has the potential to result in, water quality standards being exceeded, including impairment of designated uses, or in other significant water quality impacts, including habitat and biological impacts.

SECTION 3214. 283.33 (1) (cr) of the statutes is created to read:

283.33 **(1)** (cr) A discharge of storm water from a municipal separate storm sewer system that is designated by the department to be regulated under this section because the system contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated under this section.

SECTION 3215. 283.33 (1) (d) of the statutes is amended to read:

283.33 **(1)** (d) A discharge of storm water from a facility or activity, other than a facility or activity under ~~par.~~ pars. (a) ~~or (b)~~ to (cr), if the department determines that the discharge either contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the state.

SECTION 3216. 283.33 (4) (a) (intro.) of the statutes is amended to read:

283.33 **(4)** (a) (intro.) In addition to obtaining a permit under this section, the owner or operator of an industrial activity described in sub. (1) (a) that discharges storm water through a municipal separate storm sewer system described in sub. (1) (b) to (cr) shall submit the following information to the owner or operator of the municipal separate storm sewer system:

SECTION 3217. 283.33 (8) of the statutes is amended to read:

283.33 **(8)** RULE MAKING. The department shall promulgate rules ~~containing criteria for identifying storm water discharges for which permits are required under sub. (1)~~ for the administration of this section. The department may not require a permit under this section for diffused surface drainage or agricultural storm water discharges.

SECTION 3218. 283.84 (1) (c) of the statutes is amended to read:

283.84 **(1)** (c) Reaches an agreement with the department or a local governmental unit, as defined in s. ~~16.97~~ 22.01 (7), under which the person pays money to the department or local governmental unit and the department or local governmental unit uses the money to reduce water pollution in the project area.

SECTION 3219. 283.89 (2m) of the statutes is amended to read:

283.89 **(2m)** If the department finds a violation of s. 283.33 (1) to (8) for which a person is subject to a forfeiture under s. 283.91 (2), the department ~~shall~~ may issue a citation and, if the department does issue a citation, the procedures in ss. 23.50 to 23.99 apply.

Vetoed In Part

SECTION 3219L. 285.30 (5) (c) of the statutes is amended to read:

285.30 **(5)** (c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g) ~~or~~, (h), or (j).

SECTION 3219v. 285.30 (5) (j) of the statutes is created to read:

285.30 **(5)** (j) A low-speed vehicle, as defined in s. 340.01 (27m).

SECTION 3220. 285.59 (1) (b) of the statutes is amended to read:

Date of enactment: **April 8, 2004**
2003 Senate Bill 436 Date of publication*: **April 22, 2004**

2003 WISCONSIN ACT 220

AN ACT *to amend* 20.395 (5) (hq), 110.20 (6) (a) 1. and 110.20 (6) (a) 3.; and *to create* 110.215 of the statutes; **relating to:** motor vehicle emission inspections and creating an equipment grant program, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, providing an exemption from rule–making procedures, granting rule–making authority, and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION **1g.** 20.395 (5) (hq) of the statutes is amended to read:

20.395 **(5)** (hq) *Motor vehicle emission inspection and maintenance program; contractor costs and equipment grants; state funds.* The amounts in the schedule to provide for contracts for the operation of inspection stations under s. 110.20 and for the motor vehicle emission control equipment grant program under s. 110.215.

SECTION **1m.** 110.20 (6) (a) 1. of the statutes is amended to read:

110.20 **(6)** (a) 1. For a nonexempt vehicle required to be registered on an annual or other periodic basis in this state, within the period of time specified by the department under sub. (9) (d) prior to renewal of registration in the ~~2nd~~ 4th year after the nonexempt vehicle's model year and every 2 years thereafter, except as provided in sub. (9) (j).

SECTION **2.** 110.20 (6) (a) 3. of the statutes is amended to read:

110.20 **(6)** (a) 3. For a nonexempt vehicle that is registered under s. 341.26 (2m), owned by the United States or subject to one–time registration, at any time during the ~~2nd~~ 4th year following the nonexempt vehicle's model year and every 2 years thereafter.

SECTION **2m.** 110.215 of the statutes is created to read:

110.215 Motor vehicle emission control equipment grant program. From the appropriation under s. 20.395 (5) (hq), the department shall, in consultation with the department of natural resources, develop and administer a program to provide grants for the purchase and installation of oxidation catalyst mufflers on school buses customarily kept in counties identified in s. 110.20 (5). The department shall adopt rules to implement and administer this section, including procedures, standards, and criteria for awarding and distributing the grants.

SECTION **2r. Nonstatutory provisions.**

(1) The department of transportation shall submit in proposed form the rules required under section 110.215 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this subsection.

(2) Using the emergency rules procedure under section 227.24 of the statutes, the department of transportation shall promulgate the rules required under section 110.215 of the statutes, as created by this act, for purposes

* Section 991.11, WISCONSIN STATUTES 2001–02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

of implementing this act, for the period before the effective date of the rules submitted under subsection (1). The department shall promulgate these emergency rules no later than the first day of the 4th month beginning after the effective date of this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until June 30, 2005, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 3m. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 20.395 (5) (hq) and 110.215 of the statutes takes effect on the first day of the 4th month beginning after publication.

period, the seller shall ~~return~~ submit to the department any part of a refund or taxes that the seller does not ~~return~~ submit to a buyer or to the department along with a penalty of 25% of the amount not ~~returned or~~ submitted or, in the case of fraud, a penalty equal to the amount not ~~returned in the case of fraud~~ submitted. A person who collects amounts as taxes erroneously from buyers for a real property construction activity or nontaxable service may reduce the taxes and interest that he or she is required to submit to the buyer or to the department under this subsection for that activity or service by the amount of tax and interest subsequently due and paid on the sale of or the storage, use, or other consumption of tangible personal property that is used by the person in that activity or service and transferred to the buyer.

SECTION 27. 77.59 (5) of the statutes is amended to read:

77.59 **(5)** The department may offset the amount of any refund for a period, together with interest on the refund, against deficiencies for another period, and against penalties and interest on the deficiencies, or against any amount of whatever kind, due and owing on the books of the department from the person ~~claiming~~ who is entitled to the refund. If the refund is to be paid to a buyer, the department may also set off amounts in the manner in which it sets off income tax and franchise tax refunds under s. 71.93 and may set off amounts for child support or maintenance or both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and (7).

SECTION 28. 77.61 (14) of the statutes is amended to read:

77.61 **(14)** Documents and payments required or permitted under this subchapter that are mailed are timely furnished, filed or made if they are mailed in a properly addressed envelope with the postage duly prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight of the due date and if the document or payment is received by the department, or at the destination that the department prescribes, within 5 days after the prescribed date. Documents and payments that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department designates. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

SECTION 29. 78.22 (4) of the statutes is amended to read:

78.22 **(4)** LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor tax return when due shall pay a late filing fee of $10. A return that is mailed is filed in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly prepaid and the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due and the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

SECTION 30. 78.39 (5d) of the statutes is created to read:

78.39 **(5d)** "Pay" has the meaning given in s. 78.005 (13b).

SECTION 31. 78.39 (5m) of the statutes is created to read:

78.39 **(5m)** "Sign" has the meaning given in s. 78.005 (13r).

SECTION 32. 110.20 (8) (e) of the statutes is amended to read:

110.20 **(8)** (e) The contractor shall collect, maintain and report data as the department requires. The department shall reserve the right to enter and inspect test station premises, equipment and records at all reasonable times in the discharge of its administrative duties. ~~The department of revenue shall audit the records of the contractor annually and shall provide for the publication of the results of audits conducted under this paragraph in the official state newspaper.~~

SECTION 33. 139.03 (2x) (d) of the statutes is amended to read:

139.03 **(2x)** (d) *Late filing fee.* Any person who fails to file a floor tax return when due shall pay a late filing fee of $10. A return that is mailed shall be considered filed in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly prepaid, if the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this paragraph, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

SECTION 34. 139.05 (2a) of the statutes is amended to read:

139.05 **(2a)** The payments and returns under subs. (1) and (2) that are mailed are furnished, filed or made on time, and payments therein referred to are timely, if mailed in a properly addressed envelope, with ~~first class~~ postage duly prepaid, which envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue

promulgate rules governing background investigations, and confidentiality of information obtained, under this subsection.

SECTION 2653. 110.20 (7) of the statutes is amended to read:

110.20 **(7)** VOLUNTARY INSPECTIONS. The inspection and maintenance program shall require inspection of any nonexempt vehicle which a person presents for inspection at an inspection station or at any other location where, as established under sub. (8) (bm), the vehicle may be inspected.

SECTION 2654. 110.20 (8) (title) of the statutes is amended to read:

110.20 **(8)** (title) CONTRACTORS AND OTHER INSPECTION METHODS.

SECTION 2655. 110.20 (8) of the statutes is renumbered 110.20 (8) (am), and 110.20 (8) (am) 1., as renumbered, is amended to read:

110.20 **(8)** (am) 1. The emissions test and equipment inspection of nonexempt vehicles ~~shall~~ may be performed by persons under contract with the department. ~~The~~ Each such contract shall require the contractor to operate inspection stations for a minimum of 3 years and shall provide for equitable compensation to the contractor if the operation of an inspection and maintenance program within any county is terminated within 3 years after the inspection and maintenance program in the county is begun. No officer, director or employee of the contractor may be an employee of the department or a person engaged in the business of selling, maintaining or repairing motor vehicles or of selling motor vehicle replacement or repair parts. The department shall require the contractor to operate a sufficient number of inspection stations, permanent or mobile, to ensure public convenience in those counties identified under sub. (5).

SECTION 2656. 110.20 (8) (am) 1m. of the statutes is created to read:

110.20 **(8)** (am) 1m. Each contract under subd. 1. may authorize or require the contractor to install and operate self–service inspection stations and may allow the use of different methods for emissions testing and equipment inspection, consistent with methods established under par. (bm), than those used at inspection stations that are not self–service.

SECTION 2657. 110.20 (8) (bm) of the statutes is created to read:

110.20 **(8)** (bm) The department may establish methods for emissions testing and equipment inspection of nonexempt vehicles in addition to testing and inspection by contractors. These methods may include the installation and operation by the department of self–service inspection stations and the utilization of any technology related to emissions or data transmission with which motor vehicles may be equipped. The department may establish methods for emissions testing and equipment inspection specifically applicable to self–service inspection stations, which methods shall apply equally to self–service inspection stations operated by contractors under par. (am) 1m. and self–service inspection stations operated by the department under this paragraph.

SECTION 2658. 110.20 (9) (k) of the statutes is created to read:

110.20 **(9)** (k) Prescribe a procedure for any method for emissions testing and equipment inspection established under sub. (8) (bm).

SECTION 2659. 110.20 (10m) of the statutes is amended to read:

110.20 **(10m)** REINSPECTION. The owner of a nonexempt vehicle inspected under this section is entitled, if the inspection determines that any applicable emission limitation is exceeded, to one reinspection of the same vehicle at any inspection station within this state operated by a contractor under sub. (8) (am), or at any other location where, as established under sub. (8) (bm), the vehicle was initially inspected, if the reinspection takes place within 30 days after the initial inspection or the owner presents satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection.

SECTION 2660. 110.20 (11) of the statutes is amended to read:

110.20 **(11)** INSPECTION TESTS; RESULTS. (a) ~~The~~ A contractor shall perform the tests required under the federal act, and any testing and inspection method established under sub. (8) (bm) shall include the tests required under the federal act. The tests shall include one of the approved short tests required by the federal act to determine compliance with applicable emission limitations for carbon monoxide, hydrocarbons and oxides of nitrogen. The department may require ~~the contractor~~ contractors to provide information on the fuel efficiency of the motor vehicle.

(b) The department shall require ~~the~~ each contractor to furnish the results of the emissions inspection in writing to the person presenting the vehicle for inspection before he or she departs from the inspection station. For emissions inspections not conducted by a contractor, the department shall require any testing and inspection method established under sub. (8) (bm) to include the contemporaneous furnishing of the results of the emissions inspection in writing to the person having the vehicle inspected. If the inspection shows that the vehicle does not comply with one or more applicable emissions limitations, the results shall include, to the extent possible, a description of the noncompliance and the adjustments or repairs likely to be needed for compliance.

SECTION 2661. 110.21 of the statutes is amended to read:

110.21 Education and training related to motor vehicle emissions. The department and its contractors under s. 110.20 (8) (am) shall conduct a program of pub-

lic education related to the motor vehicle emission and equipment inspection and maintenance program established under s. 110.20 (6). The program under s. 110.20 (6) may include a pilot project of motor vehicle emissions inspections for those owners who elect to present their motor vehicles for inspection.

SECTION 2665. 111.70 (1) (j) of the statutes is amended to read:

111.70 **(1)** (j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, ~~family~~ long-term care district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state, that engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of the person's authority, express or implied, but specifically does not include a local cultural arts district created under subch. V of ch. 229.

SECTION 2666e. 111.70 (4) (c) 2. of the statutes is renumbered 111.70 (4) (c) 2. a.

SECTION 2666f. 111.70 (4) (c) 2. b. of the statutes is created to read:

Vetoed In Part

111.70 **(4)** (c) 2. b. A collective bargaining agreement ~~entered into between fire fighting personnel and a municipal employer~~ may, notwithstanding s. 62.13 (5), contain dispute resolution procedures, including arbitration, that address the suspension, reduction in rank, suspension and reduction in rank, or removal of such personnel. If the procedures include arbitration, the arbitration hearing shall be public and the decision of the arbitrator shall be issued within 180 days of the conclusion of the hearing.

SECTION 2679g. 111.70 (4) (m) (title) of the statutes is amended to read:

111.70 **(4)** (m) (title) *Prohibited subjects of bargaining; school district municipal employers.*

SECTION 2679i. 111.70 (4) (mc) of the statutes is created to read:

Vetoed In Part

111.70 **(4)** (mc) *Prohibited subjects of bargaining ~~fire fighting personnel~~.* ~~In a bargaining unit containing fire fighting personnel,~~ the municipal employer is prohibited from bargaining collectively with respect to:

1. The prohibition of access to arbitration as an alternative to the procedures in s. 62.13 (5).

2. The reduction of standards in s. 62.13 (5) (em) 1. to 7.

3. The payment of compensation in a way that is inconsistent with s. 62.13 (5) (h).

SECTION 2665g. 114.09 (title) of the statutes is amended to read:

114.09 (title) ~~**Reckless**~~ **Intoxicated and reckless flying; penalty.**

SECTION 2665h. 114.09 (1) (a) of the statutes is renumbered 114.09 (1) (a) (intro.) and amended to read:

114.09 **(1)** (a) (intro.) In this subsection~~, "drug"~~:

1. "Drug" has the meaning specified in s. 450.01 (10).

SECTION 2665j. 114.09 (1) (a) 2. of the statutes is created to read:

114.09 **(1)** (a) 2. "Prohibited alcohol concentration" means an alcohol concentration of 0.04 or more if there is no passenger in the aircraft, more than 0.00 if there is a passenger in the aircraft.

SECTION 2665L. 114.09 (1) (b) of the statutes is renumbered 114.09 (1) (b) 1. and amended to read:

114.09 **(1)** (b) 1. No person may operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor or controlled substances or controlled substance analogs under ch. 961 or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating an aircraft, or under the combined influence of intoxicating liquor and any other drug to a degree which renders him or her incapable of safely operating an aircraft~~, nor~~.

2. No person may operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In determining whether the operation was careless or reckless the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

3. The court shall make a written report of all convictions, including bail or appearance money forfeitures, obtained under this section to the department, which shall send the report to the proper federal agency.

SECTION 2665n. 114.09 (1) (b) 1m. of the statutes is created to read:

114.09 **(1)** (b) 1m. No person may operate an aircraft in the air or on the ground if the person has a prohibited alcohol concentration.

SECTION 2665r. 114.09 (2) of the statutes is repealed and recreated to read:

114.09 **(2)** (a) Any person violating sub. (1) (b) 1. or 1m.:

1. Shall forfeit not less than $150 nor more than $300, except as provided in subs. 6. and 7.

2. Except as provided in subd. 6., shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

3. Except as provided in subds. 6. and 7., shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 3, except

State of Wisconsin

2009 Senate Bill 505

Date of enactment: **May 5, 2010**
Date of publication*: **May 19, 2010**

2009 WISCONSIN ACT 228

AN ACT *to amend* 110.20 (5) (a) and (b), 110.20 (8) (am) 1., 110.20 (8) (bm), 110.20 (9) (e) and 110.20 (12); and *to create* 110.20 (8) (am) 7. and 8., 110.20 (8) (c) and 110.20 (9) (L), (m) and (n) of the statutes; **relating to:** motor vehicle emission inspections and requiring the exercise of rule–making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION **1.** 110.20 (5) (a) and (b) of the statutes are amended to read:

110.20 **(5)** (a) Any county identified in a certification under s. 285.30 (3). The department shall terminate the program in the county ~~at the end of the contractual period in effect~~ when the county is withdrawn under s. 285.30 (4). If the program is being operated under contract, termination shall occur at the end of the contractual period in effect.

(b) Any county whose board of supervisors has adopted a resolution requesting the department to establish an inspection and maintenance program in the county for the purpose of improving ambient air quality beyond the standards mandated by section 7409 of the federal act. The department shall terminate the program in the county ~~at the end of the contractual period in effect~~ when the county board adopts a resolution requesting termination of the program. If the program is being operated under contract, termination shall occur at the end of the contractual period in effect.

SECTION **2.** 110.20 (8) (am) 1. of the statutes is amended to read:

110.20 **(8)** (am) 1. The emissions test and equipment inspection of nonexempt vehicles may be performed by persons under contract with the department. Each such contract shall require the contractor to operate inspection stations, which may be permanent or mobile, for a minimum of 3 years and shall provide for equitable compensation to the contractor if the operation of an inspection and maintenance program within any county is terminated within 3 years after the inspection and maintenance program in the county is begun. No officer, director or employee of the contractor may be an employee of the department ~~or a~~. The department may contract with any person, including any person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts. The department shall require the contractor to operate a sufficient number of inspection stations, permanent or mobile, to ensure public convenience in those counties identified under sub. (5).

SECTION **3.** 110.20 (8) (am) 7. and 8. of the statutes are created to read:

110.20 **(8)** (am) 7. Each contract under subd. 1. may authorize the contractor to enter into subcontracts for the performance of any of the contractor's functions or duties under the contract. In performing any such function or duty, a subcontractor shall comply with all requirements applicable to the contractor. With the department's approval, the contractor may subcontract with any person engaged in the business of selling, maintaining, or repair-

* Section 991.11, WISCONSIN STATUTES 2007–08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ing motor vehicles or of selling motor vehicle replacement or repair parts.

8. Each contract under subd. 1. shall require that, if an emissions inspection is performed by a contractor or subcontractor engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts and the inspection shows that the vehicle does not comply with applicable emission limitations, the contractor or subcontractor shall advise the vehicle owner as specified in sub. (12).

SECTION 4. 110.20 (8) (bm) of the statutes is amended to read:

110.20 **(8)** (bm) The emissions test and equipment inspection of nonexempt vehicles may be performed by the department or by persons who are not under contract with the department but who are otherwise authorized by the department to perform such testing and inspection. The department may establish methods for emissions testing and equipment inspection by the department or other authorized persons of nonexempt vehicles, in addition to testing and inspection by contractors. These methods may include the installation and operation by the department or other authorized persons of self–service inspection stations and the utilization of any technology related to emissions or data transmission with which motor vehicles may be equipped, including reading and reporting diagnostic codes stored in any on–board diagnostic system capable of monitoring all emission–related engine systems or components. The department may establish methods for emissions testing and equipment inspection specifically applicable to self–service inspection stations, which methods shall apply equally to self–service inspection stations operated by contractors under par. (am) 1m. and self–service inspection stations operated ~~by the department~~ under this paragraph.

SECTION 5. 110.20 (8) (c) of the statutes is created to read:

110.20 **(8)** (c) 1. Notwithstanding subs. (5), (6), and (9) (d), the department of transportation may, with concurrence of the department of natural resources, grant a temporary exemption for nonexempt vehicles during any period in which the department of transportation is unable to operate an inspection and maintenance program. An exemption granted under this subdivision is valid until the next required inspection of the vehicle required under sub. (6), or until the time given by the department of transportation to complete inspection of the vehicle, whichever occurs first. Notwithstanding subs. (7) and (10m), the department of transportation may deny requests for inspection during any period in which exemptions are granted under this subdivision.

2. For purposes of ss. 341.04 (1), 341.09 (2m) (a) 1. b. and 2. and (9), and 341.65 (2) (e) 2m., an inspection under this section is not required during any period in which a temporary exemption is granted under subd. 1. For purposes of ss. 341.09 (5), 341.10 (10) (intro.), 341.26 (2m) (am), and 341.63 (1) (e), a vehicle does not require inspection under sub. (6) during any period in which a temporary exemption is granted under subd. 1.

SECTION 6. 110.20 (9) (e) of the statutes is amended to read:

110.20 **(9)** (e) Prescribe a procedure for conducting all federally required performance audits of inspection and maintenance program operations and personnel and all enforcement against contractors, and other persons authorized by the department to perform testing and inspection, required by 40 CFR 51.364.

SECTION 7. 110.20 (9) (L), (m) and (n) of the statutes are created to read:

110.20 **(9)** (L) Prescribe procedures for authorizing persons other than contractors, subcontractors of contractors, or the department to perform emission testing and equipment inspection as provided under sub. (8) (bm).

(m) Require each person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts, in a county identified in sub. (5), that performs emissions inspections to collect and periodically report to the department information related to vehicle repairs and reinspections after the vehicle has failed an inspection test, including the repairs performed, any technician recommended repairs not performed at the owner's request, the name and address of the facility that performed the repairs, the name of the individual who performed the repairs, and, if applicable, the identification number of the recognized repair facility or recognized automotive emission repair technician, or both, that performed the repairs. The reports shall also include compiled information containing the number of vehicles submitted for reinspection and percentages indicating the number of vehicles that passed, failed, and received waivers after repair following a failed inspection test. The department shall make information gathered from these reports available to the public.

(n) Prescribe procedures for granting temporary exemptions under sub. (8) (c) 1.

SECTION 8. 110.20 (12) of the statutes is amended to read:

110.20 **(12)** REPAIRS. Repairs or adjustments necessary to bring a vehicle into compliance with applicable emissions limitations are the responsibility of the vehicle owner and may be made by the owner or any person selected by the owner. If the emissions inspection is performed in a county identified in sub. (5) by a person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts and the vehicle fails the inspection test, then after the failed test the person shall advise the vehicle owner that the owner is not required to have any repair or adjustment necessary to bring the vehicle into compliance made by, or to purchase any necessary ser-

CHAPTER 285

AIR POLLUTION

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SUBCHAPTER I

DEFINITIONS

285.01 Definitions. In this chapter, unless the context requires otherwise:

(1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(2) "Air contaminant source", or "source" if not otherwise modified, means any facility, building, structure, installation, equipment, vehicle or action that emits or may emit an air contaminant directly, indirectly or in combination with another facility, building, structure, installation, equipment, vehicle or action.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(4) "Air pollution control permit" means any permit required or allowed under s. 285.60.

(5) "Allocation of the available air resource" means either:

(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant in existence at the time the rule promulgated under s. 285.25 becomes effective; or

(b) The apportionment among air contaminant sources of the difference between an ambient air increment and the baseline concentration if a baseline concentration is established.

(7) "Allowable emission" means the emission rate calculated using the maximum rated capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.

(8) "Ambient air increment" means the maximum allowable concentration of an air contaminant above the base line concentration.

(9) "Ambient air quality standard" means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.

(9m) "Architectural coating" means a coating applied to a stationary structure, including a parking lot, and its appurtenances or to a mobile home.

(10) "Attainment area" means an area which is not a nonattainment area.

(11) "Base line concentration" means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under 42 USC 7475 or the first application for an air pollution control permit under s. 285.60 for a major source located in an attainment

area, whichever occurs first, less any contribution from stationary sources identified in 42 USC 7479 (4).

(12) "Best available control technology" means an emission limitation for an air contaminant based on the maximum degree of reduction achievable as specified by the department on an individual case–by–case basis taking into account energy, economic and environmental impacts and other costs related to the source.

(13) "Department" means the department of natural resources.

(15) "Emission" means a release of air contaminants into the atmosphere.

(16) "Emission limitation" or "emission standard" means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(17) "Emission reduction option" means:

(a) An offsetting of greater emissions from a stationary source against lower emissions from the same or another stationary source.

(b) A reduction in emissions from a stationary source which is reserved as a credit against future emissions from the same or another stationary source.

(c) Other arrangements for emission reduction, trade–off, credit or offset permitted by rule by the department.

(17m) "Entire facility" means all stationary sources that are under the control of one person or under the control of persons who are under common control and that are located on contiguous properties.

(18) "Existing source" means a stationary source that is not a new source or a modified source.

(19) "Federal clean air act" means the federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal environmental protection agency under that act.

(20) "Growth accommodation" means the amount of volatile organic compounds specified in s. 285.39 (1) (a).

(21) "Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

(23) "Lowest achievable emission rate" means the rate of emission which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the air pollution regulatory program of any state for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by the class or category of source.

(24) "Major source" means a stationary source that is capable of emitting an air contaminant in an amount in excess of an amount specified by the department by rule under s. 285.11 (16).

(25) "Minor source" means a stationary source that is not a major source.

(26) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted, subject to rules promulgated under s. 285.11 (17).

(27) "Modified source" means a stationary source on which modification commences after November 15, 1992.

(28) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(29) "New source" means a stationary source on which construction, reconstruction or replacement commences after November 15, 1992.

(30) "Nonattainment area" means an area identified by the department in a document prepared under s. 285.23 (2) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard.

(33) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(34) "Reasonably available control technology" means that control technology which provides the lowest emission rate that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility.

(35) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(36) "Regulated pollutant" means any of the following, except for carbon monoxide:

(a) A volatile organic compound.

(b) An oxide of nitrogen.

(c) A pollutant regulated under 42 USC 7411 or 7412.

(d) A pollutant for which a national primary ambient air quality standard has been promulgated under 42 USC 7409.

(37) "Replenishment implementation period" means the period between August 1, 1987, and December 31 of the year by which the department requires full compliance with rules required to be promulgated under s. 285.39 (3).

(38) "Secretary" means the secretary of natural resources.

(39) "Sewage" means the water–carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (12), with such surface water or groundwater as may be present.

(40) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by–product material, as defined in s. 254.31 (1).

(41) "Stationary source" means any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.

(42) "Volatile organic compound" means an organic compound which participates in an atmospheric photochemical reaction, as determined by the department by rule.

(43) "Volatile organic compound accommodation area" means Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha counties and any other county specified by the department by rule in response to a finding by the federal envi-

ronmental protection agency that the county is to be included in the volatile organic compound accommodation area.

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302; 1995 a. 227 ss. 438 to 453, 989; Stats. 1995 s. 285.01; 1997 a. 35; 1999 a. 9; 2005 a. 25.

The DNR's interpretation and application of sub. (12) and related administrative code provisions, as discussed in this case, was entitled to great weight deference. Sierra Club v. DNR, 2010 WI App 89, 327 Wis. 2d 706, 787 N.W.2d 855, 09–0648.

The social and economic roots of judge–made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

Cleaning the Air: Wisconsin's Air Quality Laws. Burke. Wis. Law. Aug. 1992.

SUBCHAPTER II

GENERAL POWERS AND DUTIES

285.11 Air pollution control; department duties. The department shall:

(1) Promulgate rules implementing and consistent with this chapter and s. 299.15.

(2) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter and s. 299.15.

(3) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance for that purpose.

(4) Collect and disseminate information and conduct educational and training programs relating to the purposes of this chapter and s. 299.15.

(5) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air resources.

(6) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

(a) The measures are part of an interstate ozone control strategy implementation agreement under s. 285.15 signed by the governor of this state and of the state of Illinois.

(b) The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

Cross–reference: See also chs. NR 428 and 432, Wis. adm. code.

(7) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(8) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with this chapter or rules pursuant thereto, or any other provision of law.

(9) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air, consistent with s. 285.27 (2) (b).

(10) Specify the best available control technology on an individual case–by–case basis considering energy, economic and environmental impacts and other costs related to the source.

(11) Coordinate the reporting requirements under ss. 285.65 and 299.15 in order to minimize duplicative reporting requirements.

(12) Prepare an annual report which states the total nitrogen oxide and sulfur dioxide emissions from all stationary sources in this state. This report may be combined with other reports published by the department.

(13) If federal legislation is enacted that establishes sulfur dioxide or nitrogen oxide controls for the purpose of reducing acid deposition, prepare a report, in consultation with the public service commission, this state's electric utilities, industries and environmental groups, recommending ways to coordinate state law with federal law. The department, after holding a public hearing on the report, shall submit the report to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), within 6 months after the enactment of the federal legislation.

(14) Promulgate by rule the actions or events which constitute the reconstruction of a major source.

(15) Promulgate by rule the actions or events which constitute the shutdown of a facility.

(16) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(17) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

(18) Adopt and apply objective performance measurements, for the subunit of the department that administers this chapter, relating to the issuance of permits under subch. VII and to overall performance of the subunit.

History: 1995 a. 227 ss. 455, 989; 1999 a. 9; 2003 a. 118.

Cross–reference: See also NR 400–, Wis. adm. code.

285.13 Air pollution control; department powers. The department may:

(1) Hold hearings relating to any aspect of the administration of this chapter and s. 299.15 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(2) Issue orders to effectuate the purposes of this chapter and s. 299.15 and enforce the same by all appropriate administrative and judicial proceedings.

(3) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(4) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(5) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(6) Examine any records relating to emissions which cause or contribute to air contamination.

(7) Establish by rule, consistent with the federal clean air act, the amount of offsetting emissions reductions required under s. 285.63 (2) (a).

History: 1995 a. 227 ss. 456, 989.

Cross–reference: See also NR 400–, Wis. adm. code.

285.14 State implementation plans. (1) CONTENT. The department may not submit a control measure or strategy that imposes or may result in regulatory requirements to the federal environmental protection agency for inclusion in a state imple-

mentation plan under 42 USC 7410 unless the department has promulgated the control measure or strategy as a rule.

(2) REVIEW BY STANDING COMMITTEES. At least 60 days before the department is required to submit a state implementation plan to the federal environmental protection agency, the department shall prepare, and provide to the standing committees of the legislature with jurisdiction over environmental matters, under s. 13.172 (3) a report that describes the proposed plan and contains all of the supporting documents that the department intends to submit with the plan. The department shall also submit to the legislative reference bureau for publication in the administrative register a notice of availability of the report. If, within 30 days after the department provides the report, the chairperson of a standing committee to which the report was provided submits written comments on the report to the department, the secretary shall respond to the chairperson in writing within 15 days of receipt of the comments. This subsection does not apply to a modification to a state implementation plan relating to an individual source.

History: 2003 a. 118; 2007 a. 20.

285.15 Interstate agreement. After May 14, 1992, the governor may enter into an agreement with the governor of the state of Illinois, that may also include the governors of the states of Indiana and Michigan, that specifies measures for the control of atmospheric ozone that are necessary in order to implement an interstate ozone control strategy to bring an area designated under 42 USC 7407 (d) as an ozone nonattainment area into attainment with the ambient air quality standard for ozone if the area includes portions of this state and the state of Illinois.

History: 1995 a. 227 ss. 458, 989.

Cross-reference: See also s. NR 1.50, Wis. adm. code.

285.17 Classification, reporting and monitoring. (1) (a) The department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) (a) The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months.

(b) Before issuing an operation permit that contains a monitoring requirement relating to the emissions from an air contaminant source, the department shall notify the applicant of the proposed monitoring requirement and give the applicant the opportunity to demonstrate to the administrator of the division of the department that administers this chapter that the proposed monitoring requirement is unreasonable considering, among other factors, monitoring requirements imposed on similar air contaminant sources. If the administrator determines that the monitoring requirement is unreasonable, the department may not impose the monitoring requirement. If the administrator determines that the monitoring requirement is reasonable, the applicant may obtain a review of that determination by the secretary. The secretary may not delegate this function to another person. If the secretary determines that the monitoring requirement is unreasonable, the department may not impose the monitoring requirement.

(3) The department may not post on the Internet any information that is required to be reported to the department under this chapter and that relates to a facility's air emissions, including the nature and duration of specific emissions of an air contaminant source and any results of monitoring the emissions of a contaminant source or the ambient air in the vicinity of a contaminant source, unless the department certifies that the information is accurate on the date on which the information is posted.

History: 1991 a. 302; 1995 a. 227 s. 478; 1999 a. 9; 2003 a. 118.

Cross-reference: See also NR 400–, Wis. adm. code.

285.19 Inspections. Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and s. 299.15 and rules promulgated or permits issued under this chapter or s. 299.15. No person may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1991 a. 302; 1993 a. 491; 1995 a. 227 s. 461; Stats. 1995 s. 285.19.

Cross-reference: See also ch. NR 439, Wis. adm. code.

SUBCHAPTER III

AIR QUALITY STANDARDS, PERFORMANCE STANDARDS; EMISSION LIMITS AND NONATTAINMENT AREAS

285.21 Ambient air quality standards and increments. (1) AMBIENT AIR QUALITY STANDARDS. (a) *Similar to federal standard.* If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4).

(b) *Standard to protect health or welfare.* If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare. The department may not make this finding for an air contaminant unless the finding is supported with written documentation that includes all of the following:

1. A public health risk assessment that characterizes the types of stationary sources in this state that are known to emit the air contaminant and the population groups that are potentially at risk from the emissions.

2. An analysis showing that members of population groups are subjected to levels of the air contaminant that are above recognized environmental health standards or will be subjected to those levels if the department fails to promulgate the proposed ambient air quality standard.

3. An evaluation of options for managing the risks caused by the air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the proposed ambient air quality standard reduces risks in the most cost-effective manner practicable.

4. A comparison of the proposed ambient air quality standard with ambient air quality standards in Illinois, Indiana, Michigan, Minnesota, and Ohio.

(2) AMBIENT AIR INCREMENT. The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (4).

(3) CAUSE OR EXACERBATION OF AMBIENT AIR QUALITY STANDARD OR INCREMENT. The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.

(4) IMPACT OF CHANGE IN FEDERAL STANDARDS. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are modified, the department shall alter the corresponding state standards unless it finds that the modified standards would not provide adequate protection for public health and welfare. The department may not make this finding for an ambient air quality standard unless the finding is supported with the written documentation required under sub. (1) (b) 1. to 4.

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35; 2003 a. 118.

Cross-reference: See also ch. NR 404, Wis. adm. code.

The promulgation of emission standards is discussed. Wisconsin Hospital Association v. Natural Resources Board, 156 Wis. 2d 688, 457 N.W.2d 879 (Ct. App. 1990).

285.23 Identification of nonattainment areas. (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. After February 6, 2004, the department may not identify a county as part of a nonattainment area under the federal clean air act if the concentration of an air contaminant in the atmosphere in that county does not exceed an ambient air quality standard, unless under the federal clean air act the county is required to be designated as part of a nonattainment area.

(2) DOCUMENTS. The department shall issue documents from time to time which define or list specific nonattainment areas or recommend that areas be designated as nonattainment areas under the federal clean air act based upon the procedures and criteria promulgated under sub. (1). Notwithstanding ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(3) REVIEW. The documents issued under sub. (2) may be reviewed under ss. 227.42 and 227.52.

(4) PROCEDURES. (a) For any document issued under sub. (2), the department shall hold a public hearing and follow the procedures in this subsection.

(b) The department shall give notice of the public hearing, and shall take any steps it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed document. The notice shall be given at least 30 days prior to the date set for the hearing. The notice shall include a statement of the time and place at which the hearing is to be held and either a text of the proposed document or a description of how a copy of the document may be obtained from the department at no charge.

(c) The department shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if it appears that the length of the hearing otherwise would be unduly increased by reason of repetition. The department shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he or she has had an opportunity to present them orally.

(d) At the beginning of each hearing the department shall present a summary of the factual information on which the document is based. The department or its duly authorized representative may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines. The department shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(e) The department shall receive written comments on the document for at least 10 days after the close of the hearing. The department may not issue documents under this section earlier than 30 days after the close of the hearing.

(6) REPORT TO STANDING COMMITTEES. Before the department issues documents under sub. (2) and at least 60 days before the governor is required to make a submission on a nonattainment designation under 42 USC 7407 (d) (1) (A), the department shall prepare, and provide to the standing committees of the legislature with jurisdiction over environmental matters under s. 13.172 (3), a report that contains a description of any area proposed to be identified as a nonattainment area and supporting documentation. The department shall also submit to the legislative reference bureau for publication in the administrative register a notice of availability of the report. If, within 30 days after the department submits the report, the chairperson of a standing committee to which the report was provided submits written comments on the report to the department, the secretary shall respond to the chairperson in writing within 15 days of receipt of the comments.

History: 1979 c. 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1989 a. 56; 1995 a. 227 s. 463; Stats. 1995 s. 285.23; 2003 a. 118; 2007 a. 20.

Cross-reference: See also ch. NR 401, Wis. adm. code.

285.25 Air resource allocation. (1) DETERMINATION. The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule procedures and criteria to determine the allocation of the available air resource in an attainment area.

(2) ALLOCATION. The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule air resource allocation standards to allocate the available air resource in attainment areas among sources receiving a construction permit or operation permit or an elective operation permit for an existing source after the effective date of this rule, other air contaminant sources and possible future air contaminant sources. The air resource allocation standards may allow for emission reduction options. The application of air resource allocation standards may not result in a violation of an ambient air quality standard or an ambient air increment.

(3) DOCUMENTS. The department shall maintain records indicating how much of the available air resource has been allocated in attainment areas. The department shall make these records available for public inspection.

History: 1979 c. 221; 1991 a. 302; 1995 a. 227 s. 470; Stats. 1995 s. 285.25.

285.27 Performance and emission standards. (1) STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES. (a) *Similar to federal standard.* If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard, including administrative requirements that are consistent with the federal administrative requirements, but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

(b) *Standard to protect public health or welfare.* If a standard of performance for any air contaminant for new stationary sources is not promulgated under section 111 of the federal clean air act, the department may promulgate an emission standard of performance for new stationary sources if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to meet the applicable lowest achievable emission rate

under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(2) EMISSION STANDARDS FOR HAZARDOUS AIR CONTAMINANTS. (a) *Similar to federal standard.* If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard, including administrative requirements that are consistent with the federal administrative requirements, but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

Cross–reference: See also ch. NR 463, Wis. adm. code.

(b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. The department may not make this finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:

1. A public health risk assessment that characterizes the types of stationary sources in this state that are known to emit the hazardous air contaminant and the population groups that are potentially at risk from the emissions.

2. An analysis showing that members of population groups are subjected to levels of the hazardous air contaminant that are above recognized environmental health standards or will be subjected to those levels if the department fails to promulgate the proposed emission standard for the hazardous air contaminant.

3. An evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen compliance alternative reduces risks in the most cost–effective manner practicable.

4. A comparison of the emission standards for hazardous air contaminants in this state to hazardous air contaminant standards in Illinois, Indiana, Michigan, Minnesota, and Ohio.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case–by–case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(d) *Emissions regulated under federal law.* Emissions limitations promulgated under par. (b) and related control requirements do not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under section 112 of the federal clean air act, including a hazardous air contaminant that is regulated under section 112 of the federal clean air act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant.

(3) LIMITATION ON IMPOSITION OF EMISSION STANDARDS. The department may not impose emission standards on a coal–powered car ferry that was manufactured before 1954 and has operated only on Lake Michigan if the coal–powered car ferry does not burn coal with a higher sulfur content than the coal burned before May 2, 1990.

(4) IMPACT OF CHANGE IN FEDERAL STANDARDS. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department may not make this finding for an emission standard for a hazardous air contaminant unless the finding is supported with the written documentation required under sub. (2) (b) 1. to 4. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

Cross–reference: See also s. NR 462.015, Wis. adm. code.

History: 1995 a. 227 s. 474, 989; 2003 a. 118.

Cross–reference: See also NR 400–, Wis. adm. code.

The promulgation of emission standards under s. 144.375 (5) (b) [now s. 285.27 (2) (b)] is discussed. Wisconsin Hospital Association, v. Natural Resources Board, 156 Wis. 2d 688, 457 N.W.2d 879 (Ct. App. 1990).

285.29 Best available retrofit technology. (1) CASE–BY–CASE SPECIFICATION. If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case–by–case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.

(2) CONSIDERATIONS. In specifying the best available retrofit technology, the department shall consider:

(a) The cost of compliance.

(b) The existing pollution control technology in use at the source.

(c) The remaining useful life of the source.

(d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.

(e) The energy and nonair quality environmental impacts of compliance.

History: 1979 c. 221; 1995 a. 227 s. 469; Stats. 1995 s. 285.29.

SUBCHAPTER IV

VOLATILE ORGANIC COMPOUNDS AND MOBILE SOURCES; EMISSION LIMITS AND STANDARDS

285.30 Motor vehicle emissions limitations; inspections. (1) DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) "Federal act" means the federal clean air act, 42 USC 7401 et seq., and regulations issued by the federal environmental protection agency under that act.

(b) "Motor vehicle" has the meaning designated under s. 340.01 (35).

(2) LIMITATIONS. The department shall adopt rules specifying emissions limitations for all motor vehicles not exempted under sub. (5). The limitations may be different for each size, type and year of vehicle engine affected and may not be more stringent than those required by federal law at the time of the vehicle's manufacture. The limitations shall be adopted and periodically revised upon consideration of the following factors:

(a) The emissions reductions necessary to achieve federally mandated ambient air quality standards by any deadline established by the federal act and to maintain those standards after any deadline established by the federal act.

(b) The emissions levels attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices for each model year, size and type of motor vehicle affected.

(c) The requirements for eligibility for a manufacturer's warranty under section 7541 (b) of the federal act.

(d) The requirements of the federal act.

(3) COUNTIES WHERE INSPECTIONS REQUIRED. If the department finds that air quality within a county will not meet one or more applicable primary or secondary ambient air quality standards by any deadline established by the federal act, or that these standards will not be maintained in the county after any deadline established by the federal act and that inspection of emissions from motor vehicles in any part of the county is required by federal law to

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attain or maintain these standards, the department shall certify this finding to the department of transportation.

(4) TERMINATION. If the department finds that air quality within a county specified in a certification under sub. (3) has attained all applicable ambient air quality standards and that these standards will be maintained in the county or that control of motor vehicle emissions is no longer required by federal law for attainment and maintenance of these standards, the department shall notify the department of transportation that the county is withdrawn from the certification under sub. (3).

(5) EXEMPTIONS. Emissions limitations promulgated under sub. (2) do not apply to the following motor vehicles:

(a) A motor vehicle of a model year of 1995 or earlier.

(b) A motor vehicle of a model year of 2006 or earlier that has a gross vehicle weight rating exceeding 8,500 pounds, as determined by the manufacturer of the vehicle, and a motor vehicle of a model year of 2007 or later that has a gross vehicle weight rating exceeding 14,000 pounds, as determined by the manufacturer of the vehicle.

(c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g), (h), (j), or (k).

(d) A motor vehicle of a model year of 2006 or earlier that is powered by diesel fuel.

(e) A new motor vehicle not previously registered in any state.

(f) A motor vehicle for which inspection, in the judgment of the department, is not a cost effective method for attaining and maintaining air quality.

(g) A moped as defined in s. 340.01 (29m).

(h) A motorcycle as defined in s. 340.01 (32).

(i) A farm truck as defined in s. 340.01 (18) (a).

(j) An off–road utility vehicle as defined in s. 340.01 (38m).

(k) A low–speed vehicle, as defined in s. 340.01 (27h).

(L) A lightweight utility vehicle as defined in s. 346.94 (21) (a) 2.

(6) TAMPERING WITH POLLUTION CONTROL SYSTEM OR MECHANISM. (a) *Definitions.* As used in this subsection:

1. "Air pollution control equipment" means any equipment or feature which constitutes an operational element of the air pollution control system or mechanism of a motor vehicle.

3. "Tamper" means to dismantle, to remove without replacing with an identical or comparable tested replacement device or to cause to be inoperative any air pollution control equipment.

(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may fail to maintain in good working order or may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

(e) *Rule making.* The department shall promulgate rules that specify the requirements for the inspection of motor vehicles for the occurrence of tampering with air pollution control equipment.

History: 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274; 1981 c. 390; 1983 a. 243; 1987 a. 27; 1991 a. 39; 1993 a. 288; 1995 a. 137; 1995 a. 227 s. 507; Stats. 1995 s. 285.30; 1997 a. 27; 2003 a. 192; 2007 a. 20, 33; 2009 a. 157, 311.

Cross–reference: See also ch. NR 485, Wis. adm. code.

285.31 Gasoline vapor recovery. (1) DEFINITIONS. In this section:

(a) "Gasoline dispensing facility" means a place where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(b) "Retail station" means a gasoline dispensing facility where gasoline is sold at retail.

(c) "Vapor control system" means a system that gathers vapors of organic compounds, including gasoline and benzene, released during the operation of transfer, storage or processing equipment and processes the vapors to prevent their emission into the atmosphere.

(3) RULES. (a) The department shall promulgate rules, based on requirements under 42 USC 7511a, that require the owner or operator of a retail station that is located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse to install and operate a vapor control system that is approved by the department on the equipment that is used to dispense gasoline to a motor vehicle gasoline tank or other fuel tank.

(b) The department shall establish vapor recovery efficiency standards for vapor control systems approved under par. (a). The department shall use nationally recognized methods to determine the vapor recovery efficiency of vapor control systems.

(4) IMPLEMENTATION OF REQUIREMENTS. (a) The rules promulgated under sub. (3) shall have an effective date of November 15, 1992. The rules shall apply the requirements under sub. (3) beginning on November 15, 1993, except that the requirements under sub. (3) shall apply beginning on May 15, 1993, to retail stations the construction of which begins after November 15, 1990.

(b) The department may not require the owner or operator of a retail station that is located in this state to install or operate a vapor control system for gasoline dispensing equipment before November 15, 1993, or, if construction of the retail station begins after November 15, 1990, before May 15, 1993.

History: 1991 a. 39; 1993 a. 16; 1995 a. 27, 144; 1995 a. 227 s. 504; Stats. 1995 s. 285.31; 1997 a. 27.

285.33 Employee trip reduction program. (1) AREAS. (a) The department shall issue documents that describe the areas of the state in which employee trip reduction programs are required by 42 USC 7511a (d) (1) (B).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require employee trip reduction programs. The department may not require an employee trip reduction program in an area unless that requirement is authorized under s. 285.11 (6).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(2) REQUIREMENTS. (a) The department shall promulgate by rule requirements for employers who are located in areas described under sub. (1) (a) or (b) to implement programs to reduce work–related trips and miles traveled by employees. The department shall develop the rules in accordance with 42 USC 7511a (d) (1) (B) and the guidance issued by the administrator of the federal environmental protection agency under 42 USC 7408 (f).

(b) The rules under par. (a) shall establish reasonable limits on the direct and indirect expenses that an employer may be required to incur to comply with the rules. The rules shall specify a limit for each of the following:

1. The maximum annual expenses for each worksite subject to the rules.

2. The maximum annual expenses for each employee subject to the rules at a worksite.

(3) COMPLIANCE PLANS. (a) Except as provided under sub. (4) or (5), if an employer is located in an area that is described before November 15, 1993, by the department under sub. (1) (a) or (b) and is subject to the rules promulgated under sub. (2), the

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employer shall submit to the department, no later than November 15, 1994, a plan that demonstrates that the employer will comply with the rules no later than November 15, 1996.

(b) The department may not require as a condition of approving a compliance plan that an employer incur annual expenses greater than the limits established under sub. (2) (b).

(c) Notwithstanding any other provision of this section, an employer is considered to meet the requirements of this section if the employer's compliance plan is approved by the department and the employer makes reasonable efforts to implement the compliance plan.

(4) ALTERNATIVE CONTROL PLAN. (a) Instead of submitting a compliance plan under sub. (3) (a), an employer may submit to the department a plan for an alternate control program that provides for any of the following:

1. Air quality benefits similar to a compliance plan under sub. (3) (a), as determined by the department.

2. A reduction of emissions of volatile organic compounds, achieved after August 31, 1995, in the areas described under sub. (1) (a) or (b) that is at least 1.3 times the reduction of the emissions of volatile organic compounds that would be achieved under a compliance plan under sub. (3) (a).

3. A reduction of emissions of volatile organic compounds, achieved after August 31, 1995, in the areas described under sub. (1) (a) or (b) that is equal to or greater than the reduction of the emissions of volatile organic compounds that would be achieved under a compliance plan under sub. (3) (a), if the emissions reduction is included in an operation permit under s. 285.60 or another document that is enforceable by the federal government.

(b) Notwithstanding any other provision of this section, an employer with an alternate control plan under par. (a) 1. or 2. that is approved by the department is considered to meet the requirements of this section if the employer makes reasonable efforts to implement the alternate control plan.

(5) SUSPENSION. (a) If the secretary determines that the requirement for an employee trip reduction program under 42 USC 7511a (d) (1) (B) is suspended or terminated, the secretary may suspend the program under this section.

(b) If the U.S. congress has passed and the president has signed legislation that eliminates or suspends the requirement for an employee trip reduction program under 42 USC 7511a (d) (1) (B), the governor may suspend the program under this section.

History: 1991 a. 302; 1995 a. 52; 1995 a. 227 s. 464; Stats. 1995 s. 285.33.
Cross-reference: See also ch. NR 486, Wis. adm. code.

285.35 Clean fuel fleet program. (1) DEFINITIONS. In this section:

(a) "Clean alternative fuel" has the meaning given in 42 USC 7581 (2).

(b) "Clean-fuel vehicle" has the meaning given in 42 USC 7581 (7).

(c) "Covered fleet" has the meaning given in 42 USC 7581 (5).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which clean-fuel vehicle programs are required under 42 USC 7511a (c) (4) (A).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require clean-fuel vehicle programs. The department may not require a clean-fuel vehicle program in an area unless that requirement is authorized under s. 285.11 (6).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1) a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) REQUIREMENTS. The department shall promulgate by rule requirements for the use of clean-fuel vehicles and clean alternative fuels by operators of covered fleets in areas identified under sub. (2) (a) or (b). The rules shall be in accordance with the requirements applicable to covered fleets under 42 USC 7586 and regulations promulgated under that provision.

History: 1991 a. 302; 1995 a. 227 s. 465; Stats. 1995 s. 285.35.
Cross-reference: See also ch. NR 487, Wis. adm. code.

285.37 Reformulated gasoline. (1) DEFINITIONS. In this section, "reformulated gasoline" means gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which the use of reformulated gasoline is required under 42 USC 7545 (k) (5).

(b) The department shall issue documents that describe areas of the state, other than areas described under par. (a) or (c), in which the use of reformulated gasoline is required, if the governor designates the areas in an application under 42 USC 7545 (k) (6) that is approved by the administrator of the federal environmental protection agency.

(c) The department may, by rule, determine areas of the state, other than areas described under par. (a) or (b), in which the department will require the use of reformulated gasoline. The department may not require the use of reformulated gasoline in an area unless that requirement is authorized under s. 285.11 (6).

(d) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) or (b) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) PROHIBITIONS. (a) Except as provided in par. (b), beginning on January 1, 1995, no person may sell gasoline in an area described under sub. (2) (a), (b) or (c) unless the gasoline satisfies the minimum specifications for reformulated gasoline under s. 168.04.

(b) The secretary, with the approval of the administrator of the federal environmental protection agency, may grant temporary waivers from the prohibition under par. (a) if fuel that satisfies the minimum specifications for reformulated gasoline is unavailable.

History: 1991 a. 302; 1995 a. 227 s. 466, 467; Stats. 1995 s. 285.37.

285.39 Volatile organic compounds growth accommodation and replenishment. (1) GROWTH ACCOMMODATION CALCULATION. (a) The growth accommodation for any specified year, as calculated by the department, is the predicted emissions specified in par. (b) minus the sum of:

1. Net actual emissions specified in par. (c);
2. Net certified accommodation credits specified in par. (d);
3. Net offset credits specified in par. (e); and
4. Set asides specified in par. (f).

(b) Predicted emissions are the total predicted annual emissions of volatile organic compounds in the volatile organic compound accommodation area necessary to attain and maintain the ambient air quality standard for ozone for the year 2 years before the specified year, as set forth in the plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(c) Net actual emissions are the total actual annual emissions of all volatile organic compounds in the volatile organic compound accommodation area for the year 2 years before the specified year as reported under sub. (2) (a) minus:

1. The sum of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic accommodation area during the previous year; and

2. If a rule has been promulgated under sub. (3), the sum of the annual emissions reductions of volatile organic compounds attributable to the sources subject to the rule promulgated under sub. (3) during the previous year.

(d) Net certified accommodation credits are the sum of all volatile organic compound growth accommodation credits certified to date under s. 285.63 (7) or (8) minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to the sources receiv-

ing volatile organic compound growth accommodation credits certified to date under s. 285.63 (7) or (8).

(e) Net offset credits are the sum of all allowable emissions of volatile organic compounds authorized to date attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted to the U.S. environmental protection agency under the plan minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted to the U.S. environmental protection agency under the plan.

(f) Set asides are:

1. Fifteen percent of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic compound accommodation area since January 1, 1987; and

2. If a rule has been promulgated under sub. (3), 15% of the sum of the annual emissions reductions of volatile organic compounds attributable, since January 1, 1987, to the sources subject to the rule promulgated under sub. (3).

(2) ANNUAL REPORTS. The department shall prepare an annual report by January 15, which may be combined with other reports published by the department, that:

(a) States, on a calendar year basis, the total annual emissions, for the year 2 years before the year in which the report is prepared, of all volatile organic compounds in the volatile organic compound accommodation area, except methylene chloride and methyl chloroform and other volatile organic compounds that the department determines by rule to be compounds that do not contribute to the formation of ozone in the troposphere.

(b) Includes an annual plan for the management of the volatile organic compounds growth accommodation and replenishment and the growth accommodation replenishment grant program. At a minimum, the plan shall:

1. Indicate the amount of the growth accommodation at the beginning of the year.

2. Indicate the likely amount of the growth accommodation at the end of the year.

3. Report the status of the development and implementation of plans or rules under subs. (3) to (5).

4. Report if, during the prior year, the replenishment implementation period has expired.

(3) GROWTH ACCOMMODATION REPLENISHMENT. The department shall:

(a) Promulgate rules under s. 285.30 (6) (e), relating to the inspection of vehicles for tampering with air pollution control equipment.

(b) Promulgate rules restricting the amount of volatile organic compounds that may be contained in architectural coatings sold at retail in the volatile organic compound accommodation area or for use by a service provider in the volatile organic compound accommodation area. The department may exempt from a rule under this paragraph one or more categories of architectural coatings, based upon the type of coating or the use to which a coating is put, if it would be technically impractical to prohibit a category of architectural coating. The proposed rules shall include a provision to allow for the limited sale and use of the supplies of prohibited architectural coatings that retailers and suppliers in the volatile organic compound area already have in stock at the time of promulgation of the rules.

(c) Promulgate rules requiring persons who refinish auto bodies in the volatile organic compound accommodation area to use compounds, as solvents to clean painting and related equipment, that do not react to form ozone in the troposphere. The proposed rules shall allow the use of cleaning solvents containing volatile organic compounds that were purchased before the effective date of the proposed rules.

(4) REPORT ON NEW REPLENISHMENT MECHANISMS. After expiration of the replenishment implementation period, if the department reports under sub. (2) (b) 1. or determines at any other time that the growth accommodation is less than 3,500 tons, the department shall, with the advice of the department of safety and professional services, submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3) on how to most effectively and equitably replenish the growth accommodation. The report shall review existing studies and data to evaluate the accuracy of this state's state implementation plan with respect to the effect of emissions from inside and outside the volatile organic compound accommodation area on the ambient air quality within the area.

(5) CONTINGENT RESTRICTIONS ON EXISTING SOURCES. If at any time the department finds that the growth accommodation is less than 2,500 tons and determines that it is unlikely that the growth accommodation will exceed 2,500 tons in the report under sub. (2) (b) 1. for the following year because of the inadequacy of replenishment activities at the time or because of facility shutdowns, the department shall implement the rules that specify emission limitations for emissions of volatile organic compounds from stationary sources located in the volatile organic compound accommodation area that were required to report their emissions under s. 299.15 during calendar year 1987. The emission limitations shall be designed to ensure that the growth accommodation in the subsequent year is not less than 2,500 tons. The emission limitations may not be more restrictive than the lowest achievable emission rate. The department shall implement the emission limitations by source category. For the purpose of this section, the department shall determine a source category according to the type and level of emissions. The department may also use other characteristics which relate to air pollution to determine source categories. The department shall implement the emission limitations based upon ease of implementation, cost–effectiveness and the relative equity of imposing a limitation upon a source category, given any prior limitations of emissions imposed upon that source category. To the extent feasible, the emission limitations shall provide affected sources the opportunity to choose to be subject to either an annual emission limitation or a more restrictive applicable reasonably available control technology rule than was in effect in 1987.

History: 1987 a. 27, 399; 1991 a. 302; 1995 a. 27 s. 9116 (5); 1995 a. 227 s. 500; Stats. 1995 s. 285.39; 2011 a. 32.

Cross–reference: See also chs. NR 485 and 488, Wis. adm. code.

SUBCHAPTER V

SULFUR DIOXIDE AND NITROGEN OXIDE EMISSION RATES AND GOALS

285.41 Sulfur dioxide emission rates after 1992; major utilities. (1) DEFINITIONS. In this section:

(a) "Annual emissions" means the number of pounds of sulfur dioxide emissions from all boilers under the ownership or control of a major utility in a given year.

(b) "Annual heat input" means the heat input, measured in millions of British thermal units, from all boilers under the ownership or control of a major utility in a given year.

(c) "Boiler" means a fossil fuel–fired boiler.

(d) "Commission" means the public service commission.

(e) "Environmental dispatching" means the operation of the various units under the ownership or control of a major utility in

a manner that minimizes the discharge of sulfur dioxide emissions rather than minimizing the cost of operation.

(f) "Major utility" means a Class A utility, as defined under s. 199.03 (4), which generates electricity or an electrical cooperative association organized under ch. 185, if the total sulfur dioxide emissions from all stationary air contaminant sources in this state under the ownership or control of the utility or association exceeded 5,000 tons in any year after 1979.

(g) "Traded emissions" means the pounds of sulfur dioxide emissions in a given year that a major utility which is the grantor in an agreement under sub. (2) (b) 1. makes available to the major utility which is the grantee in the agreement.

(2) CORPORATE EMISSION RATE; TRADING. (a) Except as provided under sub. (4), beginning with 1993, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input from all boilers under the ownership or control of a major utility for any year may not exceed 1.20.

(b) 1. Two major utilities may enter into an agreement for trading emissions unless the sum of the proposed traded emissions and the projected annual emissions of the grantor major utility for the year to which the agreement will apply would exceed the actual annual emissions of the grantor major utility in 1985.

2. To determine whether the major utility that is the grantor in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall add the traded emissions and the grantor's annual emissions and divide the sum by the annual heat input of the grantor.

3. To determine whether the major utility that is the grantee in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall subtract the traded emissions from the grantee's annual emissions and divide the difference by the annual heat input of the grantee.

(3) ANNUAL COMPLIANCE PLAN REQUIRED. (a) *Submission; contents.* On or before October 1 of each year beginning with 1992, each major utility shall submit to the department and the commission a plan for achieving compliance with the emission rate under sub. (2) (a). The plan shall include, at a minimum:

1. The major utility's expected electricity demand.

2. The major utility's annual operation plan.

3. The expected operation characteristics of each boiler, including:

a. The order to be used in placing the boilers into operational production.

b. The planned maintenance schedule for each boiler and how the maintenance is expected to affect the methods of meeting electricity demands.

4. The amount and sulfur content of coal, other fossil fuel or other materials to be used for each boiler in operational production. The sulfur content shall be expressed in pounds of sulfur dioxide per million British thermal units of heat input.

5. The anticipated sulfur dioxide emissions from each boiler.

6. Contingency plans for unexpected events or increased demand including a summary of generation costs and the anticipated additional costs for reducing sulfur dioxide emissions under those circumstances.

7. The methods that will be used to achieve compliance with sub. (2) (a) in the following year including, if applicable, the provisions of any trading agreement under sub. (2) (b) 1.

8. The total anticipated annual sulfur dioxide emissions from all boilers under the ownership or control of the major utility for each of the next 3 years.

(b) *Review.* The department shall review the adequacy of each compliance plan and, after consulting with the commission, shall approve or disapprove the plan within 90 days after its receipt.

(4) VARIANCE. (a) *Request; variance conditions.* A major utility may request a variance from the emission rate under sub. (2) (a) by submitting the request to the commission and the department. No request for a variance may be submitted if the department has served the major utility with written notice under s. 285.83 that the major utility has violated sub. (2) (a). Upon receipt of a request, the commission shall, within 45 days, determine if any of the following variance conditions exists and shall report its determination to the department:

1. A major electrical supply emergency within or outside this state.

2. A major fuel supply disruption.

3. An extended and unplanned disruption in the operation of a nuclear plant or low sulfur coal–fired boiler under the ownership or control of the major utility.

4. The occurrence of an uncontrollable event not anticipated in the plan submitted under sub. (3).

5. A plan by the major utility to install and place into operation new technological devices that will enable it to achieve compliance with sub. (2) (a).

(b) *Compliance plan required.* With the request for a variance, the major utility shall submit its plan for achieving compliance with the emission rate. If the request is based on a variance condition specified under par. (a) 1. to 4., the request shall include an explanation of why the major utility cannot achieve or remain in compliance by using fuel with a lower sulfur content or by environmental dispatching.

(c) *Grant of variance.* The department shall grant a request for a variance if the commission determines that a variance condition exists and the department determines that the major utility's compliance plan is adequate.

(d) *Denial of variance.* The department shall deny a request for a variance if the commission determines that no variance condition exists or if the department determines that the major utility's compliance plan is not adequate.

(e) *Time limit for response.* The department shall grant or deny a request for a variance within 90 days after its receipt of the request.

(5) NO IMPACT ON OTHER PROVISIONS. Nothing in this section exempts a major utility from any provision of ss. 285.01 to 285.39 or 285.51 to 285.87. Compliance with this section is not a defense to a violation of any of those provisions.

(6) DETERMINATION OF COMPLIANCE. The department shall determine compliance with sub. (2) (a) using data submitted by the major utilities. Each major utility shall provide the department with any information needed to determine compliance.

(7) PENALTY. Notwithstanding s. 285.87, any major utility that exceeds the annual emission rate under sub. (2) (a) in violation of this section shall forfeit not less than $100,000 nor more than $500,000 for each year of violation.

History: 1985 a. 296; 1995 a. 227 s. 481; Stats. 1995 s. 285.41.

285.43 Sulfur dioxide emission rates; state–owned facilities. (1) LIMIT. After June 30, 1988, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input during any year from any large source, as defined under s. 285.45 (1) (a), that is owned by this state may not exceed 1.50.

(2) COMPLIANCE. The department shall determine compliance with sub. (1) using data submitted by state agencies. Each state agency shall provide the department with any information needed to determine compliance.

(3) NONCOMPLIANCE; REPORT REQUIRED. Noncompliance report required. If the department determines that any large source owned by this state is not in compliance with sub. (1), the department shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (2), a report of the noncompliance and recommendations for bringing the large source into compliance.

History: 1985 a. 296; 1995 a. 227 s. 482; Stats. 1995 s. 285.43.

285.45 Sulfur dioxide emission goals after 1992; major utilities and other large air contaminant sources. **(1)** DEFINITIONS. In this section:

(a) "Large source" means a stationary source in this state, other than a fossil fuel–fired boiler under the ownership or control of a major utility, that had sulfur dioxide emissions averaging at least 1,000 tons annually in the most recent 5–year period, that became operational before May 2, 1986, and that is not a boiler subject to the standard of performance for new stationary sources for sulfur dioxide emissions established under s. 285.27 (1).

(b) "Major utility" has the meaning given under s. 285.41 (1) (f).

(2) GOALS. It is the goal of this state that, beginning with 1993, total annual sulfur dioxide emissions do not exceed the following:

(a) From all major utilities and large sources, 325,000 tons.

(b) From all fossil fuel–fired boilers under the ownership and control of the major utilities, 250,000 tons.

(c) From all large sources, 75,000 tons.

(3) EXCESS EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the department determines, based on its annual report under s. 285.11 (12), that the total annual sulfur dioxide emissions from all major utilities and large sources exceeded 325,000 tons in the previous year, or if the department projects, based on the amounts anticipated by the major utilities under s. 285.41 (3) (a) 8. and the department's estimates of emissions from large sources, that the total sulfur dioxide emissions in this state will exceed 325,000 tons in any of the 3 succeeding years, the department shall determine if the actual or projected excess emissions are or will be attributable to the major utilities, the large sources or both.

(b) 1. If the department determines that the excess emissions are or will be attributable to the major utilities, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (b) should be replaced with an enforceable limit. If so, the report shall include the department's recommendation for a cost–effective mechanism for ensuring compliance with the limit, including any necessary changes in s. 285.41. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(c) 1. If the department determines that the excess emissions are or will be attributable to the large sources, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (c) should be replaced with an enforceable limit. If so, the report shall include the department's recommendation for a cost–effective mechanism for ensuring compliance with the limit. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(d) If the department determines that the excess emissions are or will be attributable to both the major utilities and the large sources, the department shall comply with both pars. (b) and (c). The reports and public hearings required under those paragraphs may be combined.

History: 1985 a. 296; 1987 a. 186; 1995 a. 227 s. 483; Stats. 1995 s. 288.45.

285.47 Nitrogen oxide emission goal; major utilities. **(1)** DEFINITION. In this section, "major utility" has the meaning given in s. 285.41 (1) (f).

(2) GOAL. It is the goal of this state that, beginning with 1991, the total annual nitrogen oxide emissions from all major utilities do not exceed 135,000 tons.

History: 1985 a. 296; 1987 a. 186; 1995 a. 27; 1995 a. 227 s. 484; Stats. 1995 s. 285.47.

285.48 Nitrogen oxide emissions reductions. **(1)** DEFINITIONS. In this section:

(a) "Call" means a call to implement a state implementation plan that is issued by the federal environmental protection agency before October 29, 1999, or after that date arising out of a call issued before that date, including a call issued after that date pursuant to a federal court order or otherwise.

(b) "Electric cooperative" has the meaning given in s. 76.48 (1g) (c).

(c) "Midcontinent area" has the meaning given in s. 16.958 (1) (e).

(cm) "Nonutility stationary or mobile source" means a stationary or mobile source that is not an electric generating facility owned by a public utility or electric cooperative.

(d) "Northwestern county" means Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vernon or Washburn county.

(e) "Other county" means a county that is not a northwestern county.

(f) "Public utility" has the meaning given in s. 196.01 (5).

(g) "State implementation plan" means a state implementation plan for control of atmospheric ozone in another state.

(h) "Summer" means the period beginning on May 1 and ending on September 30 of each year.

(2) APPLICABILITY. This section applies if the department of natural resources, pursuant to a call, issues a state implementation plan that requires electric generating facilities in the midcontinent area of this state to comply with nitrogen oxide emission reduction requirements. If the department of natural resources issues such a plan, the department of natural resources shall notify the department of administration and the public service commission. The notice shall specify the date on which electric generating facilities in the midcontinent area of this state are required to comply with the initial nitrogen oxide emission reduction requirements.

(3) NITROGEN OXIDE EMISSIONS STANDARDS AND LIMITATIONS. (a) In establishing nitrogen oxide emission reduction requirements for the control of atmospheric ozone in another state pursuant to a call, the department may not, in a state implementation plan, by rule or through the adoption of control strategies, establish nitrogen oxide emissions standards or limitations that do any of the following:

1. Require less than 2,234 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by electric cooperatives.

2. Require less than 315 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by public utilities.

3. Require less than 15,157 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in other counties owned by public utilities or electric cooperatives.

(b) The department shall issue emissions allowances in a number that is sufficient to allow the emissions specified in par. (a).

(c) In establishing nitrogen oxide emission reduction requirements for the control of atmospheric ozone in another state pursuant to a call, the department may not, with respect to any nonutility stationary or mobile source in this state, in a state implementation plan, by rule or through the adoption of control strategies, establish nitrogen oxide emissions standards or limitations that do any of the following:

1. Require any reductions in nitrogen oxide emissions for any boiler, turbine or internal combustion engine the designed heat input of which is 250 million British thermal units per hour or less.

2. Require reductions of nitrogen oxide emissions that are in addition to those reductions required by or projected for nonutility stationary or mobile sources based on source–specific nitrogen oxide inventory data or other subinventory information used by the federal environmental protection agency to establish state nitrogen oxide emission budgets concerning interstate pollution transport.

3. Require any additional reductions of nitrogen oxide emissions from nonutility stationary or mobile sources in this state due to this section, including the reduction requirements under par. (a).

(d) If the department of natural resources implements a state implementation plan specified in sub. (2) in a manner that requires reductions in nitrogen oxide emissions that are lower than the reductions set forth in the call published on October 27, 1998, the department of natural resources shall do each of the following:

1. Determine the amounts by which the number of tons specified in par. (a) 1., 2. and 3. shall be increased to reflect the lower reductions.

2. Take action that is necessary to relax any related emissions control requirements in a manner that reflects the lower reductions.

2m. Determine the amounts by which reduction requirements for any nonutility stationary or mobile source in this state shall be relaxed to reflect the lower reductions.

3. Determine the amount by which the $2,400,000 in assessments under s. 196.86 (2) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the public service commission.

4. Determine the amount by which the $2,500,000 that is transferred to the air quality improvement fund under s. 16.958 (2) (a) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the department of administration.

(4) LOW–INCOME WEATHERIZATION AND ENERGY CONSERVATION MEASURES; RENEWABLE ENERGY USES. The department shall ensure that at least 866 tons of total annual reductions in nitrogen oxide emissions required under the state implementation plan are achieved through any of the following:

(a) The use of renewable energy, including renewable energy that is provided by electric providers for the purpose of complying with the requirements of s. 196.378 (2) (a) 2., or renewable energy that is used under programs under s. 196.374.

(b) The implementation of low–income weatherization and energy conservation measures, including programs established under s. 16.957 (2) (a) or programs under s. 196.374.

History: 1999 a. 9, 75; 2005 a. 141; 2009 a. 180.

285.49 Trading program for nitrogen oxide emissions credits. The department shall establish or authorize air contaminant sources to participate in a market–based trading program for the purchase, sale and transfer of nitrogen oxide emissions credits for use in any state implementation plan under s. 285.11 (6) that requires reductions in nitrogen oxide emissions. To the extent allowed under federal law, the department shall allow nitrogen oxide emissions reductions by any source in this state, regardless of whether the source is subject to nitrogen oxide controls under a state implementation plan, to be purchased, sold or transferred under the trading program.

History: 1999 a. 9.

SUBCHAPTER VI

WASTE INCINERATORS; OZONE DEPLETING SUBSTANCES; EMISSION LIMITS AND OTHER REQUIREMENTS

285.51 Solid waste incinerator operator certification. **(1)** In this section, "solid waste treatment" has the meaning given in s. 289.01 (39).

(2) The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste treatment facilities that burn solid waste. The certification requirements shall take effect on January 1, 1993. The department shall do all of the following:

(a) Identify those persons or positions involved in the operation of a solid waste treatment facility who are required to obtain certification.

(b) Establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification.

(c) Establish different levels of certification and requirements for certification for different sizes or types of facilities, as the department determines is appropriate.

(d) Impose fees for the operator training and certification program.

(e) Require that there be one or more certified operators on the site of a solid waste treatment facility at all times during the facility's hours of operation.

(3) The program under sub. (2) does not apply with respect to any of the following:

(a) A facility described in s. 287.07 (7) (bg).

(b) A solid waste treatment facility for the treatment of hazardous waste.

(c) A solid waste treatment facility for high–volume industrial waste as defined in s. 289.01 (17).

(d) A solid waste treatment facility of a type exempted from the program by the department by rule.

(4) The training required under sub. (2) (b) may be conducted by the department or by another person with the approval of the department.

(5) The department may suspend or revoke a solid waste treatment facility's operating license if persons at the facility fail to obtain certification required under sub. (2) (a) or for failure to have a certified operator on the site as required under sub. (2) (e).

(6) The department may suspend or revoke an operator's certification for failure to comply with this chapter, rules promulgated under this chapter or conditions of operation made applicable to a solid waste treatment facility by the department.

History: 1995 a. 227 s. 457, 989.

Cross–reference: See also ch. NR 499, Wis. adm. code.

285.53 Testing emissions from medical waste incinerators. **(1)** TESTING FOR HAZARDOUS SUBSTANCES. (a) *Applicability.* This subsection applies to a medical waste incinerator, as defined in s. 287.07 (7) (c) 1. cr., that has a capacity of 5 tons or more per day.

(b) *Requirements.* 1. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall test emissions of particulates, dioxins, furans, arsenic, lead, hexavalent chromium, cadmium, mercury and any other hazardous substance identified by the department by rule, at least as often as follows:

a. During the initial 90–day period of operation.

b. One year following the initial 90–day period of operation.

c. Every 2 years following the testing under subd. 1. b.

2. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall report the results of the testing under subd. 1. to the department and the city, village or town in which the medical waste incinerator is located.

(c) *Analysis.* 1. The department shall provide an analysis of the test results submitted under par. (b) 2. to the city, village or town in which the medical waste incinerator is located.

2. The city, village or town in which the medical waste incinerator is located shall publish the analysis provided under subd. 1. as a class 1 notice under ch. 985.

3. The department may charge the person operating or responsible for the operation of the medical waste incinerator a fee for reviewing and preparing the analysis of the test results.

(2) CONTINUOUS MONITORING. A person operating or responsible for the operation of a medical waste incinerator, as defined in s. 287.07 (7) (c) 1. cr., shall continuously monitor emissions from the medical waste incinerator.

History: 1989 a. 335; 1991 a. 300; 1995 a. 227 s. 479; Stats. 1995 s. 285.53.

285.54 Medical waste incinerator fees. (1) In this section:

(a) "Medical waste incinerator" has the meaning given in s. 287.07 (7) (c) 1. cr.

(b) "Municipality" means a city, village or town.

(2) A municipality may, by ordinance, impose a fee, in accordance with rules promulgated under s. 287.03 (1) (am), on the operator of a medical waste incinerator located in the municipality to cover the costs incurred because of the presence of the medical waste incinerator, including costs of monitoring emissions and of providing periodic notification to residents concerning the medical waste incinerator. The fee imposed under this section may not exceed $1 per ton of waste that is incinerated at the medical waste incinerator unless the municipality and the operator of the medical waste incinerator agree to a higher fee.

History: 1989 a. 335; 1995 a. 227; 1999 a. 150 s. 373; Stats. 1999 s. 285.54.

285.57 Emission of ozone–depleting substances. (1) DEFINITION. In this section, "class I substance" has the meaning given in 42 USC 7671 (3).

(2) MEDICAL STERILIZERS. (a) The department shall evaluate the progress toward eliminating the use of class I substances in medical sterilizers. The department shall complete the evaluation no later than August 1, 1994.

(b) Based on the results of the evaluation under par. (a), the department shall promulgate a rule that prohibits the use of class I substances in medical sterilizers or, if no adequate substitute for class I substances is available, requires persons who operate medical sterilizers that use class I substances to achieve the lowest achievable emission rate for class I substances.

(3) SOLVENTS. The department shall advise persons who use class I substances as solvents on ways to eliminate that use.

(4) CITATIONS. The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

(5) PENALTIES. Any person who violates sub. (2) shall be required to forfeit not less than $250 nor more than $1,000. Each day of violation constitutes a separate offense.

History: 1993 a. 243; 1995 a. 227 s. 508; Stats. 1995 s. 285.57.

285.59 Recovery of ozone–depleting refrigerants. (1) DEFINITIONS. In this section:

(a) "Ozone–depleting refrigerant" has the meaning given in s. 100.45 (1) (d).

(b) "State agency" means any office, department, agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, and the Wisconsin Health and Educational Facilities Authority.

(2) SALVAGING REFRIGERATION EQUIPMENT. After June 30, 1992, except as provided in sub. (3), no person, including a state agency, may perform salvaging or dismantling of mechanical vapor compression refrigeration equipment in the course of which ozone–depleting refrigerant is or may be released or removed unless the person certifies all of the following to the department:

(a) That the person uses equipment that is approved by the department to transfer ozone–depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks whenever it performs those activities.

(b) That the individuals who use the equipment under par. (a) have, or are under the supervision of individuals who have, the qualifications established under sub. (5) (a) 1.

(3) SCRAP METAL PROCESSORS. (a) In this subsection, "scrap metal processor" has the meaning given in s. 84.31 (2) (h).

(c) After June 30, 1992, except as provided in par. (d), any person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor shall do all of the following:

1. Transfer ozone–depleting refrigerant from the mechanical vapor compression refrigeration equipment into a storage tank as provided in sub. (2) (a) and (b) or obtain and possess documentation that another person performed that transfer.

2. Provide documentation to the scrap metal processor that it has complied with subd. 1.

(d) Paragraph (c) does not apply to a person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor that agrees in writing to transfer the ozone–depleting refrigerant into a storage tank as provided in sub. (2) (a) and (b).

(4) RELEASE. (a) During the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, no person may knowingly or negligently release ozone–depleting refrigerant to the environment, except for minimal releases that occur as a result of efforts to transfer ozone–depleting refrigerant into storage tanks.

(am) No person may knowingly or negligently release from a storage tank to the environment ozone–depleting refrigerant that was removed during the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, except that this paragraph does not apply to minimal releases that occur as a result of efforts to transfer ozone–depleting refrigerant into mechanical vapor compression refrigeration equipment or other storage tanks.

(b) Any person who transports, for purposes of salvaging or dismantling, mechanical vapor compression refrigeration equipment that contains ozone–depleting refrigerant shall certify to the department that it complies with par. (a), except that this paragraph does not apply to an individual who transports his or her personal mechanical vapor compression refrigeration equipment.

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. Qualifications, which may include training or certification requirements, for individuals who use equipment to transfer ozone–depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

2. Fees to cover the cost of administering subs. (2), (3) and (4) (b).

(b) Approve equipment for the transfer of ozone–depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

(6) DEPARTMENT POWERS. The department may promulgate rules providing that any portion of sub. (2), (3) or (4) applies with respect to a substance used as a substitute for an ozone–depleting substance.

(7) CITATIONS. The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2), (3) (c) or (4).

(8) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit not less than $100 nor more than $1,000. Each act of salvaging or dismantling in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) (c) shall be required to forfeit not less than $100 nor more than $1,000. Each sale, giving or transporting in violation of sub. (3) (c) constitutes a violation.

(c) Any person who violates sub. (4) shall be required to forfeit not less than $100 nor more than $1,000. Each release in violation of sub. (4) constitutes a violation.

History: 1989 a. 284; 1991 a. 97; 1993 a. 243; 1995 a. 227 s. 509; Stats. 1995 s. 285.59; 1997 a. 27; 2001 a. 16; 2005 a. 335; 2009 a. 28; 2011 a. 7, 10; s. 35.17 correction in (1) (b).

SUBCHAPTER VII

PERMITS AND FEES

285.60 Air pollution control permits. (1) NEW OR MODIFIED SOURCES. (a) *Construction permit.* 1. Except as provided in sub. (2g), (3), (5m), or (6), no person may commence construction, reconstruction, replacement, or modification of a stationary source unless the person has a construction permit from the department.

2. A construction permit may authorize the initial operation of a stationary source for a period specified in the permit to allow testing of the stationary source's equipment and monitoring of the emissions associated with the equipment.

(b) *Operation permit.* 1. Except as provided in subd. 2., par. (a) 2., sub. (6) or s. 285.62 (8), no person may operate a new source or a modified source unless the person has an operation permit under s. 285.62 from the department.

2. A person may continue to operate a new source or a modified source for which the department issued a permit under s. 144.392, 1989 stats., on or before November 15, 1992, but on which construction, reconstruction, replacement or modification began after November 15, 1992, but the person shall apply for an operation permit under s. 285.62 no later than March 1, 1996.

(2) EXISTING SOURCES. (a) *Operation permit requirement.* Except as provided in sub. (6) or s. 285.62 (8), no person may operate an existing source after the operation permit requirement date specified under s. 285.62 (11) (a) unless the person has an operation permit under s. 285.62 from the department.

(b) *Elective operation permit.* A person may apply for an operation permit for one or more points of emission from an existing source for which an operation permit is not required. No person may operate a stationary source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an operation permit under this paragraph, the election may not be withdrawn and the stationary source may not be operated without the operation permit beginning on the date that the operation permit is first issued.

(2g) REGISTRATION PERMITS. (a) *Rules.* Subject to sub. (8), the department shall promulgate rules specifying a simplified process under which the department may issue a registration permit authorizing construction or operation or both for a stationary source with low actual or potential emissions if the owner or operator provides to the department, on a form prescribed by the department, sufficient information to show that the source qualifies for a registration permit. In the rules, the department shall include criteria for identifying categories of sources the owners or operators of which may elect to obtain registration permits and general requirements applicable to sources that qualify for registration permits. In the rules, the department may exempt persons who qualify for registration permits from the requirement to obtain a construction permit.

(b) *Procedure.* The procedural requirements of ss. 285.61 (2) to (8) and 285.62 (2) to (7) do not apply to a registration permit under this subsection. Within 15 days after receipt of the form prescribed by the department, the department shall provide one of the following to an applicant for a registration permit:

1. Written notice of the department's determination that the source qualifies for a registration permit.

2. A written description of any information that is missing from the application for a registration permit.

3. Written notice of the department's determination that the source does not qualify for a registration permit, specifically describing the reasons for that determination.

(3) GENERAL PERMITS. (a) *Rules.* The department shall promulgate rules for the issuance of general permits authorizing construction or operation or both for similar stationary sources. In the rules, the department shall specify criteria for identifying categories of sources for which the department may issue general permits and general requirements applicable to sources that qualify for general permits. In the rules, the department may exempt persons who qualify for a general permit from the requirement to obtain a construction permit.

(b) *Procedure.* The procedural requirements of ss. 285.61 (2) to (8) and 285.62 (2) to (5) do not apply to the determination of whether a source is covered by a general permit under this subsection. Within 15 days after receipt of an application for coverage under a general permit, the department shall provide one of the following to the applicant:

1. Written notice of the department's determination that the source qualifies for coverage under the general permit.

2. A written description of any information that is missing from the application for coverage under the general permit.

3. Written notice of the department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

(4) PERMIT FLEXIBILITY. The department shall allow a person to make a change to a stationary source that has an operation permit, or for which the person has submitted a timely and complete application for an operation permit, for which the department would otherwise first require an operation permit revision, without first requiring a revision of the operation permit if the change is not a modification, as defined by the department by rule, and the change will not cause the stationary source to exceed the emissions allowable under the operation permit, whether expressed as an emission rate or in terms of total emissions. Except in the case of an emergency, a person shall notify the department and, for permits required under the federal clean air act, the administrator of the federal environmental protection agency in writing at least 21 days before the date on which the person proposes to make a change to a stationary source under this subsection. A person may not make a proposed change to a stationary source if the department informs the person before the end of that 21–day period that the proposed change is not a change authorized under this subsection. The department shall promulgate rules establishing a shorter time for advance notification of changes under this subsection in case of emergency.

(5) EXEMPTION FROM ADDITIONAL PERMIT REQUIREMENTS FOR APPROVED RELOCATED SOURCES. (a) *Approved relocated source.* A source is an approved relocated source if all of the following requirements are met:

1. The source is to be relocated within an attainment area.

2. The source is a stationary source capable of being transported to a different location.

3. The source received an air pollution control permit for the relevant air contaminant prior to relocation.

4. The owner or operator of the source provides written notice to the department at least 20 days prior to relocation and the department does not object to the relocation.

5. The source in its new location meets all applicable emission limitations and any visibility requirements in the department's rules and does not violate an ambient air increment or ambient air quality standard.

6. The source is not an affected source as defined in 42 USC 7651a (1).

(b) *Exempt from additional permits.* Notwithstanding subs. (1) and (2), no additional permit is required if a source is an approved relocated source.

(5m) WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS. (a) Subject to sub. (8), the department shall promulgate rules under which a person is allowed to commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit upon a showing that commencing construction, reconstruction, replacement, or modification prior to the issuance of the permit is necessary to avoid undue hardship.

(b) Subject to sub. (8), the department may allow a person to commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit on a case–by–case basis or on bases specified in a rule.

(c) The department shall act on a waiver request under this subsection within 15 days after it receives the request.

(6) EXEMPTION BY RULE. (a) Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

(b) Subject to sub. (8), the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

(7) COMPLIANCE. A person who obtains a permit under this section shall comply with all terms and conditions of the permit.

(8) COMPLIANCE WITH FEDERAL LAW. The department may not promulgate a rule or take any other action under this section that conflicts with the federal clean air act.

(9) PETITIONS FOR REGISTRATION PERMITS, GENERAL PERMITS, AND EXEMPTIONS. A person may petition the department to make a determination that a type of stationary source meets the criteria for a registration permit under sub. (2g), a general permit under sub. (3), or an exemption under sub. (6). The department shall provide a written response to a petition within 30 days after receiving the petition indicating whether the type of stationary source meets the applicable criteria for a registration permit, a general permit, or an exemption. If the type of source meets the applicable criteria, the department shall, within 365 days after receiving the petition, issue the registration permit or general permit or, for an exemption, shall submit to the legislative council staff under s. 227.15 (1) in proposed form any necessary rules or take any other action that is necessary to provide the exemption.

(10) PERMIT STREAMLINING. The department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65 and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations, including consolidating the permits for sources at a facility into one permit, expanding exemptions under sub. (6), and expanding the availability of registration permits under sub. (2g), general permits under sub. (3), and construction permit waivers under sub. (5m).

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16; 2003 a. 118, 326; 2005 a. 28.

Cross–reference: See also chs. NR 405, 406, 407, 408, 409, and 411, Wis. adm. code.

285.61 Construction permit application and review. **(1)** APPLICANT NOTICE REQUIRED. A person who is required to obtain or who seeks a construction permit shall apply to the department for a permit to construct, reconstruct, replace or modify the stationary source.

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. (a) *Request for additional information.* 1. Within 20 days, excluding statewide legal holidays specified in s. 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically all of the plans, specifications, and any other information necessary to determine if the proposed construction, reconstruction, replacement, or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

2. If the department requests additional information under subd. 1., the department shall notify the applicant, within 15 days after receiving additional information from the applicant, whether that additional information satisfies the department's request.

(b) *When application is considered to be complete.* 1. If the department does not indicate to an applicant within the time provided in par. (a) 1. that additional information is needed, the application is considered to be complete for the purposes of the time limits in sub. (3) 20 days after receipt of the application.

2. If the department indicates to an applicant within the time provided in par. (a) 1. that additional information is needed but the department does not indicate to the applicant within the time provided in par. (a) 2. that additional information provided is deficient, the application is considered to be complete for the purposes of the time limits in sub. (3) 15 days after receipt of the additional information.

3. If neither subd. 1. nor subd. 2. applies, an application is considered to be complete for the purposes of the time limits in sub. (3) when the department notifies the applicant under par. (a) 2. that the additional information provided by the applicant satisfies the department's request.

4. This paragraph does not prevent the department from requesting additional information from an applicant after the time limit in par. (a) 1. or 2.

(3) ANALYSIS. The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the application is considered to be complete under sub. (2) (b):

(a) *Major source construction permits.* For construction permits for major sources, within 90 days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 30 days.

(4) DISTRIBUTION AND AVAILABILITY OF ANALYSIS, PRELIMINARY DETERMINATION AND MATERIALS. (a) *Distribution and publicity.* The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared.

(b) *Availability.* The department shall make available for public inspection in each area where the stationary source would be constructed, reconstructed, replaced or modified the following:

1. A copy of materials submitted by the permit applicant;

2. A copy of the department's analysis and preliminary determination; and

3. A copy or summary of other materials, if any, considered by the department in making its preliminary determination.

(5) NOTICE; ANNOUNCEMENT; NEWSPAPER NOTICE. (a) *Distribution of notice required.* The department shall distribute a notice of the proposed construction, reconstruction, replacement or modification, a notice of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to:

1. The applicant.

2. Appropriate federal, local and state agencies including agencies in other states which may be affected.

3. Regional and county planning agencies located in the area which may be affected.

4. Public libraries located in or near the area which may be affected.

5. Any person or group who requests this notice.

(b) *Announcement required.* The department shall circulate an announcement sheet containing a brief description of the proposed construction, reconstruction, replacement or modification, a brief description of the administrative procedures to be followed, the date by which comments are to be submitted to the department and the location where the department's analysis and preliminary determination are available for review to:

1. Local and regional governments which have jurisdiction over the area that may be affected.

2. Local and regional news media in the area that may be affected.

3. Persons and groups who have demonstrated an interest and have requested this type of information.

(c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination.

(6) PUBLIC COMMENT. The department shall receive public comments on the proposed construction, reconstruction, replacement or modification and on the analysis and preliminary determination for a 30–day period beginning when the department gives notice under sub. (5) (c).

(7) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on the construction permit application if requested by a person who may be affected by the issuance of the permit, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (3).

(8) DEPARTMENT DETERMINATION; ISSUANCE. (a) *Criteria; considerations.* The department may approve the construction permit application and issue a construction permit according to the criteria established under s. 285.63 after consideration of the comments received under subs. (6) and (7) and after consideration of the environmental impact as required under s. 1.11.

(b) *Time limits.* The department shall act on a construction permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with s. 1.11 requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

(9) MINING HEARING. If a hearing on the construction permit is conducted as a part of a hearing under s. 293.43, the notice, comment and hearing provisions in that section supersede the provisions of subs. (4) to (8).

(10) EXTENSIONS. Upon agreement between the department and an applicant, the department shall extend any time limit applicable to the department under this section. The department may not require an applicant to agree to extend a time period as a condition of approving an application.

(11) DELAY IN ISSUING PERMITS. (a) Subject to sub. (10), if the department fails to act on an application for a construction permit within the time limit in sub. (8) (b), the department shall include in a report the reasons for the delay in acting on the application and recommendations for how to avoid similar delays in the future. The department shall make reports under this paragraph available to the public, place a prominent notice of the reports on the department's Internet site, and submit the reports to the standing committees of the legislature with jurisdiction over environmental matters semiannually.

(b) If the department fails to act on an application for a construction permit within the time limit in sub. (8) (b) and the applicant has not agreed to an extension under sub. (10), the department shall refund the fee under s. 285.69 (1) (a) that was paid by the applicant.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61; 2003 a. 118; 2005 a. 155.

Cross–reference: See also ch. NR 490, Wis. adm. code.

285.62 Operation permit; application, review and effect. (1) APPLICATION REQUIRED. A person who is required to obtain an operation permit for a stationary source shall apply to the department for the permit on or before the operation permit application date specified under sub. (11) (b). The department shall specify by rule the content of applications under this subsection. If required by the federal clean air act, the department shall provide a copy of the complete application to the federal environmental protection agency.

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. (a) *Request for additional information.* 1. Within 20 days, excluding statewide legal holidays specified in s. 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

2. If the department requests additional information under subd. 1., the department shall notify the applicant, within 15 days after receiving additional information from the applicant, whether that additional information satisfies the department's request.

(b) *When application is considered to be complete.* 1. If the department does not indicate to an applicant within the time provided in par. (a) 1. that additional information is needed, the application is considered to be complete for the purposes of the time limit in sub. (7) (b) 20 days after receipt of the application.

2. If the department indicates to an applicant within the time provided in par. (a) 1. that additional information is needed but the department does not indicate to the applicant within the time provided in par. (a) 2. that additional information provided is deficient, the application is considered to be complete for the purposes of the time limit in sub. (7) (b) 15 days after receipt of the additional information.

3. If neither subd. 1. nor subd. 2. applies, an application is considered to be complete for the purposes of the time limit in sub. (7) (b) when the department notifies the applicant under par. (a) 2. that the additional information provided by the applicant satisfies the department's request.

4. This paragraph does not prevent the department from requesting additional information from an applicant after the time limit in par. (a) 1. or 2.

(3) REVIEW; NOTICE; PUBLICATION. (a) The department shall review an application for an operation permit. Upon completion of that review, the department shall prepare a preliminary determination of whether it may approve the application and a public notice. The public notice shall include all of the following:

1. A brief description of the stationary source.

2. The department's preliminary determination of whether it may approve the application.

3. Notice of the opportunity for public comment and the date by which comments must be submitted to the department.

4. Notice of the opportunity to request a public hearing.

5. Any other information that the department determines is necessary to inform the public about the application.

(b) The department shall provide the notice prepared under par. (a) to all of the following:

1. The applicant.

2. Any local air pollution control agency that has a program under s. 285.73 that is approved by the department and that has jurisdiction over the area in which the stationary source is located.

3. Any regional planning agency, any county planning agency and any public library located in the area that may be affected by emissions from the stationary source.

4. Any person or group that requests the notice.

5. Any city, village, town or county that has jurisdiction over the area in which the stationary source is located.

6. If required by the federal clean air act, the federal environmental protection agency.

7. If required by the federal clean air act, any state that is within 50 miles of the stationary source and any state that is contiguous to this state and whose air quality may be affected by emissions from the stationary source.

(c) The department shall publish the notice prepared under par. (a) as a class 1 notice under ch. 985 in a newspaper published in the area that may be affected by emissions from the stationary source.

(4) PUBLIC COMMENT. The department shall receive public comment on the application for a 30–day period beginning when the department gives notice under sub. (3) (c).

(5) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on an application for an operation permit for a stationary source if requested by any state that received notice under sub. (3) (b) or any other person, if the person may be affected by the issuance of the permit, within 30 days after the department gives notice under sub. (3) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it determines that there is a significant public interest in holding the hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (3).

(6) PROPOSED PERMIT; RESPONSE TO COMMENTS; ENVIRONMENTAL PROTECTION AGENCY OBJECTION. (a) After considering any public comments concerning an application, the department may prepare a proposed operation permit or deny the application for an operation permit. If the criteria in ss. 285.63 and 285.64 are met, the department shall prepare a proposed operation permit. If required by the federal clean air act, the department shall provide a copy of a proposed operation permit to the federal environmental protection agency. If a state has submitted recommendations in response to the notice under sub. (3) (b) 7. and the department has not accepted those recommendations, the department shall notify that state and the federal environmental protection agency in writing of its decision not to accept the recommendations and the reasons for that decision.

(b) The federal environmental protection agency may object in writing to the issuance of an operation permit that it determines is not in compliance with the federal clean air act or an implementation plan prepared under s. 285.11 (6). The department shall respond in writing to the objection if the federal environmental protection agency provides the reasons for the objection and submits the objection to the department and the applicant within 45 days after receiving either a copy of the proposed operation permit under par. (a) or notice under par. (a) of the department's decision not to accept the recommendations of another state.

(c) 1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit as necessary to satisfy the objection.

2. If the department has issued an operation permit before receiving an objection from the federal environmental protection agency that is based on a petition submitted under 42 USC 7661d (b) 2. and the federal environmental protection agency modifies, terminates or revokes the operation permit, the department shall issue an operation permit that is revised to satisfy the objection.

(d) The requirements under pars. (a) to (c) do not apply with respect to an application for an operation permit for a stationary source that is in a category that the department excludes, by rule, from those requirements because the source is not required to obtain a permit under the federal clean air act or that the federal environmental protection agency excludes from those requirements under 42 USC 7661d (d).

(e) This subsection does not apply before the federal environmental protection agency approves this state's air pollution control permit program under 42 USC 7661a (d) or (g).

(7) DEPARTMENT DETERMINATION; ISSUANCE. (a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within 18 months after receiving a complete application, except that the department may, by rule, extend the 18–month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the 18–month period for more than 3 years.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or modified source or deny the application within 180 days after the application is considered to be complete under sub. (2) (b) or after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit, whichever is later.

(c) If required by the federal clean air act, the department shall provide a copy of an operation permit to the federal environmental protection agency.

(8) OPERATION CONTINUED DURING APPLICATION. (a) If a person timely submits a complete application for a stationary source under sub. (1) and submits any additional information requested by the department within the time set by the department, the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (7).

(b) If a person submits an application for renewal of an operation permit before the date specified in s. 285.66 (3) (a), the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (7), except that this paragraph does not apply in a situation in which its application would contravene the federal clean air act.

(9) DELAY IN ISSUING PERMITS. (a) If the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) or in a rule promulgated under sub. (7), that failure is considered a final decision on the application solely for the purpose of obtaining judicial review under ss. 227.52 and 227.53 to require the department to act on the application without additional delay.

(b) Subject to sub. (12), if the department fails to act on an application for an operation permit within the time limit under sub. (7) (b), the department shall include in a report the reasons for

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the delay in acting on the application and recommendations for how to avoid delays in the future in similar situations. The department shall make reports under this subsection available to the public, place a prominent notice of the reports on the department's Internet site, and submit the reports to the standing committees of the legislature with jurisdiction over environmental matters semiannually.

(10) EFFECT OF PERMIT. (a) Except as provided in par. (b), the issuance of an operation permit, including an operation permit that contains a compliance schedule, does not preclude enforcement actions based on violations of this chapter that occur before, on or after the date that the operation permit is issued. The inclusion of a compliance schedule in an operation permit does not preclude enforcement actions based on violations of this chapter to which the compliance schedule relates, whether or not the source is violating the compliance schedule.

(b) Unless precluded by the administrator of the federal environmental protection agency under 42 USC 7661c (f), compliance with all emission limitations included in an operation permit is considered to be compliance with all emission limitations established under this chapter and emission limitations under the federal clean air act that are applicable to the stationary source as of the date of issuance of the operation permit if the permit includes the applicable emission limitations or the department, in acting on the application for the operation permit, determines in writing that the emission limitations do not apply to the stationary source and the operation permit includes that determination.

(11) OPERATION PERMIT DATES. (a) *Operation permit requirement date.* The department shall promulgate by rule a schedule of the dates when an operation permit is required for various categories of stationary sources.

(b) 1. The department shall promulgate by rule a schedule of the dates when an operation permit application is required to be submitted for various categories of existing sources.

2. A person who is required to obtain a construction permit shall submit an application for an operation permit with the application for the construction permit.

(12) EXTENSIONS. Upon agreement between the department and an applicant, the department shall extend any time limit applicable to the department under this section. The department may not require an applicant to agree to extend a time period as a condition of approving an application.

History: 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35; 2003 a. 118; 2005 a. 155.

Cross-reference: See also chs. NR 406, 407, 408, 409, and 490, Wis. adm. code.

285.63 Criteria for permit approval. (1) REQUIREMENTS FOR ALL SOURCES. The department may approve the application for a permit required or allowed under s. 285.60 if it finds:

(a) *Source will meet requirements.* The stationary source will meet all applicable emission limitations and other requirements promulgated under this chapter, standards of performance for new stationary sources under s. 285.27 (1) and emission standards for hazardous air contaminants under s. 285.27 (2);

(b) *Source will not violate or exacerbate violation of air quality standard or ambient air increment.* The source will not cause or exacerbate a violation of any ambient air quality standard or ambient air increment under s. 285.21 (1) or (2);

(c) *Other permits approvable if source is operating under an emission reduction option.* If the source is operating or seeks to operate under an emission reduction option, the required permit applications for other sources participating in that emission reduction option are approvable; and

(d) *Source will not preclude construction or operation of other source.* The stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another stationary source if the department received plans, specifications and other information under s. 285.61 (2) (a) for the other stationary source prior to commencing its analysis under s. 285.61 (3) for the former stationary source. This paragraph does not apply to an existing source required to have an operation permit.

(2) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN NONATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or modified source and is located in a nonattainment area if the department finds that the major source meets the requirements under sub. (1) and it finds that all of the following conditions are met:

(a) *Emission offsets.* By the time the major source is to commence operation, sufficient offsetting emissions reductions have been obtained so that total allowable emissions from the major source and from other air contaminant sources in the area designated by the department will be sufficiently less than the total emissions allowed prior to the application for the construction permit or operation permit, so that reasonable further progress toward the attainment and maintenance of any ambient air quality standard will be achieved.

(b) *Lowest achievable emission rate.* The emission from the major source will be at the lowest achievable emission rate.

(c) *Applicant's other major sources meet or on schedule to meet requirements.* All other major sources that are located in this state and that are owned or operated by the permit applicant or by any entity controlling, controlled by or under common control with the permit applicant, as determined under s. 180.1140 (6), meet or are on schedule to meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 and are in compliance with or are on schedule to come into compliance with all applicable emission limitations and emission standards under the federal clean air act.

(d) *Analysis of alternatives.* Based on an analysis of alternative sites, sizes, production processes and environmental control techniques for any major source that is located in an area designated under 42 USC 7407 (d), that the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification.

(3) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN ATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or a modified source and is located in an attainment area if the department finds that the major source meets the requirements under sub. (1) and it finds:

(a) *Best available control technology.* The source will be subject to the best available control technology for each applicable air contaminant;

(b) *Effects on air quality analyzed.* The effects on air quality as a result of the source and growth associated with the source were analyzed;

(c) *No adverse effect on air quality related values.* The source will not adversely affect the air quality related values of any federal mandatory class I prevention of significant deterioration area; and

(d) *Monitoring.* The permit applicant agrees to conduct monitoring specified by the department as necessary to determine the effects of the source on air quality.

(4) EXEMPTION FROM REQUIREMENTS. The department may waive a requirement under sub. (2) or (3) if:

(a) *Not applicable.* The requirement is not applicable to the source; or

(b) *Not necessary.* The requirement is not necessary to ensure that the source will have no adverse effect on air quality if the construction and operation or modification and operation of the source would result in an allowable emission of less than an amount specified by rule by the department.

(5) CONDITIONAL PERMIT. The department may issue a conditional air pollution control permit even if it finds that the source, as proposed, does not meet the requirements under subs. (1) to (3). If the department issues a conditional permit, it shall prescribe rea-

sonable permit conditions to assure that the source will meet the requirements under subs. (1) to (3) if it is constructed, reconstructed, replaced, modified or operated in accordance with those conditions.

(6) EXEMPTION FROM REQUIREMENTS FOR MODIFICATIONS. The department may waive a requirement under subs. (1) to (3) if the application is for the modification of a source, the source already has an air pollution control permit and the source already meets the requirements as a condition of that permit.

(7) USE OF VOLATILE ORGANIC COMPOUND GROWTH ACCOMMODATION. (a) Subject to the conditions and restrictions specified in this subsection, the department shall grant use of the growth accommodation as a means for a stationary source to comply with either sub. (1) (b) or (2) (a), or both subs. (1) (b) and (2) (a).

(b) Upon application by a source, the department shall certify to the applicant a growth accommodation credit in the amount requested subject to all of the following conditions:

1. The applicant demonstrates to the satisfaction of the department that it is unable, through reasonable means which could include installation of the best available control technology, to eliminate its need for a growth accommodation credit by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area. If the department determines that an applicant could, through reasonable means, reduce the amount of growth accommodation credit applied for by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area, the department shall certify to the applicant a growth accommodation credit equal to the amount requested by the applicant minus the amount by which the department finds the source could, through reasonable means, reduce emissions from other stationary sources that it owns or operates in the volatile organic compound accommodation area.

2. Except as provided in s. 285.69 (5) (d), the applicant is in compliance or is complying with an approved schedule to be in compliance with this chapter and s. 299.15 with respect to all stationary sources that it owns or operates and has paid the fees required under s. 285.69 (5).

3. Except as provided in subd. 8., the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, is greater than 2,500 tons.

4. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., less a reduction by the amount of any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b) 1., is greater than 3,000 tons, the department may certify to the applicant no more than the amount of the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., less the sum of 2,750 tons and any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b).

5. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b) 1., is greater than 2,500 tons but less than or equal to 3,000 tons, the department may certify no more than 250 tons to the applicant in that year.

6. The applicant agrees to forfeit any unused growth accommodation credits that the department determines the applicant does not need, as provided under sub. (8).

7. The applicant agrees not to sell or transfer any amount of the growth accommodation credit to any person other than the department.

8. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, would be 2,500 tons or less, the department may certify to the applicant a growth accommodation credit in the amount determined under this section if, because of facility shutdowns or replenishment activities under s. 285.39 that have occurred, the growth accommodation for the next succeeding year after reduction by the amount of the growth accommodation credit will be greater than 2,500 tons.

9. An applicant shall inform the department of the date or dates when it will need to use any given amount of the growth accommodation credit. The department shall certify to the applicant the proper amount of the growth accommodation credit on the date which the applicant states it will need it and shall reserve the proper amount of the growth accommodation credit for certification to the applicant upon the date needed, except for any amount which is forfeited under sub. (8). The department may use reserved growth accommodation credits to certify temporary growth accommodation credits which expire on or before the date when they are certified to the source which reserved them.

10. Upon request by an applicant, the department may certify to the applicant a growth accommodation credit which expires upon a date designated in the permit. The applicant shall sign a statement to acknowledge the expiration date of the permit. Growth accommodation credits issued under this subdivision may be certified from growth accommodation credits reserved by another source under subd. 9.

(c) Nothing in this subsection grants the recipient of a growth accommodation credit a property right to emit volatile organic compounds.

(d) Notwithstanding pars. (a) and (b) (intro.), the department may not grant use of the growth accommodation under this subsection for an air pollution control permit application submitted after July 1, 1992, as long as the growth accommodation area is designated under 42 USC 7407 as an ozone nonattainment area.

(8) FORFEITURE OF GROWTH ACCOMMODATION CREDITS. Within 4 years after the department certifies, under sub. (7), a growth accommodation credit to an applicant or reserves for the future use of an applicant a growth accommodation credit, and at least every 4 years thereafter, the department shall determine whether the certified or reserved growth accommodation credit is reasonably necessary for the applicant's current use and future plans. If the department determines that any amount of the certified or reserved growth accommodation credit is not reasonably necessary for the applicant's current use and if the applicant cannot demonstrate to the satisfaction of the department that any amount of the certified or reserved growth accommodation credit is reasonably necessary for the applicant's future plans, the applicant shall forfeit an amount of the growth accommodation credit, as determined by the department. The department shall deposit the forfeited amount of the growth accommodation credit in the growth accommodation replenishment.

(9) RESTRICTION ON EMISSION REDUCTION OPTION PROGRAMS. (a) No emissions of volatile organic compounds may be used in an emission reduction option program if:

1. The program involves a grantee of emissions of volatile organic compounds that is different than the grantor of emissions of volatile organic compounds; and

2. The emissions of volatile organic compounds specified in the program are from a recorded source.

(b) In this subsection, "recorded source" means a stationary source in the volatile organic compound accommodation area owned or operated by any person who owns or operates on May 17, 1988, a stationary source whose actual 1980 emissions of volatile organic compounds are recorded as zero in the 1982 plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(10) REQUIREMENTS FOR MEDICAL WASTE INCINERATORS. (a) In this subsection, "medical waste incinerator" has the meaning given in s. 287.07 (7) (c) 1. cr.

(b) In addition to the requirements under subs. (1) to (3), the department may approve an application submitted after

May 14, 1992, for a permit required or allowed under s. 285.60 for the construction of a medical waste incinerator or for the modification of a medical waste incinerator that expands the capacity of the medical waste incinerator only if it finds that the new or modified medical waste incinerator will be needed and that the site of the medical waste incinerator is appropriate.

(c) The department shall consider all of the following in evaluating the need for the proposed medical waste incinerator:

1. An approximate service area for the proposed medical waste incinerator that encompasses all sources of waste that could potentially be burned in the medical waste incinerator. The department shall delineate the service area based on the economics of waste collection, transportation and treatment.

2. The quantity of waste that could potentially be burned in the proposed medical waste incinerator and that is generated within the anticipated service area.

3. The remaining capacity or design capacity of other solid waste facilities, if those facilities are located within the anticipated service area of the proposed medical waste incinerator and are currently providing or are expected to provide solid waste management for any sources of solid waste that could potentially be burned in the medical waste incinerator.

4. The quantity of waste having the potential to be burned in the medical waste incinerator that may be managed in an effective recycling program created under s. 287.11.

5. The potential for reducing the quantity of waste having the potential to be burned in the medical waste incinerator by reducing the amount of waste that is generated within the anticipated service area and the potential for using alternative technologies for disposing of the waste.

(d) The department may not determine that the site of a proposed medical waste incinerator is appropriate if the medical waste incinerator or the transportation of solid waste to the medical waste incinerator will have an adverse effect that is both substantial and unreasonable on any of the following:

1. Existing recreational land uses.

2. Land or surface water that has any of the characteristics under s. 23.27 (2).

3. Scenic vistas of statewide significance.

4. Residential property.

5. Schools, churches, hospitals, nursing homes, or child care facilities.

6. Projected land uses identified in any municipal master plan or official map that is in effect at least 15 months prior to the submission to the department of the permit application, if the land uses are expected to occur during the site life of the medical waste incinerator and any expansions of the medical waste incinerator.

(e) The department shall promulgate rules for making the findings under par. (b).

History: 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302; 1993 a. 213; 1995 a. 227 s. 488; Stats. 1995 s. 285.63; 2003 a. 118; 2009 a. 185.

285.64 Criteria for operation permits for stationary sources. (1) ISSUANCE TO SOURCES NOT IN COMPLIANCE; FEDERAL OBJECTION. (a) Notwithstanding s. 285.63, the department may issue an operation permit for a stationary source that does not comply with the requirements in the operation permit, in the federal clean air act, in an implementation plan under s. 285.11 (6) or in s. 285.63 when the operation permit is issued if the operation permit includes all of the following:

1. A compliance schedule that sets forth a series of remedial measures that the owner or operator of the stationary source must take to comply with the requirements with which the stationary source is in violation when the operation permit is issued.

2. A requirement that, at least once every 6 months, the owner or operator of the stationary source submit reports to the department concerning the progress in meeting the compliance schedule and the requirements with which the stationary source is in violation when the operation permit is issued.

(b) Notwithstanding par. (a) and s. 285.63, the department may not issue an operation permit to a stationary source if the federal environmental protection agency objects to the issuance of the operation permit as provided in s. 285.62 (6) unless the department revises the operation permit to meet the objection.

(2) ONE-YEAR MORATORIUM ON REVOCATION. (a) The department may not revoke an operation permit for an existing source for one year after the issuance of that permit based upon failure of the existing source at the time of permit issuance to comply with this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

(b) Notwithstanding par. (a), the department may take any other action necessary to enforce an operation permit and this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 which apply to the existing source after issuance of an operation permit under this section.

History: 1979 c. 221, 355; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 489; Stats. 1995 s. 285.64.

285.65 Permit conditions. The department may prescribe conditions for an air pollution control permit to ensure compliance with this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 and to ensure compliance with the federal clean air act if each condition is one of the following and if each condition is applicable to the source:

(1) Final inspection and release of the project for permanent operation upon completion of construction, reconstruction, replacement or modification.

(2) Variances, orders or compliance schedules.

(3) Requirements necessary to assure compliance with s. 285.63.

(4) Reasonable construction and applicable operating conditions, emission control equipment maintenance requirements and emergency episode plans.

(5) Emission reduction options.

(6) Documentation of the allocation of the available air resource.

(7) The terms of any election by the permit applicant to meet more stringent emission limitations or to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option.

(8) The terms for use of growth accommodation credits under s. 285.63 (7) or (8), including the dates that the source expects to use the credits.

(9) Requirements concerning entry and inspection as provided in s. 285.19.

(10) Monitoring, record-keeping, reporting and compliance certification requirements.

(11) Requirements to submit compliance plans and schedules and progress reports.

(12) Conditions necessary to implement 42 USC 7651 to 7651o and regulations under 42 USC 7651 to 7651o concerning acid deposition control.

(13) Other conditions applicable to the source under the federal clean air act.

(14) Other requirements specified by rule by the department.

History: 1979 c. 34, 221; 1987 a. 27; 1991 a. 302; 1995 a. 227 s. 490; Stats. 1995 s. 285.65.

Cross-reference: See also chs. NR 406, 407, 408, 409, and 439, Wis. adm. code.

285.66 Permit duration and renewal. (1) CONSTRUCTION. Unless otherwise specified in a construction permit, the authorization to construct, reconstruct, replace, or modify a stationary source is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the authorization in the construction permit for the purposes of commencing or completing construction, reconstruction, replacement, or modification. Unless otherwise

specified in a construction permit, the department may only extend the term of the authorization in the permit for up to 18 additional months beyond the original 18–month period. If construction, reconstruction, replacement, or modification is not completed within the term specified in the permit or any extension granted by the department, the applicant shall apply for a new construction permit. Notwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit.

(2) OPERATION. (a) The department shall specify the term of an operation permit in the operation permit. The term of an operation permit issued under s. 285.62 or renewed under sub. (3) may not exceed 5 years from the date of issuance or renewal.

(b) Notwithstanding par. (a), the department may not specify that coverage under a registration permit under s. 285.60 (2g) or coverage under a general permit under s. 285.60 (3) expires except as follows:

1. The department may specify an expiration date for coverage under a registration permit or for coverage under a general permit at the request of an owner or operator.

2. The department may specify a term of 5 years or longer for coverage under a registration permit or for coverage under a general permit if the department finds that expiring coverage would significantly improve the likelihood of continuing compliance with applicable requirements compared to coverage that does not expire.

3. The department may specify a term of 5 years or less for coverage under a registration permit or for coverage under a general permit if required by the federal clean air act.

(c) Notwithstanding par. (a), the department may specify a term of longer than 5 years for an operation permit or specify that an operation permit does not expire if all of the following apply:

1. The operation permit is for a stationary source for which an operation permit is required under s. 285.60 but not under the federal clean air act.

2. The operation permit is not a registration permit or a general permit.

(3) RENEWAL. (a) A permittee shall apply for renewal of an operation permit at least 6 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

(b) The department shall follow the procedures in s. 285.62 in renewing an operation permit for a new source, a modified source or an existing source.

(c) The department may renew an operation permit if the criteria in ss. 285.63 and 285.64 are met. Notwithstanding s. 285.64 (1) (a), the department may deny an application for renewal of an operation permit for a stationary source if the stationary source is in violation of its current operation permit.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 492; Stats. 1995 s. 285.66; 2003 a. 118; 2005 a. 25, 28; 2009 a. 28.

Cross–reference: See also chs. NR 406, 408, 409, 463, 466, and 469, Wis. adm. code.

285.67 Permit revision, suspension and revocation. The department shall promulgate rules establishing criteria and procedures for revising, suspending and revoking air pollution control permits.

History: 1979 c. 34, 221; 1989 a. 335; 1991 a. 302; 1995 a. 227 s. 491; Stats. 1995 s. 285.67.

Cross–reference: See also ch. NR 407, Wis. adm. code.

285.68 Failure to adopt rule or issue permit or exemption. The failure to adopt a rule or issue an air pollution control permit or the exemption or granting of an exemption from an air pollution control permit requirement does not relieve any person from compliance with any emission limitation or with any other provision of law.

History: 1979 c. 34; 1995 a. 227 s. 493; Stats. 1995 s. 285.68.

285.69 Fees. (1) RULE MAKING. The department may promulgate rules for the payment and collection of reasonable fees for all of the following:

(a) *Application for permit.* Reviewing and acting upon any application for a construction permit, except that the department may not impose a fee on any of the following persons who apply for a construction permit:

1. An owner or operator of an entire facility for which an operation permit is required under s. 285.60 but not under the federal clean air act if the entire facility is covered by a registration permit under s. 285.60 (2g).

2. An owner or operator of an entire facility for which an operation permit is required under s. 285.60 but not under the federal clean air act if the entire facility is covered by a general permit under s. 285.60 (3).

(c) *Request for exemption.* Reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit.

(1d) REQUEST FOR WAIVER OF CONSTRUCTION PERMIT REQUIREMENT. An owner or operator that requests a waiver under s. 285.60 (5m) of the requirement to obtain a construction permit shall pay to the department a fee of $300.

(2) FEES FOR PERSONS REQUIRED TO HAVE FEDERAL OPERATION PERMITS. (a) The department shall promulgate rules for the payment and collection of fees by the owner or operator of a stationary source for which an operation permit is required under the federal clean air act. The rules shall provide all of the following:

1. That fees collected in a year before 2002 are based on actual emissions of all regulated pollutants and any other air contaminant specified by the department in the rules in the preceding year.

2. Except as provided under par. (d), that the fees collected in 1993 are $18 per ton of each regulated pollutant.

3. Except as provided under par. (d), that the fees collected in 1994 are $25 per ton increased by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), for 1993 exceeds the consumer price index for 1989.

4. That the fees collected in each year after 1994 and before 2002 are calculated by increasing the fees collected in the preceding year by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), increased in the preceding year.

5. That fees are not based on emissions by an air contaminant source in excess of 5,000 tons per year of each regulated pollutant, except that, subject to par. (b), this limitation does not apply to a major utility, as defined in s. 285.41 (1) (f), that owns or operates a phase I affected unit as listed in Table A of 42 USC 7651c.

6. That during 1995 to 1999, no fee is required to be paid under this subsection for emissions from any affected unit listed in Table A of 42 USC 7651c.

7. That the fees billed for a stationary source in each year after 2001 are based on the fees billed for the stationary source in 2001.

8. That the fee billed for each stationary source in each year after 2001 is based on the actual emissions of all regulated pollutants, and any other air contaminant specified by the department in the rules, in the preceding year.

9. That fees billed in years after 2001 are determined using a performance–based approach that increases a stationary source's fees in proportion to increases in the amount of pollutants emitted by the stationary source, as determined under subd. 8., and decreases a stationary source's fees in proportion to decreases in the amount of pollutants emitted by the stationary source, as determined under subd. 8.

10. That no multiplier or similar mechanism is used that would increase a stationary source's fees to compensate for decreases in overall amounts of emissions.

11. That no provision is used that would increase the fee per unit of pollutant emitted in order to compensate for decreases in overall amounts of emissions.

(b) The department may not charge a major utility fees on emissions in excess of 5,000 tons per year of each regulated pollutant beyond the amount necessary to recover the fees that would have been charged for any phase I affected unit listed in Table A of 42 USC 7651c owned by that major utility if the prohibition in par. (a) 6. did not exist.

(c) The fees collected under pars. (a) and (e) shall be credited to the appropriations under s. 20.370 (2) (bg), (3) (bg), (8) (mg) and (9) (mh) for the following:

1. The costs of reviewing and acting on applications for operation permits; implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; monitoring emissions and ambient air quality; preparing rules and materials to assist persons who are subject to the operation permit program; ambient air quality modeling; preparing and maintaining emission inventories; and any other direct and indirect costs of the operation permit program.

2. Costs of any other activities related to stationary sources of air contaminants.

(d) The department may promulgate a rule reducing any operation permit fee required to be paid under par. (a) by small business stationary sources to take into account the financial resources of small business stationary sources.

(e) Beginning in 2001, the owner or operator of a stationary source for which an operation permit is required shall pay to the department an annual fee of $ .86 per ton of actual emissions in the preceding year of all air contaminants on which the fee under par. (a) is based.

(2m) FEES FOR STATE PERMIT SOURCES. (a) The owner or operator of a stationary source for which an operation permit is required under s. 285.60 but not under the federal clean air act shall pay to the department a fee of $300 per year, except as provided in par. (b).

(b) An owner or operator to whom the department has issued an operation permit for one or more points of emission from an existing source in order to limit the source's potential to emit so that the existing source is not a major source shall pay to the department a fee of $4,100 per year if the operation permit includes federally enforceable conditions that allow the amount of emissions to be at least 80 percent of the amount that results in a stationary source being classified as a major source.

(bm) The fees collected under this subsection shall be credited to the appropriation account under s. 20.370 (2) (bh) for the following purposes as they relate to stationary sources for which an operation permit is required under s. 285.60 but not under the federal clean air act:

1. The costs of reviewing and acting on applications for operation permits; implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; monitoring emissions and ambient air quality; preparing rules and materials to assist persons who are subject to the operation permit program; ambient air quality modeling; preparing and maintaining emission inventories; and any other direct and indirect costs of the operation permit program.

2. Costs of any other activities related to stationary sources of air contaminants.

(3) ASBESTOS INSPECTION FEES. (a) The department may promulgate rules for the payment and collection of fees for inspecting nonresidential asbestos demolition and renovation projects regulated by the department. The fees under this subsection for an inspection plus the fee under sub. (1) (c) may not exceed $700 if the combined square and linear footage of friable asbestos–containing material involved in the project is less than 5,000. The fees under this subsection for an inspection plus the fee under sub. (1) (c) may not exceed $1,325 if the combined square and linear footage of friable asbestos–containing material involved in the project is 5,000 or more. The fees collected under this subsection shall be credited to the appropriation under s. 20.370 (2) (bi) for the direct and indirect costs of conducting inspections of nonresidential asbestos demolition and renovation projects regulated by the department and for inspecting property proposed to be used for a community fire safety training project.

(b) In addition to the fees under par. (a), the department may charge all of the following:

1. The costs it incurs for laboratory testing for a nonresidential asbestos demolition and renovation project.

2. A fee in the amount of $100 for the department to inspect property proposed to be used for a community fire safety training project for which the department requires inspection.

3. A fee in the amount of $100 for the department to review a revised notice of an asbestos renovation or demolition activity, submitted by a person required by the department to provide such notice.

4. An amount equal to the inspection fee under par. (a) to inspect property for a project for which a notice of an asbestos renovation or demolition activity was not provided, as required by the department, before the project was initiated.

(c) For the purpose of par. (a), combined square and linear footage shall be determined by adding the number of square feet of friable asbestos–containing material on areas other than pipes to the number of linear feet of friable asbestos–containing material on pipes.

(4) INFORMATION ON FEES. In promulgating rules under subs. (1) and (2), the department shall provide information on the costs upon which the proposed fees are based.

(5) GROWTH ACCOMMODATION USE FEE. (a) A one–time growth accommodation use fee shall be imposed at the time of application upon any person who obtains a certified growth accommodation credit under s. 285.63 (7). If the amount of credit per calendar year varies between calendar years, the amount of the fee shall be based upon the largest annual credit for any calendar year. If the person submits more than one application in any calendar year, the fee for the application shall be based upon the largest cumulative credit obtained for any calendar year. A fee is nonrefundable, except that in determining a fee for an application in any calendar year, the department shall credit once to the person an amount equal to any fee previously paid in the same calendar year. All fees collected under this subsection shall be deposited in the general fund.

(b) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is less than 40 tons, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by $100 per ton.

(c) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is 40 tons or more, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by $200 per ton.

(d) A stationary source which is operating without an air pollution control permit required under s. 285.60 but which can demonstrate to the satisfaction of the department the ability to comply with this chapter and s. 299.15 after obtaining a growth accommodation credit under s. 285.63 (7) shall be required to pay an amount from $200 to $1,000 times the amount of the growth accommodation credit certified to the person, expressed in tons per year.

(6) USE OF CERTAIN FEES. The department shall use moneys collected under subs. (1) and (5) for the purposes in subs. (1) and (5). If moneys collected under subs. (1) and (5) exceed the amounts necessary for the purposes specified in subs. (1) and (5), the department may use the excess for other activities to control air pollution in this state.

(7) EMISSION REDUCTION CREDIT FEES. The department may promulgate rules for the payment of fees by persons who hold emission reduction credits that may be used to satisfy the offset requirements in s. 285.63 (2) (a) and that have been certified by the department. The rules may waive the payment of fees under this subsection for categories of emission reduction credits. The fees collected under this subsection shall be credited to the appropriation under s. 20.370 (2) (bg).

History: 1979 c. 34, 221; 1987 a. 27; 1989 a. 56; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1995 a. 227 ss. 495 to 499; Stats. 1995 s. 285.69; 1997 a. 27, 35; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2009 a. 28, 276.

Cross-reference: See also ch. NR 410, Wis. adm. code.

SUBCHAPTER VIII

MISCELLANEOUS

285.70 Confidentiality of records. (1) Except as provided in sub. (2), the department shall make any record, report or other information obtained in the administration of this chapter and s. 299.15 available to the public.

(2) The department shall keep confidential any part of a record, report or other information obtained in the administration of this chapter and s. 299.15, other than emission data or an air pollution control permit, upon a showing satisfactory to the department by any person that the part of a record, report or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(3) Subsection (2) does not prevent the disclosure of any information to a representative of the department for the purpose of administering this chapter and s. 299.15 or to an officer, employee or authorized representative of the federal government for the purpose of administering the federal clean air act. When the department provides information that is confidential under sub. (2) to the federal government, the department shall also provide a copy of the application for confidential status.

History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1991 a. 302; 1995 a. 227 s. 460; Stats. 1995 s. 285.70.

285.71 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of this chapter and any other applicable requirements of law.

History: 1979 c. 34; 1995 a. 227 s. 459; Stats. 1995 s. 285.71.

285.73 Local air pollution control programs. (1) After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by this chapter and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

(b) Provides for the countywide enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;

(d) May authorize municipalities to participate in the administration and enforcement of air pollution programs; and

(e) Is approved by the department as adequate to meet the requirements of this chapter and any applicable rules pursuant thereto.

(2) Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in cooperation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such cooperative undertaking shall be considered to be performance by the county for purposes of this section.

(3) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the department may determine the boundaries within which such program is necessary and require it.

(4) (a) If the department has reason to believe that a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this chapter, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is inadequate to prevent and control air pollution in the county to which such program relates, or that such program is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of this chapter. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction.

(5) Any county in which the department administers its air pollution control program under sub. (4) may, with the approval of the department, resume a county air pollution control program which meets the requirements of sub. (1).

(6) Nothing in this chapter supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of this chapter for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

History: 1973 c. 90; 1979 c. 34 s. 2102 (39) (g); 1995 a. 227 s. 506; Stats. 1995 s. 285.73.

Cross-reference: See also ch. NR 403, Wis. adm. code.

285.75 County program. Instead of state review of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans, specifications and permits of air contaminant sources being constructed, modified or operated within the jurisdiction of these counties.

History: 1979 c. 34; 1995 a. 227 s. 501; Stats. 1995 s. 285.75.

Cross-reference: See also ch. NR 403, Wis. adm. code.

285.76 Notice concerning proposed area redesignations. (1) Within 5 days after the department receives notification that an American Indian tribal governing body proposes to redesignate an area under 42 USC 7474 for the purpose of the federal clean air act provisions concerning the prevention of significant deterioration of air quality and that a consultation meeting is requested among the tribal governing body, the federal environmental protection agency and this state, the department shall report that notification to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under s. 13.172 (3).

(2) Within 15 days after receiving notification that an American Indian tribal governing body proposes to redesignate an area under 42 USC 7474 for the purpose of the federal clean air act provisions concerning the prevention of significant deterioration of air quality, the department shall do all of the following:

(a) Publish a class 1 notice, under ch. 985, of the proposed redesignation and request for consultation with the state in a news-

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paper of general circulation in the area that would be affected by the redesignation, as determined using standards established by the federal environmental protection agency, and in the official state newspaper and provide a written statement concerning the proposed redesignation to those newspapers.

(b) Report that notification to the governor, and to the agency responsible for administering air pollution control laws, of any other state with an area that would be affected by the redesignation, as determined using standards established by the federal environmental protection agency.

(3) Within 15 days after receiving notification of the time and place of a public hearing under 42 USC 7474 (b) (1) (A) concerning a proposal by an American Indian tribal governing body to redesignate an area, the department shall provide notice of the time and place of the public hearing in the manner provided in subs. (1) and (2) (a). If the department receives notification of a hearing at the same time that it receives notification of the proposed redesignation, it shall combine the newspaper notices under this subsection with the notices under sub. (2) (a).

(4) The department shall submit a report to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under s. 13.172 (3), on the results of any consultations, under 40 CFR 52.21 (g) (4) (ii), with an American Indian tribal governing body that proposes to redesignate an area under 42 USC 7474.

History: 1997 a. 270.

285.77 Machinery use. The department may not require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

History: 1979 c. 34; 1987 a. 27; Stats. 1987 s. 144.404; 1995 a. 227 s. 503; Stats. 1995 s. 285.77.

285.78 Registration of early emission reductions. **(1)** In this section:

(a) "Carbon reserve" means any system that takes in and stores more carbon from the atmosphere than it releases to the atmosphere.

(b) "Fine particulate matter" means solid or liquid particles with a diameter less than or equal to 2.5 micrometers or emissions that are precursors to solid or liquid particles with a diameter less than or equal to 2.5 micrometers.

(c) "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride or any other gas that traps heat in the atmosphere.

(2) (a) The department shall establish and operate a system under which the department registers reductions in emissions of greenhouse gases if the reductions are made before the reductions are required by law. Under the system, the department may register carbon sequestration from the creation or preservation of carbon reserves and may register avoided emissions resulting from energy efficiency measures and from the use of renewable energy sources. Under the system, the department may not register a reduction in emissions of greenhouse gases if the reduction was made before January 1, 1991.

(b) The department may establish and operate systems under which the department registers reductions in emissions of fine particulate matter, mercury or other air contaminants identified by the department if the reductions are made before the reductions are required by law.

(c) The department may verify and quantify, or require the verification and quantification of, emission reductions that a person seeks to register under par. (a) or (b).

(d) Registration of emission reductions under this section is voluntary.

(3) (a) The department shall promulgate rules for the system under sub. (2) (a). In promulgating the rules, the department shall make the system as consistent as possible with other state, federal and international programs designed to reduce emissions of greenhouse gases.

(b) The department shall promulgate rules for any system that the department establishes under sub. (2) (b). In promulgating the rules, the department shall make the system as consistent as possible with other state, federal and international programs designed to reduce emissions of the substances covered by the system.

History: 1999 a. 195.

285.79 Small business stationary source technical and environmental compliance assistance program. **(1)** DEFINITION. In this section, "small business stationary source" means a stationary source designated under sub. (2) (a) or, except as provided in sub. (2) (b), a stationary source that satisfies all of the following criteria:

(a) Is owned or operated by a person that employs 100 or fewer individuals.

(b) Is a small business concern, as determined under 15 USC 632 (a).

(c) Is not a major stationary source, as defined in rules promulgated by the department.

(d) Does not emit 50 tons or more per year of any regulated pollutant.

(e) Emits a total of less than 75 tons per year of all regulated pollutants.

(2) DESIGNATIONS AND EXCLUSIONS. (a) In response to a petition by a stationary source, the department may, by rule, designate as a small business stationary source any stationary source that does not meet the criteria of sub. (1) (c), (d) or (e) but that does not emit a total of more than 100 tons per year of all regulated pollutants.

(b) The department may, by rule, after consultation with the administrators of the federal environmental protection agency and the federal small business administration, exclude from the definition of small business stationary source any category or subcategory of stationary source that the department determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the assistance provided under this section.

(3) ASSISTANCE PROGRAM. The department shall develop and administer a small business stationary source technical and environmental compliance assistance program. The program shall include all of the following:

(a) Mechanisms to develop, collect and coordinate information concerning methods and technologies that small business stationary sources can use to comply with the federal clean air act and programs to encourage lawful cooperation among small business stationary sources or other persons to further compliance with the federal clean air act.

(b) Mechanisms for providing small business stationary sources with information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution and with other assistance in pollution prevention and accidental release detection and prevention.

(c) A compliance assistance program that assists small business stationary sources in determining applicable requirements under this chapter and s. 299.15 and in receiving air pollution control permits in a timely and efficient manner.

(d) Mechanisms to ensure that small business stationary sources receive notice of their rights under the federal clean air act and state laws implementing the federal clean air act in a manner and form that assures reasonably adequate time for small business stationary sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the federal clean air act.

(e) Mechanisms for referring small business stationary sources to qualified auditors to determine compliance with the federal clean air act and state laws implementing the federal clean air act and other mechanisms for informing small business stationary

sources of their obligations under the federal clean air act and state laws.

(f) Procedures for consideration of a request from a small business stationary source for alteration of any required work practice or technological method of compliance with this chapter or of the schedule of measures that must be taken to implement a required work practice or method of compliance before an applicable compliance date, based on the technological and financial capability of the small business stationary source.

(4) GRANTING ALTERATIONS. The department may not grant an alteration under sub. (3) (f) unless the alteration complies with the requirements of the federal clean air act and any applicable plan under s. 285.11 (6). If those applicable requirements are set forth in federal regulations, the department may only grant alterations authorized in those regulations.

History: 1991 a. 302; 1995 a. 227 s. 462; Stats. 1995 s. 285.79; 2011 a. 32.

Cross-reference: See also ch. NR 437, Wis. adm. code.

285.795 Small business environmental council. (1) The small business environmental council shall do all of the following:

(a) Advise the department concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program under s. 285.79, difficulties encountered by small business stationary sources, as defined in s. 285.79 (1), in complying with s. 299.15 and ch. 285 and the degree and severity of enforcement of s. 299.15 and ch. 285 against small business stationary sources.

(c) Review information to be provided to small business stationary sources in connection with s. 299.15 and ch. 285 to ensure that the information can be understood by persons without technical training.

(d) Provide other advice, as directed by the secretary, related to assisting small businesses in complying with federal and state air pollution laws.

(2) The employees of the department who staff the small business stationary source technical and environmental compliance assistance program under s. 285.79 shall provide the small business environmental council with the assistance necessary to comply with sub. (1).

History: 1991 a. 302; 1995 a. 227; 2007 a. 125; 2011 a. 32 s. 3334b; Stats. 2011 s. 285.795.

SUBCHAPTER IX

ENFORCEMENT; PENALTIES

285.81 Hearings on certain air pollution actions. (1) PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. Any permit, part of a permit, condition or requirement in a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing challenging the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified or withdrawn.

(1m) EFFECT OF A CHALLENGE. (a) Subject to par. (b), if a permit holder or applicant seeks a hearing challenging part of a permit or a condition or requirement in a permit under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may, at its discretion, begin the activity for which the application was submitted or for which the permit was issued.

(b) An emission limitation contained in a construction permit becomes effective despite a challenge under par. (a), unless the permit holder or applicant challenging the emission limitation obtains a stay of the emission limitation from the hearing examiner or court considering the challenge.

(2) OTHER PERSONS. Any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted comments in the public comment process under s. 285.62 (4) or (5) may seek review under sub. (1) of any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75.

(3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. 293.43.

(4) REVIEW OF DEPARTMENT DETERMINATIONS. An air pollution control permit, part of an air pollution control permit or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 is not subject to review in any civil or criminal enforcement action for a violation of this chapter. This subsection does not restrict the ability of a person to challenge an administrative rule as provided in s. 227.40 (2).

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302; 1995 a. 227 s. 502; Stats. 1995 s. 285.81; 2003 a. 118; 2005 a. 28.

This section permits the persons identified in subs. (1) and (2) to challenge only a part of a permit, or only certain conditions or requirements. It does not address when a decision issued by an administrative law judge after the administrative hearing is final. Sierra Club v. Department of Natural Resources, 2007 WI App 181, 304 Wis. 2d 614, 736 N.W.2d 918, 06–2653.

Sub. (4) provides in unequivocal terms that enumerated permits and determinations are not subject to review. U.S. v. Murphy Oil USA, Inc. 143 F. Supp. 2d 1054 (2001).

285.83 Violations: enforcement. (1) (a) If the department has reason to believe that a violation of this chapter or s. 299.15 or any rule promulgated or special order, plan approval or permit issued under this chapter or s. 299.15 has occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation, and contain the findings of fact on which the charge of violation is based. The notice may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 285.59 (8) or 285.87.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of such other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

(2) The notice under sub. (1) (a) 1. for an alleged violation of rules promulgated under s. 285.31 (3) may include a tag or other notice placed on the dispensing equipment that is alleged to be in violation of rules promulgated under s. 285.31 (3).

History: 1971 c. 125 s. 522 (2); 1977 c. 377; 1979 c. 34 s. 980h; 1979 c. 221 s. 2202 (39); Stats. 1979 s. 144.423; 1989 a. 284; 1991 a. 39; 1995 a. 227 s. 510; Stats. 1995 s. 285.83.

Cross-reference: See also chs. NR 493 and 494, Wis. adm. code.

285.85 Emergency procedure. (1) If the secretary finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect

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human health or safety, he or she shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the natural resources board shall affirm, modify or set aside the order of the secretary.

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he or she may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 285.83. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

History: 1979 c. 34 ss. 983m, 2102 (39) (g); 1979 c. 176; Stats. 1979 s. 144.424; 1995 a. 227 s. 511; Stats. 1995 s. 285.85.

Cross-reference: See also ch. NR 493, Wis. adm. code.

285.86 Asbestos citations. (1) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture from a person who commits a violation specified under sub. (2).

(2) The department shall promulgate rules that specify violations of rules relating to asbestos abatement and management that are promulgated under ss. 285.11, 285.13, 285.17 and 285.27 to which sub. (1) applies. In a rule promulgated under this subsection, the department may limit the applicability of sub. (1) based on the frequency of violation and on health and environmental risks caused by the violation.

(3) The department shall submit any proposed rules under sub. (2) to the department of justice. The department may not promulgate a rule under sub. (2) unless the rule is approved by the department of justice.

History: 1999 a. 9.

Cross-reference: See also ch. NR 447, Wis. adm. code.

285.87 Penalties for violations relating to air pollution. (1) Except as provided in s. 285.57 (5) or 285.59 (8), any person who violates this chapter or any rule promulgated, any permit issued or any special order issued under this chapter shall forfeit not less than $10 or more than $25,000 for each violation. Each day of continued violation is a separate offense.

(2) (a) Except as provided in par. (b), any person who intentionally commits an act that violates, or fails to perform an act required by this chapter, except s. 285.59, or any rule promulgated, any permit issued or any special order issued under this chapter, except s. 285.59, shall be fined not more than $25,000 per day of violation or imprisoned for not more than 6 months or both.

(b) If the conviction under par. (a) is for a violation committed after another conviction under par. (a), the person is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than $50,000 per day of violation.

History: 1979 c. 34; 1989 a. 284, 289; 1993 a. 243; 1995 a. 227 s. 511; Stats. 1995 s. 285.87; 1997 a. 283; 2001 a. 109.

Cross-reference: See also ch. NR 494, Wis. adm. code.

In determining an entity's civil forfeitures, the trial court can consider its cooperation in remediation, its initiation of remedial activities, the environmental harm caused, and the degree of its culpability. The trial court acted within its discretion in imposing a forfeiture against a contractor for its role in improperly removing asbestos although a separate contractor was responsible for the removal. State v. T.J. McQuay, Inc, 2008 WI App 177, 315 Wis. 2d 214, 763 N.W.2d 148, 07–2449.

Because the causes of action asserted against the defendant for violating administrative rules governing the handling of asbestos did not exist and were not known or recognized at common law at the time of the adoption of the Wisconsin Constitution in 1848, the defendant had no constitutional right to a jury trial. State v. T.J. McQuay, Inc, 2008 WI App 177, 315 Wis. 2d 214, 763 N.W.2d 148, 07–2449.

2009–10 Wis. Stats. database updated and current through 2011 Wis. Act 39 and July 25, 2011. Statutory changes effective on or prior to 9–1–11 are printed as if currently in effect. Statutory changes effective after 9–1–11 are designated by NOTES. See Are The Statutes on this Website Official?

Date of enactment: **April 7, 2004**
2003 Assembly Bill 573 Date of publication*: **April 21, 2004**

2003 WISCONSIN ACT 192

AN ACT *to amend* 59.84 (2) (j), 285.30 (5) (c) and 346.16 (2) (am); and *to create* 285.30 (5) (j), 340.01 (38m), 341.05 (27), 346.16 (2) (ar), 346.94 (19) and 346.95 (8) of the statutes; **relating to:** the operation of off–road utility vehicles and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.84 (2) (j) of the statutes is amended to read:

59.84 **(2)** (j) *Traffic types and speed limits.* After an expressway project has been certified as completed, the public body having jurisdiction over the maintenance thereof shall have the power to regulate the type of vehicular use of such portion of the expressway except as limited by federal and state laws and regulations, and the power to fix speed limits thereon not in excess of the maximum speed limits for state trunk highways, and to provide and enforce reasonable penalties for infraction of such vehicular use regulation or speed limits. Notwithstanding s. 346.16 (2), the use of the expressways by pedestrians, mopeds, motor bicycles, motor scooters, bicycles, electric personal assistive mobility devices, off–road utility vehicles, funeral processions, and animals on foot and the hauling of oversized equipment without special permit shall be prohibited when an ordinance in conformity with this section and, with respect to prohibiting the use of electric personal assistive mobility devices, in conformity with s. 349.236 (1) (a) or (b) is enacted by the board, but a forfeiture provided therein shall not exceed the maximum forfeiture under s. 346.17 (2). The board may not prohibit the towing of disabled vehicles on expressways, except that the board may prohibit the towing of disabled vehicles during the peak hours of 7 a.m. to 9 a.m. and 4 p.m. to 6:30 p.~~m. as~~ established under county ordinance and except that the board may establish procedures for and may contract for the towing of vehicles which have become disabled on the expressway.

SECTION 2. 285.30 (5) (c) of the statutes is amended to read:

285.30 **(5)** (c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g) ~~or~~, (h), or (j).

SECTION 3. 285.30 (5) (j) of the statutes is created to read:

285.30 **(5)** (j) An off–road utility vehicle as defined in s. 340.01 (38m).

SECTION 4. 340.01 (38m) of the statutes is created to read:

340.01 **(38m)** "Off–road utility vehicle" means a motor vehicle that is designed and constructed to carry no more than 2 persons and to be used for collecting residential and commercial solid waste, such as yard waste, recyclable materials, and household garbage, refuse, and rubbish, landscaping, or incidental street maintenances; that is not certified by the manufacturer for on–road use or

* Section 991.11, WISCONSIN STATUTES 2001–02: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

that is certified by the manufacturer as meeting the equipment standards for a low–speed vehicle under 49 CFR 571.500; and that satisfies the equipment standards for a Type 2 automobile or Type 2 motorcycle under ch. 347 or the equipment standards for a low–speed vehicle under 49 CFR 571.500. "Off–road utility vehicle" does not include any motorized construction equipment or any motor vehicle that falls within another definition under this section.

SECTION 5. 341.05 (27) of the statutes is created to read:

341.05 **(27)** The vehicle is an off–road utility vehicle being operated in accordance with s. 346.94 (19).

SECTION 6. 346.16 (2) (am) of the statutes is amended to read:

346.16 **(2)** (am) ~~Except~~ Notwithstanding s. 349.105 and except as provided in par. (b), no person riding an electric personal assistive mobility device may go upon any expressway or freeway when official signs have been erected prohibiting persons specified in par. (a) from using the expressway or freeway.

SECTION 7. 346.16 (2) (ar) of the statutes is created to read:

346.16 **(2)** (ar) Notwithstanding s. 349.105, no person operating an off–road utility vehicle may go upon any expressway or freeway when official signs have been erected prohibiting persons specified in par. (a) from using the expressway or freeway.

SECTION 8. 346.94 (19) of the statutes is created to read:

346.94 **(19)** OFF–ROAD UTILITY VEHICLES ON ROADWAY. (a) A person may operate an off–road utility vehicle upon any roadway that has a speed limit of 35 miles per hour or less. This paragraph applies only if the person operating the off–road utility vehicle is employed by, or under contract with, the state or a local governmental unit, as defined in s. 19.42 (7u), and the off–road utility vehicle is being used for the state or local governmental purpose of collecting residential or commercial solid waste, landscaping, or performing incidental street maintenance, and is operated on a highway for a distance not to exceed one half mile.

(b) No person may operate an off–road utility vehicle upon any highway that has a speed limit of more than 35 miles per hour.

SECTION 9. 346.95 (8) of the statutes is created to read:

346.95 **(8)** Any person violating s. 346.94 (19) may be required to forfeit not less than $30 nor more than $300.

SECTION 3082. 281.87 of the statutes is created to read:

281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if federal funds are provided for the project under 33 USC 1268 (c) (12).

SECTION 3082e. 285.14 (2) of the statutes is amended to read:

285.14 **(2)** REVIEW BY STANDING COMMITTEES. At least 60 days before the department is required to submit a state implementation plan to the federal environmental protection agency, the department shall prepare, and provide to the standing committees of the legislature with jurisdiction over environmental matters, under s. 13.172 (3) a report that describes the proposed plan and contains all of the supporting documents that the department intends to submit with the plan. The department shall also submit to the ~~revisor of statutes~~ legislative reference bureau for publication in the administrative register a notice of availability of the report. If, within 30 days after the department provides the report, the chairperson of a standing committee to which the report was provided submits written comments on the report to the department, the secretary shall respond to the chairperson in writing within 15 days of receipt of the comments. This subsection does not apply to a modification to a state implementation plan relating to an individual source.

SECTION 3082r. 285.23 (6) of the statutes is amended to read:

285.23 **(6)** REPORT TO STANDING COMMITTEES. Before the department issues documents under sub. (2) and at least 60 days before the governor is required to make a submission on a nonattainment designation under 42 USC 7407 (d) (1) (A), the department shall prepare, and provide to the standing committees of the legislature with jurisdiction over environmental matters under s. 13.172 (3), a report that contains a description of any area proposed to be identified as a nonattainment area and supporting documentation. The department shall also submit to the ~~revisor of statutes~~ legislative reference bureau for publication in the administrative register a notice of availability of the report. If, within 30 days after the department submits the report, the chairperson of a standing committee to which the report was provided submits written comments on the report to the department, the secretary shall respond to the chairperson in writing within 15 days of receipt of the comments.

SECTION 3083. 285.30 (5) (a) of the statutes is amended to read:

285.30 **(5)** (a) A motor vehicle of a model year of ~~1967~~ 1995 or earlier.

SECTION 3084. 285.30 (5) (b) of the statutes is amended to read:

285.30 **(5)** (b) A motor vehicle ~~with~~ of a model year of 2006 or earlier that has a gross vehicle weight rating exceeding ~~10,000~~ 8,500 pounds, as determined by the manufacturer of the vehicle, and a motor vehicle of a model year of 2007 or later that has a gross vehicle weight rating exceeding 14,000 pounds, as determined by the manufacturer of the vehicle.

SECTION 3085. 285.30 (5) (d) of the statutes is amended to read:

285.30 **(5)** (d) A motor vehicle of a model year of 2006 or earlier that is powered by diesel fuel.

SECTION 3086k. 287.26 of the statutes is amended to read:

287.26 Business waste reduction and recycling assistance. The department may contract with a nonprofit organization for services to assist businesses to reduce the amount of solid waste generated or to reuse or recycle solid waste. In any contract under this section, the department shall include goals and objectives, methods to measure progress toward the goals and objectives, and a schedule for reporting to the department on the use of funds and progress toward the goals and objectives. The department may not provide more than $250,000 annually under this section to any nonprofit organization.

SECTION 3086p. 287.31 (6) of the statutes is amended to read:

287.31 **(6)** USE OF REVENUES. The newspaper recycling fees collected under sub. (5) shall be deposited in the recycling and renewable energy fund under s. 25.49.

SECTION 3087. 289.43 (7) (e) 3. of the statutes is amended to read:

289.43 **(7)** (e) 3. All fees collected under this paragraph shall be credited to the ~~appropriations~~ appropriation under s. 20.370 (2) (dg) ~~and (9) (mj)~~.

SECTION 3088. 289.645 (3) of the statutes is amended to read:

289.645 **(3)** AMOUNT OF RECYCLING FEE. The fee imposed under this section is ~~$3~~ $4 per ton for all solid waste other than high-volume industrial waste.

SECTION 3088d. 289.645 (6) of the statutes is amended to read:

289.645 **(6)** USE OF RECYCLING FEES. The fees collected under sub. (2) shall be deposited in the recycling and renewable energy fund.

SECTION 3089. 289.67 (1) (cp) of the statutes is amended to read:

289.67 **(1)** (cp) *Amount of environmental repair fee.* Notwithstanding par. (cm) and except as provided under par. (d), the environmental repair fee imposed under par. (a) is ~~30~~ 50 cents per ton for solid or hazardous waste, other than high-volume industrial waste, disposed of ~~on or after January 1, 1988, but before July 1, 1989, and 50 cents per ton disposed of on or after July 1, 1989~~ before the first day of the first month beginning after the effective date of this paragraph .... [revisor inserts date], and $1.60 per ton disposed of on or after the first day of the

Date of enactment: **November 16, 2007**
2007 Senate Bill 186 Date of publication*: **December 3, 2007**

2007 WISCONSIN ACT 33

AN ACT *to renumber and amend* 349.26 (1); *to amend* 285.30 (5) (c), 341.25 (title), 341.25 (1) (b), 341.297 (1), 342.14 (1r), 342.14 (3m) and 349.26 (2); and *to create* 285.30 (5) (k) and 349.26 (3) of the statutes; **relating to:** neighborhood electric vehicles.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 285.30 (5) (c) of the statutes is amended to read:

285.30 **(5)** (c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g), (h), ~~or~~ (j), or (k).

SECTION 2. 285.30 (5) (k) of the statutes is created to read:

285.30 **(5)** (k) A neighborhood electric vehicle, as defined in s. 340.01 (36r).

SECTION 3. 341.25 (title) of the statutes is amended to read:

341.25 (title) **Annual and biennial registration ~~fees; biennial motorcycle fees.~~**

SECTION 4. 341.25 (1) (b) of the statutes is amended to read:

341.25 **(1)** (b) For each motorcycle or moped with a curb weight of 1,499 pounds or less, except a specially designed vehicle under s. 341.067, which is designed for the transportation of persons rather than property, and for each neighborhood electric vehicle, a biennial fee of $23.

SECTION 5. 341.297 (1) of the statutes is amended to read:

341.297 **(1)** A motorcycle ~~or~~, moped, or neighborhood electric vehicle, as specified in s. 341.25 (1) (b).

SECTION 6. 342.14 (1r) of the statutes is amended to read:

342.14 **(1r)** Upon filing an application under sub. (1) or (3), an environmental impact fee of $9, by the person filing the application. All moneys collected under this subsection shall be credited to the environmental fund for environmental management. This subsection does not apply after December 31, 2007. This subsection does not apply to an application for a certificate of title for a neighborhood electric vehicle.

SECTION 7. 342.14 (3m) of the statutes is amended to read:

342.14 **(3m)** Upon filing an application under sub. (1) or (3), a supplemental title fee of $7.50 by the owner of the vehicle, except that this fee shall be waived with respect to an application under sub. (3) for transfer of a decedent's interest in a vehicle to his or her surviving spouse. The fee specified under this subsection is in addition to any other fee specified in this section. This subsection does not apply to an application for a certificate of title for a neighborhood electric vehicle.

SECTION 8. 349.26 (1) of the statutes is renumbered 340.01 (36r) and amended to read:

* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

340.01 **(36r)** ~~In this section, "neighborhood~~ "Neighborhood electric vehicle" means a ~~self-propelled~~ motor vehicle that ~~has successfully completed the neighborhood electric vehicle America test program conducted by the federal department of energy,~~ is propelled by electric power and that conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under 49 CFR 571.3 (b) and 571.500. "Neighborhood electric vehicle" does not include a golf cart.

SECTION 9. 349.26 (2) of the statutes is amended to read:

349.26 **(2)** ~~The~~ Subject to sub. (3), the governing body of any city, town, or village may by ordinance allow the use of a neighborhood electric vehicle on a roadway that has a speed limit of 35 miles per hour or less and over which the ~~governing body~~ city, town, or village has jurisdiction. ~~A city, town, or village that passes an ordinance under this section shall enter into an agreement with, or obtain the consent of, each governing body that shares jurisdiction over a roadway within the city, town, or village, to permit neighborhood electric vehicles to use or cross the roadway. An ordinance passed under this section may contain a provision for the city, town, or village to license neighborhood electric vehicles that are used within the city, town, or village limits.~~

SECTION 10. 349.26 (3) of the statutes is created to read:

349.26 **(3)** (a) An ordinance under sub. (2) may apply to a connecting highway, or to an intersection where the roadway crosses a state trunk highway, within the city, town, or village only if all of the following apply:

1. The city, town, or village provides written notice to the department of the ordinance, including identification of any connecting highway or state trunk highway intersection to which the ordinance will apply.

2. Within 21 days of receiving the notice under subd. 1., the department has provided written or oral consent to the use of neighborhood electric vehicles on the connecting highway or through the intersection crossing the state trunk highway or has failed to object to the use of neighborhood electric vehicles on the connecting highway or through the intersection crossing the state trunk highway.

(b) If the department makes a timely objection under par. (a) 2., no ordinance enacted under this section is valid for that connecting highway or that intersection crossing the state trunk highway.

SECTION 11. Nonstatutory provisions.

(1) Notwithstanding section 341.25 of the statutes, as affected by this act, and section 341.31 of the statutes, if a person has licensed, prior to the effective date of this subsection, any neighborhood electric vehicle in accordance with an ordinance enacted by a city, town, or village providing for such licensing, the person may register any such neighborhood electric vehicle with the department of transportation at no additional fee for the vehicle's entire initial registration period if the city, town, or village license is valid at the time that the person applies for registration with the department of transportation and if the person applies for registration within 2 years after the effective date of this subsection. The 2-year initial registration period for the neighborhood electric vehicle shall commence from the date that the certificate of registration is issued.

State of Wisconsin

2009 Assembly Bill 574

Date of enactment: **March 10, 2010**
Date of publication*: **March 24, 2010**

2009 WISCONSIN ACT 157

AN ACT *to amend* 59.84 (2) (j), 346.16 (2) (ar), 346.95 (5), 347.14 (1), 347.22, 347.245 (1) and 347.27 (3); and *to create* 285.30 (5) (L), 341.05 (27m), 346.94 (21) and 347.02 (1) (j) of the statutes; **relating to:** lightweight utility vehicles and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.84 (2) (j) of the statutes is amended to read:

59.84 **(2)** (j) *Traffic types and speed limits.* After an expressway project has been certified as completed, the public body having jurisdiction over the maintenance thereof shall have the power to regulate the type of vehicular use of such portion of the expressway except as limited by federal and state laws and regulations, and the power to fix speed limits thereon not in excess of the maximum speed limits for state trunk highways, and to provide and enforce reasonable penalties for infraction of such vehicular use regulation or speed limits. Notwithstanding s. 346.16 (2), the use of the expressways by pedestrians, mopeds, motor bicycles, motor scooters, bicycles, electric personal assistive mobility devices, off-road utility vehicles, lightweight utility vehicles as defined in s. 346.94 (21) (a) 2. except when used to cross an expressway, funeral processions, and animals on foot and the hauling of oversized equipment without special permit shall be prohibited when an ordinance in conformity with this section and, with respect to prohibiting the use of electric personal assistive mobility devices, in conformity with s. 349.236 (1) (a) or (b) is enacted by the board, but a forfeiture provided therein shall not exceed the maximum forfeiture under s. 346.17 (2). The board may not prohibit the towing of disabled vehicles on expressways, except that the board may prohibit the towing of disabled vehicles during the peak hours of 7 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m. as established under county ordinance and except that the board may establish procedures for and may contract for the towing of vehicles which have become disabled on the expressway.

SECTION 2. 285.30 (5) (L) of the statutes is created to read:

285.30 **(5)** (L) A lightweight utility vehicle as defined in s. 346.94 (21) (a) 2.

SECTION 3. 341.05 (27m) of the statutes is created to read:

341.05 **(27m)** The vehicle is a lightweight utility vehicle, as defined in s. 346.94 (21) (a) 2.

SECTION 4. 346.16 (2) (ar) of the statutes is amended to read:

346.16 **(2)** (ar) Notwithstanding s. 349.105, no person operating an off-road utility vehicle or a lightweight utility vehicle, as defined in s. 346.94 (21) (a) 2., may go upon any expressway or freeway when official signs have been erected prohibiting persons specified in par. (a) from using the expressway or freeway, except that a lightweight utility vehicle may cross such an expressway or freeway.

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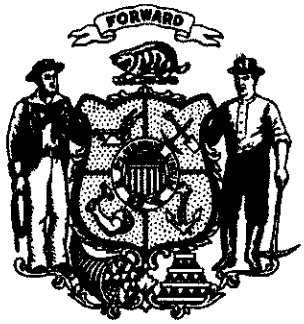
* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

State of Wisconsin



2009 Senate Bill 321

Date of enactment: **May 12, 2010**
Date of publication*: **May 26, 2010**

2009 WISCONSIN ACT 311

AN ACT *to repeal* 349.26 (3); *to renumber and amend* 340.01 (36r); *to amend* 285.30 (5) (k), 341.25 (1) (b), 341.297 (1), 342.14 (1r), 342.14 (3m), 346.94 (title), 349.26 (title) and 349.26 (2); and *to create* 343.32 (2) (be), 346.94 (22), 346.95 (11) and 349.26 (1m) of the statutes; **relating to:** operation of low-speed vehicles on highways and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 285.30 (5) (k) of the statutes is amended to read:

285.30 **(5)** (k) A ~~neighborhood electric~~ low-speed vehicle, as defined in s. 340.01 ~~(36r)~~ (27h).

SECTION 2. 340.01 (36r) of the statutes is renumbered 340.01 (27h) and amended to read:

340.01 **(27h)** ~~"Neighborhood electric~~ "Low-speed vehicle" means a motor vehicle ~~that is propelled by electric power and~~ that conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under 49 CFR 571.3 (b) and 571.500. ~~"Neighborhood electric~~ "Low-speed vehicle" does not include a golf cart.

SECTION 3. 341.25 (1) (b) of the statutes is amended to read:

341.25 **(1)** (b) For each motorcycle or moped with a curb weight of 1,499 pounds or less, except a specially designed vehicle under s. 341.067, which is designed for the transportation of persons rather than property, and for each ~~neighborhood electric~~ low-speed vehicle, a biennial fee of $23.

SECTION 4. 341.297 (1) of the statutes is amended to read:

341.297 **(1)** A motorcycle, moped, or ~~neighborhood electric~~ low-speed vehicle, as specified in s. 341.25 (1) (b).

SECTION 5. 342.14 (1r) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

342.14 **(1r)** Upon filing an application under sub. (1) or (3), an environmental impact fee of $9, by the person filing the application. All moneys collected under this subsection shall be deposited in the environmental fund for environmental management. This subsection does not apply to an application for a certificate of title for a ~~neighborhood electric~~ low-speed vehicle.

SECTION 6. 342.14 (3m) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

342.14 **(3m)** Upon filing an application under sub. (1) or (3), a supplemental title fee of $7.50 by the owner of the vehicle, except that this fee shall be waived with respect to an application under sub. (3) for transfer of a decedent's interest in a vehicle to his or her surviving spouse or domestic partner under ch. 770. The fee specified under this subsection is in addition to any other fee specified in this section. This subsection does not apply

* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

to an application for a certificate of title for a ~~neighborhood electric~~ low–speed vehicle.

SECTION 7. 343.32 (2) (be) of the statutes is created to read:

343.32 **(2)** (be) The scale adopted by the secretary shall assess, for each conviction, 2 demerit points for a violation of s. 346.94 (22) (c) or (d), except that convictions arising out of the same incident or occurrence shall be counted as a single conviction.

SECTION 8. 346.94 (title) of the statutes is amended to read:

346.94 (title) **Miscellaneous prohibited or restricted acts.**

SECTION 9. 346.94 (22) of the statutes is created to read:

346.94 **(22)** LOW–SPEED VEHICLES OPERATED ON HIGHWAYS. (a) Except as provided in par. (b) and s. 349.26, a person may operate a low–speed vehicle on any highway that has a speed limit of 35 miles per hour or less and that is under the jurisdiction, for maintenance purposes, of a municipality or county.

(b) 1. Paragraph (a) applies to the operation of a low–speed vehicle on a connecting highway only if the connecting highway has a speed limit of 25 miles per hour or less or the municipality or county with jurisdiction has adopted a valid ordinance under s. 349.26 (2).

2. Subject to subd. 3., par. (a) applies to an intersection where the highway under the jurisdiction of the municipality or county crosses a state trunk highway or connecting highway only if the state trunk highway or connecting highway has a speed limit at the intersection of 35 miles per hour or less and traffic at the intersection is controlled by traffic control signals.

3. Paragraph (a) does not apply to an intersection where the highway under the jurisdiction of the municipality or county crosses an expressway, as defined in s. 346.57 (1) (ag), or freeway, as defined in s. 346.57 (1) (am), or a controlled–access highway designated under s. 83.027 or 84.25.

(c) No person may operate a low–speed vehicle on any highway except as authorized under this subsection or s. 349.26 (2).

(d) No person may operate a low–speed vehicle at a speed in excess of 25 miles per hour.

SECTION 10. 346.95 (11) of the statutes is created to read:

346.95 **(11)** Any person violating s. 346.94 (22) (c) or (d) may be required to forfeit not more than $200.

SECTION 11. 349.26 (title) of the statutes is amended to read:

349.26 (title) **Authority to allow or prohibit the operation of ~~neighborhood electric~~ low–speed vehicles.**

SECTION 12. 349.26 (1m) of the statutes is created to read:

349.26 **(1m)** The governing body of any municipality or county may by ordinance prohibit the operation of low–speed vehicles on any highway that is under the jurisdiction, for maintenance purposes, of the municipality or county. A county ordinance enacted under this subsection does not apply within any municipality that has enacted or enacts an ordinance under sub. (2).

SECTION 13. 349.26 (2) of the statutes is amended to read:

349.26 **(2)** ~~Subject to sub. (3), the~~ The governing body of any ~~city, town, or village~~ municipality may by ordinance allow the use of a ~~neighborhood electric~~ low–speed vehicle on a roadway that has a speed limit of 35 miles per hour or less and ~~over which the city, town, or village~~ that is located within the territorial boundaries of the municipality, regardless of whether the municipality has jurisdiction over the roadway.

SECTION 14. 349.26 (3) of the statutes is repealed.

SECTION 15. Initial applicability.

(1) This act first applies to vehicles operated on the effective date of this subsection.

SECTION 16. Effective date.

(1) This act takes effect on the first day of the 5th month beginning after publication.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter NR 485

CONTROL OF EMISSIONS FROM MOTOR VEHICLES, INTERNAL COMBUSTION ENGINES AND MOBILE SOURCES; TAMPERING PROHIBITION

NR 485.01 Applicability; purpose.
NR 485.02 Definitions.
NR 485.03 General limitations.
NR 485.04 Motor vehicle emission limitations; exemptions.
NR 485.045 Repair cost limit for vehicle inspection program.
NR 485.05 Visible emission limits for motor vehicles, internal combustion engines and mobile sources.
NR 485.055 Particulate emission limit for gasoline and diesel internal combustion engines.
NR 485.06 Tampering with air pollution control equipment.
NR 485.07 Inspection requirement for motor vehicle tampering.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1997, No. 493.

NR 485.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to all motor vehicles, internal combustion engines and mobile air contaminant sources and to their owners and operators.

(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.13, 285.30 and 285.39, Stats., to establish emission limitations for motor vehicles, internal combustion engines and mobile air contaminant sources, to prohibit any person from tampering with the air pollution control equipment of a motor vehicle and to require tampering inspections.

History: Cr. Register, September, 1986, No. 369, eff. 10–1–86; am. (2), Register, July, 1989, No. 403, eff. 8–1–89; am. (1), Register, February, 1990, No. 410, eff. 3–1–90; am. (1), Register, May, 1992, No. 437, eff. 6–1–92.

NR 485.02 Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "Adjusted loaded vehicle weight" or "ALVW" means the numerical average of a vehicle's curb weight and its gross vehicle weight rating.

(2) "Air pollution control equipment" has the meaning given in s. 285.30 (6) (a) 1., Stats.

(5) "Basic vehicle frontal area" means the area enclosed by the geometric projection of the basic vehicle along the longitudinal axis, which includes tires but excludes mirrors and air deflectors, onto a plane perpendicular to the longitudinal axis of the vehicle.

(6) "Curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment plus the weight of fuel at normal tank capacity and the weight of optional equipment.

(7) "DOT" means the Wisconsin department of transportation.

(10) "Gross vehicle weight rating" or "GVWR" means the weight specified by the vehicle manufacturer as the maximum allowable loaded weight of a single vehicle.

(11) "Heavy–duty vehicle" means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.

(12) "Homemade vehicle" has the meaning given in s. 341.268 (1) (b), Stats.

(13) "Light–duty truck" means any motor vehicle rated at 8,500 pounds GVWR or less and which has a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, and which is one of the following:

(a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.

(b) Designed primarily for transportation of persons and has a capacity of more than 12 persons.

(c) Available with special features enabling off–street or off–highway operation and use.

(14) "Light–duty vehicle" means a passenger car or passenger car derivative capable of seating 12 passengers or less.

(15) "Loaded vehicle weight" or "LVW" means a vehicle's curb weight, in pounds, plus 300 pounds.

(16) "Model year" means the nominal year of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer, or if a reconstructed or homemade vehicle, the first year of titling. If the manufacturer does not designate a production period, the term "model year" means the calendar year of manufacture.

(17) "Reconstructed vehicle" has the meaning given in s. 341.268 (1) (d), Stats.

(19) "Tamper" has the meaning given in s. 285.30 (6) (a) 3., Stats.

(20) "Tampering inspection" means an inspection for tampering of air pollution control equipment.

(21) "Tier 1 emission standards" means the standards for light–duty vehicles of model year 1994 and newer and light–duty trucks of model year 1994 and newer in section 202 (g) and (h) of the federal clean air act, 42 USC 7521 (g) and (h).

(22) "Transient driving cycle" means the 240 second driving cycle specified in Appendix E to Subpart S of 40 CFR part 51, incorporated by reference in s. NR 484.04 (8).

(23) "Transient emission test" means the emission test specified in 40 CFR 51.357 (a) (11), as in effect on July 1, 1998, which consists of 240 seconds of mass emission measurement while the vehicle is driven on a dynamometer.

History: Cr. Register, September, 1986, No. 369, eff. 10–1–86; r. and recr. Register, July, 1989, No. 403, eff. 8–1–89; am. (intro.), Register, June, 1993, No. 450, eff. 7–1–93; r. and recr., Register, December, 1995, No. 480, eff. 1–1–96; am. (8), (9) and (23), Register, November, 1999, No. 527, eff. 12–1–99; correction in (18) and (22) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; **CR 10–049: r. (3), (4), (8), (9), (18) Register November 2010 No. 659, eff. 12–1–10.**

NR 485.03 General limitations. No person may cause, allow or permit emissions of particulate matter, sulfur oxides, hydrocarbons, carbon monoxide, nitrogen oxides, or odors from a motor vehicle, internal combustion engine, or mobile source which substantially contribute to the exceeding of an air standard or create air pollution.

History: Renum. from NR 154.17 (1), Register, September, 1986, No. 369, eff. 10–1–86; am. Register, July, 1989, No. 403, eff. 8–1–89; am. Register, May, 1992, No. 437, eff. 6–1–92.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

NR 485.04 Motor vehicle emission limitations; exemptions. (1) APPLICABILITY. Except as provided in subs. (9) and (10), the emission limitations in this section apply to motor vehicles subject to inspection under s. 110.20 (6) (a), Stats., when inspected under ch. Trans 131.

(2) TRANSIENT EMISSION TEST. Except as provided in sub. (7), any motor vehicle undergoing the transient emission test may not emit from the exhaust system:

(a) Carbon monoxide in rates that exceed both:

1. The applicable composite emission rate in Table 1 when measured over the entire transient driving cycle.

2. The applicable phase 2 emission rate in Table 1 when measured from second 94 to the end of the transient driving cycle.

(b) Hydrocarbons in rates that exceed both:

1. The applicable composite emission rate in Table 1 when measured over the entire transient driving cycle.

2. The applicable phase 2 emission rate in Table 1 when measured from second 94 to the end of the transient driving cycle.

(c) Oxides of nitrogen in a rate that exceeds the applicable composite emission rate in Table 1 when measured over the entire transient driving cycle, except as provided in sub. (9).

(5) GAS CAP INTEGRITY TEST. Any motor vehicle gas cap undergoing a test for pressure leaks on a gas cap tester rig may not exhibit a pressure decay of 6 inches of water or more during a 10 second measurement period after the gas cap is pressurized to 28 ± 1.0 inches of water.

(7) FAST-PASS TRANSIENT EMISSION TEST. Compliance with the emission limitations in sub. (2) for the transient emission test may be demonstrated prior to the completion of the test if all of the following conditions are met during the same second of the transient driving cycle:

(a) *Hydrocarbons.* For hydrocarbons, one of the following:

1. At least 30 seconds of the transient driving cycle has elapsed and the cumulative emission level of hydrocarbons, measured from the start of the cycle in grams, is less than the applicable composite fast-pass emission limitation in sub. (1) of Table 3.

2. At least 94 seconds of the transient driving cycle has elapsed and the cumulative emission level of hydrocarbons, measured from second 94 of the cycle in grams, is less than the applicable phase 2 fast-pass emission limitation in sub. (1) of Table 3.

(b) *Carbon monoxide.* For carbon monoxide, one of the following:

1. At least 30 seconds of the transient driving cycle has elapsed and the cumulative emission level of carbon monoxide, measured from the start of the cycle in grams, is less than the applicable composite fast-pass emission limitation in sub. (2) of Table 3.

2. At least 94 seconds of the transient driving cycle has elapsed and the cumulative emission level of carbon monoxide, measured from second 94 of the cycle in grams, is less than the applicable phase 2 fast-pass emission limitation in sub. (2) of Table 3.

(c) *Oxides of nitrogen.* Except as provided in sub. (9), at least 30 seconds of the transient driving cycle has elapsed and the cumulative emission level of oxides of nitrogen, measured from the start of the cycle in grams, is less than the applicable composite fast-pass emission limitation in sub. (3) of Table 3.

(9) EFFECTIVE DATE FOR OXIDES OF NITROGEN REQUIREMENTS. An inspection under s. 110.20 (6) (a), Stats., shall include an inspection for emissions of oxides of nitrogen. However, the emission limitations for oxides of nitrogen in subs. (2) (c) and (7) (c) shall apply for compliance purposes only to inspections conducted after May 1, 2001.

(10) EXEMPTIONS. In addition to the vehicles specified in s. 285.30 (5), Stats., the following motor vehicles are exempt from the emission limitations of this section:

(a) A motor vehicle powered solely by electricity.

(b) A motor vehicle registered under s. 341.266 (2) (a) or 341.268 (2) (a), Stats., except as provided in sub. (11).

(11) PERIODIC TESTING OF COLLECTOR AND HOBBYIST VEHICLES. A motor vehicle registered under s. 341.266 (2) (a) or 341.268 (2) (a), Stats., shall be inspected and subject to the emission limitations of this section only in conjunction with any of the following actions:

(a) Initial registration of the vehicle under s. 341.266 (2) (a) or 341.268 (2) (a), Stats.

(b) Any transfer of ownership of the vehicle.

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Table 1
Emission Limitations For The Transient Emission Test

(1) MOTOR VEHICLES INSPECTED BETWEEN DECEMBER 1, 1995, AND NOVEMBER 30, 1996.

(a) *Light–Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.90	0.60	17.5	14.0	2.3
1991–1995	1.40	0.90	23.0	18.5	3.0
1983–1990	2.30	1.40	35.0	28.0	3.5
1981–1982	2.30	1.40	70.0	55.0	3.5
1980	2.30	1.40	70.0	55.0	7.0
1977–1979	8.50	5.30	100	80.0	7.0
1975–1976	8.50	5.30	100	80.0	10.5
1973–1974	11.5	7.25	175	140	10.5
1968–1972	11.5	7.25	175	140	11.5

(b) *Light–Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	1.15	0.75	23.0	18.5	3.0
1991–1995	2.75	1.75	70.0	55.0	3.5
1988–1990	3.70	2.30	90.0	72.0	4.0
1984–1987	3.70	2.30	90.0	72.0	8.0
1979–1983	8.50	5.30	115	90.0	8.0
1975–1978	9.20	5.80	140	110	10.5
1973–1974	11.5	7.25	175	140	10.5
1968–1972	11.5	7.25	175	140	11.5

(c) *Light–Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy–Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer	1.15	0.75	23.0	18.5	3.0
1991–1996	2.75	1.75	70.0	55.0	5.2
1988–1990	3.70	2.30	90.0	72.0	5.8
1984–1987	3.70	2.30	90.0	72.0	8.0
1979–1983	8.50	5.30	115	90.0	8.0
1975–1978	9.20	5.80	140	110	10.5
1973–1974	11.5	7.25	175	140	10.5
1968–1972	11.5	7.25	175	140	11.5

(d) *Heavy–Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	2.75	1.75	70.0	55.0	4.5
1991–1997	3.70	2.30	70.0	55.0	7.0
1987–1990	3.70	2.30	90.0	72.0	9.0
1985–1986	5.75	3.60	90.0	72.0	9.0
1979–1984	8.50	5.30	115	90.0	9.0
1974–1978	11.5	7.25	175	140	11.5
1970–1973	11.5	7.25	200	160	11.5
1968–1969	23.0	14.5	230	185	17.5

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Table 1 (continued)
Emission Limitations For The Transient Emission Test

(e) *Heavy–Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	5.50	3.50	140	110	9.0
1991–1997	7.40	4.70	140	110	14.0
1987–1990	7.40	4.70	185	150	18.5
1985–1986	11.5	7.25	185	150	18.5
1979–1984	13.0	8.20	205	165	18.5
1974–1978	15.0	9.50	230	185	23.0
1970–1973	15.0	9.50	260	210	23.0
1968–1969	27.0	17.0	290	230	35.0

(2) MOTOR VEHICLES INSPECTED BETWEEN DECEMBER 1, 1996, AND NOVEMBER 30, 1997.

(a) *Light–Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.80	0.50	15.0	12.0	2.0
1991–1995	1.25	0.75	20.0	16.0	2.5
1983–1990	2.00	1.25	30.0	24.0	3.0
1981–1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	6.0
1977–1979	7.50	5.00	90.0	72.0	6.0
1975–1976	7.50	5.00	90.0	72.0	9.0
1973–1974	10.0	6.00	150	120	9.0
1968–1972	10.0	6.00	150	120	10.0

(b) *Light–Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	1.00	0.63	20.0	16.0	2.5
1991–1995	2.40	1.50	60.0	48.0	3.0
1988–1990	3.20	2.00	80.0	64.0	3.5
1984–1987	3.20	2.00	80.0	64.0	7.0
1979–1983	7.50	5.00	100	80.0	7.0
1975–1978	8.00	5.00	120	96.0	9.0
1973–1974	10.0	6.00	150	120	9.0
1968–1972	10.0	6.00	150	120	10.0

(c) *Light–Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy–Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer	1.00	0.63	20.0	16.0	2.5
1991–1996	2.40	1.50	60.0	48.0	4.5
1988–1990	3.20	2.00	80.0	64.0	5.0
1984–1987	3.20	2.00	80.0	64.0	7.0
1979–1983	7.50	5.00	100	80.0	7.0
1975–1978	8.00	5.00	120	96.0	9.0
1973–1974	10.0	6.00	150	120	9.0
1968–1972	10.0	6.00	150	120	10.0

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table 1 (continued)
Emission Limitations For The Transient Emission Test

(d) *Heavy–Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	2.40	1.50	60.0	48.0	4.0
1991–1997	3.20	2.00	60.0	48.0	6.0
1987–1990	3.20	2.00	80.0	64.0	8.0
1985–1986	5.00	3.10	80.0	64.0	8.0
1979–1984	7.50	5.00	100	80.0	8.0
1974–1978	10.0	6.00	150	120	10.0
1970–1973	10.0	6.00	175	140	10.0
1968–1969	20.0	12.5	200	160	15.0

(e) *Heavy–Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	4.80	3.00	120	96.0	8.0
1991–1997	6.40	4.00	120	96.0	12.0
1987–1990	6.40	4.00	160	128	16.0
1985–1986	10.0	6.00	160	128	16.0
1979–1984	11.5	7.00	180	145	16.0
1974–1978	13.0	8.00	200	160	20.0
1970–1973	13.0	8.00	225	180	20.0
1968–1969	24.0	15.0	250	200	30.0

(3) MOTOR VEHICLES INSPECTED BETWEEN DECEMBER 1, 1997, AND NOVEMBER 30, 1998.

(a) *Light–Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.60	0.40	10.0	8.0	1.5
1994–1995					
Tier 1[1]	0.60	0.40	10.0	8.0	1.5
Not Tier 1[1]	0.80	0.50	15.0	12.0	2.0
1991–1993	0.80	0.50	15.0	12.0	2.0
1987–1990	1.10	0.70	20.0	16.0	2.5
1983–1986	2.00	1.25	30.0	24.0	3.0
1981–1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	6.0
1977–1979	7.50	5.00	90.0	72.0	6.0
1975–1976	7.50	5.00	90.0	72.0	9.0
1973–1974	10.00	6.00	150	120	9.0
1968–1972	10.00	6.00	150	120	10.0

(b) *Light–Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer					
(≤3750 lbs LVW)[2]	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)[2]	0.80	0.50	13.0	10.0	1.8
1994–1995					
Tier 1[3]					
(≤3750 lbs LVW)[4]	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)[4]	0.80	0.50	13.0	10.0	1.8

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Table 1 (continued)
Emission Limitations For The Transient Emission Test

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
Not Tier 1[3]	1.60	1.00	40.0	32.0	2.5
1991–1993	1.60	1.00	40.0	32.0	2.5
1988–1990	2.20	1.40	55.0	44.0	3.0
1987	2.20	1.40	55.0	44.0	5.5
1984–1986	3.20	2.00	80.0	64.0	7.0
1979–1983	7.50	5.00	100	80.0	7.0
1975–1978	8.00	5.00	120	96.0	9.0
1973–1974	10.0	6.00	150	120	9.0
1968–1972	10.0	6.00	150	120	10.0

(c) *Light–Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy–Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer					
(≤5750 lbs ALVW)[5]	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW)[5]	0.80	0.50	15.0	12.0	2.0
1996					
Tier 1[6]					
(≤5750 lbs ALVW)[7]	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW)[7]	0.80	0.50	15.0	12.0	2.0
Not Tier 1[6]	1.60	1.00	40.0	32.0	3.5
1991–1995	1.60	1.00	40.0	32.0	3.5
1988–1990	2.20	1.40	55.0	44.0	4.0
1987	2.20	1.40	55.0	44.0	5.5
1984–1986	3.20	2.00	80.0	64.0	7.0
1979–1983	7.50	5.00	100	80.0	7.0
1975–1978	8.00	5.00	120	96.0	9.0
1973–1974	10.0	6.00	150	120	9.0
1968–1972	10.0	6.00	150	120	10.0

(d) *Heavy–Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	2.00	1.25	30.0	24.0	4.0
1991–1997	2.00	1.25	40.0	32.0	5.0
1987–1990	2.40	1.50	55.0	44.0	7.0
1985–1986	5.00	3.10	80.0	64.0	8.0
1979–1984	7.50	5.00	100	80.0	8.0
1974–1978	10.0	6.00	150	120	10.0
1970–1973	10.0	6.00	175	140	10.0
1968–1969	20.0	12.5	200	160	15.0

(e) *Heavy–Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	3.50	2.00	60.0	48.0	7.0
1991–1997	3.50	2.00	70.0	56.0	9.0
1987–1990	4.50	2.80	100	80.0	13.0
1985–1986	10.0	6.00	160	128	16.0
1979–1984	11.5	7.00	180	145	16.0

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Table 1 (continued)
Emission Limitations For The Transient Emission Test

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1974–1978	13.0	8.00	200	160	20.0
1970–1973	13.0	8.00	225	180	20,0
1968–1969	24.0	15.0	250	200	30.0

(4) MOTOR VEHICLES INSPECTED BETWEEN DECEMBER 1, 1998, AND MARCH 31, 2006. (a) *Light–Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.60	0.40	10.0	8.0	1.5
1994–1995					
Tier 1[1]	0.60	0.40	10.0	8.0	1.5
Not Tier 1[1]	0.80	0.50	15.0	12.0	2.0
1987–1993	0.80	0.50	15.0	12.0	2.0
1983–1986	2.00	1.25	30.0	24.0	3.0
1981–1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	4.0
1977–1979	3.00	2.00	65.0	52.0	4.0
1975–1976	3.00	2.00	65.0	52.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

(b) *Light–Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer					
(≤3750 lbs LVW)[2]	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)[2]	0.80	0.50	13.0	10.0	1.8
1994–1995					
Tier 1[3]					
(≤3750 lbs LVW)[4]	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)[4]	0.80	0.50	13.0	10.0	1.8
Not Tier 1[3]	1.60	1.00	40.0	32.0	2.5
1988–1993	1.60	1.00	40.0	32.0	2.5
1987	1.60	1.00	40.0	32.0	4.5
1984–1986	3.20	2.00	70.0	56.0	4.5
1979–1983	3.40	2.00	70.0	56.0	4.5
1975–1978	4.00	2.50	80.0	64.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

(c) *Light–Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy–Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer					
(≤5750 lbs ALVW)[5]	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW)[5]	0.80	0.50	15.0	12.0	2.0
1996					
Tier 1[6]					
(≤5750 lbs ALVW)[7]	0.80	0.50	13.0	10.0	1.8

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table 1 (continued)
Emission Limitations For The Transient Emission Test

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
(>5750 lbs ALVW)[7]	0.80	0.50	15.0	12.0	2.0
Not Tier 1[6]	1.60	1.00	40.0	32.0	3.5
1988–1995	1.60	1.00	40.0	32.0	3.5
1987	1.60	1.00	40.0	32.0	4.5
1984–1986	3.20	2.00	70.0	56.0	4.5
1979–1983	3.40	2.00	70.0	56.0	4.5
1975–1978	4.00	2.50	80.0	64.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

(d) *Heavy–Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	2.00	1.25	30.0	24.0	4.0
1991–1997	2.00	1.25	40.0	32.0	5.0
1987–1990	2.00	1.25	40.0	32.0	6.0
1985–1986	5.00	3.10	80.0	64.0	8.0
1979–1984	7.50	5.00	100	80.0	8.0
1974–1978	10.0	6.00	150	120	10.0
1970–1973	10.0	6.00	175	140	10.0
1968–1969	20.0	12.5	200	160	15.0

(e) *Heavy–Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	3.50	2.00	60.0	48.0	7.0
1991–1997	3.50	2.00	70.0	56.0	9.0
1987–1990	3.50	2.00	70.0	56.0	11.0
1985–1986	10.0	6.00	150	120	16.0
1979–1984	11.5	7.00	150	120	16.0
1974–1978	13.0	8.00	150	120	20.0
1970–1973	13.0	8.00	175	140	20.0
1968–1969	24.0	15.0	200	160	30.0

(5) MOTOR VEHICLES INSPECTED ON AND AFTER APRIL 1, 2006. (a) *Light–Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.60	0.40	10.0	8.0	1.5
1987–1995	0.80	0.50	15.0	12.0	2.0
1983–1986	2.00	1.25	30.0	24.0	3.0
1981–1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	5.0
1977–1979	3.00	2.00	65.0	52.0	5.0
1975–1976	3.00	2.00	65.0	52.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table 1 (continued)
Emission Limitations For The Transient Emission Test

(b) *Light–Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer					
(≤3750 lbs LVW)	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)	0.80	0.50	13.0	10.0	1.8
1988–1995					
(≤3750 lbs LVW)	1.60	1.00	40.0	32.0	2.5
(>3750 lbs LVW)	1.60	1.00	40.0	32.0	3.5
1987	1.60	1.00	40.0	32.0	5.5
1984–1986	3.20	2.00	70.0	56.0	5.5
1979–1983	3.40	2.00	70.0	56.0	5.5
1975–1978	4.00	2.50	80.0	64.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

(c) *Light–Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy–Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer					
(≤5750 lbs ALVW)	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW)	0.80	0.50	15.0	12.0	2.0
1990–1996	1.60	1.00	40.0	32.0	3.5
1987–1989	1.60	1.00	40.0	32.0	5.5
1984–1986	3.20	2.00	70.0	56.0	5.5
1979–1983	3.40	2.00	70.0	56.0	5.5
1975–1978	4.00	2.50	80.0	64.0	6.0
1973–1974	7.00	4.50	120	96.0	6.0
1968–1972	7.00	4.50	120	96.0	7.0

(d) *Heavy–Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
2005 and newer	1.00	0.63	30.0	24.0	3.0
1998–2004	2.00	1.25	30.0	24.0	7.0
1991–1997	2.00	1.25	40.0	32.0	9.0
1987–1990	2.00	1.25	40.0	32.0	11.0
1985–1986	5.00	3.10	80.0	64.0	16.0
1979–1984	7.50	5.00	100	80.0	16.0
1974–1978	10.0	6.00	150	120	20.0
1970–1973	10.0	6.00	175	140	20.0
1968–1969	20.0	12.5	200	160	30.0

(e) *Heavy–Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
2005 and newer	1.00	0.63	60.0	48.0	3.0
1998–2004	3.50	2.00	60.0	48.0	7.0
1991–1997	3.50	2.00	70.0	56.0	9.0
1987–1990	3.50	2.00	70.0	56.0	11.0
1985–1986	10.0	6.00	150	120	16.0

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Table 1 (continued)
Emission Limitations For The Transient Emission Test

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1979–1984	11.5	7.00	150	120	16.0
1974–1978	13.0	8.00	150	120	20.0
1970–1973	13.0	8.00	175	140	20.0
1968–1969	24.0	15.0	200	160	30.0

[1]Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1994–1995 model year light–duty vehicles. (**Note:** On January 7, 1998, the department issued to DOT written approval for this use of the "Not Tier 1" emission limitations until November 30, 1999.)

[2]Upon written department approval granted to DOT, the emission limitations for ">3750 lbs LVW" may be applied to all 1996 model year and newer light–duty trucks with GVWR of 6,000 pounds or less.

[3]Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1994–1995 model year light–duty trucks with GVWR of 6,000 pounds or less. (**Note:** On January 7, 1998, the department issued to DOT written approval for this use of the "Not Tier 1" emission limitations until November 30, 1999.)

[4]Upon written department approval granted to DOT, the emission limitations for ">3750 lbs LVW" may be applied to all 1994–1995 model year light–duty trucks with GVWR of 6,000 pounds or less which are certified to meet Tier 1 emission standards.

[5]Upon written department approval granted to DOT, the emission limitations for ">5750 lbs ALVW" may be applied to all 1997 model year and newer light–duty trucks with GVWR of 6,001 to 8,500 pounds and to all 1997 model year and newer heavy–duty vehicles with GVWR of 8,500 pounds or less.

[6]Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1996 model year light–duty trucks with GVWR of 6,001 to 8,500 pounds and to all 1996 model year heavy–duty vehicles with GVWR of 8,500 pounds or less. (**Note:** On January 7, 1998, the department issued to DOT written approval for this use of the "Not Tier 1" emission limitations until November 30, 1999.)

[7]Upon written department approval granted to DOT, the emission limitations for ">5750 lbs ALVW" may be applied to all 1996 model year light–duty trucks with GVWR of 6,001 to 8,500 pounds which are certified to meet Tier 1 emission standards and to all 1996 model year heavy–duty vehicles with GVWR of 8,500 pounds or less which are certified to meet Tier 1 emission standards.

Table 3
Fast–Pass Emission Limitations For The Transient Emission Test

(1) HYDROCARBON EXHAUST EMISSIONS.

(a) *Motor vehicles having composite hydrocarbon emission limitations in Table 1 of at least 0.60 grams/mile but less than 0.80 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.093	N/A	56	0.189	N/A
31	0.095	N/A	57	0.196	N/A
32	0.097	N/A	58	0.203	N/A
33	0.101	N/A	59	0.207	N/A
34	0.105	N/A	60	0.209	N/A
35	0.110	N/A	61	0.210	N/A
36	0.113	N/A	62	0.212	N/A
37	0.115	N/A	63	0.212	N/A
38	0.117	N/A	64	0.213	N/A
39	0.120	N/A	65	0.214	N/A
40	0.124	N/A	66	0.215	N/A
41	0.127	N/A	67	0.216	N/A
42	0.129	N/A	68	0.218	N/A
43	0.130	N/A	69	0.221	N/A
44	0.133	N/A	70	0.222	N/A
45	0.148	N/A	71	0.224	N/A
46	0.150	N/A	72	0.225	N/A
47	0.156	N/A	73	0.227	N/A
48	0.166	N/A	74	0.228	N/A
49	0.174	N/A	75	0.230	N/A
50	0.176	N/A	76	0.231	N/A
51	0.179	N/A	77	0.231	N/A
52	0.180	N/A	78	0.231	N/A
53	0.182	N/A	79	0.236	N/A
54	0.185	N/A	80	0.240	N/A
55	0.187	N/A	81	0.243	N/A

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
82	0.245	N/A	145	0.513	0.053
83	0.247	N/A	146	0.515	0.053
84	0.250	N/A	147	0.516	0.054
85	0.252	N/A	148	0.518	0.055
86	0.254	N/A	149	0.519	0.056
87	0.257	N/A	150	0.521	0.057
88	0.260	N/A	151	0.522	0.058
89	0.263	N/A	152	0.524	0.058
90	0.267	N/A	153	0.525	0.059
91	0.269	N/A	154	0.527	0.059
92	0.270	N/A	155	0.528	0.060
93	0.272	N/A	156	0.530	0.062
94	0.275	N/A	157	0.531	0.064
95	0.278	N/A	158	0.533	0.066
96	0.279	N/A	159	0.534	0.066
97	0.282	N/A	160	0.537	0.070
98	0.291	N/A	161	0.563	0.077
99	0.297	N/A	162	0.588	0.087
100	0.304	N/A	163	0.604	0.093
101	0.308	N/A	164	0.630	0.099
102	0.308	N/A	165	0.640	0.103
103	0.309	N/A	166	0.656	0.129
104	0.310	N/A	167	0.677	0.151
105	0.316	N/A	168	0.683	0.153
106	0.321	N/A	169	0.686	0.162
107	0.323	N/A	170	0.687	0.178
108	0.341	N/A	171	0.689	0.191
109	0.344	0.012	172	0.698	0.200
110	0.347	0.014	173	0.711	0.208
111	0.348	0.017	174	0.737	0.216
112	0.350	0.019	175	0.764	0.229
113	0.351	0.019	176	0.770	0.239
114	0.353	0.020	177	0.776	0.253
115	0.366	0.021	178	0.788	0.258
116	0.385	0.023	179	0.806	0.262
117	0.404	0.026	180	0.813	0.273
118	0.421	0.028	181	0.824	0.280
119	0.433	0.028	182	0.841	0.284
120	0.435	0.029	183	0.849	0.291
121	0.440	0.031	184	0.864	0.314
122	0.446	0.032	185	0.871	0.322
123	0.452	0.033	186	0.876	0.324
124	0.458	0.034	187	0.881	0.326
125	0.461	0.034	188	0.886	0.328
126	0.468	0.034	189	0.891	0.339
127	0.471	0.036	190	0.902	0.348
128	0.474	0.037	191	0.914	0.358
129	0.478	0.037	192	0.925	0.370
130	0.481	0.040	193	0.938	0.383
131	0.482	0.041	194	0.941	0.395
132	0.483	0.042	195	0.944	0.406
133	0.484	0.044	196	0.949	0.413
134	0.485	0.044	197	0.960	0.415
135	0.488	0.044	198	0.970	0.416
136	0.494	0.045	199	0.976	0.418
137	0.497	0.045	200	0.985	0.420
138	0.500	0.045	201	0.993	0.427
139	0.501	0.048	202	0.999	0.438
140	0.503	0.049	203	1.006	0.443
141	0.504	0.049	204	1.018	0.448
142	0.506	0.049	205	1.031	0.453
143	0.509	0.051	206	1.044	0.456
144	0.511	0.052	207	1.056	0.459

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
208	1.067	0.463	224	1.160	0.547
209	1.075	0.466	225	1.162	0.554
210	1.082	0.469	226	1.172	0.562
211	1.090	0.482	227	1.181	0.568
212	1.097	0.490	228	1.184	0.569
213	1.101	0.497	229	1.188	0.574
214	1.103	0.504	230	1.192	0.574
215	1.106	0.508	231	1.193	0.574
216	1.109	0.517	232	1.197	0.575
217	1.111	0.521	233	1.199	0.575
218	1.113	0.521	234	1.203	0.576
219	1.115	0.523	235	1.208	0.577
220	1.118	0.527	236	1.209	0.577
221	1.120	0.531	237	1.210	0.577
222	1.128	0.537	238	1.211	0.578
223	1.142	0.544	239	1.211	0.580

(b) *Motor vehicles having composite hydrocarbon emission limitations in Table 1 of at least 0.80 grams/mile but less than 1.25 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.124	N/A	75	0.307	N/A
31	0.126	N/A	76	0.308	N/A
32	0.129	N/A	77	0.308	N/A
33	0.135	N/A	78	0.308	N/A
34	0.140	N/A	79	0.314	N/A
35	0.146	N/A	80	0.320	N/A
36	0.150	N/A	81	0.324	N/A
37	0.153	N/A	82	0.327	N/A
38	0.156	N/A	83	0.329	N/A
39	0.160	N/A	84	0.333	N/A
40	0.165	N/A	85	0.336	N/A
41	0.169	N/A	86	0.339	N/A
42	0.172	N/A	87	0.343	N/A
43	0.173	N/A	88	0.347	N/A
44	0.177	N/A	89	0.350	N/A
45	0.197	N/A	90	0.356	N/A
46	0.200	N/A	91	0.358	N/A
47	0.208	N/A	92	0.360	N/A
48	0.221	N/A	93	0.363	N/A
49	0.232	N/A	94	0.367	0.000
50	0.235	N/A	95	0.370	0.000
51	0.238	N/A	96	0.372	0.000
52	0.240	N/A	97	0.376	0.000
53	0.242	N/A	98	0.388	0.000
54	0.246	N/A	99	0.396	0.000
55	0.249	N/A	100	0.405	0.001
56	0.252	N/A	101	0.410	0.002
57	0.261	N/A	102	0.411	0.003
58	0.271	N/A	103	0.412	0.006
59	0.276	N/A	104	0.413	0.007
60	0.278	N/A	105	0.421	0.008
61	0.280	N/A	106	0.428	0.009
62	0.282	N/A	107	0.430	0.010
63	0.283	N/A	108	0.455	0.013
64	0.284	N/A	109	0.459	0.015
65	0.285	N/A	110	0.462	0.017
66	0.286	N/A	111	0.464	0.021
67	0.288	N/A	112	0.466	0.024
68	0.291	N/A	113	0.468	0.024
69	0.294	N/A	114	0.471	0.025
70	0.296	N/A	115	0.488	0.026
71	0.298	N/A	116	0.513	0.029
72	0.300	N/A	117	0.538	0.032
73	0.302	N/A	118	0.561	0.035
74	0.304	N/A	119	0.577	0.035

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
120	0.580	0.036	180	1.084	0.337
121	0.586	0.038	181	1.099	0.345
122	0.594	0.040	182	1.121	0.350
123	0.603	0.041	183	1.132	0.359
124	0.610	0.042	184	1.152	0.387
125	0.615	0.042	185	1.161	0.398
126	0.624	0.042	186	1.168	0.400
127	0.628	0.045	187	1.175	0.402
128	0.632	0.046	188	1.181	0.405
129	0.637	0.046	189	1.188	0.418
130	0.641	0.049	190	1.203	0.429
131	0.643	0.050	191	1.219	0.442
132	0.644	0.052	192	1.233	0.457
133	0.645	0.054	193	1.251	0.473
134	0.647	0.054	194	1.255	0.487
135	0.651	0.054	195	1.258	0.501
136	0.658	0.055	196	1.265	0.510
137	0.663	0.055	197	1.280	0.512
138	0.666	0.056	198	1.293	0.514
139	0.668	0.059	199	1.301	0.516
140	0.670	0.061	200	1.313	0.518
141	0.672	0.061	201	1.324	0.527
142	0.675	0.061	202	1.332	0.540
143	0.678	0.063	203	1.341	0.547
144	0.681	0.064	204	1.357	0.553
145	0.684	0.065	205	1.375	0.559
146	0.686	0.066	206	1.392	0.563
147	0.688	0.067	207	1.408	0.567
148	0.690	0.068	208	1.422	0.571
149	0.692	0.069	209	1.433	0.575
150	0.694	0.070	210	1.443	0.579
151	0.696	0.071	211	1.453	0.595
152	0.698	0.072	212	1.463	0.605
153	0.700	0.073	213	1.468	0.614
154	0.702	0.073	214	1.470	0.622
155	0.704	0.074	215	1.474	0.627
156	0.706	0.077	216	1.478	0.638
157	0.708	0.079	217	1.481	0.643
158	0.710	0.082	218	1.484	0.643
159	0.712	0.082	219	1.487	0.645
160	0.716	0.086	220	1.490	0.651
161	0.750	0.095	221	1.493	0.655
162	0.784	0.107	222	1.504	0.663
163	0.805	0.115	223	1.522	0.671
164	0.840	0.122	224	1.547	0.675
165	0.853	0.127	225	1.549	0.684
166	0.874	0.159	226	1.562	0.694
167	0.903	0.186	227	1.574	0.701
168	0.910	0.189	228	1.579	0.702
169	0.914	0.200	229	1.584	0.708
170	0.916	0.220	230	1.589	0.708
171	0.919	0.236	231	1.590	0.709
172	0.931	0.247	232	1.596	0.710
173	0.948	0.257	233	1.598	0.710
174	0.983	0.267	234	1.604	0.711
175	1.018	0.283	235	1.610	0.712
176	1.027	0.295	236	1.612	0.712
177	1.035	0.312	237	1.613	0.712
178	1.051	0.318	238	1.614	0.713
179	1.074	0.323	239	1.615	0.716

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

(c) *Motor vehicles having composite hydrocarbon emission limitations in Table 1 of at least 1.25 grams/mile but less than 2.00 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.247	N/A	92	0.729	N/A
31	0.253	N/A	93	0.731	N/A
32	0.258	N/A	94	0.734	0.000
33	0.263	N/A	95	0.740	0.000
34	0.268	N/A	96	0.748	0.001
35	0.277	N/A	97	0.759	0.001
36	0.283	N/A	98	0.771	0.002
37	0.293	N/A	99	0.783	0.003
38	0.297	N/A	100	0.793	0.005
39	0.298	N/A	101	0.810	0.007
40	0.313	N/A	102	0.823	0.009
41	0.320	N/A	103	0.836	0.011
42	0.327	N/A	104	0.853	0.016
43	0.342	N/A	105	0.871	0.017
44	0.360	N/A	106	0.887	0.022
45	0.376	N/A	107	0.899	0.029
46	0.389	N/A	108	0.931	0.036
47	0.408	N/A	109	0.947	0.040
48	0.423	N/A	110	0.957	0.047
49	0.434	N/A	111	0.965	0.052
50	0.444	N/A	112	0.971	0.056
51	0.454	N/A	113	0.977	0.061
52	0.465	N/A	114	0.983	0.064
53	0.472	N/A	115	1.003	0.072
54	0.478	N/A	116	1.030	0.081
55	0.485	N/A	117	1.041	0.082
56	0.493	N/A	118	1.050	0.083
57	0.500	N/A	119	1.052	0.092
58	0.505	N/A	120	1.055	0.094
59	0.514	N/A	121	1.061	0.097
60	0.537	N/A	122	1.071	0.100
61	0.540	N/A	123	1.081	0.103
62	0.543	N/A	124	1.091	0.106
63	0.546	N/A	125	1.102	0.108
64	0.551	N/A	126	1.110	0.110
65	0.559	N/A	127	1.116	0.112
66	0.567	N/A	128	1.121	0.114
67	0.575	N/A	129	1.125	0.116
68	0.588	N/A	130	1.128	0.118
69	0.595	N/A	131	1.130	0.120
70	0.601	N/A	132	1.132	0.122
71	0.606	N/A	133	1.134	0.123
72	0.610	N/A	134	1.135	0.124
73	0.617	N/A	135	1.143	0.127
74	0.631	N/A	136	1.147	0.130
75	0.643	N/A	137	1.156	0.134
76	0.651	N/A	138	1.163	0.139
77	0.659	N/A	139	1.186	0.146
78	0.667	N/A	140	1.253	0.149
79	0.676	N/A	141	1.262	0.151
80	0.681	N/A	142	1.271	0.153
81	0.685	N/A	143	1.277	0.155
82	0.689	N/A	144	1.283	0.157
83	0.694	N/A	145	1.291	0.162
84	0.700	N/A	146	1.294	0.164
85	0.705	N/A	147	1.296	0.166
86	0.709	N/A	148	1.298	0.168
87	0.713	N/A	149	1.303	0.169
88	0.717	N/A	150	1.316	0.170
89	0.721	N/A	151	1.330	0.171
90	0.724	N/A	152	1.342	0.172
91	0.727	N/A	153	1.348	0.173

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
154	1.353	0.175	197	2.079	0.709
155	1.362	0.178	198	2.094	0.725
156	1.365	0.180	199	2.109	0.740
157	1.366	0.189	200	2.122	0.754
158	1.373	0.198	201	2.130	0.767
159	1.397	0.203	202	2.137	0.775
160	1.423	0.207	203	2.157	0.787
161	1.440	0.214	204	2.172	0.795
162	1.452	0.221	205	2.194	0.803
163	1.465	0.229	206	2.222	0.854
164	1.509	0.247	207	2.245	0.859
165	1.533	0.274	208	2.268	0.872
166	1.555	0.309	209	2.279	0.892
167	1.576	0.318	210	2.288	0.896
168	1.598	0.322	211	2.301	0.903
169	1.618	0.333	212	2.316	0.924
170	1.636	0.343	213	2.332	0.938
171	1.666	0.356	214	2.345	0.941
172	1.685	0.385	215	2.354	0.951
173	1.726	0.409	216	2.362	0.966
174	1.742	0.433	217	2.368	0.979
175	1.756	0.453	218	2.376	0.980
176	1.769	0.463	219	2.384	0.981
177	1.784	0.507	220	2.391	1.005
178	1.802	0.523	221	2.395	1.016
179	1.822	0.528	222	2.400	1.022
180	1.843	0.541	223	2.405	1.028
181	1.864	0.549	224	2.409	1.035
182	1.884	0.559	225	2.413	1.041
183	1.896	0.571	226	2.417	1.045
184	1.915	0.584	227	2.426	1.051
185	1.940	0.598	228	2.428	1.055
186	1.958	0.613	229	2.431	1.059
187	1.972	0.624	230	2.433	1.064
188	1.985	0.629	231	2.441	1.069
189	1.991	0.629	232	2.461	1.071
190	1.993	0.638	233	2.476	1.072
191	1.995	0.648	234	2.488	1.073
192	2.001	0.659	235	2.498	1.081
193	2.015	0.663	236	2.508	1.083
194	2.031	0.671	237	2.516	1.084
195	2.047	0.681	238	2.520	1.085
196	2.063	0.693	239	2.523	1.086

(d) *Motor vehicles having composite hydrocarbon emission limitations in Table 1 of 2.00 grams/mile or greater.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.407	N/A	49	0.679	N/A
31	0.415	N/A	50	0.696	N/A
32	0.423	N/A	51	0.712	N/A
33	0.436	N/A	52	0.727	N/A
34	0.451	N/A	53	0.745	N/A
35	0.464	N/A	54	0.760	N/A
36	0.468	N/A	55	0.776	N/A
37	0.475	N/A	56	0.797	N/A
38	0.487	N/A	57	0.814	N/A
39	0.506	N/A	58	0.826	N/A
40	0.530	N/A	59	0.837	N/A
41	0.549	N/A	60	0.849	N/A
42	0.569	N/A	61	0.862	N/A
43	0.588	N/A	62	0.872	N/A
44	0.609	N/A	63	0.887	N/A
45	0.621	N/A	64	0.895	N/A
46	0.636	N/A	65	0.903	N/A
47	0.649	N/A	66	0.925	N/A
48	0.666	N/A	67	0.933	N/A

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
68	0.945	N/A	132	1.854	0.356
69	0.959	N/A	133	1.862	0.357
70	0.970	N/A	134	1.870	0.359
71	0.980	N/A	135	1.883	0.362
72	0.988	N/A	136	1.888	0.364
73	0.997	N/A	137	1.896	0.368
74	1.022	N/A	138	1.911	0.378
75	1.037	N/A	139	1.928	0.391
76	1.051	N/A	140	1.949	0.402
77	1.064	N/A	141	1.969	0.408
78	1.075	N/A	142	1.982	0.422
79	1.087	N/A	143	1.999	0.428
80	1.097	N/A	144	2.011	0.432
81	1.105	N/A	145	2.022	0.434
82	1.114	N/A	146	2.035	0.439
83	1.136	N/A	147	2.043	0.450
84	1.160	N/A	148	2.049	0.460
85	1.182	N/A	149	2.063	0.467
86	1.201	N/A	150	2.085	0.472
87	1.217	N/A	151	2.104	0.480
88	1.233	N/A	152	2.117	0.491
89	1.248	N/A	153	2.127	0.503
90	1.262	N/A	154	2.138	0.505
91	1.271	N/A	155	2.152	0.515
92	1.279	N/A	156	2.168	0.522
93	1.287	N/A	157	2.186	0.527
94	1.295	0.001	158	2.205	0.537
95	1.302	0.002	159	2.224	0.549
96	1.309	0.003	160	2.242	0.568
97	1.316	0.004	161	2.268	0.586
98	1.325	0.008	162	2.308	0.610
99	1.339	0.015	163	2.352	0.648
100	1.356	0.021	164	2.406	0.677
101	1.365	0.026	165	2.421	0.699
102	1.378	0.039	166	2.435	0.720
103	1.397	0.044	167	2.470	0.738
104	1.420	0.055	168	2.501	0.767
105	1.445	0.094	169	2.537	0.828
106	1.470	0.110	170	2.571	0.855
107	1.491	0.116	171	2.625	0.869
108	1.506	0.132	172	2.657	0.885
109	1.517	0.151	173	2.683	0.900
110	1.528	0.159	174	2.701	0.941
111	1.542	0.172	175	2.717	0.979
112	1.559	0.186	176	2.732	1.002
113	1.578	0.199	177	2.756	1.025
114	1.594	0.207	178	2.781	1.047
115	1.605	0.216	179	2.811	1.065
116	1.615	0.229	180	2.853	1.089
117	1.625	0.235	181	2.898	1.109
118	1.642	0.240	182	2.946	1.133
119	1.670	0.245	183	2.988	1.158
120	1.694	0.261	184	3.023	1.184
121	1.705	0.267	185	3.057	1.209
122	1.717	0.277	186	3.076	1.222
123	1.732	0.287	187	3.101	1.231
124	1.747	0.298	188	3.120	1.239
125	1.763	0.308	189	3.136	1.254
126	1.779	0.316	190	3.151	1.278
127	1.795	0.322	191	3.163	1.300
128	1.810	0.329	192	3.209	1.313
129	1.823	0.338	193	3.223	1.324
130	1.835	0.346	194	3.237	1.340
131	1.845	0.354	195	3.263	1.367

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
196	3.302	1.387	218	3.853	1.705
197	3.338	1.402	219	3.864	1.711
198	3.372	1.417	220	3.874	1.735
199	3.390	1.432	221	3.891	1.752
200	3.428	1.446	222	3.928	1.760
201	3.470	1.460	223	3.966	1.774
202	3.493	1.477	224	4.008	1.778
203	3.509	1.492	225	4.010	1.797
204	3.522	1.501	226	4.012	1.802
205	3.533	1.510	227	4.016	1.804
206	3.550	1.522	228	4.019	1.806
207	3.578	1.561	229	4.057	1.810
208	3.607	1.585	230	4.065	1.814
209	3.630	1.597	231	4.072	1.827
210	3.658	1.607	232	4.081	1.833
211	3.701	1.627	233	4.104	1.837
212	3.745	1.645	234	4.124	1.841
213	3.778	1.656	235	4.128	1.845
214	3.814	1.663	236	4.132	1.851
215	3.825	1.669	237	4.137	1.855
216	3.835	1.674	238	4.147	1.857
217	3.844	1.685	239	4.158	1.860

(2) CARBON MONOXIDE EXHAUST EMISSIONS. (a) *Motor vehicles having composite carbon monoxide emission limitations in Table 1 of at least 10.0 grams/mile but less than 15.0 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.462	N/A	69	1.384	N/A
31	0.515	N/A	70	1.403	N/A
32	0.558	N/A	71	1.411	N/A
33	0.567	N/A	72	1.417	N/A
34	0.569	N/A	73	1.420	N/A
35	0.571	N/A	74	1.425	N/A
36	0.600	N/A	75	1.435	N/A
37	0.640	N/A	76	1.447	N/A
38	0.689	N/A	77	1.459	N/A
39	0.713	N/A	78	1.467	N/A
40	0.717	N/A	79	1.475	N/A
41	0.722	N/A	80	1.475	N/A
42	0.735	N/A	81	1.481	N/A
43	0.741	N/A	82	1.481	N/A
44	0.743	N/A	83	1.485	N/A
45	0.771	N/A	84	1.491	N/A
46	0.896	N/A	85	1.495	N/A
47	0.988	N/A	86	1.508	N/A
48	1.020	N/A	87	1.514	N/A
49	1.028	N/A	88	1.523	N/A
50	1.035	N/A	89	1.533	N/A
51	1.047	N/A	90	1.539	N/A
52	1.063	N/A	91	1.551	N/A
53	1.089	N/A	92	1.553	N/A
54	1.123	N/A	93	1.554	N/A
55	1.126	N/A	94	1.563	N/A
56	1.129	N/A	95	1.565	N/A
57	1.133	N/A	96	1.570	N/A
58	1.149	N/A	97	1.597	N/A
59	1.235	N/A	98	1.634	N/A
60	1.248	N/A	99	1.672	N/A
61	1.248	N/A	100	1.727	N/A
62	1.248	N/A	101	1.773	N/A
63	1.267	N/A	102	1.833	N/A
64	1.278	N/A	103	1.942	N/A
65	1.296	N/A	104	2.108	N/A
66	1.333	N/A	105	2.113	N/A
67	1.373	N/A	106	2.131	N/A
68	1.376	N/A	107	2.192	N/A

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
108	2.279	N/A	172	10.469	4.459
109	2.391	0.115	173	10.835	4.669
110	2.397	0.119	174	11.271	4.950
111	2.427	0.163	175	11.770	5.600
112	2.493	0.183	176	12.013	5.654
113	2.579	0.192	177	12.233	5.898
114	2.585	0.200	178	12.447	6.046
115	2.623	0.216	179	12.648	6.078
116	2.677	0.227	180	12.819	6.124
117	2.707	0.237	181	13.415	6.267
118	2.709	0.240	182	13.603	6.549
119	2.719	0.245	183	13.836	7.046
120	2.760	0.252	184	14.456	7.463
121	2.790	0.267	185	14.637	7.555
122	2.799	0.280	186	15.100	7.699
123	2.803	0.318	187	15.326	7.911
124	2.808	0.330	188	15.690	8.172
125	2.821	0.348	189	15.917	8.258
126	2.865	0.356	190	16.012	8.361
127	2.896	0.359	191	16.309	8.600
128	2.907	0.361	192	16.457	8.655
129	2.911	0.363	193	16.621	8.674
130	2.913	0.364	194	16.792	8.693
131	2.915	0.364	195	16.979	8.778
132	2.957	0.367	196	17.085	8.867
133	3.015	0.378	197	17.164	8.924
134	3.016	0.381	198	17.233	8.973
135	3.017	0.405	199	17.316	9.045
136	3.021	0.423	200	17.427	9.098
137	3.023	0.439	201	17.483	9.215
138	3.028	0.449	202	17.559	9.386
139	3.035	0.455	203	17.698	9.463
140	3.036	0.469	204	17.879	9.579
141	3.036	0.478	205	18.035	9.680
142	3.036	0.486	206	18.262	9.773
143	3.036	0.495	207	18.334	9.911
144	3.036	0.508	208	18.421	9.961
145	3.036	0.510	209	18.535	10.152
146	3.036	0.510	210	18.635	10.242
147	3.036	0.512	211	18.803	10.248
148	3.036	0.514	212	19.029	10.315
149	3.036	0.516	213	19.331	10.458
150	3.036	0.524	214	19.333	10.630
151	3.037	0.542	215	19.337	10.687
152	3.037	0.543	216	19.387	10.754
153	3.043	0.546	217	19.521	10.971
154	3.075	0.549	218	19.655	11.012
155	3.223	0.553	219	19.823	11.250
156	3.801	0.578	220	19.869	11.327
157	3.894	0.680	221	19.881	11.353
158	4.113	0.713	222	19.898	11.390
159	4.447	0.932	223	19.908	11.463
160	4.950	1.000	224	19.915	11.511
161	5.586	1.062	225	20.005	11.522
162	6.432	1.253	226	20.084	11.546
163	7.279	1.887	227	20.085	11.587
164	8.105	2.111	228	20.085	11.652
165	8.487	2.496	229	20.139	11.652
166	8.554	3.095	230	20.209	11.654
167	8.595	3.402	231	20.215	11.672
168	8.621	3.610	232	20.217	11.729
169	9.135	3.937	233	20.245	11.744
170	9.426	4.157	234	20.274	11.806
171	9.976	4.351	235	20.277	11.808

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
236	20.285	11.809	238	20.301	11.845
237	20.287	11.810	239	20.325	11.934

(b) *Motor vehicles having composite carbon monoxide emission limitations in Table 1 of at least 15.0 grams/mile but less than 20.0 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.693	N/A	89	2.299	N/A
31	0.773	N/A	90	2.308	N/A
32	0.837	N/A	91	2.326	N/A
33	0.851	N/A	92	2.330	N/A
34	0.853	N/A	93	2.331	N/A
35	0.857	N/A	94	2.344	0.000
36	0.900	N/A	95	2.347	0.000
37	0.960	N/A	96	2.355	0.000
38	1.034	N/A	97	2.395	0.000
39	1.070	N/A	98	2.451	0.000
40	1.076	N/A	99	2.508	0.004
41	1.083	N/A	100	2.590	0.008
42	1.102	N/A	101	2.660	0.015
43	1.111	N/A	102	2.749	0.026
44	1.114	N/A	103	2.913	0.038
45	1.157	N/A	104	3.162	0.038
46	1.344	N/A	105	3.170	0.039
47	1.482	N/A	106	3.197	0.061
48	1.530	N/A	107	3.288	0.062
49	1.542	N/A	108	3.419	0.108
50	1.553	N/A	109	3.587	0.168
51	1.571	N/A	110	3.595	0.173
52	1.595	N/A	111	3.640	0.237
53	1.633	N/A	112	3.740	0.266
54	1.685	N/A	113	3.868	0.280
55	1.689	N/A	114	3.877	0.291
56	1.693	N/A	115	3.934	0.314
57	1.700	N/A	116	4.015	0.331
58	1.723	N/A	117	4.061	0.345
59	1.852	N/A	118	4.063	0.350
60	1.872	N/A	119	4.079	0.356
61	1.872	N/A	120	4.140	0.367
62	1.872	N/A	121	4.185	0.388
63	1.900	N/A	122	4.199	0.407
64	1.917	N/A	123	4.205	0.463
65	1.944	N/A	124	4.212	0.480
66	2.000	N/A	125	4.232	0.506
67	2.060	N/A	126	4.298	0.518
68	2.064	N/A	127	4.344	0.522
69	2.076	N/A	128	4.361	0.525
70	2.104	N/A	129	4.366	0.528
71	2.117	N/A	130	4.369	0.530
72	2.125	N/A	131	4.372	0.530
73	2.130	N/A	132	4.435	0.534
74	2.138	N/A	133	4.523	0.550
75	2.152	N/A	134	4.524	0.554
76	2.170	N/A	135	4.525	0.590
77	2.188	N/A	136	4.531	0.616
78	2.200	N/A	137	4.534	0.639
79	2.212	N/A	138	4.542	0.653
80	2.212	N/A	139	4.553	0.662
81	2.221	N/A	140	4.554	0.683
82	2.222	N/A	141	4.554	0.696
83	2.227	N/A	142	4.554	0.708
84	2.236	N/A	143	4.554	0.721
85	2.243	N/A	144	4.554	0.739
86	2.262	N/A	145	4.554	0.742
87	2.271	N/A	146	4.554	0.743
88	2.284	N/A	147	4.554	0.745

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
148	4.554	0.748	194	25.188	12.653
149	4.554	0.751	195	25.468	12.777
150	4.554	0.762	196	25.627	12.906
151	4.556	0.789	197	25.746	12.989
152	4.556	0.790	198	25.850	13.060
153	4.565	0.794	199	25.974	13.165
154	4.612	0.799	200	26.141	13.242
155	4.834	0.805	201	26.225	13.412
156	5.702	0.842	202	26.338	13.662
157	5.841	0.990	203	26.547	13.773
158	6.170	1.038	204	26.818	13.942
159	6.670	1.357	205	27.052	14.090
160	7.425	1.455	206	27.393	14.224
161	8.379	1.546	207	27.501	14.426
162	9.648	1.824	208	27.632	14.498
163	10.918	2.746	209	27.803	14.776
164	12.127	3.073	210	27.953	14.907
165	12.731	3.633	211	28.205	14.916
166	12.831	4.505	212	28.543	15.014
167	12.892	4.952	213	28.997	15.221
168	12.932	5.254	214	29.000	15.472
169	13.702	5.730	215	29.005	15.555
170	14.139	6.051	216	29.081	15.652
171	14.964	6.333	217	29.281	15.969
172	15.704	6.490	218	29.483	16.028
173	16.253	6.796	219	29.734	16.375
174	16.907	7.205	220	29.803	16.487
175	17.655	8.151	221	29.821	16.524
176	18.020	8.230	222	29.847	16.578
177	18.349	8.584	223	29.862	16.684
178	18.671	8.800	224	29.873	16.755
179	18.972	8.847	225	30.008	16.770
180	19.228	8.913	226	30.126	16.805
181	20.123	9.122	227	30.127	16.865
182	20.405	9.532	228	30.127	16.960
183	20.754	10.256	229	30.208	16.960
184	21.684	10.862	230	30.314	16.962
185	21.955	10.996	231	30.323	16.988
186	22.650	11.206	232	30.325	17.072
187	22.989	11.514	233	30.368	17.094
188	23.535	11.894	234	30.411	17.184
189	23.876	12.019	235	30.416	17.187
190	24.018	12.170	236	30.428	17.188
191	24.464	12.517	237	30.430	17.189
192	24.685	12.598	238	30.452	17.241
193	24.931	12.625	239	30.488	17.370

(c) *Motor vehicles having composite carbon monoxide emission limitations in Table 1 of at least 20.0 grams/mile but less than 30.0 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	1.502	N/A	45	2.406	N/A
31	1.546	N/A	46	2.433	N/A
32	1.568	N/A	47	2.458	N/A
33	1.582	N/A	48	2.483	N/A
34	1.593	N/A	49	2.774	N/A
35	1.602	N/A	50	2.844	N/A
36	1.621	N/A	51	2.900	N/A
37	1.631	N/A	52	2.936	N/A
38	1.702	N/A	53	3.133	N/A
39	1.784	N/A	54	3.304	N/A
40	1.879	N/A	55	3.407	N/A
41	2.162	N/A	56	3.456	N/A
42	2.307	N/A	57	3.480	N/A
43	2.343	N/A	58	3.518	N/A
44	2.376	N/A	59	3.560	N/A

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
60	3.593	N/A	124	8.568	0.532
61	3.628	N/A	125	8.572	0.533
62	3.641	N/A	126	8.584	0.548
63	3.655	N/A	127	8.592	0.610
64	3.680	N/A	128	8.596	0.614
65	3.700	N/A	129	8.597	0.622
66	3.728	N/A	130	8.601	0.631
67	3.857	N/A	131	8.605	0.640
68	3.894	N/A	132	8.608	0.646
69	3.943	N/A	133	8.626	0.650
70	3.983	N/A	134	8.650	0.652
71	4.009	N/A	135	8.660	0.738
72	4.023	N/A	136	8.767	0.754
73	4.023	N/A	137	9.029	0.780
74	4.053	N/A	138	9.238	0.795
75	4.063	N/A	139	9.389	0.804
76	4.077	N/A	140	9.493	0.810
77	4.225	N/A	141	9.583	0.815
78	4.243	N/A	142	9.626	0.818
79	4.260	N/A	143	9.669	0.821
80	4.282	N/A	144	9.716	0.825
81	4.322	N/A	145	9.763	0.840
82	4.398	N/A	146	9.809	0.847
83	4.482	N/A	147	9.852	0.855
84	4.515	N/A	148	9.885	0.865
85	4.518	N/A	149	9.932	0.874
86	4.520	N/A	150	9.986	0.891
87	4.522	N/A	151	10.039	0.914
88	4.522	N/A	152	10.072	0.929
89	4.523	N/A	153	10.090	0.937
90	4.526	N/A	154	10.105	0.942
91	4.527	N/A	155	10.146	0.949
92	4.527	N/A	156	10.245	1.375
93	4.528	N/A	157	10.397	1.576
94	4.528	0.000	158	10.923	1.943
95	4.528	0.000	159	11.970	2.820
96	4.529	0.000	160	13.421	3.281
97	4.575	0.000	161	15.289	3.483
98	4.703	0.002	162	15.912	3.620
99	4.805	0.005	163	16.530	4.168
100	4.886	0.010	164	17.622	4.338
101	4.957	0.017	165	18.366	4.682
102	5.104	0.052	166	19.869	5.633
103	5.340	0.085	167	20.711	6.137
104	5.496	0.094	168	22.319	6.853
105	5.625	0.122	169	23.751	7.136
106	5.815	0.151	170	24.842	7.320
107	6.473	0.191	171	25.410	7.685
108	7.037	0.234	172	25.798	8.052
109	7.419	0.246	173	26.122	8.344
110	7.643	0.257	174	26.353	8.602
111	7.759	0.286	175	26.638	8.898
112	7.824	0.379	176	27.219	9.251
113	7.889	0.425	177	27.279	10.253
114	7.960	0.457	178	27.320	10.828
115	8.024	0.477	179	27.352	10.933
116	8.076	0.494	180	27.822	11.060
117	8.111	0.504	181	28.763	11.188
118	8.130	0.512	182	29.402	11.345
119	8.148	0.519	183	29.971	11.733
120	8.211	0.529	184	30.276	12.598
121	8.478	0.529	185	30.988	12.953
122	8.548	0.530	186	31.095	13.213
123	8.561	0.531	187	31.314	14.131

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
188	31.833	14.839	214	38.591	20.260
189	32.239	15.137	215	38.852	20.739
190	32.547	15.138	216	38.861	21.346
191	32.855	15.141	217	38.926	21.810
192	33.153	15.595	218	39.194	22.001
193	33.444	15.658	219	39.474	22.290
194	33.482	15.704	220	39.668	22.324
195	33.516	15.729	221	39.781	22.343
196	33.549	16.058	222	39.890	22.522
197	33.653	16.987	223	39.954	22.683
198	33.973	17.064	224	39.984	22.850
199	34.159	17.073	225	39.989	22.853
200	34.191	17.153	226	39.990	22.853
201	34.250	17.332	227	39.990	22.853
202	34.469	17.406	228	39.990	22.872
203	34.716	17.641	229	39.991	22.872
204	34.969	17.922	230	40.012	22.872
205	35.144	18.484	231	40.061	22.895
206	35.418	18.553	232	40.116	22.911
207	35.766	18.658	233	40.249	22.922
208	35.949	18.953	234	40.253	22.939
209	36.010	19.266	235	40.290	23.010
210	36.548	19.309	236	40.385	23.010
211	37.179	19.731	237	40.488	23.010
212	37.651	19.902	238	40.720	23.010
213	38.041	20.012	239	40.763	23.010

(d) *Motor vehicles having composite carbon monoxide emission limitations in Table 1 of 30.0 grams/mile or greater.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	3.804	N/A	66	9.354	N/A
31	3.985	N/A	67	9.457	N/A
32	4.215	N/A	68	9.575	N/A
33	4.440	N/A	69	9.728	N/A
34	4.579	N/A	70	9.938	N/A
35	4.688	N/A	71	10.140	N/A
36	4.749	N/A	72	10.222	N/A
37	4.783	N/A	73	10.261	N/A
38	4.813	N/A	74	10.278	N/A
39	4.876	N/A	75	10.290	N/A
40	5.104	N/A	76	10.715	N/A
41	5.217	N/A	77	10.790	N/A
42	5.383	N/A	78	10.844	N/A
43	5.571	N/A	79	10.921	N/A
44	5.888	N/A	80	11.010	N/A
45	6.199	N/A	81	11.090	N/A
46	6.245	N/A	82	11.136	N/A
47	6.318	N/A	83	11.136	N/A
48	6.418	N/A	84	11.165	N/A
49	6.540	N/A	85	11.191	N/A
50	6.690	N/A	86	11.205	N/A
51	6.875	N/A	87	11.211	N/A
52	7.029	N/A	88	11.211	N/A
53	7.129	N/A	89	11.211	N/A
54	7.359	N/A	90	11.211	N/A
55	7.722	N/A	91	11.220	N/A
56	8.017	N/A	92	11.294	N/A
57	8.249	N/A	93	11.332	N/A
58	8.425	N/A	94	11.355	0.000
59	8.563	N/A	95	11.383	0.000
60	8.686	N/A	96	11.410	0.001
61	8.804	N/A	97	11.433	0.006
62	8.916	N/A	98	11.516	0.020
63	9.025	N/A	99	11.820	0.051
64	9.138	N/A	100	12.104	0.092
65	9.250	N/A	101	12.344	0.131

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
102	12.781	0.200	166	35.937	13.366
103	13.472	0.307	167	37.012	14.428
104	14.405	0.582	168	37.892	15.318
105	14.808	0.800	169	39.028	15.699
106	14.965	0.925	170	40.406	16.073
107	15.121	0.973	171	41.379	16.475
108	15.372	1.091	172	42.033	17.158
109	15.530	1.113	173	42.432	17.532
110	15.687	1.213	174	42.742	17.965
111	16.018	1.344	175	43.399	18.242
112	16.527	1.399	176	43.895	18.283
113	16.810	1.520	177	44.227	18.480
114	16.961	1.640	178	44.926	19.576
115	17.120	1.684	179	45.256	20.015
116	17.135	1.693	180	45.553	20.203
117	17.249	1.786	181	45.753	20.433
118	17.451	2.007	182	46.210	21.025
119	17.509	2.084	183	47.017	21.882
120	17.605	2.179	184	48.185	22.204
121	17.734	2.264	185	48.741	22.859
122	18.049	2.328	186	49.462	23.533
123	18.447	2.375	187	50.313	24.281
124	18.592	2.437	188	51.285	25.078
125	18.657	2.543	189	52.076	25.276
126	18.796	2.593	190	52.857	25.578
127	18.952	2.641	191	52.876	25.859
128	19.137	2.663	192	53.067	25.985
129	19.329	2.672	193	53.777	26.153
130	19.519	2.676	194	54.242	26.582
131	19.707	2.683	195	54.489	27.067
132	19.882	2.817	196	54.601	27.456
133	19.905	2.992	197	54.912	27.805
134	20.049	3.111	198	55.588	28.070
135	20.460	3.234	199	56.266	28.590
136	20.746	3.304	200	56.617	28.914
137	21.068	3.310	201	56.863	29.063
138	21.380	3.320	202	57.204	29.502
139	21.748	3.354	203	57.371	29.697
140	22.046	3.436	204	57.487	29.713
141	22.348	3.443	205	57.728	29.783
142	22.397	3.452	206	58.097	29.942
143	22.407	3.490	207	58.572	30.284
144	22.417	3.552	208	59.024	30.755
145	22.922	3.588	209	59.321	31.287
146	22.951	3.600	210	59.715	31.549
147	22.976	3.616	211	60.045	31.820
148	23.017	3.627	212	60.453	32.250
149	23.073	3.636	213	60.935	32.546
150	23.161	3.676	214	61.307	32.808
151	23.218	3.882	215	61.666	33.142
152	23.253	4.011	216	62.148	33.529
153	23.337	4.047	217	62.532	33.763
154	23.425	4.067	218	62.546	33.921
155	23.534	4.081	219	62.559	33.961
156	23.652	4.116	220	62.570	33.983
157	23.739	4.251	221	62.846	34.007
158	24.606	5.099	222	63.097	34.032
159	25.615	5.383	223	63.150	34.054
160	26.073	6.362	224	63.150	34.061
161	28.496	7.926	225	63.150	34.082
162	29.772	8.429	226	63.150	34.100
163	31.056	9.201	227	63.150	34.109
164	33.351	10.825	228	63.150	34.129
165	34.890	12.291	229	63.150	34.284

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
230	63.150	34.397	235	63.159	34.470
231	63.150	34.463	236	63.173	34.471
232	63.150	34.465	237	63.193	34.472
233	63.150	34.466	238	63.214	34.472
234	63.153	34.468	239	63.233	34.473

(3) OXIDES OF NITROGEN EXHAUST EMISSIONS. (a) *Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of at least 1.5 grams/mile but less than 2.0 grams/mile.*

Second	Composite (grams)	Second	Composite (grams)
30	0.125	86	0.560
31	0.133	87	0.561
32	0.141	88	0.561
33	0.161	89	0.561
34	0.174	90	0.561
35	0.180	91	0.561
36	0.182	92	0.561
37	0.184	93	0.561
38	0.185	94	0.561
39	0.185	95	0.561
40	0.188	96	0.561
41	0.195	97	0.561
42	0.208	98	0.561
43	0.233	99	0.563
44	0.246	100	0.573
45	0.257	101	0.592
46	0.269	102	0.617
47	0.280	103	0.650
48	0.287	104	0.679
49	0.289	105	0.694
50	0.300	106	0.716
51	0.308	107	0.739
52	0.326	108	0.745
53	0.348	109	0.746
54	0.354	110	0.747
55	0.360	111	0.758
56	0.368	112	0.771
57	0.375	113	0.776
58	0.380	114	0.783
59	0.382	115	0.794
60	0.384	116	0.806
61	0.387	117	0.810
62	0.389	118	0.810
63	0.392	119	0.811
64	0.397	120	0.818
65	0.400	121	0.822
66	0.401	122	0.833
67	0.405	123	0.842
68	0.413	124	0.851
69	0.422	125	0.854
70	0.431	126	0.854
71	0.441	127	0.854
72	0.450	128	0.854
73	0.452	129	0.854
74	0.453	130	0.854
75	0.460	131	0.854
76	0.468	132	0.854
77	0.485	133	0.854
78	0.488	134	0.854
79	0.494	135	0.854
80	0.505	136	0.870
81	0.522	137	0.881
82	0.530	138	0.887
83	0.536	139	0.898
84	0.543	140	0.917
85	0.553	141	0.941

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)
142	0.954	191	2.228
143	0.965	192	2.265
144	0.978	193	2.308
145	0.980	194	2.349
146	0.984	195	2.389
147	0.988	196	2.414
148	0.991	197	2.451
149	0.994	198	2.474
150	0.996	199	2.513
151	0.999	200	2.555
152	1.004	201	2.600
153	1.008	202	2.623
154	1.013	203	2.636
155	1.018	204	2.638
156	1.024	205	2.639
157	1.034	206	2.642
158	1.061	207	2.659
159	1.100	208	2.678
160	1.136	209	2.700
161	1.169	210	2.714
162	1.193	211	2.729
163	1.231	212	2.765
164	1.289	213	2.799
165	1.333	214	2.843
166	1.374	215	2.875
167	1.439	216	2.918
168	1.479	217	2.949
169	1.510	218	2.970
170	1.575	219	2.998
171	1.650	220	3.010
172	1.688	221	3.026
173	1.703	222	3.029
174	1.726	223	3.038
175	1.739	224	3.050
176	1.751	225	3.053
177	1.762	226	3.054
178	1.790	227	3.054
179	1.817	228	3.055
180	1.847	229	3.055
181	1.877	230	3.055
182	1.909	231	3.055
183	1.940	232	3.056
184	1.970	233	3.056
185	2.005	234	3.056
186	2.062	235	3.056
187	2.103	236	3.057
188	2.138	237	3.057
189	2.171	238	3.057
190	2.198	239	3.057

(b) *Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of at least 2.0 grams/mile but less than 2.5 grams/mile.*

Second	Composite (grams)	Second	Composite (grams)
30	0.167	42	0.277
31	0.177	43	0.311
32	0.188	44	0.328
33	0.214	45	0.343
34	0.232	46	0.359
35	0.240	47	0.373
36	0.243	48	0.383
37	0.245	49	0.385
38	0.246	50	0.400
39	0.246	51	0.410
40	0.250	52	0.434
41	0.260	53	0.464

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)
54	0.472	119	1.081
55	0.480	120	1.091
56	0.491	121	1.096
57	0.500	122	1.111
58	0.506	123	1.122
59	0.509	124	1.135
60	0.512	125	1.138
61	0.516	126	1.139
62	0.519	127	1.139
63	0.523	128	1.139
64	0.529	129	1.139
65	0.533	130	1.139
66	0.535	131	1.139
67	0.540	132	1.139
68	0.551	133	1.139
69	0.563	134	1.139
70	0.575	135	1.139
71	0.588	136	1.160
72	0.600	137	1.174
73	0.603	138	1.183
74	0.604	139	1.197
75	0.613	140	1.223
76	0.624	141	1.255
77	0.646	142	1.272
78	0.651	143	1.286
79	0.659	144	1.304
80	0.673	145	1.307
81	0.696	146	1.312
82	0.706	147	1.317
83	0.716	148	1.321
84	0.724	149	1.325
85	0.737	150	1.328
86	0.747	151	1.332
87	0.748	152	1.338
88	0.748	153	1.344
89	0.748	154	1.350
90	0.748	155	1.357
91	0.748	156	1.365
92	0.748	157	1.379
93	0.748	158	1.414
94	0.748	159	1.466
95	0.748	160	1.514
96	0.748	161	1.559
97	0.748	162	1.591
98	0.748	163	1.641
99	0.751	164	1.719
100	0.764	165	1.777
101	0.789	166	1.832
102	0.822	167	1.919
103	0.867	168	1.972
104	0.905	169	2.013
105	0.925	170	2.100
106	0.955	171	2.200
107	0.985	172	2.251
108	0.993	173	2.270
109	0.995	174	2.301
110	0.996	175	2.318
111	1.010	176	2.335
112	1.028	177	2.349
113	1.034	178	2.387
114	1.044	179	2.423
115	1.059	180	2.462
116	1.075	181	2.503
117	1.080	182	2.545
118	1.080	183	2.586

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)
184	2.627	212	3.686
185	2.673	213	3.732
186	2.749	214	3.791
187	2.804	215	3.833
188	2.851	216	3.890
189	2.894	217	3.932
190	2.931	218	3.960
191	2.971	219	3.997
192	3.020	220	4.013
193	3.077	221	4.035
194	3.132	222	4.038
195	3.185	223	4.050
196	3.219	224	4.066
197	3.268	225	4.070
198	3.299	226	4.072
199	3.350	227	4.072
200	3.406	228	4.073
201	3.466	229	4.073
202	3.497	230	4.073
203	3.514	231	4.073
204	3.517	232	4.074
205	3.519	233	4.074
206	3.523	234	4.075
207	3.545	235	4.075
208	3.570	236	4.076
209	3.600	237	4.076
210	3.619	238	4.076
211	3.639	239	4.076

(c) *Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of at least 2.5 grams/mile but less than 3.0 grams/mile.*

Second	Composite (grams)	Second	Composite (grams)
30	0.262	63	0.703
31	0.275	64	0.707
32	0.301	65	0.711
33	0.317	66	0.716
34	0.327	67	0.721
35	0.330	68	0.726
36	0.332	69	0.742
37	0.334	70	0.759
38	0.336	71	0.773
39	0.337	72	0.784
40	0.354	73	0.790
41	0.366	74	0.794
42	0.410	75	0.799
43	0.414	76	0.809
44	0.438	77	0.821
45	0.477	78	0.833
46	0.506	79	0.839
47	0.518	80	0.844
48	0.522	81	0.857
49	0.526	82	0.870
50	0.554	83	0.883
51	0.574	84	0.894
52	0.587	85	0.902
53	0.601	86	0.907
54	0.615	87	0.910
55	0.629	88	0.912
56	0.643	89	0.913
57	0.667	90	0.914
58	0.678	91	0.915
59	0.683	92	0.916
60	0.686	93	0.917
61	0.693	94	0.918
62	0.699	95	0.919

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)•
96	0.920	161	2.050
97	0.921	162	2.131
98	0.922	163	2.235
99	0.924	164	2.320
100	0.929	165	2.395
101	0.941	166	2.488
102	0.970	167	2.563
103	1.027	168	2.645
104	1.093	169	2.746
105	1.155	170	2.778
106	1.234	171	2.792
107	1.275	172	2.810
108	1.305	173	2.847
109	1.320	174	2.874
110	1.332	175	2.905
111	1.346	176	2.950
112	1.358	177	3.001
113	1.378	178	3.047
114	1.406	179	3.104
115	1.426	180	3.173
116	1.438	181	3.238
117	1.448	182	3.302
118	1.460	183	3.372
119	1.462	184	3.452
120	1.467	185	3.545
121	1.476	186	3.648
122	1.494	187	3.701
123	1.505	188	3.759
124	1.517	189	3.821
125	1.546	190	3.870
126	1.569	191	3.892
127	1.586	192	3.914
128	1.596	193	3.955
129	1.603	194	3.997
130	1.605	195	4.035
131	1.606	196	4.089
132	1.607	197	4.146
133	1.607	198	4.206
134	1.608	199	4.243
135	1.614	200	4.295
136	1.616	201	4.351
137	1.631	202	4.398
138	1.643	203	4.410
139	1.656	204	4.419
140	1.673	205	4.426
141	1.703	206	4.429
142	1.739	207	4.453
143	1.767	208	4.486
144	1.774	209	4.542
145	1.785	210	4.598
146	1.806	211	4.638
147	1.830	212	4.715
148	1.844	213	4.774
149	1.845	214	4.829
150	1.846	215	4.872
151	1.852	216	4.931
152	1.868	217	4.981
153	1.877	218	5.017
154	1.879	219	5.029
155	1.886	220	5.033
156	1.900	221	5.037
157	1.910	222	5.047
158	1.936	223	5.057
159	1.954	224	5.061
160	1.986	225	5.062

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)
226	5.063	233	5.067
227	5.063	234	5.068
228	5.063	235	5.069
229	5.063	236	5.070
230	5.064	237	5.070
231	5.065	238	5.070
232	5.066	239	5.070

(d) *Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of 3.0 grams/mile or greater.*

Second	Composite (grams)	Second	Composite (grams)
30	0.419	85	1.310
31	0.425	86	1.319
32	0.431	87	1.320
33	0.449	88	1.337
34	0.476	89	1.348
35	0.497	90	1.361
36	0.515	91	1.366
37	0.516	92	1.369
38	0.519	93	1.373
39	0.527	94	1.375
40	0.542	95	1.377
41	0.560	96	1.379
42	0.598	97	1.381
43	0.616	98	1.383
44	0.645	99	1.385
45	0.670	100	1.399
46	0.691	101	1.405
47	0.716	102	1.466
48	0.735	103	1.485
49	0.765	104	1.546
50	0.802	105	1.623
51	0.836	106	1.699
52	0.868	107	1.760
53	0.890	108	1.788
54	0.918	109	1.798
55	0.936	110	1.842
56	0.947	111	1.864
57	0.958	112	1.888
58	0.970	113	1.905
59	0.982	114	1.920
60	0.994	115	1.926
61	1.019	116	1.939
62	1.042	117	1.958
63	1.049	118	1.972
64	1.058	119	1.981
65	1.062	120	1.987
66	1.064	121	1.991
67	1.070	122	1.996
68	1.077	123	2.012
69	1.085	124	2.040
70	1.092	125	2.060
71	1.101	126	2.069
72	1.111	127	2.092
73	1.121	128	2.114
74	1.131	129	2.132
75	1.141	130	2.144
76	1.159	131	2.152
77	1.164	132	2.157
78	1.186	133	2.160
79	1.221	134	2.163
80	1.260	135	2.165
81	1.268	136	2.168
82	1.272	137	2.171
83	1.277	138	2.186
84	1.288	139	2.235

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Table 3 (continued)
Fast–Pass Emission Limitations For The Transient Emission Test

Second	Composite (grams)	Second	Composite (grams)
140	2.298	190	4.696
141	2.333	191	4.731
142	2.373	192	4.780
143	2.406	193	4.837
144	2.416	194	4.876
145	2.420	195	4.928
146	2.424	196	4.972
147	2.435	197	5.025
148	2.455	198	5.104
149	2.471	199	5.189
150	2.484	200	5.275
151	2.495	201	5.336
152	2.509	202	5.366
153	2.522	203	5.387
154	2.533	204	5.427
155	2.541	205	5.444
156	2.552	206	5.447
157	2.589	207	5.477
158	2.631	208	5.520
159	2.704	209	5.560
160	2.758	210	5.603
161	2.802	211	5.657
162	2.904	212	5.698
163	2.960	213	5.762
164	3.027	214	5.836
165	3.127	215	5.944
166	3.187	216	6.008
167	3.306	217	6.040
168	3.384	218	6.072
169	3.467	219	6.089
170	3.565	220	6.101
171	3.640	221	6.118
172	3.718	222	6.126
173	3.781	223	6.139
174	3.827	224	6.145
175	3.852	225	6.148
176	3.903	226	6.150
177	3.930	227	6.151
178	3.970	228	6.152
179	4.015	229	6.153
180	4.074	230	6.154
181	4.159	231	6.156
182	4.230	232	6.157
183	4.286	233	6.159
184	4.334	234	6.160
185	4.388	235	6.162
186	4.447	236	6.163
187	4.505	237	6.164
188	4.561	238	6.166
189	4.625	239	6.168

History: Renum. from NR 154.17 (3) and am. Register, September, 1986, No. 369, eff. 11–1–86; am. Table, Register, February, 1990, No. 410, eff. 3–1–90; r. and recr. Register, December, 1995, No. 480, eff. 1–1–96; am. (9) (b), Register, January, 1997, No. 493, eff. 2–1–97; r. and recr. Table 1 (3), renum. Table 3, (1) (a) to (c), (2) (a) to (c) and (3) (a) to (c) to be (1) (b) to (d), (2) (b) to (d) and (3) (b) to (d), Register, November, 1998, No. 515, eff. 12–1–98; am. (2) (c), (8) (a), (b), (10) (intro.), r. and recr. Table 3 (1) (a), (2) (a) and (3) (a), r. Table 1 (5), Register, November, 1999, No. 527, eff. 12–1–99; renum. (9) (a) to be (9), r. (9) (b), Register, January, 2001, No. 541, eff. 2–1–01; CR 05–072: am. Table 1 (4) (title) and cr. Table 1 (5) Register March 2006 No. 603, eff. 4–1–06; **CR 10–049: am. (2) (intro.), (7) (title), (9), r. (3), (4), (6), (7) (a) (title), (b), (8), Table 2, 4, Register November 2010 No. 659, eff. 12–1–10.**

NR 485.045 Repair cost limit for vehicle inspection program. (1) REPAIR COST LIMIT. For vehicles subject to the motor vehicle emission inspection program under s. 110.20 (6), Stats., the repair cost limit for determining eligibility for a waiver of compliance under s. 110.20 (13), Stats., from the emission limitations of s. NR 485.04, shall be established in accordance with 42 USC 7511a (b) (4) or (c) (3) (C), and regulations promulgated thereunder, and shall equal the higher of $450 or an amount calculated from a base of $450 and adjusted annually, beginning in 1989, by the percentage, if any, by which the consumer price index, as defined in section 502 (b) (3) (B) (v) of the Act (42 USC 7661a (b) (3) (B) (v)), has been adjusted.

(2) CERTIFICATION OF REPAIR COST LIMIT. Beginning in 1994, by April 1 of each year the department shall certify to DOT the amount of the repair cost limit calculated under sub. (1) for

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determining eligibility for a waiver of compliance under s. 110.20 (13), Stats., for the subsequent 12 month period of July 1 through June 30.

History: Emerg. cr. eff. 11–15–92; cr. Register, June, 1993, No. 450, eff. 7–1–93; r. (1) (a), Register, December, 1995, No. 480, eff. 1–1–96; **CR 10–049: renum. (1) (intro.) to be (1) and am., r. (1) (b), (c) Register November 2010 No. 659, eff. 12–1–10; correction in (2) made under s. 13.92. (4) (b) 7., Stats., Register November 2010 No. 659.**

NR 485.05 Visible emission limits for motor vehicles, internal combustion engines and mobile sources. No person may cause, allow or permit visible emissions in amounts greater than the following limitations, except when uncombined water is the cause for violation:

(1) Gasoline–powered internal combustion engines of 25 HP or more, or gasoline–powered motor vehicles: no visible emissions for longer than 5 consecutive seconds.

(2) Diesel–powered motor vehicles of model year 1970 or later: emissions of shade or density greater than number 1 on the Ringelmann chart or 20% opacity for longer than 10 consecutive seconds.

(3) Diesel–powered motor vehicles of model year 1969 or earlier: emissions of shade or density greater than number 2 on the Ringelmann chart or 40% opacity for longer than 10 consecutive seconds.

(4) Ships, locomotives, or semistationary diesel engines: emissions of shade or density greater than number 2 on the Ringelmann chart or 40% opacity for longer than an aggregate time of 5 minutes in any 30–minute period. At no time may emissions exceed a shade or density greater than number 4 on the Ringelmann chart or 80% opacity.

History: Renum. from NR 154.17 (4), Register, September, 1986, No. 369, eff. 10–1–86; am. (intro.) Register, July, 1989, No. 403, eff. 8–1–89; am. (intro.) and (4), Register, May, 1992, No. 437, eff. 6–1–92.

NR 485.055 Particulate emission limit for gasoline and diesel internal combustion engines. No person may cause, allow or permit the emissions of particulate matter to the ambient air from stationary or semistationary gasoline or diesel powered internal combustion reciprocating engines in excess of 0.50 pound of particulate per million Btu heat input.

History: Cr. Register, June, 1994, No. 462, eff. 7–1–94.

NR 485.06 Tampering with air pollution control equipment. (1) No person may tamper with or fail to maintain in good working order any air pollution control equipment which has been installed on a motor vehicle by the manufacturer prior to sale unless the person repairs or restores the equipment or replaces the equipment with new identical or comparable tested replacement equipment. Catalytic converters must be original equipment or EPA–certified equipment except as specified in sub. (2). Air pollution control equipment includes but is not limited to:

(a) Positive crankcase ventilation equipment.

(b) Exhaust emission control equipment.

(c) Evaporative fuel loss control equipment.

(d) Any control equipment operating on principles such as thermal decomposition, catalytic oxidation or reduction, absorption, or adsorption.

(2) (a) Notwithstanding sub. (1), any person may replace the catalytic converter with aftermarket equipment certified by the U.S. environmental protection agency (EPA) on the following categories of vehicles:

1. All vehicles of model year 1994 or earlier.

2. For vehicles of model year 1995 or later, those vehicles which are at least 8 model years older than the current model year, or those vehicles with more than 80,000 miles on the odometer.

(b) If the catalytic converter is replaced, the owner of the vehicle shall provide a receipt or other evidence showing that the replacement converter has been certified by EPA.

History: Renum. from NR 154.17 (2), Register, September, 1986, No. 369, eff. 10–1–86; renum. (intro.) to (4) to (1) (a) to (d) and cr. (2), Register, July, 1989, No. 403, eff. 8–1–89; CR 05–072: am. (2) Register March 2006 No. 603, eff. 4–1–06.

NR 485.07 Inspection requirement for motor vehicle tampering. (1) APPLICABILITY. This section applies to any motor vehicle which is subject to an air pollution control equipment inspection under s. 110.20 (6) (b), Stats., or which is inspected for tampering of air pollution control equipment.

(2) RECORDS AND COMPLIANCE. DOT or its designee shall maintain a record of vehicles failing the tampering inspection conducted under either s. 110.20 (6) (b), Stats., or any other enforcement mechanism. DOT may not register or renew registration of a failed vehicle until evidence of repair, replacement or restoration of the failed or missing parts is provided to DOT or its designee, and DOT or its designee reinspects the vehicle for the failed or missing parts.

(3) FULL TAMPERING INSPECTION PROCEDURE. (a) Full tampering inspections shall consist of a visual check for the presence and proper connection of the following air pollution control equipment: the positive crankcase ventilation (PCV) valve and connections; the evaporative emissions control canister; the exhaust system catalytic converter and oxygen sensor; the exhaust gas recirculation (EGR) assembly; the air pump, belts and hoses or the air injector assembly; the fuel inlet restricter; a properly seated gas tank fill cap; and the thermostatic air cleaner/filter assembly. A vehicle shall fail the tampering inspection if this check indicates any evidence of tampering.

(b) Full tampering inspections shall also include a visual check of the status and operation of any emission service indicator light which has been installed on the motor vehicle by the manufacturer prior to sale. A vehicle shall fail the tampering inspection if the status of this light indicates an emission malfunction or if the light is not operational.

(c) Full tampering inspections may also include a test for the presence of lead deposits in the tailpipe if the vehicle is required to use unleaded gasoline. Evidence of the use of leaded fuel in vehicles requiring the use of unleaded fuel as shown by the presence of lead in the tailpipe, the presence of leaded fuel in the gas tank or evidence of current or previous tampering with the fuel inlet restricter shall constitute tampering with the catalytic converter and the exhaust oxygen sensor if the vehicle originally had that equipment. When evidence of fuel inlet tampering is found, and a tailpipe lead test indicates the absence of lead deposits, DOT or its designee may waive the requirement to repair, replace or restore the catalytic converter and oxygen sensor equipment if the following conditions are met:

1. A full tampering inspection of the vehicle indicates no additional tampering.

2. The owner of the vehicle provides evidence to DOT or its designee that the catalytic converter and oxygen sensor were replaced subsequent to April 1, 1988, or the owner provides evidence to DOT or its designee that a previously tampered with but partially restored and functional fuel inlet restricter was installed in the vehicle prior to or concurrently with the replacement of the catalytic converter and oxygen sensor, or DOT or its designee determines that the particular vehicle model is on a list of vehicle models that chronically fail the fuel inlet restricter test due to improper new vehicle equipment design, improper new vehicle equipment installation or normal extended wear.

(4) SUBSTITUTE PROCEDURE. Upon written department approval granted to DOT, a partial tampering inspection procedure may be substituted for the full inspection procedure in sub. (3), provided that use of the substitute procedure maintains the inspection program effectiveness in terms of adequate pollution

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reduction and adequate identification and repair of tampered and misfueled vehicles and improperly maintained emission control equipment.

(5) PROCEDURE REVIEW. The department shall review the tampering inspection procedure in effect prior to each DOT inspection contract or contract extension. Upon such review, the department may withdraw or alter any substitute procedure approved under sub. (4).

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (4) (a) (intro.), Register, May, 1992, No. 437, eff. 6–1–92; am. (1), (2), (3) (a) and (5), r. (3) (c), renum. (3) (b) to be (3) (c) and am. (intro.), cr. (3) (b), r. and recr. (4), Register, December, 1995, No. 480, eff. 1–1–96; am. (3) (c) (intro.), Register, January, 1997, No. 493, eff. 2–1–97.

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 **05-072**

AN ORDER to amend NR 485.04 Table 1 (4) (title) and 485.06 (2); and to create NR 485.04 Table 1 (5), relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-12-2005 RECEIVED BY LEGISLATIVE COUNCIL.

08-08-2005 REPORT SENT TO AGENCY.

RNS:JES

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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
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CLEARINGHOUSE RULE 05-072

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 January 2005.]

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

a. Section 285.11 (6), Stats., requires that rules or control strategies submitted to the federal Environmental Protection Agency under the federal Clean Air Act for the control of atmospheric ozone shall ***conform*** with the federal Clean Air Act unless specified conditions are met. The summary accompanying the rule states that "These [federal emissions] standards are more stringent than those in the proposed rule.... Wisconsin's I/M program currently meets this [federal] performance standard and will continue to meet this standard under the proposed rule revisions." To avoid any ambiguity over whether the rule complies with the requirement in s. 285.11 (6), Stats., the department should consider stating, in the summary accompanying the rule, whether the rule conforms with the federal Clean Air Act, and, if it does not conform, how the department will comply with s. 285.11 (6), Stats.

b. To provide consistency between the amended title of s. NR 485.04 Table 1 (4) and the existing titles of s. NR 485.04 Table 1 (1) to (3), the department should consider revising the title of s. NR 485.04 Table 1 (4) as follows: MOTOR VEHICLES INSPECTED ~~ON AND AFTER~~ BETWEEN DECEMBER 1, 1998 AND THE EFFECTIVE DATE OF THIS SECTION....[revisor inserts date].

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Signed final

RECEIVED
FEB 15 2006
AIR MANAGEMENT

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **amend** NR 485.04 Table 1 (4) (title) and NR 485.06(2); and to **create** NR 485.04 Table 1 (5) relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

AM-03-05

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: ss. 285.11(6) and 285.30(2) and (6)(b), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 227.11(2)(a), 285.11(1) and 285.30(2) and (6)(b), Stats.

3. Explanation of agency authority: Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30(2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles. Section 285.30(6)(b), Stats., prohibits tampering with air pollution control equipment, but provides authority for the Department to promulgate rules which permit exceptions to this prohibition.

4. Related statute or rule: The related statutes are ss. 110.20, 110.21 and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

5. Plain language analysis:
The proposed rule will make three general changes to the motor vehicle emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code. These emission limitations are pass/fail standards for the state's motor vehicle inspection and maintenance (I/M) program. This program originally started during 1984 and is currently operating in the seven southeastern Wisconsin counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. To meet requirements in the federal 1990 Clean Air Act Amendments, enhanced test procedures (provided in ch. Trans 131, Wis. Adm. Code) and emission limitations associated with those procedures (provided in ch. NR 485, Wis. Adm. Code) took effect during December 1995.

It should be noted that the emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, are no longer used as pass/fail standards for most model year 1996 and newer light-duty vehicles and light-duty trucks and for most model year 2005 and newer heavy-duty vehicles. Starting July 2001, most of these vehicles have been inspected by a check of the vehicle's computerized on-board diagnostic (OBD) system instead of a measurement of the vehicle's tailpipe emissions.

The three general changes to the emission limitations in the proposed rule are:

a. Relax the emission limitations for oxides of nitrogen (NOx) for some groups of trucks and older cars to account for some deterioration of the emission control systems for these vehicles.
b. Establish new emission limitations for model year 2005 and newer heavy-duty vehicles to account for the new federal certification standards required for these vehicles.
c. Simplify the emission limitations for some categories of model year 1994-1996 vehicles so that the lane inspector would not need to decode data under the vehicle's hood in order to determine the proper limitations.

The specific changes to the emission limitations are as follows:

a. Light-Duty Vehicles

i. Model years 1994-1995: Emission limitations are simplified so that all vehicles in this category will have emission limitations of 0.80 grams per mile (gpm) for hydrocarbons (HC), 15.0 gpm for carbon monoxide (CO) and 2.0 gpm for NOx. [This change has already been authorized by written approval from the Department of Natural Resources to the Department of Transportation, as allowed under the current rule. Without this written approval, the current rule would have the above limitations apply only to those vehicles in this category which are not certified to meet federal "Tier 1" emission standards, while the vehicles in this category which are certified to meet federal "Tier 1" emission standards would have emission limitations of 0.60 gpm HC, 10.0 gpm CO and 1.5 gpm NOx.]

ii. Model years 1977-1980: Emission limitation for NOx is changed from 4.0 gpm to 5.0 gpm.

b. Light-Duty Trucks with Gross Vehicle Weight Rating (GVWR) of 6,000 pounds of less

i. Model Years 1994-1995: Emission limitations are simplified so that all vehicles in this category will have emission limitations of 1.60 gpm for HC and 40.0 gpm for CO. The emission limitations for NOx will be 2.5 gpm (for vehicles with Loaded Vehicle Weight [LVW] of 3,750 pounds or less) or 3.5 gpm (for vehicles with LVW of greater than 3,750 pounds). [Most of this change has already been authorized by written approval from the Department of Natural Resources to the Department of Transportation, as allowed under the current rule. Without this written approval, the current rule would have the limitations of 1.60 gpm HC, 40.0 gpm CO and 2.5 gpm NOx apply only to those vehicles in this category which are not certified to meet federal "Tier 1" emission standards, while the vehicles in this category which are certified to meet federal "Tier 1" emission standards would have emission limitations of either 0.60 gpm HC, 10.0 gpm CO and 1.5 gpm NOx (for vehicles with LVW of 3,750 pounds or less) or 0.80 gpm HC, 13.0 gpm CO and 1.8 gpm NOx (for vehicles with LVW of greater than 3,750 pounds). The only part of this change that has not been already applied is the NOx emission limitation of 3.5 gpm for vehicles with LVW of greater than 3,750 pounds. Currently the Wisconsin I/M program uses a NOx emission limitation for these vehicles of 2.5 gpm.]

ii. Model years 1988-1993: For vehicles with Loaded Vehicle Weight greater than 3,750

pounds, the emission limitation for NOx is changed from 2.5 to 3.5 gpm.

iii. Model years 1979-1987: Emission limitation for NOx is changed from 4.5 gpm to 5.5 gpm.

c. Light-Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy-Duty Vehicles with GVWR of 8,500 pounds or less

i. Model year 1996: Emission limitations are simplified so that all vehicles in this category will have emission limitations of 1.60 gpm for HC, 40.0 gpm for CO and 3.5 gpm for NOx. [This change has already been authorized by written approval from the Department of Natural Resources to the Department of Transportation, as allowed under the current rule. Without this written approval, the current rule would have the above limitations apply only to those vehicles in this category which are not certified to meet federal "Tier 1" emission standards, while the vehicles in this category which are certified to meet federal "Tier 1" emission standards would have emission limitations of either 0.80 gpm HC, 13.0 gpm CO and 1.8 gpm NOx (for vehicles with Adjusted Loaded Vehicle Weight [ALVW] of 5,750 pounds or less) or 0.80 gpm HC, 15.0 gpm CO and 2.0 gpm NOx (for vehicles with ALVW of greater than 5,750 pounds).]

ii. Model years 1988-1989: Emission limitation for NOx is changed from 3.5 gpm to 5.5 gpm.

iii. Model years 1979-1987: Emission limitation for NOx is changed from 4.5 gpm to 5.5 gpm.

d. Heavy-Duty Vehicles with GVWR of 8,500 to 10,000 pounds

i. Model years 2005 and newer: Emission limitation for HC is changed from 2.00 gpm to 1.00 gpm and emission limitation for NOx is changed from 4.0 gpm to 3.0 gpm.

ii. Model years 1998-2004: Emission limitation for NOx is changed from 4.0 gpm to 7.0 gpm.

iii. Model years 1991-1997: Emission limitation for NOx is changed from 5.0 gpm to 9.0 gpm.

iv. Model years 1987-1990: Emission limitation for NOx is changed from 6.0 gpm to 11.0 gpm.

v. Model years 1979-1986: Emission limitation for NOx is changed from 8.0 gpm to 16.0 gpm.

vi. Model years 1970-1978: Emission limitation for NOx is changed from 10.0 gpm to 20.0 gpm.

vii. Model years 1968-1969: Emission limitation for NOx is changed from 15.0 gpm to 30.0 gpm.

e. Heavy-Duty Vehicles with GVWR greater than 10,000 pounds

i. Model years 2005 and newer: Emission limitation for HC is changed from 3.50 gpm to 1.00 gpm and emission limitation for NOx is changed from 7.0 gpm to 3.0 gpm.

The proposed rule will also revise the catalytic converter replacement provisions in s. NR 485.06(2), Wis. Adm. Code, to make them consistent with the current federal emission warranty provisions in 40 CFR part 85. These federal provisions provide an 8 year or 80,000 mile (whichever comes first) warranty for the catalytic converter for model year 1995 and newer vehicles. For older vehicles, the federal warranty for the catalytic converter lasts for 5 years or 50,000 miles (whichever comes first). Currently s. NR 485.06(2), Wis. Adm. Code., allows a person to replace the catalytic converter on a vehicle older than 5 model years or with more than 50,000 miles on the odometer with aftermarket equipment certified by the U. S. Environmental Protection Agency (EPA). The proposed revision will allow that type of replacement for all model year 1994 and older vehicles (since they all are older than 5 model years) and also allow that type of replacement for those model year 1995 and newer vehicles that are older than 8 model years or have more than 80,000 miles on the odometer. This change thereby will prevent one from replacing the catalytic converter on a model year 1995 and newer vehicle while the converter is still under the federal warranty.

6. Summary of, and comparison with, existing or proposed federal regulation:
Three federal regulations address activities to be regulated by the proposed rule: (1) the federal motor vehicle certification standards in 40 CFR part 86; (2) the low-enhanced I/M performance standard in 40 CFR 51.351; and (3) the federal emission warranty provisions in 40 CFR part 85.

40 CFR part 86 provides emission standards for new motor vehicles. Motor vehicles must be certified by the EPA to comply with these standards before they can be sold in the United States. These standards are more stringent than those in the proposed rule. In fact, a key reason for proposing this rule is that staff from the Wisconsin Departments of Natural Resources and Transportation and the I/M program contractor found some of the current emission limitations in ch. NR 485 to be too close to the federal certification standards, thus providing inadequate allowance for deterioration due to age and mileage.

40 CFR 51.351(f) requires that "Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program." The Wisconsin I/M program is required to meet the "Alternate Low Enhanced I/M Performance Standard" in 40 CFR 51.351(g). Wisconsin's I/M program currently meets this performance standard and will continue to meet this standard under the proposed rule revisions.

40 CFR part 85 includes warranty provisions for motor vehicle emission control equipment. As mentioned in the preceding section, the proposed rule will revise the minimum age and mileage levels under which the catalytic converter may be replaced to the age and mileage levels to which the original catalytic converter is under warranty under 40 CFR part 85.

An important consideration related to a comparison with federal regulations is that the proposed rule meets the requirements in s. 285.11(6), Stats. This section requires that rules or control strategies submitted to the EPA under the federal Clean Air Act for the control of atmospheric ozone shall ***conform*** with the federal Clean Air Act unless specified conditions are met. This proposed rule does conform with the

federal Clean Air Act. It conforms because the proposed emission limitations are not more stringent than the federal emission standards for new motor vehicles in 40 CFR part 86, but are stringent enough to enable the Wisconsin I/M program to meet the low-enhanced I/M performance standard in 40 CFR 51.351. (Both the federal emission standards in 40 CFR part 86 and the low-enhanced I/M performance standard in 40 CFR 51.351 were promulgated under the federal Clean Air Act.)

7. Comparison with rules in adjacent states:
The only state adjacent to Wisconsin with a vehicle inspection program is Illinois. The motor vehicle emission limitations in Illinois are similar to those in Wisconsin for hydrocarbons (HC) and carbon monoxide (CO). For most vehicle categories the HC and CO emission limitations for Wisconsin and Illinois are the same, but the Illinois emission limitations are more stringent than Wisconsin's for some of the model year 1996 light-duty trucks, while the Wisconsin emission limitations are more stringent for the model year 1987 cars and the model year 1981-1987 light-duty trucks. However, overall the Wisconsin emission limitations, both current and those proposed in this rule, are more stringent than Illinois's, since Wisconsin's I/M program fails vehicles for high NOx emissions while Illinois's I/M program does not. The U.S. Environmental Protection Agency (EPA) does not require that the Illinois I/M program fail vehicles for high NOx emissions, since EPA has granted the one-hour ozone nonattainment areas in the Lake Michigan region a waiver, under section 182(f) of the federal clean air act, from certain NOx requirements. While this "NOx waiver" also covers the Wisconsin I/M program area, Wisconsin elected to enforce NOx cutpoints starting in 2001, since new modeling evaluations have shown that the region's ozone problem could be reduced through a regional NOx control effort. If the Illinois I/M program area loses this "NOx waiver" for their upcoming state implementation plan (SIP) for attaining the eight-hour ozone standard, the Illinois I/M program may need to fail vehicles for high NOx emissions and the emissions limitations for Illinois and Wisconsin would be similar in stringency.

Wisconsin's motor vehicle emission limitations, both current and those proposed in this rule, are neither the most lenient nor the most stringent among the I/M programs in the United States. As discussed above, the Illinois emission limitations are currently more lenient than Wisconsin's. However, the emission limitations for the State of Missouri I/M program are overall more stringent than Wisconsin's. (Both states fail for HC, CO and NOx and have the same emission limitations for model years 1987 and newer. However, the Missouri emission limitations are more stringent than Wisconsin's for model years 1981-1986.)

8. Summary of factual data and analytical methodologies:
The proposed changes to the emission limitations are based on a cooperative analysis of the current emission limitations by staff of the Departments of Natural Resources and Transportation and the I/M program contractor. The recommended changes to the emission limitations resulting from this analysis are included in the report: An Evaluation of Wisconsin's Vehicle Inspection Program, May 2003, prepared for the Wisconsin Legislature by the Departments of Natural Resources and Transportation. The changes to the emission limitations in this proposed rule are the same as those recommended in the above report.

The main factual data and information utilized for developing this proposed rule were: emission limitations for enhanced I/M programs recommended in U.S. EPA guidance; the federal motor vehicle certification standards in 40 CFR part 86; statistics of vehicles failing the I/M inspection by vehicle category; and information from automotive technicians on the ability of certain categories of vehicles to be repaired to meet the current emission limitations.

The main analytical methodology used in determining the revised emission limitations was the process of

converting the federal motor vehicle certification standards to the same units used for the emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, and then setting the revised emission limitations to levels sufficiently greater than the federal standards to account for some deterioration of the emission control systems.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rule is not expected to have a significant effect on small businesses nor have a significant economic effect on any entity. The main impact of the proposed rule is that slightly fewer vehicles will fail the vehicle emission inspection. The Department estimates that about 500 fewer vehicles will fail per year, which is expected to be less than one percent of the total initial inspection failures (79,000 vehicles failed the initial inspection during 2004).

10. Effect on small business: The proposed rule is not expected to have a significant effect on small businesses. Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way individual vehicle owners are affected. The proposed rule will not impose any new requirements on small businesses.

11. Agency contact person: Christopher Bovee; phone: (608) 266-5542; email: christopher.bovee@dnr.state.wi.us

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SECTION 1. NR 485.04 Table 1 (4)(title) is amended to read:

NR 485.04 Table 1 (4)(title) MOTOR VEHICLES INSPECTED ~~ON AND AFTER~~ BETWEEN DECEMBER 1, 1998 AND THE DAY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION....[revisor inserts date].

SECTION 2. NR 485.04 Table 1 (5) is created to read:

NR 485.04 Table 1 (5) MOTOR VEHICLES INSPECTED ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION....[revisor inserts date].

(a) *Light-Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile) Composite	Hydrocarbons (grams/mile) Phase 2	Carbon Monoxide (grams/mile) Composite	Carbon Monoxide (grams/mile) Phase 2	Oxides of Nitrogen (grams/mile) Composite
1996 and newer	0.60	0.40	10.0	8.0	1.5
1987-1995	0.80	0.50	15.0	12.0	2.0
1983-1986	2.00	1.25	30.0	24.0	3.0
1981-1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	5.0
1977-1979	3.00	2.00	65.0	52.0	5.0
1975-1976	3.00	2.00	65.0	52.0	6.0
1973-1974	7.00	4.50	120	96.0	6.0
1968-1972	7.00	4.50	120	96.0	7.0

(b) *Light-Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile) Composite	Hydrocarbons (grams/mile) Phase 2	Carbon Monoxide (grams/mile) Composite	Carbon Monoxide (grams/mile) Phase 2	Oxides of Nitrogen (grams/mile) Composite
1996 and newer					
(≤3750 lbs LVW)	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW)	0.80	0.50	13.0	10.0	1.8
1988-1995					
(≤3750 lbs LVW)	1.60	1.00	40.0	32.0	2.5
(>3750 lbs LVW)	1.60	1.00	40.0	32.0	3.5
1987	1.60	1.00	40.0	32.0	5.5
1984-1986	3.20	2.00	70.0	56.0	5.5
1979-1983	3.40	2.00	70.0	56.0	5.5
1975-1978	4.00	2.50	80.0	64.0	6.0
1973-1974	7.00	4.50	120	96.0	6.0
1968-1972	7.00	4.50	120	96.0	7.0

(c) *Light-Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy-Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile) Composite	Hydrocarbons (grams/mile) Phase 2	Carbon Monoxide (grams/mile) Composite	Carbon Monoxide (grams/mile) Phase 2	Oxides of Nitrogen (grams/mile) Composite
1997 and newer					
(≤5750 lbs ALVW)	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW)	0.80	0.50	15.0	12.0	2.0
1990-1996	1.60	1.00	40.0	32.0	3.5
1987-1989	1.60	1.00	40.0	32.0	5.5
1984-1986	3.20	2.00	70.0	56.0	5.5
1979-1983	3.40	2.00	70.0	56.0	5.5
1975-1978	4.00	2.50	80.0	64.0	6.0
1973-1974	7.00	4.50	120	96.0	6.0
1968-1972	7.00	4.50	120	96.0	7.0

(d) *Heavy-Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile) Composite	Hydrocarbons (grams/mile) Phase 2	Carbon Monoxide (grams/mile) Composite	Carbon Monoxide (grams/mile) Phase 2	Oxides of Nitrogen (grams/mile) Composite
2005 and newer	1.00	0.63	30.0	24.0	3.0
1998-2004	2.00	1.25	30.0	24.0	7.0
1991-1997	2.00	1.25	40.0	32.0	9.0
1987-1990	2.00	1.25	40.0	32.0	11.0
1985-1986	5.00	3.10	80.0	64.0	16.0
1979-1984	7.50	5.00	100	80.0	16.0
1974-1978	10.0	6.00	150	120	20.0
1970-1973	10.0	6.00	175	140	20.0
1968-1969	20.0	12.5	200	160	30.0

(e) *Heavy-Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile) Composite	Hydrocarbons (grams/mile) Phase 2	Carbon Monoxide (grams/mile) Composite	Carbon Monoxide (grams/mile) Phase 2	Oxides of Nitrogen (grams/mile) Composite
2005 and newer	1.00	0.63	60.0	48.0	3.0
1998-2004	3.50	2.00	60.0	48.0	7.0
1991-1997	3.50	2.00	70.0	56.0	9.0
1987-1990	3.50	2.00	70.0	56.0	11.0
1985-1986	10.0	6.00	150	120	16.0
1979-1984	11.5	7.00	150	120	16.0
1974-1978	13.0	8.00	150	120	20.0
1970-1973	13.0	8.00	175	140	20.0
1968-1969	24.0	15.0	200	160	30.0

SECTION 3. NR 485.06(2) is amended to read:

NR 485.06(2)(a) Notwithstanding sub. (1), any person may replace the catalytic converter ~~on a vehicle older than 5 model years or with more than 50,000 miles on the odometer~~ with aftermarket equipment certified by the U.S. environmental protection agency (EPA)~~.~~ on the following categories of vehicles:

1. All vehicles of model year 1994 or earlier.

2. For vehicles of model year 1995 or later, those vehicles which are at least 8 model years older than the current model year, or those vehicles with more than 80,000 miles on the odometer.

(b) If the catalytic converter is replaced, the owner of the vehicle shall

provide a receipt or other evidence showing that the replacement converter has been certified by EPA.

SECTION 4. 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.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 7, 2005.

Dated at Madison, Wisconsin 2/10/06.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Scott Hassett
Scott Hassett, Secretary

(SEAL)

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
AM-03-05

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2)(a), 285.11(1) and 285.30(2) and (6)(b), Stats., interpreting ss. 285.11(6) and 285.30(2) and (6)(b), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 485.04 and 485.06, Wis. Adm. Code, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment. The Department's State Implementation Plan will be revised as a result of this revision. A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. To meet requirements for I/M programs in the federal Clean Air Act Amendments of 1990, Wisconsin started "enhanced" emission inspections on December 4, 1995. The enhanced inspection procedures (transient emission test and gas cap integrity test) are more effective in identifying high-emitting vehicles and in diagnosing the causes of excess emissions than were the original inspection procedures.

The emission limitations ("cutpoints") subject to this proposed revision are pass/fail standards for the I/M program. The Department proposes to revise certain cutpoints for specific categories of vehicles as follows:

1. Relax the cutpoints for oxides of nitrogen (NOx) for some groups of trucks and older cars to account for some deterioration of the emission control systems for these vehicles;
2. Establish new cutpoints for model year 2005 and newer heavy-duty trucks to account for new federal certification standards for these vehicles; and
3. Simplify the cutpoints for some categories of model year 1994 to 1996 vehicles so that the lane inspector would not need to decode data under the vehicle's hood in order to determine the proper cutpoints.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rules may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Small businesses that own nonexempt motor vehicles customarily kept in the 7-county I/M program area and small businesses that repair motor vehicles that fail the I/M inspection. Under the proposed rule, slightly fewer vehicles would fail the I/M inspection. This may lower vehicle repair costs for some small businesses that own motor vehicles, but may also result in a slight decrease in business for small businesses that repair motor vehicles.
b. Description of reporting and bookkeeping procedures required: Other than the requirements for vehicles to report at inspection stations, there are no reporting, bookkeeping or other procedures required for compliance with the rule.
c. Description of professional skills required: No professional skills are necessary.

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 23, 2005 Tuesday	Room 140-141, DNR Southeast Region Hdqrs., 2300 N. Dr. Martin Luther King Jr. Dr., Milwaukee	at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Chris Bovee, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 2, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained by contacting Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, phone: (608) 266-7118; FAX: (608) 267-0560.

Dated at Madison, Wisconsin July 15, 2005

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Scott Hassett
Scott Hassett, Secretary

Chris Bowe

FYI

Wisconsin State Journal ★

LOCAL

[illegible] July 22, 2005 ★

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and [illegible] new [illegible] for these vehicles [illegible]

3. Simply the [illegible] for some categories of model year 1994 to 1999 vehicles so that the lane inspector would not need to decode data under the vehicle's hood in order to determine the proper cutpoints.

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b. Description of reporting and bookkeeping procedures required: Other than the requirements for vehicles to report at inspection stations, there are no reporting, bookkeeping or other procedures required for compliance with the rule.

c. Description of professional skills required: [illegible]

[illegible] SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling [illegible]

NOTICE IS HEREBY FURTHER GIVEN that the [illegible]

[illegible]

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on August [illegible], 2005 Room [illegible] Southeast Region Hdqrs., [illegible] Luther King Tuesday Jr. Dr. [illegible]

NOTICE IS HEREBY FURTHER [illegible]

[illegible]

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AND AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 484.04 (7), 485.02 (3), (4), (8), (9) and (18), 485.04 (3), (4), (6), (7) (a) (title) and (b), (8), Table 2 and Table 4, and 485.045 (1) (b) and (c); to **renumber and amend** NR 485.04 (7) (a), and 485.045 (1) (intro.); and to **amend** NR 485.04 (2) (intro.) and (9), relating to the vehicle inspection and maintenance program and affecting small business.

AM-13-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: ss. 110.20(13)(b), 285.11(6) and 285.30(2), Wis. Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 110.20(13)(b), 227.11(2)(a), 285.11(1) and 285.30(2), Wis. Stats.

3. Explanation of agency authority: Section 110.20(13)(b), Stats., gives the Department authority to establish the amount of the repair cost limit for the vehicle inspection and maintenance program. Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30(2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles.

4. Related statute or rule: The related statutes are ss. 110.20, 110.21 and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

5. Plain language analysis:
A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. However, prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

This rule is being proposed in response to two issues relating to the issuing of cost waivers: (1) the lower repair cost limits currently in effect for vehicles registered in Sheboygan County and (2) the I/M program's policy change to allow cost waivers for vehicles failing the OBD-II inspection, starting July, 2009. Descriptions of these two issues follow:

Sheboygan County:

For all I/M program counties except Sheboygan, the repair cost limit is currently $788 ($450 in 1989, adjusted annually each July 1 for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at $200 for vehicles of a 1981 or newer model year and at $75 for older vehicles. Sheboygan County has had lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

OBD:

Prior to July, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD-II inspection. Cost waivers were not issued for OBD-II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05(1)(j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD-II system's malfunction indicator light (MIL) must be operational and non-active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD-II inspection. Therefore, no cost waivers were issued for vehicles failing the OBD-II inspection and once the I/M program became OBD-II-only in July of 2008, the program did not issue any cost waivers at all.

Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP.

Rule Summary:

The DNR is proposing to expand the coverage of the inflation-adjusted, currently $788, repair cost limit in s. NR 485.045, Wis. Adm. Code, to all counties subject to the I/M program, thereby raising the lower limits for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
- Steady-state tests

These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD-II scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady-state tests were effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today's vehicles.

6. Summary of, and comparison with, existing or proposed federal regulation:
The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle inspection and maintenance programs under that act. These regulations are found in 40 CFR 51.350-51.373.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):
Illinois is the only adjacent state that has a vehicle inspection and maintenance program. In Illinois the repair cost limit for a waiver is $450. Thus, the state of Illinois has not adjusted its repair cost limit for the increase in the federal consumer price index since 1989.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:
The U. S. Environmental Protection Agency (EPA) has issued guidance for adjusting the repair cost limit for inflation: Calculation of the I/M Waiver Adjusted for CPI, Office of Mobile Sources, U.S. EPA, EPA 420-B-99-011, December, 1999, http://www.epa.gov/otaq/epg/b99011.pdf. The DNR has followed this guidance for calculating the repair cost limit. The consumer price index (CPI) adjustment for 1989 to 2009 was 1.7520, resulting in a repair cost limit for July, 2010, through June, 2011, of $450 * 1.7520 = $788.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:
The only economic effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County that what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be $416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only $200 for vehicles in Sheboygan County and the same $416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by $216.

10. Effect on small business:
Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

The proposed rule will not impose any new requirements on small businesses.

11. Agency contact person:
Christopher Bovee, DNR – Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, telephone number: (608) 266-5542; e-mail address: christopher.bovee@wisconsin.gov

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SECTION 1. NR 484.04 (7) is repealed.

SECTION 2. NR 485.02 (3), (4), (8), (9) and (18) are repealed.

SECTION 3. NR 485.04 (2) (intro.) is amended to read:

NR 485.04 (2) (intro.) Except as provided in sub. (7) ~~(a)~~, any motor vehicle undergoing the transient emission test may not emit from the exhaust system:

SECTION 4. NR 485.04 (3), (4), (6), and (7) (a) (title) are repealed.

SECTION 5. NR 485.04 (7) (a) is renumbered NR 485.04 (7) and as renumbered NR 485.04 (7) (title) is amended to read:

NR 485.04 (7) (title) FAST-PASS TRANSIENT EMISSION TEST.

SECTION 6. NR 485.04 (7) (b), (8) and Table 2 and Table 4 are repealed.

SECTION 7. NR 485.04 (9) is amended to read:

NR 485.04 (9) EFFECTIVE DATE FOR OXIDES OF NITROGEN REQUIREMENTS. An inspection under s. 110.20 (6) (a), Stats., shall include an inspection for emissions of oxides of nitrogen. However, the emission limitations for oxides of nitrogen in subs. (2) (c) and ~~(7) (a) 3.~~ (7) (c) shall apply for compliance purposes only to inspections conducted after May 1, 2001.

SECTION 8. NR 485.045 (1) (intro.) is renumbered NR 485.045 (1) and as renumbered is amended to read:

NR 485.045 (1) REPAIR COST LIMIT. For vehicles subject to the motor vehicle emission inspection program under s. 110.20 (6), Stats., the repair cost limit for determining eligibility for a waiver of compliance under s. 110.20 (13), Stats., from the emission limitations of s. NR 485.04, shall be established in accordance with 42 USC 7511a (b) (4) or (c) (3) (C), and regulations promulgated thereunder, and shall equal the ~~following amounts:~~ higher of $450 or an amount calculated from a base of $450 and adjusted annually, beginning in 1989, by the percentage, if any, by which the consumer price

index, as defined in section 502 (b) (3) (B) (v) of the Act (42 USC 7661a (b) (3) (B) (v)), has been adjusted.

SECTION 9. NR 485.045(1) (b) and (c) are repealed.

SECTION 10. 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.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin October 5, 2010.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

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 **10-049**

AN ORDER to repeal NR 484.04 (7), 485.02 (3), (4), (8), (9), and (18), 485.04 (3), (4), (6), (7) (a) (title) and (b), (8), Table 2 and Table 4, and 485.045 (1) (b) and (c); to renumber and amend NR 485.04 (7) (a), and 485.045 (1) (intro.); and to amend NR 485.04 (2) (intro.) and (9), relating to the vehicle inspection and maintenance program and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-29-2010 RECEIVED BY LEGISLATIVE COUNCIL.

05-24-2010 REPORT SENT TO AGENCY.

RS:LAK

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701–2536
(608) 266–1304 • Fax: (608) 266–3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

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 ☑

State of Wisconsin
Department of Natural Resources

NOTICE OF SUBMITTAL OF PROPOSED RULE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Date Submitted:	April 29, 2010
Board Order No.:	AM-13-10
Administrative Codes:	chs. NR 484 and 485
Subject:	The vehicle inspection and maintenance program.
Date of Public Hearing:	June 10, 2010
Name and Organizational Unit of Agency Contact:	Robert B. Eckdale – Bureau of Air Management

Approved by:

Thomas P. Steidl for
Matthew J. Frank, Secretary
Department of Natural Resources

AM-13-10

THIS FORM IS TO BE COMPLETED AND SUBMITTED BEFORE THE START OF THE HEARING.

Personally identifiable information on this form is not intended to be used for any other purpose.

State of Wisconsin
Department of Natural Resources

HEARING APPEARANCE
Form 8300-14 Rev. 1-97

PLEASE PRINT

Date 6/10/10	**Do you wish to make an oral statement?** ☐ Yes ☐ No
Name Carter A Pawlus [Pawlus]	**Telephone Number (please include area code)** (920) 457-6100
Street or Route (Mailing Address) 414 Erie Ave.	
City, State, Zip Code Sheboygan, WI 53081	

1. Representing (If you are the authorized representative of some other person or organization, identify who you are representing and your title.)

Myself

2. Regarding rule proposals only. Small business representation: Are you representing the interests of a small business as defined by s. 227.114, Wis. Stats., as "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than 25 full-time employees or which has a gross annual sales of less than $2,500,000"?

☐ Yes ☐ No

3. Comments:

4. Position (Please check one):

☐ As interest may appear ☐ In support ☒ In opposition

THIS FORM IS TO BE COMPLETED AND SUBMITTED BEFORE THE START OF THE HEARING.

Personally identifiable information on this form is not intended to be used for any other purpose.

State of Wisconsin
Department of Natural Resources

HEARING APPEARANCE
Form 8300-14 Rev. 1-97

PLEASE PRINT

Date 6/10/10	**Do you wish to make an oral statement?** ☒ Yes ☐ No
Name ED INACKOWSKI	**Telephone Number (please include area code)** (920) 803-2750
Street or Route (Mailing Address) 2632 N 8th St	
City, State, Zip Code Sheboygan WI 53083	

1. Representing (If you are the authorized representative of some other person or organization, identify who you are representing and your title.)

ME

2. Regarding rule proposals only. Small business representation: Are you representing the interests of a small business as defined by s. 227.114, Wis. Stats., as "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than 25 full-time employees or which has a gross annual sales of less than $2,500,000"?

NO

☐ Yes ☒ No

3. Comments:

4. Position (Please check one):

☐ As interest may appear ☐ In support ☒ In opposition

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
Natural Resources Board Order AM-13-10

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on repealing, renumbering and amending, and amending rules affecting chs. NR 484 and 485, relating to the motor vehicle inspection and maintenance program and affecting small business. The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11(6), Stats., will be revised.

Hearing Information

Date and Time
Thursday, June 10, 2010
at 1:30 PM

Location
Mead Public Library
Rocca Meeting Room
710 North 8th Street
Sheboygan, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov ; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate
The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at http://www.dnr.state.wi.us/air/rules/calendar.htm . If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert B. Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St, Madison, WI, 53703, or by calling 608.266.2856.

Submitting Comments
Comments on the proposed rule must be received on or before Monday, June 21, 2010. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Chris Bovee
Department of Natural Resources
Bureau of Air Management (AM/7)
101 S Webster St, Madison, WI 53703

Phone: 608 266-5542
Fax: 608 267-0560
E-mail: Christopher.Bovee@wisconsin.gov
Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at http://dnr.wi.gov/air/rules/calendar.htm

Analysis Prepared by the Department of Natural Resources
Statute Interpreted:
ss. 110.20(13)(b), 285.11(6) and 285.30(2), Wis. Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Statutory authority:
ss. 110.20(13)(b), 227.11(2)(a), 285.11(1) and 285.30(2), Wis. Stats.

Explanation of agency authority:
Section 110.20(13)(b), Stats., gives the Department authority to establish the amount of the repair cost limit for the vehicle inspection and maintenance program. Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30(2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles.

Related statute or rule:
The related statutes are ss. 110.20, 110.21, and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

Plain language analysis:
A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. Prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

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Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties.would enable Sheboygan County to achieve the emission levels projected in the SIP.

Rule Summary:

The DNR is proposing to expand the coverage of the inflation-adjusted, currently $787, repair cost limit in s. NR 485.045, Wis. Adm. Code, to all counties subject to the I/M program, thereby raising the lower limits for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
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Summary of, and comparison with, existing or proposed federal regulation:
The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle inspection and maintenance programs under that act. These regulations are found in 40 CFR 51.350 to 51.373.

Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan, and Minnesota):
Illinois is the only adjacent state that has a vehicle inspection and maintenance program. In Illinois the repair cost limit for a waiver is $450. Thus, the state of Illinois has not adjusted its repair cost limit for the increase in the federal consumer price index since 1989.

Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:
The U. S. Environmental Protection Agency (EPA) has issued guidance for adjusting the repair cost limit for inflation: Calculation of the I/M Waiver Adjusted for CPI, Office of Mobile Sources, U.S. EPA, EPA 420-B-99-011, December, 1999, http://www.epa.gov/otaq/epg/b99011.pdf. The DNR has followed this guidance for calculating the repair cost limit. The consumer price index (CPI) adjustment for 1989 to 2008 was 1.7487, resulting in a repair cost limit for July, 2009, through June, 2010, of $450 * 1.7487 = $787.

Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:
The only economic effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County that what they would be under the current rule. The proposed rule

would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be $416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only $200 for vehicles in Sheboygan County and the same $416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by $216.

Effect on small business:
Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County. Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs. The proposed rule will not impose any new requirements on small businesses.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us , or by calling (608) 266-1959.

Environmental Analysis
The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary
The only fiscal effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County than what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be $416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only $200 for vehicles in Sheboygan County and the same $416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by $216. Since about seven percent of the vehicles fail the initial inspection and since vehicles are inspected every other year, the estimated annual average additional repair cost per inspected vehicle in Sheboygan County is: $216 * 0.07 * 0.5 = $7.56.

The DNR estimates that the number of state and local government vehicles registered in Sheboygan County which are subject to inspection is 565 (115 for state government and 450 for local governments). Thus the total increased costs are $7.56 * 115 = $870 for state government and $7.56 * 450 = $3400 for local governments.

The proposed rule would have some fiscal effect on the private sector. The affected entities would be those having vehicles registered in Sheboygan County which are subject to inspection. The estimated fiscal effect is an average increase in annual repair costs of $7.56 per inspected vehicle. Thus, the estimated fiscal effect for an entity having 100 vehicles registered in Sheboygan County and subject to inspection is $756 per year.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

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Dated at Madison, Wisconsin April 28, 2010

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Thomas F. Steidl for
Matthew J. Frank, Secretary

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Chapter Trans 131

MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM (MVIP)

Trans 131.01 Purpose and scope.
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Trans 131.14 Remote sensing.
Trans 131.15 Performance monitoring of repair facilities.
Trans 131.16 Automotive emission repair technician training.
Trans 131.17 Notification of inspection requirements.

Note: Chapter Trans 131 as it existed on June 30, 1993 was repealed and a new ch. Trans 131 was created effective July 1, 1993.

Trans 131.01 Purpose and scope. (1) STATUTORY AUTHORITY. As authorized by ss. 110.06, 110.20 (9) and 227.11 (2) (a), Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

(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 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.

Note: Forms used in this chapter are MV 2016, substitute renewal notice; MV 2470, vehicle inspection report; 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, Dealer and Agent Section, P. O. Box 7909, Madison, WI 53707–7909.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; CR 07–114: am. (2) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (2) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.02 Definitions. Words and phrases defined in s. 110.20, Stats., have the same meaning in this chapter unless a different definition is specified. In this chapter:

(1) "Air pollution control equipment" or "emission equipment" means any equipment or feature which constitutes an operational element, device or mechanism which is part of the air pollution control system on a motor vehicle.

(1m) "Authorized inspection facility" means a self–service inspection facility, or a private 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 inspections.

(2) "CO" means carbon monoxide.

(3m) "Collector vehicle" means a nonexempt vehicle with a collector special interest vehicle registration under s. 341.266, Stats.

(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 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.

(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 II system.

(7) "Department" means the Wisconsin department of transportation.

(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.

(9) "Emission limitations" means the maximum vehicle emission concentrations in s. NR 485.04.

Note: Chapter NR 485 may be obtained from the Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

(10) "Emission inspection" means the OBD II inspection.

(12) "Exempt vehicles" means all vehicles other than nonexempt vehicles which are identified in s. 285.30 (5), Stats., and s. NR 485.04 (10).

(13) "Exhaust emission" or "exhaust gas" means the combination of substances emitted into the atmosphere from the tailpipe or tailpipes of a motor vehicle.

(15) "Federal rule" means 40 CFR part 51, subpart S, inspection/maintenance program requirements; final rule.

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 through January 1, 2001.

(17) "GPM" means grams per mile.

(18) "GVWR" means gross vehicle weight rating and has the same meaning as provided in s. 340.01 (19r), Stats.

(19) "Government vehicle" means a motor vehicle both owned by this state or by any county, municipality, or federally–recognized Indian tribe or band and registered under s. 341.26 (2m), Stats., or a vehicle owned or leased by the United States.

(20) "HC" means hydrocarbon.

(20m) "Hobbyist vehicle" means a nonexempt vehicle with a hobbyist registration under s. 341.268, Stats.

(21) "Homemade vehicle" has the same meaning as provided in s. 341.268, Stats.

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

(23) "Inspection report" has the same meaning as provided in sub. (54).

(24) "Inspection station" means an inspection facility operated by a party under contract with the department for the purpose of conducting vehicle emission inspections required by s. 110.20, Stats.

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

(26) "MIL" means malfunction indicator lamp.

(28) "Master automotive technician" means a person possessing the highest level of any nationally recognized certification organization for automotive emission–related diagnosis and repair.

(29) "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer, or if a reconstructed or homemade vehicle, the first year of titling. If the manufacturer does not designate a production period, the term "model year" means the calendar year of manufacture. Determination of model year shall be as indicated in the VIN or on the vehicle's registration documents.

(31) "New vehicle" means a motor vehicle to which the legal title has never been transferred to an ultimate retail purchaser as defined in s. Trans 139.02.

(34) "OBD II" means the on–board diagnostic system installed on 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 inspection 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.

(36) "Person" means an individual, corporation, association, firm, partnership, joint stock company, public or municipal corporation, political subdivision, the state or any agency thereof, and the federal government.

(37) "Proper" or "properly" means meeting original manufacturer's equipment standards or the equivalent.

(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.

(38) "Recognized automotive emission repair technician" means a person who has received and has proof of formal training in both diagnosis and repair of automotive engines and related systems.

(39) "Recognized repair facility" means a franchised new car dealer or other business with a Wisconsin sales tax number that performs emission repairs as a regular part of its business activities and employs at least one recognized automotive emission repair technician.

(40) "Reconstructed vehicle" has the same meaning as provided in s. 341.268 (1) (d), Stats.

(41) "Registration" has the same meaning as provided in s. 344.01 (2) (e), Stats.

(42) "Remote sensing test" means the test conducted under s. Trans 131.14.

(44) "Tamper" or "tampering" has the same meaning as in s. 285.30 (6) (a) 3., Stats.

(45) "Technical assistance center" means either a separate contractor facility or a portion of an inspection station which, under the direction of a master automotive technician, is equipped to perform both emission inspections and complete diagnostic evaluations of nonexempt vehicles.

(48) "Truck" has the same meaning as "motor truck" as provided in s. 340.01 (34), Stats.

(50) "USEPA" means the United States Environmental Protection Agency.

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

Note: Copies are on file with the 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 7909, Room 253, Madison, WI 53707–7909 and can be accessed on the internet at http://www.epa.gov/otaq/regs/im/obd/r01015.pdf.

(51) "Van" means a motor vehicle constructed on a truck chassis, or indicated as a truck on the manufacturer's statement of origin, with a completely enclosed driver and cargo compartment useable as a cargo carrying vehicle or as a passenger vehicle depending upon equipment.

(52) "Vehicle" or "motor vehicle" has the same meaning as provided in s. 340.01 (35), Stats.

(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 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.

(55) "VIN" means a unique vehicle identification number as defined in s. 340.01 (23r), Stats.

(56) "Voluntary inspection" means the voluntary presentation of a nonexempt vehicle for an emission inspection.

(56m) "Waiver" means a conditional one–cycle exemption from emission inspection that may be granted to a vehicle owner or lessee.

(57) "Waiver emission equipment inspection" means a visual inspection conducted to determine the presence and proper connection of selected emission equipment on vehicles presented for waiver determination under s. Trans 131.04.

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

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. revise eff. 12–4–95; am. (intro.), renum. (1) to (4), (6) to (10), (14) to (16), (18) to (22), (24), (26) to (28) and (34) to (42) to be (2), (3), (6) to (10), (12), (13), (16), (19) to (25), (29) to (32), (36), (37), (41), (43), (44), (48), (51), (52), (54), (56), (58), respectively, and am. (6), (8) to (10), (12), (19), (22), (23), (25), (29), (32), (43), (44), (51), (52), (54), (56), (58), cr. (1), (3m), (4), (14), (15), (18), (20m), (27), (28), (34), (35), (38), (39), (40), (42), (45), (47), (49), (50), (50m), (53), (55) and (57), r. (5), (12), (13), (23), (25), (29), (30), r. and recr. (11), (17), (33), Register, April, 1996, No. 484, eff. 5–1–96; correction in (44) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488; correction made to delete duplicative subsection and correction in (12) and (20m) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; cr. (6m), (6r), (26), (34m), (37m), am. (11), (22), (32), (50m) and (58), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: cr. (1m) and (56m), r. (3), (4), (11), (14), (16), (27), (30), (32), (33), (43), (47) and (49), am. (6), (6r), (10), (22), (25), (34) to (35), (50m), (53) and (54), r. and recr. (8) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (1m), (6), (10), (34m), (50m), (54) and (56m) Register December 2010 No. 660, eff. 1–1–11.**

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Trans 131.03 Emission 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 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.

Note: The 6 counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha were certified by the department of natural resources in a letter to the department dated August 21, 1981. Sheboygan County was certified by the department of natural resources in a letter to the department dated April 20, 1992.

(b) Nothing in this chapter waives an expired registration because of failure to pass inspection requirements by the registration deadline.

(c) A vehicle is first subject to the requirements of this chapter when the vehicle is 4 model years old.

(d) For purposes of calculating the number of model years of vehicle age under ss. 110.20 (13) and 285.30 (5), Stats., a model year shall be considered synonymous with a calendar year. Not satisfying the inspection requirements of this chapter prior to the date of registration expiration shall not extend vehicle age.

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

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

(a) No more than 180 days prior to renewal of annual registration. This requirement applies when the vehicle is 4 model years old and every 2 years thereafter.

(b) Within 45 days of an ownership change registration issuance for vehicles more than 5 model years old at the time of ownership change, unless the vehicle passed inspection within 180 days prior to such ownership change registration, or

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

(c) Within 45 days of notification of failing a remote sensing test, as required by s. 110.20 (9) (g), Stats.

(d) Within 45 days of collector or hobbyist registration issuance.

(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:

(a) A current Wisconsin vehicle license renewal notice.

(b) A current Wisconsin certificate of registration.

(c) A current Wisconsin certificate of title.

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

(e) A letter of temporary exemption issued by the department.

(f) A properly completed substitute renewal notice, form MVD 2016.

(g) A letter issued by the department notifying the vehicle owner that the vehicle requires inspection.

(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 INSPECTION. The vehicle emission inspection shall consist of an OBD II inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.

(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.

(6) EMISSION INSPECTION. (a) *General requirements.* 1. Vehicles shall be inspected in an as–received condition. Prior to 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 inspected in order to prevent abnormal fuel distribution.

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

(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.

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 inspection system to the vehicle by connecting the vehicle's DLC to the OBD II inspection system. The 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 inspection. Vehicles rejected because on–board tests are not complete shall be required to leave the inspection station, pursue a means of completing on–board tests, and return for inspection.

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

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

10. Vehicles failing the OBD inspection may not be reregistered within the state of Wisconsin until such failing items have

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been repaired or replaced if necessary as required by s. 285.30 (6), Stats.

(10) REINSPECTIONS. (a) Vehicles failing initial inspection may receive a reinspection at no additional charge under the following conditions:

1. The reinspection shall take place within 30 days of the initial inspection or the owner or lessee shall present satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection. Additionally, the vehicle shall have been repaired or adjusted according to s. 110.20, Stats., and this chapter.

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:

a. The repairs performed as well as any recognized automotive emission repair technician recommended repairs not performed per owner's request.

b. The name, address and telephone number of the repair facility.

c. The name of the individual who performed the repairs.

d. If available, the appropriate identification number of the recognized repair facility and technician.

3. The vehicle is not prohibited from inspection pursuant to sub. (11).

(b) 2. A vehicle that fails the OBD inspection shall be reinspected after repair provided a readiness evaluation indicates that:

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.

(c) If the vehicle passes the reinspection, the contractor shall retain all previously–issued vehicle inspection reports and issue a vehicle inspection report indicating compliance. If the vehicle does not pass the reinspection, the contractor shall issue a vehicle inspection report indicating non–compliance. If the owner or lessee requests a waiver of compliance from emission limitations, the waiver investigator shall review the request and shall either approve or deny the request in accord with s. Trans 131.04. If approved, the waiver investigator shall retain all previously–issued vehicle inspection reports, except the latest on which the waiver is indicated as granted.

(d) The following limitations on the total number of inspections performed at no additional charge shall apply for each vehicle requiring compliance with this chapter:

1. A vehicle may receive no more than 2 reinspections. The reinspections shall occur within 30 days of initial inspection.

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

(e) Nonexempt vehicles may be reinspected at any time according to the voluntary inspection procedure of s. Trans 131.07.

(11) INSPECTION PROHIBITED. The inspector shall refuse to perform any inspection required by this section for any vehicle if any of the following apply:

(b) The vehicle is carrying explosives or other hazardous material which is recognized as a safety hazard by the contractor.

(c) The vehicle is towing a trailer or another vehicle which is considered a safety hazard by the contractor.

(d) Gasoline, oil or other fluid leaks are considered a safety hazard by the contractor.

(e) The vehicle exhibits excessive idle speed, in the judgment of the contractor.

(f) The vehicle is emitting smoke in amounts greater than the limitations specified in s. NR 485.05.

(j) The vehicle is subject to a manufacturer's recall for emission problems and the recall repair has not been performed. Vehicles for which emission–related recall notices have been issued shall have the recall repairs completed prior to submitting the vehicle for inspection. The owners or lessees of these vehicles shall present proof of compliance with the recall notice at time of inspection, unless the emission–related recall notice has been issued within 45 days prior to submitting the vehicle for inspection. This paragraph applies to vehicles for which emission–related recall notices have been issued after January 1, 1995.

(k) The vehicle operator refuses to disclose the odometer reading to the inspector.

(L) The vehicle operator refuses to yield the driver's seat.

(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 inspection.

(o) Vehicles shall be rejected from 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).

(12) RECONSTRUCTED AND HOMEMADE VEHICLES. Any nonexempt vehicle registered as reconstructed or homemade under s. 341.268, Stats., shall be inspected for compliance with 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 subject to OBD II inspection compliance standards established in s. Trans 131.03 (5).

(14) TRUCKS AND VANS. All trucks and vans shall be inspected in accord with the 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) The operator of each vehicle inspected shall receive a vehicle inspection report, 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:

1. Inspection serial number.
2. Date of the inspection.
3. VIN.
4. Year, make and type of the vehicle.
5. Number of cylinders or engine displacement.
6. Transmission type.
7. Fuel type.
8. Present odometer reading in thousands of miles.

12. The results of any OBD inspection.
13. The final result.

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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.

15. Space to indicate who repaired the vehicle, such as owner, repair facility or other private party.

16. Space to indicate the name, address and telephone number of the facility where repairs occurred.

17. Space to indicate the appropriate identification number of the recognized repair facility and technician, if available.

18. Space to indicate the cost of parts and labor for emission–related repair.

19. Space to indicate the emission–related repairs performed.

20. Space to indicate the emission–related repairs recommended, but not performed per owner's request.

21. Advisory diagnostic information for failing vehicles.

22. Vehicle license number, if available.

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

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

25. GVWR.

26. Inspection number, such as initial, first reinspection, or subsequent reinspection number.

28. A statement indicating the availability of emission warranty coverage as provided in section 207 of the Clean Air Act.

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

30. The cause for any aborted or rejected inspection.

31. Other information as the department may reasonably require to enable it to determine compliance with this chapter, state laws, federal laws and regulations.

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

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; am. (1) (a), (2) (intro.), (a), (b), (3) (intro.), (6) (a) 1., (7) (a) to (c), r. and recr. (2) (c), (6) (b), (c), cr. (2) (d), (6) (a) 4., r. (3) (f), (7) (d), (8), (9), renum. (3) (g) to (i) to be (f) to (h), (10) and (12) to be (12) and (14) and am. all, renum. (11) to be (13) and am. (b) and (c), renum. (8), (9) and (13) to be (10), (11) and (15) and r. and recr., Register, April, 1996, No. 484, eff. 5–1–96; correction in (1) (d) and (7) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; am. (2) (b), Register, August, 2000, No. 536, eff. 9–1–00; am. (4), (6) (b) 3., (7) (a) (intro.), (c), (9) (g), r. (6) (b) 8., (8) (g), (15) (a) 12., renum. (10) (b) to be (10) (b) 1., cr. (6) (d), (10) (b) 2., (11) (o), Register, May, 2001, No. 545, eff. 6–1–01; CR 01–121: am. (2) (a), Register March 2002 No. 555, eff. 4–1–02; CR 07–114: am. (title), (1) (a), (c), (2) (intro.) and (a), (3) (intro.), (d) and (h), (4), (6) (d) 1., 3., 5., 8. and 10., (10) (a) 2., (b) 2., (d) 2., (11) (m) to (o), (12), (13) (a), (14) and (15) (a) (intro.), 14. and 23., (b) and (c), r. and recr. (5), (6) (d) 2., r. (6) (a) 3., (b), Table 2 and (c), (d) 6., 7., and 9., (7) to (9), (10) (b) 1., (11) (a) and (g) to (i), (13) (b) to (d), (15) (a) 9. to 11. and 27. Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (title), (4), (6) (title), (a) 1., 2., 4., (d) 2., 3., 5., and 8., (10) (a) 3. and (d) 2., (11) (title), (n) and (o) and (15) (a) 1., 2., 12., 23., 24. and 29. Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.04 Waiver of compliance. (1) ELIGIBILITY. A vehicle which fails the initial inspection, and which after repair or adjustment, or both, again fails the 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 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 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. Proof of recognized automotive emission repair technician training shall consist of either ASE certification in level L1, or valid documentation indicating successful completion of a WISE-TECH course under s. Trans 131.16 or an equivalent program as determined by the department.

(d) The vehicle shall pass a waiver emission equipment inspection as described in s. Trans 131.05.

(2) CRITERIA. A vehicle which meets the eligibility requirements of sub. (1) may receive a waiver of compliance valid until the next required inspection of the vehicle if it meets any one of the following conditions:

(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 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 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.

(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.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. am. (1) (intro.), (a) and (b), (2) (intro.), (a) and (b), r. and recr. (1) (c), cr. (1) (d) and (2) (c), eff. 12–4–95; am. (1) (intro.), (a), (b), (2) (intro.), (a), (b), r. and recr. (1) (c), cr. (1) (d), (2) (c), Register, April, 1996, No. 484, eff. 5–1–96; am. (1) (intro.), Register, May, 2001, No. 545, eff. 6–1–01; CR 01–121: am. (1) (b), Register March 2002 No. 555, eff. 4–1–02; CR: 07–114: am. (1) (intro.), (a), (b) and (c) 1. and 2., r. (2) (a), cr. (2) (d) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (2) (b) and (c) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.05 Waiver emission equipment inspection. (1) PURPOSE. When a vehicle owner or lessee requests a waiver of compliance from emission inspection standards, the emission equipment shall be inspected by the waiver investigator. This waiver emission equipment inspection is designed to detect

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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:

(a) A properly sized fuel filler restrictor.

(b) A properly connected catalytic converter.

(c) A proper fuel cap.

(d) A proper evaporative emission control canister system.

(e) A properly connected positive crankcase ventilation system.

(f) A proper exhaust gas recirculation system.

(g) A proper air pump system.

(h) A properly installed thermostatic air cleaner system.

(i) A properly connected oxygen sensor.

(j) An operational and non–active 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 inspection under s. Trans 131.07 until the failing emission equipment items are either repaired or replaced.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. am. (1) to (3), cr. (1) (i) and (j), eff. 12–4–95; am. (1), (2), (3), cr. (1) (i), (j), Register, April, 1996, No. 484, eff. 5–1–96; am. (1) (j), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: r. (2), am. (3) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (1) (intro.) and (j) and (3) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.06 Inspection compliance. (1) REGISTRATION ELIGIBILITY. To be eligible for license plate renewal or ownership change registration, collector registration, or hobbyist registration, a vehicle shall comply with one of the following:

(a) Either pass the emission inspection or receive a waiver of compliance from emission limitations.

(b) Receive a temporary exemption according to s. Trans 131.08.

(2) EVIDENCE. Evidence of inspection compliance shall consist of one of the following:

(a) A vehicle inspection report indicating either "passed" or on which the waiver investigator has indicated "waived."

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

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. am. (1) (intro.) and (2), r. (1) (a), renum. (1) (b) and am., eff. 12–4–95; am. (1) (intro.), (2), r. (1) (a), renum. (1) (b) to be (a) and am., cr. (1) (b), Register, April, 1996, No. 484, eff. 5–1–96; **CR 10–088: am. (2) (b) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.07 Voluntary inspections. (1) 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.

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

(c) The operator presents payment to the contractor of a monetary fee as determined by contract.

(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.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. am. eff. 12–4–95; am. Register, April, 1996, No. 484, eff. 5–1–96; CR 07–114: am. (1) (intro.), (a) and (2) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (1) (b) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.08 Letter of temporary exemption from emission inspection requirements. (1) ELIGIBILITY. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or incapacity, during the 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under s. Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

(2) APPLICATION. The department shall provide an application form, MVD2472, on which the vehicle owner or lessee shall state their name, permanent address, temporary address, if used, and daytime telephone number. The vehicle owner or lessee shall identify the vehicle involved, provide the reason for requesting a letter of temporary exemption, certify that the vehicle is unavailable for emission inspection, and state the date when the vehicle will again be operated within a Wisconsin county subject to the emission inspection requirements of this chapter.

(3) ISSUANCE. Upon approval of the application by the department, a letter of temporary exemption shall be issued to the vehicle owner or lessee. Such approval letter shall allow the owner or lessee to proceed with vehicle registration renewal. As a condition of granting the letter of temporary exemption, the department shall require that the vehicle be inspected within 30 days of the date the applicant indicates that the vehicle will again be operated within a Wisconsin county subject to the emission inspection requirements of this chapter.

(4) DURATION. A letter of temporary exemption shall not be valid longer than the period of registration renewal.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. am., eff. 12–4–95; am. (1) to (3), Register, April, 1996, No. 484, eff. 5–1–96; CR 01–121: am. (1), Register March 2002 No. 555, eff. 4–1–02.

Trans 131.09 Temporary operating permits. (1) GENERAL. The department or its designated representative may issue a temporary operating permit, valid for not more than 30 days, to allow time for inspection and necessary repairs and adjustments of any vehicle subject to inspection under s. 110.20 (6), Stats. No temporary operating permit shall be issued for a vehicle with registration expired for more than 90 days.

(2) APPLICATION. The department shall provide an application form, MV2505, on which the vehicle owner or lessee shall state their name, permanent address, and daytime telephone number. The vehicle owner or lessee shall identify the vehicle involved, and provide the reason for requesting a temporary operating permit.

(3) ISSUANCE. Upon 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.

(4) TERM. A temporary operating permit shall be valid for 30 days after issuance. The department may approve the application for a second or third temporary operating permit provided that application is made within 90 days of the vehicle's registration expiration date.

History: Emerg. cr., eff. 12–4–95; cr. Register, April, 1996, No. 484, eff. 5–1–96; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; CR 07–114: am. (3) Register June 2008 No. 630, eff. 7–1–08.

Trans 131.10 Reciprocity. (1) COMPLIANCE. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall submit an

official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

(2) REGISTRATION ELIGIBILITY. The submission of satisfactory evidence of emission inspection compliance from another nonattainment area shall allow the owner or lessee to proceed with vehicle registration renewal or to satisfy ownership change, collector, or hobbyist vehicle registration inspection requirements.

(3) EXCEPTION. When a vehicle operates in a nonattainment area which does not allow the inspection of vehicles from other nonattainment areas, the owner or lessee may apply for a temporary exemption under s. Trans 131.08.

History: Emerg. cr., eff. 12–4–95; cr. Register, April, 1996, No. 484, eff. 5–1–96; CR 01–121: am. (1), Register March 2002 No. 555, eff. 4–1–02.

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

(a) All contractor inspection functions, including those occurring at the inspection stations, other authorized 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.

(b) Scheduled audits may be performed at any time.

(c) Either the department or its agent may conduct covert audits in order to satisfy the requirements of the federal rule.

(d) Audits shall be performed according to written procedures either established or approved by the department.

(2) EQUIPMENT AUDITS. (c) Equipment used to perform remote sensing tests shall be audited according to written procedures either established or approved by the department.

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

(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 inspection operation until such time as the equipment is properly repaired and documentation of corrective actions is available for review by the department.

(3) PENALTIES. (a) Equipment failure shall result in the imposition of a penalty. Penalties are established in the penalty schedule section of the contract and may require that the contractor either incur liquidated damages or suspend or revoke inspector licenses, or both.

(b) Contractor 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 employee. Failure to hold a hearing within 14 days when requested shall cause the suspension or revocation to lapse.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; renum. Trans 131.09 to be 131.11 and r. and recr., Register, April, 1996, No. 484, eff. 5–1–96; renum. (2) (d) to be (2) (e), cr. (2) (d), am. (3) (b), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: am. (1) (a) and (2) (e), r. (2) (a) and (b) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (1) (intro.) and (a) and (2) (e) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.12 Equipment specifications and quality control. (1) GENERAL. All equipment utilized for emission inspections shall be calibrated and maintained according to the standards established in the federal rule.

(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.

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

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; renum. Trans 131.10 to be 131.12 and r. and recr., Register, April, 1996, No. 484, eff. 5–1–96; cr. (2) (d), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: r. and recr. (2), am. (3) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (3) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.13 Licensing of inspectors. (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:

1. Air pollution causes and effects.
2. Purpose, function and goals of the inspection program.
3. State inspection regulations.
4. Inspection procedures and rationale for their design.
5. Emission control devices, configuration and inspection.
6. Inspection equipment operation and maintenance.
7. Quality control procedures.
8. Public relations.
9. Safety and health issues related to the inspection process.

(b) Trainees shall both pass, by a minimum of 80% correct responses, a written test and demonstrate the ability, without the assistance of another person, to conduct a proper inspection as a condition of successfully completing a licensing examination administered by a party other than the contractor.

(c) An applicant for a vehicle emissions inspection license who fails an examination for inspector shall successfully complete the applicable vehicle emissions inspector training program prior to reexamination for license.

(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.

(3) RENEWAL. Licenses issued to vehicle emissions inspectors shall be valid for 2 years. Inspectors shall complete both refresher training and testing prior to license renewal.

(4) AUDITING. Representatives of the department or its designated agent shall conduct both overt and covert, scheduled and unscheduled audits.

(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

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employee. Failure of the department to hold a hearing within 14 days when requested shall cause the suspension to lapse.

(6) CHALLENGE MECHANISM. (a) A motorist who alleges that either an incorrect inspection occurred or that fraud or abuse influenced the results of the inspection may contest the results of that inspection by notifying the department immediately after the inspection, or as soon as possible after discovering the problem.

(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.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; r. and recr. Register, April, 1996, No. 484, eff. 5–1–96; am. (1) (a) (intro.), (2), (5) (a) and (b), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: am. (1) (a) and 6., (2), (5) (a) and (b) and (6) (c) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (1) (a) 4. and 6. and (6) (b) and (c) Register December 2010 No. 660, eff. 1–1–11.**

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 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) (c), Stats.

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

(b) Vehicles that fail the remote sensing test, but are scheduled to receive an emission inspection required under s. 110.20 (6), Stats., within 90 days of remote sensing test failure, or for which temporary exemptions will expire within 30 days of remote sensing test failure, shall receive notification of the remote sensing test failure but are exempt from the inspection requirements of s. 110.20 (9) (g), Stats.

(c) Vehicles that have a valid emission inspection waiver at the time of remote sensing test failure are exempt from the inspection requirements of s. 110.20 (9) (g), Stats.

(3) SCOPE AND NATURE OF REMOTE SENSING TEST. The test shall consist of using an open–path infrared sensor to measure the concentration of one or more of the following pollutants present in the vehicle's exhaust:

(a) Hydrocarbons.

(b) Carbon monoxide.

(c) Carbon dioxide.

(d) Oxides of nitrogen.

(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(%)
1996 and newer	All	400	2.0	Reserved

Note: Changes to these standards may occur either if the USEPA establishes remote sensing standards or if the department's program evaluation indicates that modifications should occur to identify more accurately gross polluting vehicles.

(5) VEHICLE INSPECTION NOTICE. The contractor shall mail a vehicle inspection notice to the owner or lessee of vehicles that fail a remote sensing test conducted under this section. The vehicle inspection notice shall be mailed to the owner's or lessee's address indicated on the department's registration database. The vehicle inspection notice shall include all of the following:

(a) Remote sensing test serial number.

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

(c) License plate number.

(d) VIN.

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

(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.

(g) Information describing the remote sensing test.

(h) Explanation of both the legal requirements and registration penalties for failure to comply with an inspection notice.

(i) Other information that the department may decide to include to improve understanding of the remote sensing test.

(6) REMOTE SENSING EQUIPMENT SPECIFICATIONS AND MAINTENANCE. (a) All equipment utilized for remote sensing emission measurement shall be calibrated and maintained according to the manufacturer's specifications or as superseded by contract.

(b) Remote sensing equipment, personnel and procedures shall be subject to periodic audits by the department under s. Trans 131.11.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; r. and recr. Register, April, 1996, No. 484, eff. 5–1–96; CR 07–114: am. (1), (2) (a), (4) and (5) (f) Register June 2008 No. 630, eff. 7–1–08; **CR 10–088: am. (3) (title) and (5) (a), (b) and (e) Register December 2010 No. 660, eff. 1–1–11.**

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

(2) DATA COLLECTION. Whenever a nonexempt vehicle receives a reinspection, the contractor shall collect the following emission repair information from the vehicle inspection report as required by s. Trans 131.03 (11):

(a) The repairs performed.

(b) Any technician recommended repairs not performed, per owner's request.

(c) The name and address of the facility that performed the repairs.

(d) The name of the person who performed the repairs.

(e) The identification number, if available, of the recognized repair facility or recognized automotive emission repair technician, or both.

(3) REPORTING. (a) The contractor shall compile a report which includes the emission repair facility name, address, telephone number, number of vehicles submitted for reinspection, and percentages indicating the number of vehicles that have passed, failed, and received waivers after repair.

(b) Beginning in the third month of the vehicle emission inspection program, the contractor shall produce a summary report of the performance of local repair facilities that have repaired vehicles for reinspection. The report shall be provided to the motorist at the time of initial vehicle emission inspection failure. The report shall be updated on a quarterly basis.

(c) Repair facilities shall receive summary reports at least quarterly. Reports to the repair facility shall include all informa-

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tion made available to the public and may include reports on individual technicians if so requested by the employing repair facility.

(d) The department may include additional statistics that convey information on the relative ability of repair facilities in providing effective emission repair.

History: Emerg. cr., eff. 12–4–95; cr. Register, April, 1996, No. 484, eff. 5–1–96; **CR 10–088: am. (1) Register December 2010 No. 660, eff. 1–1–11.**

Trans 131.16 Automotive emission repair technician training. (1) GENERAL. The department, in cooperation with community and technical colleges located in counties certified under s. 110.20 (5) (a), Stats., shall establish guidelines for assessing programs for automotive emission repair technician education and training available at both public and private facilities. The department shall designate programs that meet these guidelines as Wisconsin emission technician training, or WISETECH, programs. Any public or private facility offering automotive emission repair technician training may request WISETECH designation from the department.

(2) CRITERIA. To meet WISETECH standards, training courses shall, at a minimum, include instruction in:

(a) Diagnosis and repair of malfunctions in computer controlled close–loop vehicles.

(b) Application of emission control theory and diagnostic data to the diagnosis and repair of vehicles failing OBD inspection.

(c) Utilization of diagnostic information on systematic or repeated failures observed in OBD inspection.

(d) General training on the various subsystems related to engine emission control.

(3) EQUIPMENT. Both priyate 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 maintained according to the manufacturer's specifications.

(4) PROGRAM RECOGNITION. Programs shall be designated as meeting WISETECH standards if in compliance with one of the following:

(a) The department approves the course curricula, equipment and facility.

(b) The training facility presents documentation that the course meets National Automotive Technician Education Foundation, Inc., standards.

(5) TECHNICIAN RECOGNITION. (a) A person successfully completing all phases of a WISETECH training program shall achieve the designation of "recognized automotive emission repair technician" as defined in s. Trans 131.02 (38).

(b) A person who satisfactorily completes a WISETECH approved automotive emission training course shall receive from the organization providing the training, an identification card which states the technician's name, the name and location of the course, the date of completion and a WISETECH identification number.

(6) REPORTING. Both private and public facilities offering WISETECH automotive emission repair training courses shall supply the department with the names of the persons registered in their course, the percentage successfully passing the course and the names and WISETECH identification numbers of those passing.

(7) SUPPLEMENTAL TRAINING. The department may authorize periodic supplemental training as a requirement for a person to maintain the status of WISETECH automotive emission repair technician.

(8) QUALITY ASSURANCE. (a) WISETECH training programs are subject to periodic monitoring by the department or its representative to assure that courses continue to meet WISETECH standards.

(b) The department may use performance monitoring as described in s. Trans 131.15 to evaluate both the emission repair success of the technicians and the effectiveness of WISETECH designated courses.

History: Emerg. cr., eff. 12–4–95; cr. Register, April, 1996, No. 484, eff. 5–1–96; am. (2) (b) and (c), Register, May, 2001, No. 545, eff. 6–1–01; CR 07–114: am. (2) (b), (c) and (3) Register June 2008 No. 630, eff. 7–1–08.

Trans 131.17 Notification of inspection requirements. As part of the notification process for vehicle registration renewal under s. 341.08 (4m), Stats., or for inspection required due to ownership change registration under s. 110.20 (6) (a) 2., Stats., or for inspection required due to registration as a collector or hobbyist vehicle, the department shall include notification to vehicle owners whose vehicles either are or may be subject to the inspection requirements of this chapter.

History: Cr. Register, June, 1993, No. 450, eff. 7–1–93; emerg. renum. and am., eff. 12–4–95; renum. from Trans 131.15, Register, April, 1996, No. 484, eff. 5–1–96.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to amend TRANS 131.03(2)(a), 131.04(1)(b), 131.08(1) and 131.10(1), Wisconsin Administrative Code, relating to vehicle emission inspections.	**NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING AND TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16, and 227.11, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 131 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Jerry Medinger, Department of Transportation, Bureau of Vehicles Services, Room 253, P. O. Box 7909, Madison, WI 53707-7909, telephone (608) 266-2267.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16
STATUTES INTERPRETED: s. 110.20(6)(a)1., Stats.

General Summary of Proposed Rule. Ch. Trans 131 governs the operation of the Vehicle Emission Inspection Program. This rule making proposes to amend Trans 131.03(2)(a) which requires a vehicle registrant to obtain an emission test within 90 days prior to registration renewal. Originally, emission testing was done every year.

Existing policy that the vehicle must be tested within 90 days prior to registration renewal was intended to assure that no more than 15 months would have passed between a vehicle's testing. Currently, tests are done every two years, and the 90-day window is more restrictive than necessary. We propose making the window 180 days instead of 90 days. The other provisions are references to the period of time prior to registration renewal in which a vehicle may be tested, and are simply changed to correspond to the 180-day period from 90-days.

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 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 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 s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16, the department of transportation hereby proposes to amend a rule interpreting s. 110.20(6)(a)1., Stats., relating to vehicle emission inspections.

SECTION 1. Trans 131.03(2)(a) is amended to read:

Trans 131.03(2)(a) No more than ~~90~~ 180 days prior to renewal of annual registration. In the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter.

SECTION 2. Trans 131.04(1)(b) is amended to read:

Trans 131.04(1)(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 ~~90~~ 180 days prior to renewal of annual registration or within ~~90~~ 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. 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.

SECTION 3. Trans 131.08(1) is amended to read:

Trans 131.08(1) ELIGIBILITY. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or incapacity, during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

SECTION 4. Trans 131.10(1) is amended to read:

Trans 131.10(1) COMPLIANCE. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall

submit an official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

(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 16 day of October, 2001.

TERRY MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 01-121

The Wisconsin Department of Transportation proposes an order to amend TRANS 131.03(2)(a), 131.04(1)(b), 131.08(1) and 131.10(1), Wisconsin Administrative Code, relating to vehicle emission inspections.

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:

JOE MAASSEN
Deputy General Counsel
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

STATUTORY AUTHORITY: s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16
STATUTES INTERPRETED: s. 110.20(6)(a)1., Stats.

General Summary of Proposed Rule. Ch. Trans 131 governs the operation of the Vehicle Emission Inspection Program. This rule making proposes to amend Trans 131.03(2)(a) which requires a vehicle registrant to obtain an emission test within 90 days prior to registration renewal. Originally, emission testing was done every year. Existing policy that the vehicle must be tested within 90 days prior to registration renewal was intended to assure that no more than 15 months would have passed between a vehicle's testing. Currently, tests are done every two years, and the 90-day window is more restrictive than necessary. We propose making the window 180 days instead of 90 days. The other provisions are references to the period of time prior to registration renewal in which a vehicle may be tested, and are simply changed to correspond to the 180-day period from 90-days.

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 or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of 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 s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16, the department of transportation hereby proposes to amend a rule interpreting s. 110.20(6)(a)1., Stats., relating to vehicle emission inspections.

SECTION 1. Trans 131.03(2)(a) is amended to read:

Trans 131.03(2)(a) No more than ~~90~~ 180 days prior to renewal of annual registration. In the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter.

SECTION 2. Trans 131.04(1)(b) is amended to read:

Trans 131.04(1)(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 ~~90~~ 180 days prior to renewal of annual registration or within ~~90~~ 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. 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.

SECTION 3. Trans 131.08(1) is amended to read:

Trans 131.08(1) ELIGIBILITY. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or incapacity, during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

SECTION 4. Trans 131.10(1) is amended to read:

Trans 131.10(1) COMPLIANCE. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall submit an official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

(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 18 day of December, 2001.

TERRY MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 **01–121**

AN ORDER to amend Trans 131.03 (2) (a), 131.04 (1) (b), 131.08 (1) and 131.10 (1), relating to vehicle emission inspections.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10–17–01 RECEIVED BY LEGISLATIVE COUNCIL.

11–08–01 REPORT SENT TO AGENCY.

RS:PC:jal

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701–2536
(608) 266–1304 • Fax: (608) 266–3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

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 ☑

PART 4
CR 01-121

ANALYSIS OF FINAL DRAFT OF TRANS 131

(a) **Need for Amended Rule**. This rule making proposes to amend Trans 131.03(2)(a) which requires a vehicle registrant to obtain an emission test within 90 days prior to registration renewal. Originally, emission testing was done every year. Existing policy that the vehicle must be tested within 90 days prior to registration renewal was intended to assure that no more than 15 months would have passed between a vehicle's testing. Currently, tests are done every two years, and the 90-day window is more restrictive than necessary. We propose making the window 180 days instead of 90 days. The other provisions are references to the period of time prior to registration renewal in which a vehicle may be tested, and are simply changed to correspond to the 180-day period from 90-days.

(b) **Modifications as a Result of Testimony at Public Hearing**. Notice of intent to adopt this proposed rule without public hearing was given under the procedure set forth in s. 227.16(2)(e), Stats. No one petitioned for a public hearing and no public hearing was held.

(c) **List of Persons who Appeared or Registered at Public Hearing**. Because there was no hearing, there were none.

(d) **Response to Legislative Council Recommendations**. The Legislative Council report contained no recommendations to the proposed rule.

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

consumer price index. For the purposes of this rulemaking, 2006 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2006 is 3.2%.

3. The Department's WIC vendor and vendor redemption records. Each vendor is placed in a vendor peer group according to the number of cash registers, a valid indicator for the size of store. Small stores are those with 4 or less registers and would be considered a small store.

4. The Wisconsin WIC Program Advisory Committee's Retailer Sub–committee that includes the Wisconsin Grocers Association and retailers representing large and small grocery stores and pharmacies, reviewed and commented on the draft rule.

Initial Regulatory Flexibility Analysis

The Wisconsin WIC Program assigns each vendor (grocery store and pharmacy) to a vendor peer group based on the number of cash registers, a criteria that has been validated as an accurate indicator of the store size. As of July 2007, peer group 1 consisted of 433 grocery stores with 1–4 cash registers, i.e., a small store. The total redemption of the 433 grocery stores in Peer Group 1 for the month of July 2007 was $1,567,237, compared to $1,409,331 for the 222 grocery stores in Peer Group 2 (5–10 registers), and $3,465,249 for the 232 grocery stores in Peer Group 3 (11 or more registers).

All 165 WIC pharmacies are placed in Peer Group 9, regardless of the number of registers, with a July 2007 total redemption of $224,150.

All 9 above–50–percent vendors are placed in Peer Group 7. An above–50–percent vendor is an authorized vendor who derives more than 50 percent of annual food sales revenue from WIC checks or a vendor applicant for initial authorization who estimate they will derive more than 50 percent of annual food sales revenue from WIC checks. There are 6 small stores and 1 pharmacy in the above–50–percent Peer Group. Total redemption for July 2007 was $108,450.

The proposed rules will affect small businesses, however, the proposed rules will not have a significant economic impact on the small businesses that are compliant with this rule. Small stores that do not currently maintain regular established hours of operation may have to increase the time open to at least five days a week for a minimum of two four–hour blocks of time. This requirement may result in an increase in sales that would off–set any increase in costs. The rules codify vendor contract requirements for stores and pharmacies to maintain inventory and accounting records as required under the vendor contract, and to report store prices to the Department. These are not new requirements. No professional skills are required to comply with the rules.

The WIC Program is entirely federally funded. No state funding is used for administrative expenses or for food purchases. It is not anticipated that federal food expenditures will be increased as a result of this rule; in fact, food expenditures should be less when the rule is in place. There would be tighter pricing requirements for above–50–percent vendors, and stronger sanctions for fraud and abuse, including recoupments as a result of overcharging for WIC foods.

Small business regulatory coordinator

Rosie Greer, Greerrj@dhfs.state.wi.us, 608–266–1279

Fiscal Impact

The WIC program is entirely federally funded. No state funding is used for administrative expenses or for food purchases. It is not anticipated that federal food expenditures will be increased as a result of this rule; in fact, food expenditures should be less when the rule is in place. There would be tighter pricing requirements for above–50–percent vendors and stronger sanctions for fraud and abuse, including recoupment of overcharging for WIC foods.

There would be an indeterminate state fiscal impact as a result of the expansion of sanctions, but it is anticipated that WIC would increase its existing administration revenues as a result of imposing an enforcement assessment with each recoupment.

There will be no local government impact as a result of this rule. All of the provisions related to vendor sanctions are conducted by the state WIC office and monitoring requirements for the local projects have not changed. Provisions related to participant fraud and abuse are either unchanged from previous policy or lessened; for example, follow–up for participant repayment is now limited to two letters, with additional follow–up to be conducted by the state WIC office if needed.

Copy of Rule

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov or by contacting the person listed below.

Contact Person

Patti Herrick
WIC Program Director
Room 243, 1 West Wilson Street
Madison, WI 53701
Phone: 608–266–3821
Fax: 608–266–3125
herriph@dhfs.state.wi.us

Notice of Hearing
Transportation
CR 07–114

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.06, 110.20 (9), and 227.11, Stats., interpreting s. 110.20, Stats., the Department of Transportation will hold a public hearing on **February 4, 2008** at the Hill Farms State Transportation Building, **Room 144–B**, 4802 Sheboygan Avenue, Madison, WI, at **1:00 PM**, to consider the amendment of ch. Trans 131, Wisconsin Administrative Code, relating to the vehicle emission inspection program.

Parking for persons with disabilities and an accessible entrance are available.

Copy of Rule

A copy of the proposed rule may be obtained upon request from 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.

Analysis Prepared by the Department of Transportation

Statutes interpreted

s. 110.20, 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 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 which may be used in such measurement. The procedures and methods used must be capable of being correlated with procedures established under federal law.

Related statutes or rules

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 multiple contractors who perform the test at their 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.

Summary of, and comparison with, existing or proposed federal regulations

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 adjacent 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 rending 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

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.

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, 2007, 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 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.

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.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation adopts an order to amend TRANS 131.03(2)(a), 131.04(1)(b), 131.08(1) and 131.10(1), Wisconsin Administrative Code, relating to vehicle emission inspections.	**ORDER ADOPTING RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16
STATUTES INTERPRETED: s. 110.20(6)(a)1., Stats.

General Summary of Rule. Ch. Trans 131 governs the operation of the Vehicle Emission Inspection Program. This rule making amends Trans 131.03(2)(a) which requires a vehicle registrant to obtain an emission test within 90 days prior to registration renewal. Originally, emission testing was done every year. Existing policy that the vehicle must be tested within 90 days prior to registration renewal was intended to assure that no more than 15 months would have passed between a vehicle's testing. Currently, tests are done every two years, and the 90-day window is more restrictive than necessary. We propose making the window 180 days instead of 90 days. The other provisions are references to the period of time prior to registration renewal in which a vehicle may be tested, and are simply changed to correspond to the 180-day period from 90-days.

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 or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

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

Copies of Rule. Copies of the 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 rule will be provided to individuals at their request.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 110.20(9)(d), Stats., as amended by 2001 Wis. Act 16, the department of transportation hereby amends a rule interpreting s. 110.20(6)(a)1., Stats., relating to vehicle emission inspections.

SECTION 1. Trans 131.03(2)(a) is amended to read:

Trans 131.03(2)(a) No more than ~~90~~ 180 days prior to renewal of annual registration. In the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter.

SECTION 2. Trans 131.04(1)(b) is amended to read:

Trans 131.04(1)(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 ~~90~~ 180 days prior to renewal of annual registration or within ~~90~~ 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. 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.

SECTION 3. Trans 131.08(1) is amended to read:

Trans 131.08(1) ELIGIBILITY. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or

incapacity, during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

SECTION 4. Trans 131.10(1) is amended to read:

Trans 131.10(1) COMPLIANCE. When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the ~~90~~ 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall submit an official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

(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 24th day of January, 2002.

TERRY MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

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

The Wisconsin Department of Transportation proposes an order to repeal TRANS 131.02(3), (4), (8), (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 131.03(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.

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.06, 110.20(9), and 227.11, Stats., interpreting s. 110.20, Stats., the Department of Transportation will hold a public hearing on **February 4, 2008** at the Hill Farms State Transportation Building, **Room 144-B**, 4802 Sheboygan Avenue, Madison, WI, at **1:00 PM**, to consider the amendment of ch. Trans 131, Wisconsin Administrative Code, relating to the vehicle emission inspection program.

Parking for persons with disabilities and an accessible entrance are available.

A copy of the proposed rule may be obtained upon request from 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.

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES

The Wisconsin Department of Transportation adopts 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.

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 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 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 rule eliminates the evaporative emission test ("gas cap test"), which was previously required but is no longer necessary with OBD II technology.

The 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 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 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 rending 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 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 rule: Copies of the 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.

TEXT OF 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 ~~8917~~ 7909, Room ~~266~~ 253, Madison, WI 53707~~-8917~~7909 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, ~~2001~~ 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 ~~1981~~ 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 <u>or other authorized inspection facility</u> 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 <u>or at other authorized inspection facilities as determined by the department</u>.

(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, <u>other authorized testing facilities,</u> 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~~ 1996 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 2nd day of May, 2008.

Frank J. Busalacchi

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

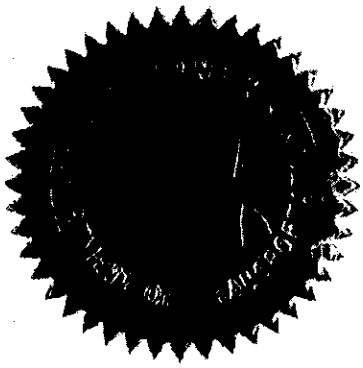
CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, FRANK J. BUSALACCHI, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **vehicle emission inspection program**, was duly approved and adopted by this Department on May 2nd, 2008.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 2nd day of **May**, 2008.

Frank J. Busalacchi

FRANK J. BUSALACCHI
Secretary

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.

- Adds examples where needed for clarification purposes.
- Updates certain department procedures to follow, such as the various methods to register to collect Wisconsin sales or use tax and how to inactivate a seller's permit.

Comparison with federal regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule order.

Comparison with rules in adjacent states

Minnesota, Michigan, and Iowa:

Minnesota, Michigan, and Iowa administer their sales and use tax laws in a manner consistent with Wisconsin. These states do this through a combination of statutory provisions and administrative rules.

Illinois:

Illinois does not administer its sales and use tax laws in a manner substantively consistent with Wisconsin.

Summary of factual data and analytical methodologies

2009 Wisconsin Acts 2, 28, 204, and 330 adopted statutory changes to Wisconsin's sales and use tax statutes. The department has created this proposed rule order to reflect these changes in Wisconsin's sales and use tax laws.

Analysis and supporting documents used to determine effect on small business

As explained above, this proposed rule order is created to reflect changes in Wisconsin's sales and use tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Small Business Impact

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed rule updates Chapter Tax 11 of the Administrative Code, pertaining to the sales and use tax, to reflect certain sales tax changes adopted during the 2009 Legislative session. Specifically, the proposed rule updates Chapter Tax 11 to conform, or more clearly conform, this chapter of the administrative code to sales tax provisions contained in the following 2009 Acts:

- Act 2 — 2008–09 Budget Adjustment Legislation
- Act 28 — 2009–11 Budget Bill
- Act 204 — Food Sold by Child Welfare Facilities
- Act 330 — Streamlined Sales and Use Tax Agreement Changes

The proposed rule modifies Chapter Tax 11 to reflect law changes, improve clarity, and add examples to illustrate the tax treatment of certain items.

The proposed rule includes:

- Updates and clarifications to reflect amendments to the Streamlined Sales and Use Tax Agreement.
- Act 204's sales tax exemption for food, except soft drinks, sold by any child welfare facility licensed or certified under Chapter 48.
- Examples of items not directly used in manufacturing (to facilitate the administration of Act 28's modifications to the definition of manufacturing).
- Clarifications to earlier changes pertaining to Act 2 and Act 28.

The fiscal effects of these rule changes were included in the fiscal estimates of 2009 Acts 2, 28, 204 and 330. Consequently, these rule changes have no fiscal effect.

Anticipated costs incurred by private sector

This proposed rule order does not have a significant fiscal effect on the private sector.

Agency Contact Person

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Madison WI 53708–8933
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Email: dale.kleven@revenue.wi.gov

Notice of Hearing
Transportation
CR 10–088

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.06, 110.20 (9) and 227.11 (2), Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 131, Wis. Adm. Code, relating to the vehicle emission inspection process.

Hearing Information

The hearing will be held:

Date:	**August 12, 2010**
Time:	11:00 AM
Location:	Hill Farms State Transportation Bldg. Room 254 4802 Sheboygan Avenue Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Carson Frazier at (608) 266–7857 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

Copies of Proposed Rule

A copy of the rule may be obtained upon request from 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 obtain copies of the proposed rule. Copies will also be available at the hearing.

Submittal of Written Comments

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.

Analysis Prepared by the Department of Transportation

Statutes interpreted

Section 110.20, Stats.

Statutory authority

Sections 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.

Comparison with federal regulations

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 adjacent 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

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.

Small Business Impact

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 Estimate

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.

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency Contact Person

Carson Frazier, Dept. of Transportation
Bureau of Vehicle Services, Room 253
P. O. Box 7911, Madison, WI 53707–7911
Phone: (608) 266–7857
Email: carson.frazier@dot.state.wi.us

Notice of Hearing
Workforce Development

Public Works Construction Contracts, Chs. DWD 290–294

CR 10–092

NOTICE IS HEREBY GIVEN that pursuant to sections 103.005 (1) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of rules relating to the state prevailing wage program and affecting small businesses.

Hearing Information

Date:	**August 11, 2010**
Time:	10:00 AM
Location:	MADISON G.E.F. 1 Building, Room F 305 201 East Washington Avenue

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266–9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707–7946 or Howard.Bernstein@dwd.wisconsin.gov. The deadline for submission is **August 13, 2010.**

Copies of Proposed Rule

The proposed rules are available at the website http://adminrules.wisconsin.gov. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266–9427.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 103.005(1) and 227.11(2), Stats.

Statutes interpreted

Sections 66.0903, 66.0904 and 103.49, Wis. Stats.

Explanation of agency authority

The state prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project, it must obtain a prevailing wage rate

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

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NOTICE IS HEREBY GIVEN that pursuant to ss. 110.06, 110.20(9) and 227.11(2), Stats., interpreting s. 110.20, Stats., the Department of Transportation will hold a public hearing on the **12th** day of **August**, 2010, at the Hill Farms State Transportation Building, **Room 254**, 4802 Sheboygan Avenue, Madison, WI, at **11:00 AM**, to consider the amendment of ch. Trans 131, Wisconsin Administrative Code, relating to the vehicle emission inspection process.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Carson Frazier at (608) 266-7857 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

A copy of the rule may be obtained upon request from 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 obtain copies of the proposed rule. Copies will also be available at the hearing.

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES

The Wisconsin Department of Transportation adopts an order amending 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

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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 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 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 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 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 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 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 amendment will not affect small business. If, however, the Department's current policy were not in effect, this rule would have the effect of potentially reducing cost for small business, as well as any other vehicle owner, since without this rule, no cost waiver would be possible.

The 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 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 copies of rule: Copies of the rule can be obtained, without cost, by writing 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, or at the Department of Administration's Administrative Rule website: https://health.wisconsin.gov/admrules/public/Search.

TEXT OF 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~~ 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 ~~centers~~ 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 15th day of **October**, 2010.

Frank J. Busalacchi

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, FRANK J. BUSALACCHI, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to the **vehicle emission inspection process**, was duly approved and adopted by this Department on October 15th, 2010.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 15th day of October, 2010.

Frank J. Busalacchi
FRANK J. BUSALACCHI
Secretary

PART 4
CR 10-088

ANALYSIS OF FINAL DRAFT OF TRANS 131

(a) **Basis and Purpose of Rule**. 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.

This proposed rule making amends s. Trans 131.05(1)(j) to allow a "cost waiver" 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.

(b) **Modifications as a Result of Testimony at Public Hearing**. The public hearing was held in Madison on August 12, 2010. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing**. None.

(d) **Summary of Public Comments and Agency Response to those Comments**. No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate**. No changes were made.

(f) **Response to Legislative Council Recommendations**. The Legislative Council report contained no comments.

(g) **Final Regulatory Flexibility Analysis**. The proposed rule will have no effect on small business.