

## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider amendments to the Heavy-Duty Vehicle Inspection Program. This notice summarizes the staff proposal.

DATE: January 26, 2006

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, CA 95812

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 26, 2006, and may continue at 8:30 a.m., January 27, 2006. This item may not be considered until January 27, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before January 26, 2006, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT** **OVERVIEW**

**Sections Affected:** Proposed amendments to title 13, California Code of Regulations, sections 2180, 2180.1, 2181, 2182, 2183, 2184, 2185, 2186, 2187, and 2188. Proposed adoption to title 13, California Code of Regulations, section 2189: Heavy-Duty Smoke Emissions Test and Heavy-Duty Vehicle Emissions Control System Inspections.

**Background:** On September 29, 2004, Assembly Bill 1009 (AB1009) 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 standards that were at least as stringent as emission 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. In developing its proposal, ARB staff met with stakeholders from companies that operate HDCVs in California, representatives from manufacturer-authorized HDCV service providers, representatives from the California Highway Patrol, and other interested parties at public workshops held on May 16, 2005, and June 17, 2005.

**Background:** In response to environmental concerns and public health impacts from the operation of in-use heavy-duty diesel-powered vehicles, the legislature in 1988 directed the ARB to design and enforce a heavy-duty vehicle smoke enforcement program. The regulations governing this program, 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 are 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, in order to incorporate new Society of Automotive Engineers (SAE) J1667 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 would apply 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. Under the staff's proposal, the ARB would amend its current HDVIP smoke inspection procedure to require, 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 twelve 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, obtains a replacement ECL that is affixed to the engine by an authorized engine repair/service facility.

The proposal would 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. certification standards. For HDCVs with an affixed label, but which are not equipped with engines that met U.S. certification standards at

the time of manufacture, the owner or operator of the vehicle would receive an additional citation also mandating a civil penalty of \$300.

It would be presumed at the time of inspection that an HDCV without a label affixed to it does not at least meet federal certification standards. Therefore, the owner would be cited for both violations identified above. However, the penalty for operating in California with a non-compliant engine would 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 manufacturer. As discussed above, the penalty for operating with a missing ECL would not be waived beyond the twelve month period following the effective date of the regulation. 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.

In addition to adding specific language regarding penalties under AB 1009, amendments to the civil penalty section set forth at section 2185 of the HDVIP are being proposed to provide additional clarity. The staff determined that the incorporation of the proposal contained herein necessitated modifications to improve the overall flow of the regulatory text.

### **COMPARABLE FEDERAL REGULATIONS**

There are no comparable federal regulations at this time. Federal regulations for heavy-duty engines are limited to establishing emission standards for NOx, PM, hydrocarbons (HC), and carbon monoxide (CO). The regulations also require that all new heavy-duty engines have an ECL affixed. U. S. EPA's authority to adopt emission standards for "new engines" is authorized under section 202(b) of the federal Clean Air Act. While states are generally preempted from adopting their own emission standards for motor vehicles, California has uniquely set its own emission standards under the preemption waiver provisions of section 209(b) of the Act.

The proposed amended regulations apply to the operation of in-use vehicles in California. This is authorized under CAA section 209(d), which provides that any state or political subdivision may control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "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, Pavley 2004, Chapter 873)".

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on January 26, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Tullie Flower, Air Resources Engineer, at (916) 322-5848, or Mr. Donald Chernich, Manager, Heavy-Duty Diesel Inspection/Maintenance Development Section, at (916) 322-7620.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/hdvp2006/hdvp2006.htm>

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined 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.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The Executive Officer has determined that certain private persons and businesses will incur costs to comply with the staff's proposal.

Those impacted are companies that operate HDCVs in California, including out-of-state and out-of-country businesses. Such companies would incur costs under the proposal if they currently operate HDCVs in California equipped with engines that do not meet or exceed U.S. certification standards at the time of manufacture, or for any HDCV that is missing its engine ECL. The costs would cover replacement of HDCVs that fail to at least meet U.S. certification standards for the year of manufacture of the engine, and necessary replacement of missing or illegible engine ECLs. Based on data collected from HDCVs at roadside locations, the staff has estimated total compliance costs in the 2006 calendar year to be approximately \$20 million for the estimated 400,000 diesel-powered HDCVs that operate in California.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code sections 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses that operate diesel-powered HDCVs within California. Staff was unable to determine the number or percentage of total businesses impacted that are small businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than 12:00 noon, January 25, 2006, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814

Electronic mail is to be sent to: [hdvip2006@listserv.arb.ca.gov](mailto:hdvip2006@listserv.arb.ca.gov) and received at the ARB no later than 12:00 noon, January 25, 2006.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than 12:00 noon, January 25, 2006.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43016, 43018, 43701, and 44011.6.

This action is proposed to implement, interpret and make specific sections 39002, 39003, 39010, 39033, 43000, 43013, 43016, 43018, 43701, and 44011.6 Health and Safety Code, and sections 260, 305, 410, 505, and 545 Vehicle Code.

### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon  
Executive Officer

Date: November 29, 2005