

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

- 1. Sections Affected**

R18-2-1003	Amend
R18-2-1006	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes A.R.S. §§ 49-104(A)(11), 49-425, 49-541, and 49-542
Implementing statutes: A.R.S. §§ 49-542 and 49-543
- 3. The effective date of the rules:**

June 28, 2000
- 4. List of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 480, January 28, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 536, February 4, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mark Lewandowski or Martha Seaman, Rule Development Section
Address: ADEQ
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)
Fax: (602) 207-2251
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Summary. The Arizona Department of Environmental Quality (ADEQ) has made two clarifications to existing rule language for the vehicle emissions testing program. The first covers exempt vehicles in areas A (Phoenix metropolitan area) and B (Tucson metropolitan area). The second deals with gas cap inspections in area A. ADEQ had also proposed to revise Table 3 (Emission Standards-Biennial Tests), but is not making any changes to Table 3 in this rulemaking.

Explanation. The rule language change covering exempt vehicles is at R18-2-1003(B)(11). ADEQ has clarified that although vehicles with the current and prior 4 model years are exempt from the emission inspection program for registration purposes, if the owner voluntarily chooses to have the vehicle inspected and it fails, the owner is required to have the vehicle retested and pass, or receive a waiver, before registration. As a result of this change, emission-related repairs for many failing vehicles will be covered under the federal emissions warranty and paid for by the vehicle manufacturer. Under § 207(b)(2)(C) of the Clean Air Act, an emission failure only triggers warranty liability for the manufacturer if the failure results in the owner "of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law" The vehicle manufacturer is not liable for repairs if the warranty period has expired or the vehicle has not been maintained and operated according to the manufacturer's instructions.

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The rule language change covering gas cap inspections is at R18-2-1006(E)(6)(a). The former language treated vehicles with “non-sealing gas caps” and those with “non-pressurized systems” as if they were the same. In fact, many “non-pressurized, vented systems” use “sealing gas caps.” With the revision, the subsection refers only to non-pressurized systems. There is no functional gas cap test for non-pressurized systems, only a visual check for the presence of a properly fitting cap.

New standards were implemented for the IM147 test on January 1, 2000. (See 6 A.A.R. 382, January 21, 2000) ADEQ proposed, but did not make any changes to the IM147 pass-fail standards in Table 3 in this final rulemaking, because data gathered from the first month of testing vehicles under the new IM147 indicated that the proposed standards would not produce the expected emission reduction benefits. A more effective set of standards is currently being developed and reviewed.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The rule imposes an administrative burden on the Arizona Department of Environmental Quality (ADEQ), the Department charged with implementing and enforcing the rule. This will result from a slight increase in administrative procedures associated with additional failing vehicles, but will not increase the cost to the state.

A potential impact of this rule will be on owners of exempt vehicles (those of the current model year plus 4) who exercise the option to subject the vehicle to the IM147 test. Although exempt, if any vehicle fails, the owner will be required to repair the vehicle and pass a re-test or apply for a waiver. An estimated average of 350,000 vehicles annually during the years 2000 to 2002, will be exempt from emissions testing because they are of the newer model years. Only a small percentage (about 1.7%) of these newer vehicles fail. On the basis of past experience, Gordon Darby projects that only 3% of exempt vehicle owners will choose to take the test. Thus, only about 179 of the newer vehicles are projected to fail. The change clarifying that voluntarily tested and failing vehicles need to be repaired before they can be registered may affect a few owners of vehicles that fail, and that are no longer within the emissions warranty, because of high mileage (over 50,000) on the vehicle. Otherwise costs to repair these vehicles should be borne by the manufacturer.

The rule clarification concerning gas cap inspections is not expected to have any economic impact because procedures in the test lanes will not change.

As a result of this rule, the general public will receive cleaner air and health-related benefits because of reduced emissions of carbon monoxide, nitrogen oxides, volatile organic compounds, and PM 10. In addition, the state of Arizona is less likely to be subject to sanctions under the Clean Air Act. These sanctions carry the potential of large losses of federal highway funds, and further reductions in the ability of industry to locate in the nonattainment area.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None of the changes proposed to Table 3 were made.

In R18-2-1003(B)(11)(c), the following change was made: “Vehicles ~~that fail~~ failing an emissions inspection the owner chooses to have under A.R.S. § 49-543.”

In R18-2-1006(E)(6)(a), the word “with” was reinserted in the text.

All other changes were made as proposed.

11. A summary of the principal comments and the agency response to them:

No comments were received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their locations in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. AIR POLLUTION CONTROL

ARTICLE 10. MOTOR VEHICLES; INSPECTION AND MAINTENANCE

Section

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program

R18-2-1006. Emissions Test Procedures

ARTICLE 10. MOTOR VEHICLES; INSPECTION AND MAINTENANCE

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program

- A. No change.
- B. The following vehicles are exempt from the inspection requirements of this Article:
 - 1. A vehicle manufactured in or before the 1966 model year;
 - 2. A vehicle leased to a person residing outside area A and area B by a leasing company whose place of business is in area A or area B, except as provided in subsection (A)(3);
 - 3. A vehicle sold between motor vehicle dealers;
 - 4. An electrically-powered vehicle;
 - 5. An apportioned vehicle;
 - 6. A golf cart;
 - 7. A vehicle with an engine displacement of less than 90 cubic centimeters;
 - 8. A vehicle registered at the time of change of name of ownership except when:
 - a. The change in registration is accompanied by required fees for the year following expiration of the prior registration, or
 - b. The change results from the sale by a dealership whose place of business is located in area A or area B;
 - 9. A vehicle for which a current certificate of exemption or Director's certificate has been issued;
 - 10. A diesel-powered vehicle in area A applying for registration or re-registration 33 months or less after the date of initial registration as a new vehicle; and
 - 11. Vehicles of a model year the same as, or newer than, the current calendar year and vehicles of the prior 4 model years, except:
 - a. Reconstructed vehicles; ~~and~~
 - b. Vehicles requiring emissions testing under R18-2-1015; and
 - c. Vehicles failing an emissions inspection the owner chooses to have under A.R.S. § 49-543.
- C. No change.

R18-2-1006. Emissions Test Procedures

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. In area A, the inspection test procedures for all vehicles other than diesel-powered vehicles and vehicles held for resale by fleet-licensed motor vehicle dealers shall conform to the following:
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - 4. No change.
 - 5. No change.
 - 6. A nondiesel vehicle required to take an annual emission test in area A shall, at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emission system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label under the hood. Vehicles that fail any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection or shall provide the written statement required in R18-2-1008(B). "Original configuration" for foreign manufactured vehicles means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:

- a. All nondiesel vehicles emission tested, except those with ~~non-sealing gas caps~~ non-pressurized, vented systems, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. Nondiesel vehicles with non-pressurized, vented systems shall be checked for the presence of a properly fitting gas cap.
- b. No change.

F. No change.

G. No change.

H. No change.

I. No change.

J. No change.

K. No change.