

California Environmental Protection Agency
AIR RESOURCES BOARD

**CALIFORNIA EVALUATION PROCEDURES FOR AFTERMARKET
CRITICAL EMISSION CONTROL PARTS ON
HIGHWAY MOTORCYCLES**

NOTE: This is a new Evaluation Procedure. For clarity, the proposed text is shown in normal type.

Adopted: January 22, 2009

Note: This document is incorporated by reference in section 2222(j), title 13, California Code of Regulations. It contains the criteria Air Resources Board (ARB) will use to evaluate whether aftermarket critical emission control parts on highway motorcycles qualify for exemptions from California Vehicle Code sections 27156 and 38391. An ARB exemption is required before any aftermarket critical emission control part can be advertised, sold, offered for sale, or installed on a highway motorcycle operating in California.

California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles

- (a) **Applicability.** These procedures apply to any person who manufactures, supplies, distributes, offers for sale, sells, advertises, or installs an aftermarket critical emission control part for use on highway motorcycles in California.
- (b) **Definitions.** The definitions in title 13, California Code of Regulations, section 1900(b), apply to these procedures with the following additions:
- (1) "Aftermarket critical emission control part" means any add-on or modified part or system that is intended to replace or modify any original part or system that is designed and used primarily for the reduction of emissions (exhaust, evaporative, or both) from a highway motorcycle. Examples of aftermarket critical emission control parts include, but are not limited to, catalytic converters and oxygen sensors.
 - (2) "Distributor" means any person to whom an aftermarket critical emission control part is sold or supplied for the purposes of resale or distribution in commerce. Manufacturers, retailers, and consumers are not considered to be distributors.
 - (3) "Highway motorcycle" means a motorcycle that does not qualify for any of the exclusions specified in title 13, California Code of Regulations, section 1958(a), as it existed on January 4, 2008.
 - (4) "Installer" means any person that installs an aftermarket critical emission control part on a highway motorcycle. Consumers are not considered to be installers.
 - (5) "Manufacturer" means any person that imports, manufactures, assembles, packages, or repackages an aftermarket critical emission control part.
 - (6) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (c) **Exemption Procedures.** Manufacturers of aftermarket critical emission control parts for use on highway motorcycles in California, including those parts that are intended to replace any original emission control part or system that is designed and used primarily for the reduction of emissions and that is still covered under the terms of the original vehicle manufacturer's emission warranty, must obtain an exemption from the prohibitions in Vehicle Code sections 27156 and 38391 before advertising, selling, offering for sale or

installing those aftermarket critical emission control parts on a highway motorcycle in California.

The criteria for obtaining an exemption for aftermarket critical emission control parts for use on highway motorcycles in California are set forth below.

(1) **Emissions Testing.** A manufacturer must demonstrate that its aftermarket critical emission control part, when installed on a highway motorcycle, will comply with any exhaust or evaporative emission standard(s) applicable to the certified highway motorcycle for which the part(s) are designed or intended to be installed on, pursuant to title 13, California Code of Regulations, sections 1958(b) and 1976(b)(2), respectively.

(A) **Test Vehicle Selection.** As specified below in section (c)(4) of these procedures, a manufacturer must designate in its application for exemption of an aftermarket critical emission control part any highway motorcycle engine family that the part is designed or intended to be installed in.

For each such designated highway motorcycle engine family, the manufacturer must select a highway motorcycle that is determined to be the worst-case configuration for exhaust emissions. This highway motorcycle will be deemed the manufacturer's test vehicle for the corresponding aftermarket critical emission control part. The test vehicle selection must include consideration of the following minimum criteria:

- (i) Heaviest loaded vehicle weight per engine family, including all accessories and parts offered by the highway motorcycle manufacturer;
- (ii) Highest engine speed-to-vehicle speed (N/V) ratio, and;
- (iii) Highest projected sales for the manufacturer's aftermarket critical emission control part.

In addition to the criteria specified above in section (c)(1)(A), the Executive Officer may also utilize good engineering judgment and/or test data to determine if additional criteria are necessary to select a test vehicle for a specific aftermarket critical emission control part. Manufacturers are advised to consult with Air Resources Board staff before selecting a test vehicle or conducting any testing in support of an application for exemption.

- (B) The aftermarket critical emission control part must be installed in the test vehicle in accordance with the instructions the manufacturer provides to its retailers, installers and ultimate purchasers. The test vehicle with the aftermarket critical emission control part installed shall be assumed to have zero kilometers of service accumulation at the time the part is installed.

- (C) The exhaust emission test procedures for determining compliance with applicable exhaust emission standards are set forth in title 13, California Code of Regulations, section 1958(c), as they existed on January 4, 2008, which incorporates by reference the U.S. Environmental Protection Agency's (U.S. EPA's) test procedures in Title 40, Code of Federal Regulations, Part 86, Subparts E and F, as they existed on July 7, 1986. These test procedures require a manufacturer to conduct service accumulation on the test vehicle and determine deterioration factors from the emission test results.
 - (i) The evaporative emission test procedures for determining compliance with applicable evaporative emission standards are set forth in title 13, California Code of Regulations, section 1976(c) as they existed on January 4, 2008. A manufacturer may request the Executive Officer to waive the evaporative emission testing requirements if it can provide technical justification that its aftermarket critical emissions control part does not affect evaporative emissions.

 - (ii) Any proposed modifications or alterations to either of these test procedures are subject to advance approval by the Executive Officer, who shall utilize good engineering judgment and/or test data to determine if such modifications or alterations will generate test data that adequately characterizes the extent to which an aftermarket critical emission control part will affect the emissions from a highway motorcycle engine.

- (D) Subject to advance approval by the Executive Officer, manufacturers may utilize carryover and/or carryacross of previously generated emission data to fulfill the emissions testing criteria of these exemption procedures. Manufacturers must provide documentation to show the similarities in terms of emissions performance between the aftermarket critical emission control parts and engine families considered for carryover and/or carryacross.

- (E) Confirmatory Testing. The Executive Officer may require that any test vehicle be submitted to the Air Resources Board, at such place or places as the Air Resources Board may designate, for the purpose

of conducting confirmatory emissions tests. The Executive Officer may also specify that such testing be conducted at the manufacturer's selected laboratory facility, in which case instrumentation and equipment specified by the Executive Officer must be made available by the manufacturer for test operations. Confirmatory testing will be performed within 30 days after ARB's receipt of all required vehicle emission test data obtained pursuant to paragraph (c)(1)(C). If the confirmatory test results indicate that any regulated pollutant exceeds the applicable standards, the Air Resources Board will deny the manufacturer's exemption request.

(2) Emission Defects Warranty.

- (A) The manufacturer shall warrant to the initial and each subsequent purchaser of its aftermarket critical emission control part that said aftermarket critical emission control part is designed and manufactured to comply with the applicable requirements of these procedures and is free from defects in materials and workmanship which cause the part to fail to conform with the applicable requirements of these procedures or to cause damage to any original part on the highway motorcycle.
 - (i) If the aftermarket critical emission control part is installed on a highway motorcycle within four years of the date that the highway motorcycle is first acquired by an ultimate purchaser, this emissions warranty requirement will be the applicable full warranty period specified in title 13, California Code of Regulations, section 2036(c), of each subject highway motorcycle pursuant to title 13, California Code of Regulations, section 2035 et seq. from the date of installation. A sample warranty statement in accordance with this paragraph must be submitted to the Executive Officer for approval.
 - (ii) If the aftermarket critical emission control part is installed on a highway motorcycle more than four years after the date that the highway motorcycle is first acquired by an ultimate purchaser, the warranty period will be three years, or half the applicable warranty period mileage specified in title 13, California Code of Regulations, section 2036(c), whichever occurs first, from the date of installation. A sample warranty statement in accordance with this paragraph must be submitted to the Executive Officer for approval.
- (B) The manufacturer or installers, as applicable, must also warrant that each of the aftermarket critical emission control parts is installed correctly in accordance with the manufacturer's specified instructions,

and that the installation will not cause failure of the part to conform to the applicable requirements in these procedures or cause damage to any original part on the highway motorcycle due to incorrect installation. The installation warranty shall be two years or 12,000 kilometers (7,456 miles) from the date of the installation of the aftermarket critical emission control part, whichever occurs first

- (C) The manufacturer must supply a warranty registration card with each aftermarket critical emission control part that it imports, manufactures, assembles, packages, or repackages. The card may inform the purchaser that the information requested may be transmitted either via U.S. mail or electronically, but in no case may the ultimate purchaser be charged to return the card. The cards must be addressed to the manufacturer.

The warranty registration card must include the general terms and conditions of the applicable emission warranties, and a statement that the aftermarket critical emission control part has been designed and manufactured to meet the warranty requirements. The card may request that the ultimate purchaser provide only the following information only:

- (i) Name of ultimate purchaser.
- (ii) Address of ultimate purchaser.
- (iii) Telephone number and e-mail address of ultimate purchaser.
- (iv) Name/model of aftermarket critical emission control part purchased, associated part/serial number.
- (iv) Date part was purchased and installed.
- (v) Model year, make, and model of the highway motorcycle owned by the ultimate purchaser.
- (vi) The mileage of the ultimate purchaser's highway motorcycle at the time the part was installed.
- (vii) Vehicle identification number and license plate number of the highway motorcycle.

- (D) Recordkeeping Requirements.

- (i) The manufacturer must retain records of the number of warranty cards supplied annually, records of the number of returned warranty cards, and records of the information provided in the

returned warranty cards, as specified above in paragraph (c)(2)(C). The manufacturer may account for and consequently retain records of the number of parts that have not yet been sold in California when estimating the percent of warranty cards returned. Such records must be maintained for a period of five years from the date of sale of aftermarket critical emission control parts. The manufacturer must provide this information upon request by Air Resources Board staff. The manufacturer is responsible for ensuring that at least 50 percent of the warranty cards are returned by ultimate purchasers. If the warranty card return rate falls below 50 percent, the manufacturer must implement measures to increase the return rate to at least 50 percent. A manufacturer may alternatively comply with the requisite return rate by demonstrating that it will be able to accurately and effectively locate 50 percent of the ultimate purchasers of its aftermarket critical emission control parts irrespective of the number of warranty cards received. Any manufacturer choosing this option must submit its proposed plan in its application for exemption.

- (ii) Installers and retailers of aftermarket critical emission control parts shall keep documentation regarding the sale and/or installation of the aftermarket critical emission control parts, including part number/model, date of sale and/or installation, purchaser name and address, vehicle make, model and vehicle identification number. This documentation shall be made available upon request by Air Resources Board staff. All such records must be maintained for a period of five years from the date of sale or installation.

(3) **Exemption Labeling.** The manufacturer must permanently identify its exempted aftermarket critical emission control parts by direct stamping or embossment. The identification must be readily visible and readable (i.e., utilize block text that is a minimum of 2 millimeters in height), and resistant to heat, cold, and corrosive materials. A sample of the identification must be submitted in the application for exemption.

(A) The identification must contain the following information:

- (i) The manufacturer's name. If another name is desired (e.g., a brand or equipment name), the manufacturer must make a request to the Executive Officer before proceeding.
- (ii) The name or model number and the part number associated with the aftermarket critical emission control part. The part

name/number must match the name/number stated on the exemption Executive Order.

(iii) The exemption Executive Order number.

(B) If the aftermarket critical emission control part is too small to stamp or emboss the required information in paragraph (c)(3)(A), the manufacturer must supply a legible and visible identification plate or label with the part that contains this information, as well as instructions regarding a visible location upon which it must be permanently affixed on the highway motorcycle.

(4) Application Submittal.

(A) The manufacturer of an aftermarket critical emission control part must submit an application for exemption for each highway motorcycle engine family that the part is designed or intended to be installed in. The application must be in writing, and must be signed by a person authorized to act on behalf of the manufacturer. The manufacturer must submit all information specified above in sections paragraphs (c)(1), (c)(2), and (c)(3) of these Procedures to the Air Resources Board in the format prescribed by the Executive Officer. The manufacturer must also submit the following information in the application for exemption:

- (i) Description of the aftermarket critical emission control part. This includes drawings, dimensions, theory of operation, operational parameters, and a description of the part's configuration on the highway motorcycle if different from the stock configuration (e.g., the aftermarket critical emission control part manufacturer uses a single exhaust system whereas the stock configuration is dual exhaust). If the part is, or includes, a catalytic converter system, the manufacturer must also provide the following specific information:
 - a. Catalyst supplier and address.
 - b. General catalyst type: oxidation, single-bed three-way, dual-bed, etc.
 - c. Location: close-coupled, integrated muffler, bolt-on muffler.
 - d. Number and type of each catalyst used per converter.

- e. Substrate - configuration construction technique (e.g., extruded, laid-up, formed, Dravo disk, etc.), composition, supplier and address, composition of active constituents in substrate. For monolithic substrates, number of cells per square inch of frontal area with the design tolerances, and nominal cell wall thickness. For pelleted substrates, pellet shape and dimensions, pellet bulk density, and, if applicable, usage of more than one type of pellet (e.g., Rh or Pt/Pd), the geometrical distribution of pellets, and the mean impregnation depth of active materials with the production tolerances.
 - f. Washcoat - composition of active constituents, and total active material loading in washcoat.
 - g. Active material - composition of active constituents, loading of each active material including design tolerances, and total active material loading including design tolerances.
 - h. Container - dimensions, volume, materials used, technique of containment and restraint, method of constructing container, canner (if different from catalyst supplier), and insulation and shielding (converter and/or vehicle).
 - i. Physical description - dimensions (e.g., length, width, height, etc.), weight, volume including design tolerances, active surface area (BET), and total active surface area including design tolerances.
- (ii) Installation instructions for each highway motorcycle model that the aftermarket critical emission control part can be installed on.
 - (iii) A list of any authorized installers and installation locations for the manufacturer's aftermarket critical emission control part.
 - (iv) A detailed description of any tamper-resistance method(s) the manufacturer will employ to prevent the removal and/or modification, as applicable, of the aftermarket critical emission control part. For example, a catalytic converter that is integrated in a highway motorcycle's exhaust muffler must utilize an adequate control measure to reduce the likelihood of its removal from the muffler. The manufacturer must provide

the Executive Officer with actual samples of the tamper resistance methods upon request.

- (v) A written statement that the aftermarket critical emission control part, if installed according to the manufacturer's installation instructions, will not in its operation, function, or malfunction result in any unsafe condition endangering the highway motorcycle, its occupants, or persons or property in close proximity to the highway motorcycle.
- (B) After review of the submitted test data and required information, an exemption Executive Order will be issued to the manufacturer only if the application and its information are in compliance with all of the provisions of these procedures. An exemption Executive Order is valid for the parts and highway motorcycle engine families described in the application. The manufacturer must not use the exemption Executive Order as an endorsement or approval by the Air Resources Board.

(5) Audit Reporting and Testing.

- (A) A manufacturer must submit production reports for an exempted aftermarket critical emission control part within 30 days after the last day in each calendar quarter. These production reports must be submitted in a format prescribed by the Executive Officer and provide the following information:
 - (i) Total number of aftermarket critical emission control parts produced that are covered by an Executive Order; and,
 - (ii) Total number of aftermarket critical emission control parts sold/installed in California, and the corresponding vehicle identification numbers, as available.

The production numbers and vehicle identification numbers shall be based on the warranty registration cards received by the manufacturer pursuant to paragraph (c)(2)(C), as well as other methods used by the manufacturer to obtain this information.

- (B) The Air Resources Board reserves the right to inspect facilities and records and may select production units for audit testing. The Air Resources Board may select up to five aftermarket critical emission control parts per manufacturer per year for audit testing. At the manufacturer's expense, aftermarket critical emission control parts selected by the Air Resources Board shall be sent to the Air Resources Board facility or a designated independent laboratory for

testing in accordance with the test procedures in paragraph (c)(1)(C), with the exception of service accumulation requirements. Audit testing will be conducted on highway motorcycle(s) selected by the Air Resources Board. Each highway motorcycle selected for testing will be checked to verify that all engine settings and emission control components are within the manufacturer's specifications. Baseline emissions of the test highway motorcycle will be typical for that particular make, model, and year, and shall be within the applicable emission standards using the deterioration factors provided by the original highway motorcycle manufacturer. The aftermarket critical emission control part shall be installed in accordance with the written instructions provided by the part manufacturer. All measured emissions must be projected to the vehicle's useful distance using the deterioration factors generated by the part manufacturer for its exemption Executive Order.

Initial testing costs, including test vehicle procurement and maintenance, will be borne by the Air Resources Board. For those parts installed on highway motorcycles that do not comply with the applicable emission standards, the manufacturer will reimburse the state for the costs of the audit testing. If one or more of the aftermarket critical emission control parts fails to meet the applicable emission standards in an appropriate test vehicle, the Air Resources Board may rescind a previously granted Executive Order, request further analysis and data from the manufacturer, or require, at the manufacturer's expense, additional parts to be tested. Additional parts to be tested shall be limited to no more than five aftermarket critical emission control parts from the same Executive Order as the failed part per calendar year.

(6) Warranty Defects Reporting.

- (A) Manufacturers shall retain and review unscreened warranty claim records for each California-exempted aftermarket critical emission control part covered under each Executive Order on a production year basis for a period of five years following the production year. If the cumulative number of unscreened warranty claims meets or exceeds four percent (4%) or 10 units, whichever is greater, of any aftermarket critical emission control part produced for sale in California under any individual Executive Order, the manufacturer shall submit an emission warranty information report semi-annually to the Air Resources Board during the five year period. The warranty information report shall contain the information, as applicable, prescribed by title 13, California Code of Regulations, section 2167(b). Unscreened emission warranty claims include both valid emission warranty defect claims and claims resulting from causes

such as cosmetic defects, neglect, improper maintenance, and abuse.

- (B) If the cumulative number of unscreened emission warranty claims reaches or exceeds ten percent (10%) of any aftermarket critical emission control part produced for sale in California under any individual Executive Order or 20 units, whichever is greater, the manufacturer will be required to submit a supplemental emission warranty information report containing information, as applicable, prescribed by title 13, California Code of Regulations, section 2168(j). This includes a determination of whether the cumulative number of valid emission warranty claims exceeds four percent (4%) or 10 units, whichever is greater, of any aftermarket critical emission control part produced for sale in California under any individual Executive Order.
- (C) All emission warranty information reports and updates shall be submitted to the Chief, Mobile Source Operations Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731.

(7) In-Use Recall and Corrective Action. If, after review of a manufacturer's supplemental emission warranty information report pursuant to paragraph (c)(6)(B) above, the Executive Officer determines that the valid failure rate of an aftermarket critical emission control part has reached or exceeded four percent (4%) or 10 vehicles, whichever is greater, the manufacturer may be required to implement the recall procedures or corrective actions specified below in paragraphs (c)(7)(A) et al of these procedures.

(A) Notification of Required Recall or Corrective Action by the Executive Officer. The Executive Officer shall notify the manufacturer when recall or corrective action is required. The Executive Officer's notification shall include a description of each aftermarket critical emission control part encompassed by the determination of nonconformity, shall set forth the factual basis for the determination and shall designate a date no earlier than 45 days from the date of receipt of such notification (no earlier than 90 days for recalls) by which the manufacturer shall submit a plan to remedy the nonconformity unless the manufacturer can show good cause for the Executive Officer to extend the deadline.

(B) Ordered or Voluntary Corrective Action Plan.

- (i) Unless a public hearing is requested by the manufacturer, the manufacturer shall submit a recall or corrective action plan to the Chief, Mobile Source Operations Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731, within the time limit specified in the notification issued pursuant to paragraph (c)(7)(A). The Executive Officer may grant the manufacturer an extension upon good cause shown.

- (ii) The recall or corrective action plan shall contain the following:
- a. A description of each aftermarket critical emission control part to be recalled or subject to corrective action, including the part number and other information as may be required to identify the parts to be recalled or subjected to corrective action.
 - b. A description of the nonconformity and the specific modifications, alterations, repairs, replacements, corrections, adjustments or other changes to be made to bring the aftermarket critical emission control parts into conformity with the requirements of this article including a brief summary of the data and technical studies that support the manufacturer's decision regarding the specific corrections to be made. Nonconformities shall be addressed by replacing a non-conforming component with an improved, conforming component.
 - c. A description of the method by which the manufacturer will determine the names and addresses of the ultimate purchasers of the affected aftermarket critical emission control parts and the method(s) by which they will be notified.
 - d. A description of the procedure to be followed by the ultimate purchasers of the affected aftermarket critical emission control parts to obtain correction of the nonconformity including the date on or after which the ultimate purchaser can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities, as applicable, at which the nonconformity can be remedied. The corrective action described in paragraph (c)(7)(B)(ii)b. shall be completed within a reasonable time designated by the Executive Officer from the date the ultimate purchaser delivers the highway motorcycle for remedy of the nonconformity. In the case where the corrective action permits ultimate purchasers to receive a replacement part from the manufacturer and perform the replacement of the defective aftermarket critical emission control part themselves, the manufacturer must also provide the Executive Officer with a proposed plan on how it will ensure that ultimate purchasers will perform the replacement within that designated time. The manufacturer's plan must include any proposed conditions (e.g., return of the original, defective aftermarket critical emission control part to the manufacturer), criteria, or incentives it will extend to ultimate purchasers when providing them with a

replacement part. These requirements become applicable on the date designated by the manufacturer as the date on or after which the ultimate purchaser can have the nonconformity remedied.

- e. If some or all of the nonconforming aftermarket critical emission control parts are to be remedied by persons other than retailers, installers, or authorized warranty agents of the manufacturer, a description of such class of persons and a statement indicating that the participating members of the class will be properly equipped to perform such remedial action.
 - f. A copy of the letter of notification to be sent to the ultimate purchasers of the affected aftermarket critical emission control parts.
 - g. A description of the system by which the manufacturer will ensure that an adequate supply of parts will be available to perform the corrective action under the recall or corrective action plan including the date by which an adequate supply of parts will be available to initiate the recall campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.
 - h. A copy of all necessary instructions to be sent to those persons (e.g., ultimate purchasers, retailers, installers, etc.) who are to perform the corrective action under the recall or corrective action plan.
 - i. Any other information, reports, or data which the Executive Officer may reasonably determine to be necessary to evaluate the recall plan or other corrective action.
- (iii) If the Executive Officer finds that the recall or corrective action plan is designed effectively to correct the nonconformity and complies with the provisions of paragraph (c)(7)(B) above, the manufacturer will be notified in writing. Upon receipt of the approval notice from the Executive Officer, the manufacturer shall commence implementation of the approved plan. Notification of the ultimate purchasers of the affected aftermarket critical emission control parts and the implementation of the approved corrective action shall commence within 45 days of the receipt of notice unless the manufacturer can show good cause for the Executive Officer to extend the deadline.

(iv) The Executive Officer may extend any deadline in the recall or corrective plan if he or she that a manufacturer has shown good cause for such extension.

(C) Notification of Owners.

(i) Manufacturers shall notify the ultimate purchasers of the affected aftermarket critical emission control parts of a recall or other corrective action by first class mail or by such other means as approved by the Executive Officer. For good cause, the Executive Officer may require the use of certified mail to ensure an effective notification.

(ii) The manufacturer shall use all reasonable means necessary to locate highway motorcycle owners, including returned warranty cards. For good cause, the Executive Officer may require the manufacturer to use motor vehicle registration lists available from State or commercial sources to obtain the names and addresses of the ultimate purchasers of the affected aftermarket critical emission control parts to ensure effective notification.

(iii) The Executive Officer may require subsequent notification by the manufacturer to the ultimate purchasers of the affected aftermarket critical emission control parts by first class mail or other reasonable means. For good cause, the Executive Officer may require the use of certified mail to ensure effective notification.

(iv) The notification of the ultimate purchasers of the affected aftermarket critical emission control parts shall contain the following:

- a. The statement: "The California Air Resources Board has determined that an emission control component installed in your highway motorcycle has a problem that requires corrective action".
- b. A statement that the nonconformity of any such aftermarket critical emission control part will be remedied at the expense of the manufacturer.
- c. A clear description of the aftermarket critical emission control part that will be affected by the recall or other corrective action and a general statement of the measures to be taken to correct the nonconformity.

- d. A statement that such nonconformity, if not corrected, may cause the highway motorcycle to fail an emission inspection.
 - e. A description of the adverse effects, if any, that an uncorrected nonconformity would have on the performance, fuel economy, or driveability of the highway motorcycle or to the function of other engine components.
 - f. A description of the procedure which the ultimate purchasers of the affected aftermarket critical emission control parts should follow to obtain correction of the nonconformity including the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to correct the nonconformity, and a designation of the facilities, as applicable, at which the nonconformity can be remedied.
 - g. A card to be used by the ultimate purchaser of the affected aftermarket critical emission control part in the event the vehicle in which the aftermarket critical emission control part subject to the recall has been sold. The card should be addressed to the manufacturer, have postage paid, and shall provide a space in which the owner may indicate the name and address of the person to whom the highway motorcycle was sold.
 - h. The statement: "In order to ensure your full protection under the emission warranty made applicable to your highway motorcycle by State or Federal law, and your right to participate in future recalls, it is recommended that you have your highway motorcycle (appropriate corrective action) as soon as possible. Failure to do so could be determined to be a lack of proper maintenance of your highway motorcycle."
 - i. A telephone number provided by the manufacturer, which may be used to report difficulty in obtaining (appropriate corrective action).
- (v) The manufacturer shall not condition eligibility for corrective action on the proper maintenance or use of the aftermarket critical emission control part or highway motorcycle except for strong or compelling reasons and with approval of the Executive Officer; however, the manufacturer shall not be obligated to perform corrective action on an aftermarket critical emission control part that has been removed or altered so that the recall action cannot be performed without additional cost.

- (vi) No notice sent pursuant to paragraph (c)(7)(B)(ii)h. above, nor any other communication sent to the ultimate purchasers of the affected aftermarket critical emission control parts, retailers, or installers shall contain any statement, express or implied, that the nonconformity does not exist or will not degrade air quality.
 - (vii) The manufacturer shall be informed of any other requirements pertaining to the notification under paragraph (c)(7)(C) which the Executive Officer has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.
- (D) Repair Identification. The manufacturer must permanently identify by direct embossment or stamping each replacement aftermarket critical emission control part included in the corrective action plan. The identification shall be placed in a location in close proximity to the labeling required by paragraph (c)(3). The identification shall contain the recall campaign number. If the replacement aftermarket critical emission control part is too small to stamp or emboss the recall campaign number, the manufacturer must supply a legible and visible identification plate or label with the part that contains this information, as well as instructions regarding a visible location upon which it must be permanently affixed on the highway motorcycle. Additionally, any facility, as applicable, at which the corrective action was performed must affix a label with a code that is specific to that facility. The label must be in the same general location of the manufacturer's repair identification.
- (E) The manufacturer shall require those who perform the corrective action to provide the ultimate purchaser of the affected aftermarket critical emission control part remedied with a certificate, through a protocol and in a format prescribed by the Executive Officer that indicates that the noncomplying aftermarket critical emission control part has been corrected under the recall program. The certificate is not required if the corrective action is performed by the ultimate purchaser.
- (F) The Executive Officer may require the manufacturer to conduct tests on aftermarket critical emission control parts and/or highway motorcycles incorporating a proposed correction, repair, or modification reasonably designed and necessary to demonstrate the effectiveness of the correction, repair, or modification.
- (G) The manufacturer shall provide to the Executive Officer a copy of all communications which relate to the recall plan directed to retailers, installers, and other persons who are to perform the corrective action. Such copies shall be mailed to the Executive Officer concurrently with

their transmission to retailers, installers, and other persons who are to perform the corrective action under the recall plan.

(H) Recordkeeping and Reporting Requirements.

- (i) The manufacturer must maintain, and provide to the Executive Officer upon request, sufficient records to enable the Executive Officer to conduct an analysis of the adequacy of the recall or corrective action campaign. The records shall include, for each affected aftermarket critical emission control part, but need not be limited to, the following:
 - a. Number of aftermarket critical emission control parts and engine families involved, and recall or corrective action campaign number as designated by the manufacturer.
 - b. Date manufacturer began notifying ultimate purchasers, and date manufacturer completed notifying ultimate purchasers.
 - c. Number of affected aftermarket critical emission control parts and highway motorcycles involved in the recall or corrective action campaign.
 - d. Number of affected aftermarket critical emission control parts and highway motorcycles known or estimated to be affected by the nonconformity.
 - e. Number of affected aftermarket critical emission control parts and highway motorcycles inspected, as applicable, pursuant to the recall plan and found to be affected by the nonconformity.
 - f. Number of inspected highway motorcycles, as applicable.
 - g. Number of affected aftermarket critical emission control parts and highway motorcycles receiving corrective action under the recall plan.
 - h. Number of aftermarket critical emission control parts undergoing corrective action by ultimate purchasers. This number shall be based on the number of replacement parts supplied by the manufacturer to ultimate purchasers, excluding those installed by the manufacturer's retailers or installers.
 - i. Number of affected aftermarket critical emission control parts and highway motorcycles determined to be unavailable for

inspection or corrective action under the recall plan due to exportation, theft, scrapping, or for other reasons (specify).

- j. Number of affected aftermarket critical emission control parts and highway motorcycles determined to be ineligible for recall action due to removed or altered components.
 - k. A listing of the vehicle identification numbers of highway motorcycles subject to recall for which the manufacturer has not been invoiced for corrective action. This listing shall be supplied in a standardized computer data storage format to be specified by the Executive Officer. The frequency of this submittal, as specified in paragraph (c)(7)(H)(iii) below, may be changed by the Executive Officer depending on the needs of recall enforcement.
 - l. Any service bulletins transmitted to retailers and installers that relate to the nonconformity and that have not previously been submitted.
 - m. All communications transmitted to the ultimate purchasers of the affected aftermarket critical emission control parts that relate to the nonconformity and that have not previously been submitted.
- (ii) If the manufacturer determines that the original responses to paragraphs (c)(7)(H)(i)c. and (c)(7)(H)(i)d. of these procedures are incorrect, revised figures and an explanatory note shall be submitted. Responses to paragraphs (c)(7)(H)(i)e., (c)(7)(H)(i)f., (c)(7)(H)(i)g., (c)(7)(H)(i)h., and (c)(7)(H)(i)i. shall be cumulative totals.
 - (iii) Unless otherwise directed by the Executive Officer, the information specified in paragraph (c)(7)(H)(i) of these procedures shall be included in six quarterly reports, beginning with the quarter in which the notification of the ultimate purchasers of the affected aftermarket critical emission control parts was initiated, or until all nonconforming aftermarket critical emission control parts involved in the campaign have been remedied, whichever occurs first. Such reports shall be submitted no later than 30 days after the close of each calendar quarter.
 - (iv) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, and shall make available to the Executive Officer or his or her authorized representative upon request, lists of the names and

addresses of the ultimate purchasers of the affected aftermarket critical emission control parts:

- (a) To whom notification was given;
 - (b) Who received corrective action or inspection under the recall plan;
 - (c) Who was denied eligibility for corrective action due to removed or altered components; and
 - (d) Who are presumed to perform the corrective action themselves.
 - (v) The records and reports required by these procedures shall be retained for not less than one year beyond the useful life of the aftermarket critical emission control parts involved, or one year beyond the reporting time frame specified in paragraph (c)(7)(H)(iii) above, whichever is later.
- (d) Compliance with the provisions of these evaluation procedures does not exempt aftermarket critical emission control parts from compliance with other applicable federal and state statutes and regulations such as noise requirements, safety codes, and other safety regulations, nor will the Air Resources Board test for or determine compliance with such other statutes or regulations.
- (e) **Penalties.** If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an aftermarket critical emission control part for use on highway motorcycles in California in violation of these evaluation procedures, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section 43017 of the Health and safety Code. The Executive Officer may also assess civil penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code.

NOTE: Authority cited: Health and Safety Code sections 39600, 39601, 43000, 43000.5, 43011, and 43107, and Vehicle Code sections 27156, 38391, and 38395. Reference: Health and Safety Code sections 39002, 39003, 39500, 43000, 43000.5, 43009.5, 43011, 43107, 43204, 43205.5, and 43644, and Vehicle Code sections 27156, 38391, and 38395.