

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATE: August 31, 2009

SUBJECT MATTER OF PROPOSED REGULATIONS: Smog Inspection Requirements

- I. Diesel-Powered Vehicle Testing and Repair;
- II. Sublet Repairs;
- III. Smog Check Inspection Procedures Manual;
- IV. Fuel Fillpipe Restrictor Dowel Gauge; and
- V. Gasoline Visible Smoke Test

SECTIONS AFFECTED: §§ 3340.5, 3340.15, 3340.16, 3340.42, and 3340.45 of Title 16, Division 33, Chapter 1, Article 5.5, California Code of Regulations

Updated Information:

The *Initial Statement of Reasons* is included in the file. The Bureau of Automotive Repair issued a 15-day notice of availability of modified text concerning general requirements for Smog Check stations and the *Smog Check Inspection Procedures Manual*, revised August 2009, on August 18, 2009. This 15-day notice was served concurrently with the ongoing 45-day comment period which ended on September 8, 2009.

Recent legislation, SB 734 (Lowenthal, Chapter 200, Statutes of 2009), concerning diesel powered vehicles with a gross vehicle weight rating of 13,999 pounds was increased to 14,000 pounds. Thus, the Order of Adoption has been updated to reflect this legislative change. This change is considered a change without regulatory effect because it does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the proposed regulations.

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

These regulations will not have a significant adverse economic impact on businesses, including small businesses. This initial determination is based on the following facts or evidence/documents/testimony:

Diesel-Powered Vehicle Testing and Repair

This proposed action will add diesel-powered vehicle testing to regulations. The Smog Check industry would expect additional inspection and repair revenue potentially generated from the inspection and repair of diesel-powered vehicles that fail the Smog Check inspection.

Sublet Repairs

This proposed action will expand the circumstances in which licensed Smog Check Test and Repair (T&R) stations may sublet repairs. The proposed action will allow T&R stations to retain customers that need specialized emission-related repairs and will provide consumers with a choice of selecting a conveniently located T&R station that can sublet these repairs.

Smog Check Inspection Procedures Manual

The proposed action will incorporate by reference the *Smog Check Inspection Procedures Manual*. The proposed action will consolidate the inspection procedures, and thus provide technicians with one convenient source to reference when conducting a Smog Check inspection.

Fuel Fillpipe Restrictor Dowel Gauge

The proposed action will eliminate the testing of a vehicle's fuel fillpipe restrictor during a Smog Check inspection, and remove the fuel fillpipe restrictor dowel gauge from the list of equipment required for all Smog Check stations. The proposed action brings the Smog Check inspection, and equipment requirements in alignment with current fuel production, as motor vehicle fuel sold in the United States, Mexico, and Canada no longer contains lead.

Gasoline Visible Smoke Test

The proposed action will revise the visible smoke test procedure for gasoline-powered vehicles. The Smog Check industry could expect additional repair revenue potentially generated from the repair of smoking vehicles.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either 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 regulation.

Objections or Recommendations/Responses:

The following comments/objections/recommendations were made, either in writing or orally, during the public comment period or at the public hearings, regarding the proposed action:

I. Comments Received During the 45-Day Comment Period

1. Benjamin Lee Rue, Licensed Smog Check Technician, North Highlands CA.

a) “When vehicles have non-disengageable traction control they cannot be tested on a dynamometer. An issue I have faced is when vehicles traction control off switches have been removed or disabled. Many rental car companies have sold former rental cars and have left the “traction control off switch” disabled or removed. Vehicles with TC off switches removed or disabled should be allowed a two speed idle test. The smog check manual should address this specifically and should allow Two speed idle tests in this situation.”

This comment/recommendation was rejected because:

Vehicle tampering such as removing a traction control switch so that it becomes incompatible with parts of the Smog Check inspection procedures does not excuse the vehicle from the Smog Check inspection requirements. The Smog Check Program does not accommodate tampered vehicles, and this proposal would allow a tampered vehicle to receive a less comprehensive exhaust emissions test. Section 44012 (h) of the Health and Safety Code states: “The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.” Section 1.2.3 of the Smog Check Inspection Procedures Manual provides direction or instruction for vehicles in which the traction control will not disengage.

b) “Very often I find malfunction indicator lamps that have been rewired to operate as other lamps such as oil pressure loss or charge failure. This is common as most mechanic people can’t actually diagnose and repair most MIL problems.

The smog check manual should require technicians when performing the malfunction indicator lamp test to verify the MIL has not been wired to operate as another lamp on non- obd II vehicles. This should be done in addition to the existing procedures.”

This comment/recommendation was rejected because:

The inspection procedures contained in the Smog Check Inspection Procedures Manual address modifications to emission controls systems. As part of the procedure, technicians are required to check that the emission control systems are installed in

their original configuration, or in an Air Resources Board approved aftermarket configuration. This check includes, but is not limited to, any component, computer, hose, motor, pump, seal, sensor, solenoid, switch, servo, transducer, tube valve, and wire.

It should also be noted that, for 1996 and newer model year vehicles equipped with OBD II systems, the current inspection procedures will properly fail a vehicle that actually has a fault commanding the MIL “on” regardless of whether the MIL has been inappropriately rewired and/or if the technician fails to detect the wiring problem while performing the visual inspection. Therefore, no additional inspection procedures are needed for these OBD II vehicles.

The information Mr. Rue provided can be beneficial as technical advisement to inform or alert technicians about prevalent emission control system modifications. The Bureau is committed to ensure this type of information is relayed to all technicians. Depending on the urgency of the message, the Bureau uses “ET Blasts” (immediate electronic messages sent via the State’s central database to each station’s Emissions Inspection System), the Smog Check website, direct mailers, and/or a periodic Smog Check industry newsletter, to communicate this kind of technical information.

c) “There should be an appendix added to the smog check manual that shows malfunction lamp testing issues.

For example:

Many vehicles such as 1998-2000 Chevrolet Astro vans and GMC safari vans the service engine soon light will not turn on at all when the key is on and the engine is off if all of the OBDII readiness monitors are complete unless the key has been on the off position for about 5 minutes. And then it will just flash on for a brief moment.

2. Also most GM Saturn’s, the MIL won’t come on for the bulb check when the key is just turned on unless the key has been off for more than about a minute.

3. Some 80’s Cadillac’s, The MIL did not turn on at all unless the engine was cranking or diagnostics was entered from the Climate control console by pressing off and warmer until the light cam on.

4. also many 80’s cadillacs had two MIL lamps :Service engine soon” and Service engine now” they need to both be working to pass.

5. Most Mitsubishi vehicles the MIL would stay on for about 10 seconds after start up. This is normal and they should not be failed for this reason.

6. there were federal mercedez benz and vvolks wagen vehicles that did not bet MIL lamps until 1994 model year.

7. ect.... the list goes on and on.

The test of the MIL lamp needs to be more specific. There are many vehicles that after engine start regardless of how many malfunctions they have the MIL light will always go off for a second or two after start up. The functional test of the MIL should require that the MIL stay off with the engine idling for a period of at least 2 minutes on non-obdii vehicles. The way it is currently written in the smog check manual vehicles will pass the MIL lamp test that have problems that should be repaired.”

These comments/recommendations were rejected because:

The malfunction indicator lamp (MIL) test procedure is based on the operational design standard that vehicle manufacturers must follow in developing each vehicle's on-board diagnostic system. However, prior to the 2005 model year, there were no specifications for precisely how long the MIL must illuminate during the bulb check. Further, the amount of time a vehicle must be “off” to re-arm the bulb check is dependent on the control units and hardware of the vehicle itself in terms of normal power down events and processing time. As such, there are and will be slight variations of MIL illumination during the bulb check but almost all vehicles operate in a similar enough manner to facilitate quick and easy inspection. The inspection procedures contained in the Smog Check Inspection Procedures Manual note that operation may vary with some systems.

When appropriate, the type of information Mr. Rue provides is relayed by BAR to technicians as described in the response to “1.b)” above. However, in specific response to Mr. Rue's comments, the first item in his list is incorrect and the specific vehicles mentioned do not require more than 30 seconds with the vehicle off before the MIL will indeed illuminate as expected for the bulb check. Some technicians may mistakenly cycle the key to a run or accessory position rather than off. In Smog Check training, technicians are advised to remove the key altogether from the ignition to ensure the elimination of such mistakes. Similarly, item number 2 in the list, to the extent it applies to 1996 and newer model year Saturn vehicles, is also incorrect and does not require more than 30 seconds with the vehicle off before the MIL bulb check will be re-enabled. Mr. Rue's item number 4 is also a commonly made mistake in interpreting that there are multiple warning lights that should trigger a failure. The MIL is required to be a single warning light on vehicles and contain specific wording. A “service engine now” warning light is not a MIL and should not be used as the basis for a pass or fail decision. Similarly, other non-OBD warning lights such as “service vehicle soon” or maintenance reminder lights should not be considered part of the MIL. The Smog Check Inspection Procedures Manual cautions technicians not to confuse these “maintenance reminders” with the actual OBD malfunction light. In some cases, some vehicles will illuminate other lights in addition to the MIL when certain faults are detected but that should not be interpreted as the other lights now being part of the MIL or part of the pass/fail criteria for the visual check of the MIL.

d) “The MIL lamp should be labeled in either the way the vehicle was originally manufactured, or should have no label at all, or be labeled “check engine” or “service engine soon” or may be labeled the same in any foreign language or with a graphic to mean the same.”

This comment/recommendation was rejected because:

The malfunction indicator lamp (MIL) identification and labeling requirements are the responsibility of the Federal EPA, and the California ARB. Further, the existing OBD II regulations already address this issue for 1996 and newer model year vehicles. Specifically, Title 13, California Code of Regulations, Section 1968.2, Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium Duty Vehicles and Engines, standardizes MIL specifications as follows: “The MIL shall be located on the driver’s side instrument panel and be of sufficient illumination and location to be readily visible under all lighting conditions and shall be amber in color when illuminated. The MIL, when illuminated, shall display the phrase ‘Check Engine’ or ‘Service Engine Soon.’ The word ‘Powertrain’ may be substituted for ‘Engine’ in the previous phrases. Alternatively, the International Standards Organization (ISO) engine symbol may be substituted for the word ‘Engine’ or for the entire phrase.”

2. Kevin Marcheschi

a) “I can't connect to the streaming coverage for some reason, so here is my questions. are the CFM, AFE, type intakes legal or do they require carb #'s (intake side not turbo side) on diesels ”

This comment/recommendation was rejected because:

This comment is outside the jurisdiction of BAR. The California Air Resources Board (ARB) has authority regarding aftermarket parts with defined requirements and procedures for exemption of aftermarket parts such as those listed in the comment. In general, modified and add-on parts require an ARB exemption (documented with an Executive Order (EO) number) to be legal for use.

The ARB EO listings and additional information can be found on the ARB’s website at <http://www.arb.ca.gov/msprog/aftermkt/aftermkt.htm>, or by calling ARB at (800) 242-4450.

b) “the FASS Fuel pumps or AIR DOG fuel pumps do they require carb #'s?”

This comment/recommendation was rejected because:

Please refer to the Bureau’s comment/recommendation “2.a)” above.

c) “in the new revision, why are we not checking gas cap pressure on 2000 and newer vehicles?”

This comment/recommendation was rejected because:

This is a question, and not a comment/recommendation. The answer to this question is that newer model year vehicles’ on-board diagnostic systems are equipped with enhanced evaporative leak detection capabilities that make a Smog Check auxiliary fuel cap pressure test duplicative and unnecessary. Further, this change will also save Smog Check stations from buying new gas cap tester adapters, and will save technicians time in performing the test.

d) “in the new revision, please clarify the visible smoke test procedure for gas vehicle.”

This comment/recommendation was rejected because:

The complete visible smoke test procedure can be found on pages 14-16 of the Smog Check Inspection Procedures Manual. Additional on-line training for the revised gasoline smoke test procedure will be made available by BAR.

3. Will Bucquoy, California AAMCO Dealers Association (CADA)

a) “1. Section 3340.15 (i): This section provides licensed smog check stations with specific sublet inspections and/or repair exemptions. CADA believes that consumers should also have “freedom of choice” as to where a car is repaired, where the licensed smog check station lacks the mechanical expertise and/or necessary equipment to properly repair the vehicle. In addition to above sublet exception, CADA believes that if a component of the vehicle is determined to need repair because of failure to pass a smog inspection test and the licensed smog check station lacks the mechanical expertise/necessary equipment, the consumer should also be allowed to have repairs completed at any registered/licensed automotive repair dealer of its choosing. Of course, after the necessary repairs are completed the vehicle would be required to be re-tested at a licensed smog check station.”

This comment/recommendation was rejected because:

Currently, subletting of vehicles requiring repair due to a Smog Check failure is allowed under limited circumstances in Title 16, California Code of Regulations, Section 3340.15 (i). Specifically, “A licensed smog check station shall not sublet inspections or repairs required as part of the Smog Check Program, except for the following: (1) Repairs of a vehicle’s exhaust system which are normally performed by muffler shops, provided that the malfunction has been previously diagnosed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle. (2) Repairs of those individual components that have been previously diagnosed as being defective and that have been removed by the specific smog check station originally authorized by the consumer to perform repairs to the vehicle.”

Also, currently licensed Smog Check stations and technicians must perform the Smog Check repairs as required in Health and Safety Code section 44014 (a), which reads as follows: “Except as otherwise provided in this chapter the testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check technicians who have qualified pursuant to this chapter.”

This regulation package expands the circumstances in which licensed Smog Check Test and Repair stations may sublet repairs. This proposed action will allow Test and Repair stations to sublet the repairs of diesel-powered vehicles and vehicle transmissions, and to sublet the corrections to the software version that controls the vehicle’s on-board computer systems.

BAR received similar comments from the diesel workshops held in 2008/2009, and that is why the sublet of diesel repairs were added into this regulation package.

BAR recognizes that Smog Check license strategies should correspond to industry dynamics. With this in mind, BAR is working with the Smog Check industry to establish a new “repair only” Smog Check license classification that will allow qualified repair facilities the opportunity to provide Smog Check related repairs.

4. Bert Friel, Supervisor, Pacific Gas and Electric Company, Regulatory Management and Policy

a) “These changes would include diesel vehicles up to 13,999 pounds in the Smog Check Program. PG&E would like to request that these vehicles be exempted from the current Fleet Smoke Check Program, as described in the California Code or Regulation Title 13, sections 2190 through 2194. It is PG&E’s belief that the Smog Check Program will also address the requirements of the Fleet Smoke Check Program. This exemption will prevent PG&E’s vehicles from being subject to overlapping requirements.”

This comment/recommendation was rejected because:

This comment is outside the scope of this proposed action. The California Air Resources Board (ARB) enforces the Periodic Smoke Inspection Program (PSIP) for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or more.

ARB plans to consider the exemption of diesel-powered vehicles that are subject to the Smog Check Program from their PSIP in January 2010.

b) “PG&E also requests clarification in the regulation that we will still be able to repair our own vehicles emission controls systems, should an inspection determine that repairs are necessary.”

This comment/recommendation was rejected because:

This comment is rejected because current law and regulations already cover the area of fleet repairs. Section 44020 of the Health and Safety Code provides in pertinent part:

Notwithstanding any other provision of this chapter, the department may license any registered owner of a fleet of 10 or more motor vehicles subject to this chapter, who so elects, to implement and conduct the tests and to perform necessary service and adjustment on the fleet’s vehicles under this chapter, subject to all the following conditions:

(a) The registered owner’s facilities or personnel, or both, or a designated contractor of the registered owner, shall be licensed by the department as a fleet smog check station, and the test and repair system shall conform, in the department’s determination, with all provisions of this chapter and the rules and regulations adopted by the department.

Additionally, Section 3340.50 (f) of the California Code of Regulations states:

Vehicles Serviced. A licensed fleet facility shall test, repair, and certify only vehicles owned by it. The repair cost limit shall not apply to the repair of fleet vehicles.

Therefore, no changes are needed in the regulation package because current law and regulations establish the rights and responsibilities of fleet vehicles needing Smog Check inspections and repairs.

c) “Lastly, PG&E does have some concerns about how the visual test will be conducted. It seems like a very subjective test as compared to the opacity testing with calibrated equipment that we currently perform under the Fleet Smoke Check Program. We are concerned that the result of a smog check inspection may be dependent on the personal interpretation of an individual inspector. PG&E would like to see a more objective standard developed in this area.”

This comment/recommendation was rejected because:

Section 44012.1 (c) of the Health and Safety Code states that “... No new equipment shall be required to implement the visible smoke test.” If equipment were required, it would create an undue cost to stations since diesel vehicles comprise such a small percent of the fleet. BAR performed several studies to develop a visible smoke inspection procedure for diesel vehicles. Based on the study, the BAR Snap Test was developed, in addition to the current idle test, to provide industry a simple yet accurate procedure to reliably identify vehicles emitting excessive smoke.

5. Tom Gibbs, Transportation Services Department, Southern California Edison Company

a) “SCE would like to request that these vehicles be exempted from the current Fleet Smoke Check Program, as described in the California Code of Regulations Title 13, sections 2190 through 2194. It is SCE’s belief that the Smog Check Program will also address the requirements of the Fleet Smoke Check Program. This exemption will prevent our fleet vehicles from being subject to duplicative regulatory requirements.”

This comment/recommendation was rejected because:

Please refer to the Bureau’s comment/recommendation “4.a)” above.

b) “SCE also request a clarification in the regulation that we will still be able to repair our own vehicles emission controls systems, should an inspection determine that repairs are necessary.”

This comment/recommendation was rejected because:

Please refer to the Bureau’s comment/recommendation “4.b)” above.

c) “Our last request concerns how the visual test will be conducted. The current direction of the rule development seems like a very subjective test as compared to the opacity testing with calibrated equipment that we currently perform under the Fleet Smoke Check Program. We are concerned that the result of a smog check inspection may be dependent on the personal interpretation of an individual inspector. SCE would prefer to see a more objective, measurable standard developed for this test.”

This comment/recommendation was rejected because:

Please refer to comment/recommendation “4.c)” above.

6. Jackie A. Miller, for Larry Nobriga, Chair, Government Affairs Committee of Automotive Service Councils of California (ASCCA)

a) “The Automotive Service Councils of California (ASCCA) appreciates the opportunity to provide input during the regulatory process that has resulted in the promulgation of this regulation. As you know, ASCCA supported the legislation to include diesel-powered vehicles in the Smog Check program. The industry appreciates the fact that Smog Check stations will not be required to purchase new equipment, since BAR plans to provide online diesel-specific inspection training to technicians at no cost. Additionally, ASCCA supports the regulation allowing consumers to provide authorization to Test & Repair stations to sublet emission-related repairs. This is a consumer benefit, in that individuals whose automobiles require additional repairs need not get bounced

around to additional repair facilities. ASCCA also supports incorporation by reference of the Smog Check Inspection Procedures Manual into the California Code of Regulations.”

The BAR accepts this support of the regulation.

7. Gary Greno with Accurate Smog of Marin

a) “I’ve read through all this and of course my biggest concern is cost impact on shops. And basically diesel testing, OBD II only, with a visible and smoke check, correct? And reading through everything it says there should be no additional costs or anything, but at the same time, on the website links to the Air Resources Board OBD II testing for the future. And they put in there extreme cost cuts and they want to fence down the prices down to as low as \$35.00 off the current price of smogs. You have listed here that the average smog test is \$47.00. With ARB saying we’re going to cut the price down to \$35.00, that’s a \$12.00 smog check. As a business owner that is not feasible. On your report it says there will be no cost inclusions involved. The software is supposed to be supplied by BAR and everything’s going to be OK. But then we’re going to get Air Resources Board coming in saying cut your prices \$35.00. That affects me, my bottom line. But you want us to do the checks, inspections, and tests. If we can’t afford to do it as shop owners, we’re going to close down. And BAR will have someone else to find to do to smogs. Like a centralized system. Which kind of ruins everything. So, since no one addresses these matters, financially, for me, I need to bring it up because I need to plan am I going to be here next year? Am I planning for two years down the road? Or am I planning to put my business on EBay and sell it next week. So these are my concerns.

And under ARB’s document for OBD II testing, which I’m assuming that’s a diesel, also, we want to cut the price, whereas on your report says, no, the average price is \$47.00. Which is roughly my price. And to cut it, for me, would be I’m out of business. I want to know where BAR stands on this if they print out this is the price of the average smog and then ARB at the same time is saying well we plan on doing that certain test with a cost reduction.

It’s off BAR’s website that links to the Remote Sensing. Why I found it there? And it’s just basically its OBD II testing. It’s listed as OBD II the future. What does it say here...transitioning away to OBD II equipped vehicles? But nowhere it says gasoline or its OBD II equipped vehicles. Which would be a diesel.

Because the gasoline for the OBD II test also would be the same. No tailpipe, along with the diesel. So to me it would be we’re doing the diesel test on the gas powered and we’re going to regulate your price. Which I’ve seen this report many times in different locations, through IMRC, Air Resources Board. But never on a BAR page. And I’m wondering are you guys on line with this? Do you know of this? Because this is going to directly affect shops willingness to stay in the program.”

This comment/recommendation was rejected because:

This comment is outside the scope of this proposed action because it refers to an ARB document that discusses a realistic and proven OBD II-based inspection strategy for gasoline-powered vehicles in California. Questions or comments regarding this report should be directed to the ARB at 1001 I Street, Sacramento, CA 95814. The proposed diesel Smog Check inspection does include a visual, on-board diagnostic (OBD), and visible smoke test for 1998 and newer diesel-powered vehicles with a gross vehicle weight rating (GVWR) up to 13,999 pounds. However, neither the ARB document cited nor the proposed regulations in this package include changes that would regulate inspection prices. As always, other than the cost of the certificate, stations are allowed to set their own prices.

II. 15-Day Notice of Modified Text Availability

All comments received during an additional 15-day comment period which ran concurrently with the 45-day comment period for this regulation, have been addressed in the previous section.