



# Vehicle Emission Testing

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The owner of a motor vehicle that is customarily kept in one of seven southeastern Wisconsin counties must comply with a vehicle emission inspection and maintenance program operated by the Department of Transportation (DOT). The program operates pursuant to state law that implements the federal Clean Air Act, a comprehensive law regulating outdoor air pollutants.<sup>1</sup> The program operates in counties experiencing air quality that does not meet a federal standard for ground-level ozone. This issue brief provides an overview of relevant federal and state law and of the inspection and maintenance program.

## REQUIREMENTS OF FEDERAL LAW

The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish air quality standards for any pollutant that endangers public health or welfare.<sup>2</sup> Under this authority, EPA has established standards for six pollutants or groups of pollutants, including ozone.<sup>3</sup>

Each state must identify areas within the state that do not meet an established standard. EPA designates these areas as “nonattainment areas.” For ozone pollution, each nonattainment area is categorized based on the severity of the problem. The categories are marginal, moderate, serious, severe, or extreme.<sup>4</sup>

Although states generally have flexibility to develop and implement air pollution control programs for nonattainment areas, a state must implement a vehicle inspection and maintenance program in an ozone nonattainment area designated as moderate or higher.<sup>5</sup> The state designs its vehicle inspection and maintenance program consistent with EPA regulations.

EPA has designated the following areas in Wisconsin as moderate nonattainment areas for ozone: Milwaukee and Ozaukee Counties and parts of Kenosha, Racine, Sheboygan, Washington, and Waukesha Counties.<sup>6</sup> Accordingly, DOT must operate a vehicle emission inspection and maintenance program in those counties.<sup>7</sup>

## WISCONSIN’S INSPECTION AND MAINTENANCE PROGRAM

Wisconsin’s vehicle emission inspection and maintenance program consists of three main components: vehicle emissions limitations set by DNR; vehicle emissions testing by DOT; and vehicle maintenance and repair to resolve violations.

### Emissions Limitations

Under state law, DNR promulgates emissions limitations for motor vehicles. The limitations may vary based on size, type, and year of vehicle manufacture, but they may not be more stringent than those required by federal law. DNR must consider whether its emissions levels are attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices.<sup>8</sup>

State law exempts several types of motor vehicles from these emissions limitations. Exempt vehicles include the following: a motor vehicle of model year 1995 or earlier; a motor vehicle exempt from registration, such as road machinery, a motor bicycle, or an implement of husbandry; a diesel motor vehicle of model year 2006 or earlier; and certain vehicles over 8,500 or 14,000 pounds, depending on model year.<sup>9</sup>

### Inspection

Through a [contractor](#), DOT administers the vehicle emissions inspection and maintenance program in order to determine compliance with DNR’s emissions limitations and to detect unlawful tampering with

a vehicle's pollution control systems or mechanisms. The inspection usually consists of accessing the vehicle's on-board computer to evaluate the status of the vehicle's emission control system.<sup>10</sup>

Generally, a vehicle must be inspected biennially starting in the fourth year after the vehicle's model year. Testing is required in certain other situations, such as following a change in vehicle ownership if the vehicle is more than five model years old.<sup>11</sup> Certain vehicles registered as hobbyist or special interest vehicles must be tested only at initial registration and upon transfer of ownership.<sup>12</sup>

An inspector must refuse to perform an inspection in certain situations, such as where the vehicle is leaking fluid, exhibiting excessive idle speed, or exhibiting any condition rendering it unsafe for inspection, or where the owner refuses to disclose the odometer reading or produce evidence of repair at a reinspection.<sup>13</sup>

## Maintenance and Repair

State law requires that the air pollution control equipment of a vehicle must be maintained in good working order, and it prohibits tampering with the equipment.<sup>14</sup>

If a vehicle fails inspection, the owner of the vehicle must have it repaired or adjusted to bring it into compliance with the applicable emissions limitations.<sup>15</sup> The vehicle must be reinspected within 30 days, unless the repair or adjustment cannot be completed in that time. A vehicle may receive no more than two reinspections. The owner of a vehicle that cannot pass inspection may apply for a waiver in certain circumstances.<sup>16</sup> In addition, DOT must issue a waiver if the actual costs of repairs performed on a vehicle exceed a repair cost limit established by DNR.<sup>17</sup> In 2024, the repair cost limit is \$1,110.

## ENFORCEMENT

DOT may not register a vehicle that is subject to inspection but has not been inspected or that fails an inspection and has not received a waiver.<sup>18</sup>

An individual who performs vehicle emissions testing and alters data from the test, submits a false test report, or attributes test data to a different vehicle is subject to a Class H felony.<sup>19</sup> In addition, if the air pollution control equipment of a vehicle has been tampered with, that vehicle is ineligible for registration until the equipment has been replaced, repaired, or restored to good working order.<sup>20</sup>

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<sup>1</sup> For information on the regulation of air pollution generally, see Legislative Council, *Federal and State Regulation of Air Pollution*, Issue Brief (April 2021).

<sup>2</sup> 42 U.S.C. s. 7409 (a) and (b).

<sup>3</sup> 40 C.F.R. part 50.

<sup>4</sup> 42 U.S.C. ss. 7511 and 7511a (b) (4).

<sup>5</sup> 42 U.S.C. s. 7511a (c) (3). If an area is categorized as serious or higher, it must implement an "enhanced" vehicle emission inspection and maintenance program. An enhanced program includes all elements of the basic program plus additional requirements, such as more frequent inspection and on-road testing. Wisconsin does not have any such areas currently.

<sup>6</sup> See <https://www3.epa.gov/airquality/greenbook/jncs.html#WI>.

<sup>7</sup> A county board may adopt a resolution requesting DOT to operate a vehicle emission inspection and maintenance program in that county in order to improve air quality even if that county meets the federal ozone standard. [s. 110.20 (5) (b), Stats.] In addition, the owner of a nonexempt vehicle may present it for voluntary inspection. [s. 110.20 (7), Stats.; s. Trans 131.07, Wis. Adm. Code.]

<sup>8</sup> s. 285.30 (2), Stats.

<sup>9</sup> s. 285.30 (5), Stats.; s. NR 485.04 (10), Wis. Adm. Code.

<sup>10</sup> s. 110.20 (3) (a), Stats.; s. Trans 131.03 (6), Wis. Adm. Code.

<sup>11</sup> s. 110.20 (6) (a), Stats.; s. Trans 131.03 (2), Wis. Adm. Code.

<sup>12</sup> s. NR 485.04 (11), Wis. Adm. Code.

<sup>13</sup> s. Trans 131.03 (11), Wis. Adm. Code.

<sup>14</sup> s. 285.30 (6) (b), Stats.; s. NR 485.06 (1), Wis. Adm. Code.

<sup>15</sup> s. 110.20 (12), Stats.

<sup>16</sup> s. 110.20 (10m), Stats.; ss. Trans 131.03 (10) (a) and (d) and 131.04, Wis. Adm. Code.

<sup>17</sup> s. 110.20 (13), Stats.; s. NR 485.045, Wis. Adm. Code. DNR annually adjusts this limit based on adjustments to the federal Consumer Price Index.

<sup>18</sup> s. 341.10 (10), Stats.

<sup>19</sup> s. 110.20 (11) (c) and (15) (b), Stats.

<sup>20</sup> s. 285.30 (6) (c), Stats.