

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE HEAVY-DUTY VEHICLE SMOKE INSPECTION PROGRAM (IMPLEMENTATION OF ASSEMBLY BILL 1009, PAVELY 2004, CHAPTER 873)

Public Hearing Date: January 26, 2006
Agenda Item No.: 06-1-5

I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to the Heavy-Duty Vehicle Smoke Inspection Program (Implementation of Assembly Bill 1009, Pavely 2004, Chapter 873) hereafter referred to as ISOR or Staff Report, was released December 9, 2005 and is incorporated by reference herein.

Following a public hearing on January 26, 2006, the Air Resources Board (Board or ARB) by Resolution 06-2, approved, with modifications, amendments to the Heavy-Duty Vehicle Smoke Inspection Program (HDVIP) regulation for all 1977 and later, in-use, heavy-duty diesel commercial vehicles with gross vehicle weight ratings in excess of 10,000 pounds (Resolution 06-2 is included in this rulemaking record and incorporated herein.) The HDVIP regulations were initially adopted and became operative in 1990. They were subsequently amended in 1998 and again in 2003, and are now set forth in sections 2180-2188, title 13, California Code of Regulations (13 CCR). The present Board action amends 13 CCR sections 2180-2188 and adds new section 2189. At the January 26, 2006 hearing, the board approved amendments proposed by staff and directed staff to make certain additional modifications in response to comments received during the hearing and the 45-day comment period. The Board closed the record on January 26, 2006 and directed that it be reopened with the issuance to the public of the Notice of Proposed Modification to Text (15-Day Notice).

On May 11, 2006, staff issued the 15-Day Notice outlining the changes made to the regulation in response to the Board's directives at the January 26 Board hearing. No comments were received during the 15-day comment period. The 15-Day Notice is incorporated by reference herein.

Background: On September 29, 2004, Assembly Bill 1009 (AB 1009) was signed into law, amending Health and Safety Code Section 43701. The amendments require ARB to develop and implement, in consultation with the California Highway Patrol, regulations to ensure that heavy-duty commercial vehicles (HDCVs) operating in California are equipped with engines that, at the time of manufacture, met emission

standards that were at least as stringent as standards promulgated by the United States Environmental Protection Agency (U.S. EPA). In adopting AB 1009, the Legislature found that heavy-duty vehicles equipped with engines emitting greater levels of oxides of nitrogen (NOx) and particulate matter (PM) than those designed to meet standards adopted by the U.S. EPA contribute to higher levels of ozone and PM, and pose a threat to public health in California.

ARB staff's proposal is designed to meet the requirements of the legislation.

Background on ARB's Existing Heavy-Duty Vehicle Inspection Program: In response to environmental concerns and public health impacts from the operation of in-use heavy-duty diesel-powered vehicles, in 1988 the Legislature directed ARB to design and enforce a heavy-duty vehicle smoke enforcement program. The regulations governing the Heavy-Duty Vehicle Inspection Program (HDVIP) were adopted by the ARB in 1990, and the program became operative in November 1991. Under the HDVIP, in-use heavy-duty diesel and gasoline-powered trucks are tested for excessive smoke and inspected for tampered emission control systems. Intrastate, interstate, and international vehicles are all subject to these inspections that are conducted in cooperation with the California Highway Patrol (CHP) at CHP weigh stations and at random roadside locations. Owners of vehicles failing prescribed test procedures are issued citations that require prompt vehicle repairs and carry civil penalties ranging from \$300 to \$1800 per violation. The HDVIP program regulations were updated in December 1997 to incorporate new Society of Automotive Engineers (SAE) J1667 smoke test procedures and other program protocols. In 2004, the HDVIP regulations were amended to inspect and assess penalties for scan tool evaluation violations under title 13, CCR, section 2011.

Staff's Proposal: The ARB staff's proposal applies to all 1977 and later model year diesel-powered HDCVs operating in California with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. Presently, under the HDVIP regulations, staff inspects vehicles for missing emission control labels (ECL) but has not been, in general, assessing penalties for missing ECLs. The amendments revise the current HDVIP smoke inspection procedure to require, within one year after the amendments become effective, a mandatory penalty of \$300 for a missing ECL. If a citation is issued for a missing ECL within the first 12 months from the effective date of the regulations, the civil penalty would be waived provided the owner/operator, within 45 days of the date of the citation, obtain a replacement ECL that is affixed to the engine by an authorized engine repair/service facility. After the first 12 months, an owner or operator will be excused from the \$300 penalty only if he or she is able to present documentation at the time inspection that the vehicle's engine is in compliance with the requirement that the engine met federal emission standards at the time of manufacture.

The amendments require that ECLs be affixed to the engine so that ARB will be able to determine, pursuant to the mandate of AB 1009, whether the vehicle has been manufactured to meet at least U.S. EPA certification standards. For HDCVs with an affixed label, but which are not equipped with engines that met U.S. EPA certification

standards at the time of manufacture, the owner or operator of the vehicle would receive an additional citation mandating a civil penalty of \$500.

It will be presumed at the time of inspection that an HDCV without a label affixed to it does not at least meet U.S. EPA certification standards. Therefore, the owner will be cited for both violations identified above. However, the penalty for operating in California with a non-compliant engine will be waived provided the owner/operator, within 45 days of the date of the citation, obtains a replacement ECL that indicates the engine was in fact certified to meet at least U.S. EPA standards applicable at the time of manufacture. ARB enforcement staff would cite HDCVs that do not meet the ECL and certification requirements each time they are found to be operating illegally in California.

As set forth in the Notice of Hearing for this rulemaking, the Executive Officer has determined pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6) that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

For the reasons stated in the ISOR, the Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective as and less burdensome to affected private persons than the action taken by the Board.

II. MODIFICATIONS TO THE ORIGINAL PROPOSAL

At the January 26, 2006 hearing, the Board approved two modifications suggested by staff in response to public comments. These modifications, which were set forth in Attachment B to Resolution 06-2, are described below.

First, an amendment to section 2185(a)(3)(B) provides that the \$300 penalty for a missing emission control label (ECL) will be waived after the first year of implementation in cases when the owner provides at the time of vehicle inspection other documentation from the engine manufacturer or authorized dealer that demonstrates compliance with the emission standards requirements and provided that the ECL is replaced within 45 days. This responds to the American Trucking Association comment listed as Comment 1 below. The substitute documentation will provide interim assurance of compliance, and the requirement for replacement of the ECL within 45 days is consistent with the penalty waiver mechanism in the first year of implementation.

Second, the text of section 2185(a)(3) was modified to increase the civil penalty for operating a non-compliant engine in California from \$300 per violation to \$500, as recommended by various environmental groups in Comment 2 below. The larger civil penalty is intended to further discourage operation of non-U.S. compliant engines in California.

In addition, the final amendments included conforming modifications to section 2181(c)(5) to improve clarity, and modifications that corrected several formatting and typographical errors that were inadvertently included or omitted from initially proposed amendments. All of these modifications were included in the regulatory text made available for the supplemental 15-day comment period. They do not reflect substantive additions or deletions to the regulation or initially proposed amendments.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

A. Comments Submitted During the 45-Day Comment Period

At the January 26, 2006, hearing, testimony was received from:

Mr. John Rosa, American Trucking Association (ATA)/ California Trucking Association (CTA)

Mr. Adrian Martinez, Natural Resources Defense Council, Coalition for Clean Air, Union of Concerned Scientists, Center for Energy and Renewable Technologies, Planning and Conservation League, Clean Power Campaign, Environmental Defense, now known as Clean Air for Life Campaign, and the American Lung Association of Los Angeles County (NRDC, et al.)

Written comments were also received from Mr. Martinez, Mr. Michael Tunnell of ATA, and Ms. Stephanie Williams of CTA during the 45-day comment period prior to the hearing.

Below is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change.

1. Comment: ATA and CTA request amendment to section 2185(3)(A) and (B) of the Proposed Regulatory Order to ensure that operators of commercial heavy-duty engines that met federal emission standards at the time they were manufactured are given an opportunity to demonstrate compliance with the standards in the event the engine label is missing or obscured (referred to as “tampered” in the Staff Report). As proposed, the regulation provides this opportunity only during the first year of the program. However, some vehicles that met federal emission standards may have missing or obscured labels, unbeknownst to the vehicle’s owner or operator, beyond the regulation’s first year. Since these vehicles meet the intent of AB 1009 (i.e., compliance with federal emission standards) and do not emit any more emissions than a compliant vehicle with a label, they should not be subject to a penalty without being given the opportunity to demonstrate proof of compliance. (ATA) (CTA)

Agency Response: In response to the comment, the amendments have been modified to allow owners or operators to carry supplemental documentation to

demonstrate that the engine is a U.S. compliant engine at the time of inspection. The fine will then be waived, if the owner or operator has a new ECL affixed within 45 days of being cited. The amendment would apply following the first year of program implementation. During the first year, regardless of presenting documentation of compliance with U.S. EPA vehicle emission standards, all owners and operators may have the ECL penalty waived upon demonstrating that a new ECL has been attached within 45 days of issuance of the citation. The modification was made available for supplemental comment in connection with the 15-Day Notice.

2. Comment: The Board should impose the maximum fines possible for violations of the proposed rules. (NRDC, et al.)

Agency Response: In response to the comment, section 2185(a)(3)(B) of the proposed amendments has been modified to increase the civil penalty for operating a non-compliant engine in California from \$300 per violation to \$500. The larger civil penalty is intended to further discourage operation of non-U.S. EPA compliant engines in California. The modification was made available for supplemental comment in connection with the 15-Day Notice.

3. Comment: To the extent that staff believes that enforcement of AB 1009 could be strengthened through further legislative grants of authority, we request that the Board direct staff to work with CHP and state legislators to obtain that authority. (NRDC, et al.)

Agency Response: The staff maintains continuing dialog with the California Highway Patrol regarding enforcement of the Heavy-Duty Vehicle Inspection program, to which the AB 1009 amendments are being added. Staff will continue this dialog with added emphasis on outreach and uniform enforcement of the proposed labeling requirements. The staff has forwarded the comments submitted by NRDC, et al. to the author of AB 1009 for her review and consideration of possible future amendments.

4. Comment: We believe that staff may have underestimated the number of foreign-domiciled trucks that do not meet U.S. EPA emission standards and request that the Board direct staff to revise their calculations. (NRDC, et al.)

Agency Response: The staff plans to conduct or assist in future surveys of the number of foreign-domiciled trucks that do not meet U.S. EPA emissions standards. Results from these surveys will be evaluated and incorporated, as appropriate, into future versions of ARB's emission inventory models for on-road heavy-duty vehicles.

B. Comments Submitted During the Supplemental 15-Day Comment Period

The deadline for public comment on the 15-Day Notice was May 26, 2006. No comments were received during the supplemental comment period.