

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER PROPOSED MINOR AMENDMENTS TO THE PERIODIC SMOKE INSPECTION PROGRAM (PSIP) IN RESPONSE TO THE INCLUSION OF DIESEL VEHICLES IN SMOG CHECK (ASSEMBLY BILL 1488, MENDOZA 2007).

Public Hearing Date: October 21, 2010
Agenda Item No.: 10-9-3

I. GENERAL

This Air Resources Board (ARB or Board) rulemaking is intended to eliminate duplicative emissions testing requirements for owners of diesel fleet vehicles that operate in California. The passage of Assembly Bill 1488 (Mendoza, Chapter 739, Statutes of 2007), in combination with existing ARB regulations resulted in approximately 77,000 diesel trucks being subject to both the biennial AB 1488 Diesel Smog Check Program and ARB's annual Periodic Smoke Inspection Program ("PSIP," California Code of Regulations (CCR), title 13, section 2190, et seq). Specifically, AB 1488 created overlap between these two programs for diesel fleet trucks manufactured after the 1997 model year with a Gross Vehicle Weight Rating (GVWR) of 14,000 pounds or less by subjecting these vehicles to biennial smog tests in addition to existing annual periodic smoke opacity tests. This rulemaking amends ARB's PSIP regulations to exempt diesel smog check vehicles from the requirement to conduct annual periodic smoke inspection tests, thereby eliminating these duplicative emissions testing requirements and saving the affected industry several million dollars in emission testing costs with little or no impact to air quality, since the smog check tests are more rigorous than the periodic smoke inspections.

Staff's Original Proposal

The staff's original proposal would have eliminated the requirement to perform periodic smoke inspections only in years that trucks were to undergo biennial AB 1488 smog tests. At the Board's direction the staff's proposal was amended to exempt AB 1488 smog test vehicles from the PSIP program entirely.

The rulemaking was initiated on September 6, 2010 with the publication of a notice for a public hearing on October 21, 2010. The Staff Report: Initial Statement of Reasons for Rulemaking ("Staff Report") was made available for public review and comment on September 6, 2010. The Staff Report, which is incorporated by reference herein, described the rationale for the proposal.

The original staff proposal included amendments to sections 2190, 2191, and 2194 to title 13, CCR, and is included as Appendix B to the Staff Report. These documents were posted on the ARB's internet site for the rulemaking at: <http://www.arb.ca.gov/regact/2010/psip2010/psip2010.htm>.

The Board's Action

On October 21, 2010, the Board conducted a public hearing to consider staff's proposal. Three written comments were received prior to the hearing and three commenters testified at the hearing. Instead of adopting staff's proposal the Board approved another alternative the staff had considered, which was to exempt all of the approximately 77,000 diesel trucks now subject to AB 1488 diesel smog tests completely from the PSIP. The text of the Board's modified proposal was made available for comment through the issuance of a "Notice of Public Availability of Modified Text and Availability of Additional Documents" ("15-Day Notice") and is incorporated by reference herein. The 15-Day Notice was mailed on April 21, 2011 to interested parties and was posted on ARB's Internet site.

The Final Statement of Reasons

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and explaining the modifications that were made to the staff's original proposal as a result of public comment and the Board's direction. The FSOR also summarizes written and oral comments the Board received and provides ARB's responses to those comments.

Fiscal Impacts. The Executive Officer has determined that this regulatory action will not create costs, but will in fact create savings to state and local agencies, school districts, and the regulated industry. The Executive Officer has determined that no additional cost to ARB will be incurred in order to implement this regulatory modification.

A PSIP inspection ranges in cost from \$40 to \$100 with an average cost of about \$55 per test. This cost was determined by a phone survey of industry representatives. The annual cost saving estimate to private fleets (businesses) was determined by taking the number of diesel trucks subject to both the PSIP and the new Diesel Smog Check Program (76,740) and multiplying it by the \$55, average cost of a PSIP inspection. According to this analysis, the proposed amendments will result in a cost savings of \$4.2 million annually. Of this amount, \$400,000 is annual cost savings to local and State agencies and the remaining \$3.8 million annual costs savings is to private fleets. Over five years the total cost savings to private fleet owners would be \$19 million. This is twice the savings envisioned in the Staff Report, which was based on staff's original proposal to exempt AB 1488 smog test vehicles from the PSIP program every other year, the year they underwent diesel smog testing.

Annual ongoing costs to a small business. A small business is assumed to have 2-5 trucks. Assuming that an average small business owns 3 trucks, this would result in an annual cost savings of \$165 (3 trucks X \$55 per truck tested).

Annual ongoing costs to a typical business. A typical business is assumed to have six or more trucks. While some fleets (businesses) may have several hundred trucks, a typical fleet is assumed to have about 15 trucks. Assuming that in any given year all 15 trucks would be eligible for a cost savings, an annual cost savings would be \$825 (15 trucks X \$55 per truck tested).

Other Fiscal Effects on Local Government. School Districts, Cities and Counties, Fire Districts, and other local government fleets make up about 8 percent of the fleets (businesses) affected by the proposed amendments. Assuming a proportional cost saving from the \$4.2 million, local government fleets will realize cost savings of \$336,000 in fiscal years 2010/2011, 2011/2012, 2012/2013 and thereafter by eliminating duplicative emissions test requirements. Staff originally estimated the fiscal effect on local government using the annual ISOR cost savings estimate of \$2.1 million multiplied by 8 percent for a savings of \$168,000.

Other Fiscal Effects on State Government. State government fleets make up about 2 percent of the fleets affected by the proposed amendments. Assuming a proportional cost saving from the \$4.2 million, state government fleets will realize cost savings of \$84,000 in fiscal years 2010/2011, 2011/2012, 2012/2013 and thereafter by eliminating duplicative emissions test requirements.

As referenced above, the cost savings estimates in the Staff Report for state government were based upon an annual state-wide cost saving of \$2.1 million multiplied by 2 percent for a savings of \$42,000 annually. However, as a result of the Board's decision to expand the exemption, the estimate for state government is an annual saving of \$84,000 (computed by using an annual saving of \$4.2 million multiplied by 2 percent).

Relative to the implementation of the PSIP, the ARB currently has three staff conducting PSIP audits in the State and this amendment does not decrease their workload as the removal of a small number of vehicles still leaves a large number of heavy-duty vehicles that need to be audited.

Consideration of Alternatives. As presented at the October 21, 2010 Board hearing, staff proposed to amend the current PSIP to eliminate the duplicative testing which arose due to the inclusion of 1998 and newer diesel vehicles that belong to commercial fleets and having GVWR of 14,000 pounds and less; these vehicles were added to the Smog Check Program beginning January 1, 2010 by AB 1488.

Staff's original proposal allowed Smog Check documentation to be substituted in lieu of a PSIP inspection every other year when a Smog Check was required. However, the Board elected to select "Alternative 2" and exempt all 76,740 diesel

trucks from the PSIP. As a result, these vehicles will be subject only to the registration-based biennial Smog Check Program.

Additionally, pursuant to the Board's direction, staff has modified the PSIP requirements for those diesel trucks garaged in Smog Check, Change of Ownership areas of the State. Smog Check, Change of Ownership areas are mostly rural areas and meet ambient air quality standards and therefore have less stringent emission requirements than other areas of the state. Fleet owners in these areas are required to obtain a Smog Check inspection upon initial registration in the State and upon change of ownership.

The additional modification that staff presented in the 15-Day Notice requires commercial fleets operating in Change of Ownership areas to continue to perform PSIP on a biennial basis as opposed to an annual basis. Without this modification diesel trucks in Change of Ownership areas would not receive any emissions inspections, except during the initial registration and for change of ownership. This modification makes, diesel trucks will be subject to a PSIP every other year.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Board received three written comments during the formal 45-day rulemaking comment period leading up to the October 21, 2010 Board Hearing. The 45-day comment period began with the notice publication on September 6, 2010 and ended with the closing of the record on October 20, 2010 at noon. Three comments were presented at the Board Hearing, one new comment and two comments were the same as previously submitted.

One written comment was received during the 15-Day comment period.

Below is a list of commenters and the date the comment was submitted.

California Cattlemen's Association (CCA)
October 12, 2010 (Written Testimony)

Engine Manufacturers Association (EMA)
October 14, 2010 (Written Testimony)

GUALCO Group on behalf of the California Council for Environmental and Economic Balance (CCEEB)
October 19, 2010(Written Testimony), October 21, 2010 (Oral Testimony)

California Farm Bureau Federation (CFBF)
October, 21, 2010 (Oral Testimony)

American Lung Association (ALA)
October 21, 2010 (Oral Testimony)

GUALCO Group on behalf of the California Council for Environmental and Economic Balance (CCEEB)
May 6, 2011(Written Testimony) in response to 15 Day Notice.

Comments Submitted During the 45-Day Comment Period.

Comment: The proposed regulation to require an emissions test for diesel cars and pickups between 6,000 to 14,000 pounds GVWR and model year 1998 and newer every year by requiring a PSIP test during the off-year of the Diesel Smog Check Program is duplicative and does not match the biennial checks for gasoline powered vehicles. (CCA)

Agency Response: The staff agrees with this comment and the proposal was modified in response to it at the Board's direction.

Comment: The ARB has not done a sufficient job of educating consumers, specifically farmers and ranchers about the existing PSIP. ARB should do more outreach (CCA, and CFBF)

Agency Response: The staff objects to this comment because it is not specifically directed to the proposed amendments or the procedures followed in adopting them. Nevertheless, staff responds as follows. Staff was directed by the Board to provide further outreach, specifically to the agricultural industry. In follow up to this request, ARB has issued an advisory posted on ARB's website since December 2010. This advisory, number 351, clarifies how the enforcement of this amendment will be carried out. In addition, PSIP field inspectors routinely provide copies of this advisory to audited fleet operators, which include members of the farm industry. Staff has also conducted informational presentations on the PSIP to the regulated industry.

Comment: The proposed regulation to allow commercial truck fleets subject to both the PSIP and Smog Check Program to submit evidence of a passing Smog Check test as proof of compliance with the PSIP in the years in which the Smog Check test is not required, is supported to eliminate duplicate testing. (EMA)

Agency Response: Staff agrees with the comment, but points out that the proposal adopted by the Board would go even farther and exempt all 76,740 diesel trucks from the PSIP.

Comment: The proposed regulation should be worded to eliminate the PSIP requirement for diesel vehicles 6,000 to 14,000 pounds GVWR subject to the Diesel Smog Check. (CCEEB)

Agency Response: The staff agrees with this comment and the proposal was modified in response to it at the Board's direction.

Comment: The \$4.2 million dollar amount of savings claimed by staff in Alternate Two seems based on a low average price for a smoke inspection and does not include time lost or fuel. The dollar amount could be more like the rounded amount of 50 million dollars saved. Select Alternative Two and only perform the smog check instead of the PSIP for the vehicles in question. (CFBF)

Agency Response: The staff agrees with this comment in part. The proposal was modified in response to it at the Board's direction. The staff responds to the remainder of the comment as follows.

It is difficult to quantify fuel cost and employee time for individual fleets. Depending on the fleet and whether it conducts its own opacity tests or contracts for these tests on-site, or if they deliver their vehicles to a repair facility for these tests, complicates the cost estimation. Staff did conduct a survey of approximately 20 opacity testing services across the state to determine their rates. Those cost numbers were then used to determine the average cost of an opacity test. This averaged cost was then multiplied by the estimated number of affected fleets to determine annual savings. At the hearing, the Board adopted Alternative 2.

Comment: The Smog Check Program and PSIP both play a role in keeping diesel vehicles maintained and reducing public exposure to diesel pollution. These vehicles travel through neighborhoods and communities and impact people who live close to roads, highways or facilities. It seems reasonable to blend the two programs together since there is a lot of information still to be learned about the impacts of diesel vehicles and the uncertainty of their operation over time. (ALA)

Agency Response: Staff agrees that both the PSIP and the new Diesel Smog Check Program are key elements in mitigating diesel PM and NOx emissions. However, in keeping with ARB's mission, the Board also considers the effect that a regulation has on the economy of the state. Alternative 2 has an associated 0.01 tons per day PM dis-benefit statewide, counterbalanced by a \$4.2 million dollar annual savings to the regulated industry. Although these vehicles will not be checked as frequently as before, they are still subject to routine emissions inspections.

Comments Received During the 15 Day Notice Period

Comment: CCEEB believes this solution, Alternative 2, will continue to provide emission reductions, prevent duplicative testing, decrease regulatory costs on businesses and maintain the integrity and intent of both the PSIP and the Smog Check programs (CCEEB).

Agency Response: Staff believes that CCEEB's comment is addressed through the Board's adoption of Alternative 2 as presented in the 15-Day Notice.