

Appendix G:
Implementation and Enforcement

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A. Implementation

If adopted, ARB would need to take the following actions to implement the proposed regulation.

- Develop an outreach program to inform drivers, motor carriers, California-based brokers, tractor and trailer owners, and California-based shippers about the adopted regulation and any financial assistance or incentive programs that may be available.
- Develop guidance documents for the regulation and its compliance schedules.
- Develop a web-based tractor and trailer registry, which would be primarily used for compliance schedule reporting, but would also be available for voluntary compliance reporting.
- Develop databases and programming that would allow both enforcement personnel and the public to access compliance information about registered vehicles.
- Develop forms for compliance schedule reporting.
- Set up the existing 1-800-END-SMOG telephone line to receive both questions about the proposed regulation and complaints about regulatory violations.
- Develop an enforcement action plan.
- Develop settlement guidance for violation penalties.
- Develop an enforcement training program for peace officers and local air pollution control districts.
- Develop an audit procedure for the compliance schedules.

B. Enforcement

In addition to ARB's enforcement staff, the proposed regulation would also give enforcement authority to peace officers and local air pollution control districts. Staff envisions the proposed regulation could be enforced in the following ways:

- ARB's enforcement personnel would be able to verify compliance with the proposed regulation during roadside inspections conducted as part of the Heavy-Duty Vehicle Inspection Program.
- ARB's enforcement personnel would be able to verify compliance with the proposed regulation during audits conducted as part of the Periodic Smoke Inspection Program. These audits are typically conducted at vehicle storage facilities where numerous vehicles can be inspected in one visit.
- Although ARB's enforcement personnel would continue responding to air quality complaints, peace officers and local air pollution control districts could also handle complaints pertaining to the proposed regulation.

- At their own discretion, peace officers and local air pollution control districts could also enforce the proposed regulation as part of their daily duties.

The discovery of a violation could lead to more in-depth fleet-wide audits and targeted inspections, if deemed necessary by enforcement personnel.

ARB's enforcement personnel would also have the option to conduct comprehensive compliance audits of fleets that elect to participate in one of the two optional trailer fleet compliance schedules. By choosing to comply with an optional trailer fleet compliance schedule, a trailer owner would be agreeing to allow authorized enforcement personnel to conduct periodic audits of both vehicles and records. If an owner were found in violation of the proposed regulation, ARB would be able to terminate the owner's participation in an optional trailer fleet compliance schedule, which may substantially accelerate the fleet's compliance timeline. Therefore, ARB's audit authority would encourage most participants to keep their fleet in compliance with the requirements of the proposed regulation.

Under the proposed regulation, enforcement efforts would be primarily directed at drivers, motor carriers, tractor owners, and trailers owners. Therefore, if a noncompliant tractor or trailer were found operating on a California highway, the driver, motor carrier, and tractor or trailer owner, as applicable, would receive a notice of violation (NOV). Although California-based shippers and brokers would not initially be held responsible for a noncompliant tractor and trailer, the proposed regulation could be enforced on them in situations involving a motor carrier, tractor owner, or trailer owner that has failed to settle a previously-issued NOV. The enforcement strategy applicable to California-based shippers and brokers is explained in more detail below.

Since California-based shippers and brokers are not typically responsible for the tractors and trailers they use, they would not initially be held liable for tractors and trailers found in violation. However, enforcement action could be taken on a California-based shipper or broker in situations meeting the following criteria:

1. The shipper or broker is involved in a shipment where the tractor or trailer is found operating in violation of the proposed regulation, and
2. The motor carrier, tractor owner, or trailer owner involved in the shipment has an unsettled NOV that was issued for a previous shipment in which the shipper or broker was also involved, and
3. The shipper or broker has received a notification from ARB regarding the delinquent status of the motor carrier, tractor owner, or trailer owner.

The primary intent of this strategy is to ensure that out-of-state motor carriers, tractor owners, and trailer owners also comply with the proposed regulation. Historically, it has been very time consuming and costly to collect penalties from unresponsive out-of-state fleets. This is because the State has no authority to hold the registrations of out-of-state

registered vehicles, and limited authority to hold the vehicles themselves. Therefore, if an out-of-state registered fleet refuses to settle an NOV, it is currently necessary, in many cases, for the State of California to file a lawsuit against that fleet in their state of residence to collect any penalties. However, under the strategy of the proposed regulation, staff expects that most motor carriers, tractor owners, and trailer owners, including those domiciled out-of-state, would choose to settle their NOVs in order to avoid any potential detriment to their relationships with California-based shippers and brokers. Ensuring that out-of-state fleets are treated the same as California-registered fleets with respect to enforcement would provide an equitable playing field for those doing business in California.

Under the proposed strategy, ARB would notify all affected California-based shippers and brokers involved in a shipment for which an NOV was issued to the motor carrier, tractor owner, or trailer owner. This notification would be provided for informational purposes only. If, however, the violating motor carrier, tractor owner, or trailer owner, were to fail to settle the NOV within the permitted time period, ARB would then send a second notification to affected shippers and brokers notifying them that, until the NOV is settled, they could also be held liable for future violations involving the delinquent motor carrier, tractor owner, or trailer owner. Staff believes that shippers would have three options after receiving this notification:

1. They could implement a written agreement that would pass on the cost of any penalties to the motor carrier, tractor owner, or trailer owner.
2. They could begin inspecting tractors and trailers prior to loading.
3. They could use a different motor carrier, tractor owner, or trailer owner for their transportation needs.

Because the proposed regulation was developed pursuant to AB 32, any violation would be subject to the penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of Division 26 of the California Health and Safety Code.