

State of California  
AIR RESOURCES BOARD

**STAFF REPORT: Initial Statement of Reasons  
For Proposed Rulemaking**

**NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO  
REPEAL THE 2007 AMENDMENTS TO CALIFORNIA'S EMISSION  
WARRANTY INFORMATION REPORTING AND RECALL  
REGULATIONS (EWIR REGULATIONS) AND EMISSION TEST  
PROCEDURES AND READOPT THE PRIOR EWIR REGULATIONS AND  
EMISSION TEST PROCEDURES**

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This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

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## EXECUTIVE SUMMARY

### **Authority**

California Health and Safety Code (H&SC) sections 43105 and 43106 authorize the ARB to require manufacturers to comply with emission standards and test procedure requirements as part of the new vehicle or engine certification process. There are several existing H&SC sections that not only address that manufacturers meet emission standards, but also ensures that manufacturers build durable emission-related components. H&SC section 43105 authorizes ARB to order a recall or other corrective action for violations of its emission standards or test procedures. Under this same authority, the California Air Resources Board (ARB or Board) has wide discretion to determine the facts constituting compliance with these emission standards and test procedures, to fashion corrective action, including recalls and other remedies for noncompliance, and to adopt procedures for making these determinations. In addition, H&SC section 43106 requires that production vehicles or engines, must in all material respects, be substantially the same as the test vehicles manufacturers use to obtain ARB's certification. Over the years, the ARB has developed programs and regulations aimed at meeting the objectives of the H&SC.

### **In-Use Recall Program**

In 1982, the Board adopted regulations establishing a recall program for in-use vehicles. In this program staff would procure and test about ten similar, well maintained, lower mileage vehicles (typically three years old, and thus within the five year useful life which at the time defined the period the vehicle manufacturer was obligated to meet emission standards.) The emission tests conducted were identical to those used to originally certify the vehicles. If the test vehicles on average exceeded one or more emission standard, a recall of all the vehicles produced of that group was implemented. Owners were notified to bring their car to a dealer, and the vehicle manufacturer was required to take those steps necessary to reduce the vehicles' emissions to below the applicable standard. This often involved replacement of defective parts with parts of improved durability. Initially, many of the groups of similar vehicles tested failed to meet emission standards, but over time manufacturers improved the durability of the emission controls, and the failure rate and number of recalls decreased.

In the recall testing program, staff would often find two or three of the ten vehicles tested had defective emission controls. Because compliance was determined by the average of all ten vehicles tested, emission standards would not be exceeded and no recall would be ordered. Staff was concerned that with 20 to 30 percent of an important emission control part failing at low mileage, the chance of additional failures during the rest of the vehicle's life and resulting high emissions was real and not being addressed. Furthermore, staff resources restricted testing to only a small fraction of the several hundred models certified each year. In addition, the useful life period in which the vehicle manufacturer was responsible for emission compliance was extended to

100,000 miles or more, which meant either testing models several times during their useful life, or waiting to test until the models were older and thus potentially missing problems that may have existed for many years. Finally, on-board diagnostics (OBD) had become well established and was providing valuable information on what specific parts were failing during the vehicle's warranty period. These factors caused staff to develop an additional, more efficient and comprehensive program to identify and recall vehicles with defective emission related parts and systems. This new program was called the Emission Warranty Information Reporting (EWIR) program.

### **Original 1988 EWIR Program**

In 1988, the Board adopted the original EWIR program to address manufacturers' durability requirements as authorized by the H&SC. The ARB launched the first EWIR program in early 1990 requiring all on-road vehicle and engine manufacturers to review all emission-related warranty claims during the warranty period (applicable warranty period for the type of vehicle or engine – e.g., 3 years/50,000 miles or 7 years/70,000 miles for passenger cars, light- and medium-duty trucks, depending on the part) and on a quarterly basis to determine the number of repairs or replacements made for each component. The first step in the warranty reporting process requires that a manufacturer submit an EWIR whenever it determines that an emission-control component for a given engine family or test group reaches an unscreened<sup>1</sup> one percent or 25 component replacement rate (whichever is greater). A manufacturer must continue to analyze warranty claims and report to ARB on a quarterly basis. When the warranty claims for an emission-control component reach an unscreened four percent or 50 component replacement rate (whichever is greater), the manufacturer must submit a Field Information Report (FIR).

The FIR contains the warranty repair rate with any invalid data removed. If this validated failure rate is less than four percent, the manufacturer must determine and report the date when the projected replacement rate is expected to reach four percent. If the manufacturer determines that a valid defect exists, the manufacturer is required to submit an Emissions Information Report to quantify the emissions impact of the defect and, if necessary, determine what action is necessary to correct the problem. Corrective action has either been a recall or in some cases an extended warranty for the failing component.

Over a hundred recalls resulted from this program. However, in several circumstances the recalls were so extensive and costly that vehicle manufacturers balked at conducting the recall. Industry claimed that the statute required ARB to show that every subgroup of vehicles with the defective part exceeded emission standards, even though in some subgroups the rate of warranty claim reached as high as 70 percent. Although ARB disagreed with the manufacturers' position, an administrative law judge ruled in the manufacturer's favor. Based on this, another manufacturer with an extensive problem of defective catalyts was able to narrow down the remedy so that in ARB's opinion many cars with defective catalyts were not fixed and the chance of more vehicles having failures during their remaining vehicle life was great.

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<sup>1</sup> Unscreened – The tabulation of dealership emission warranty service records for emission-related components as they apply to individual engine families or test groups without verification that the part is actually defective.

In each of these cases a systemic failure clearly existed and each manufacturer challenged ARB's authority to require corrective action citing legal interpretations of the EWIR regulations. The staff identified three aspects of the original EWIR regulation that needed improvement, specifically: (1) the proof required to demonstrate violations of ARB's emission standards or test procedures, (2) the corrective actions available to ARB to address the violations and, (3) the way emissions warranty information is reported to ARB. The ARB staff developed a proposal to amend the EWIR regulations to address the issues with implementing the original program.

### **Amended 2007 EWIR Regulations**

The revised program as proposed by staff and adopted by the Board in 2007, was based on the legal concept that in certifying a vehicle for sale in California, a manufacturer is required to demonstrate the durability of its emission control system design through a testing program, and if after sale, a substantial number of the allegedly durable parts fail, the manufacturer has violated the certification test procedure and a recall can be ordered on the basis of the excessive parts failure alone. As a result, no emission testing by ARB was needed, as was no demonstration that the vehicles exceeded emissions standards on average. Simply put, if enough emission control parts break or fail to perform during the warranty period (i.e., a four percent failure rate), the vehicle manufacturer must remedy the defect. In the regulation the Board adopted, the amount of reporting was reduced, and an alternative to recall involving extending the emission warranty was provided as an option. These features reduced the cost of compliance for vehicle manufacturers, provided of course the instances of emission control failure were relatively limited. From the staff standpoint, this revised program provided a greater assurance defective parts would be replaced, and in those instances when the fraction of the part that actually fails in-use remained low (i.e. parts failure was not expected to occur on every vehicle before the end of the vehicle's life), the consumer was protected by the extended warranty and the manufacturer did not have to face the cost and stigma of recalling every vehicle.

The staff's approach had several advantages, including the following: allowing the implementation of swifter recalls or other corrective actions at lower administrative costs, harnessing the powers of on-board diagnostic systems to detect emission component failures and warn drivers to seek repairs, relating the recall/corrective action decision to the durability demonstration that manufacturers must make to obtain ARB's certification, and guaranteeing that the vehicles used by manufacturers for certification testing are substantially the same in all material respects to the vehicles that they sell to the public. Manufacturers disagreed with and were widely opposed to staff's approach to this rulemaking at the December 2006 and March 2007 Board hearings.

### **Lawsuit**

By March 2008, petitions for writs of mandate were filed in Los Angeles Superior Court by the Automotive Service Councils of California and other associated petitioners, and the Engine Manufacturers Association, against ARB challenging the newly amended EWIR regulations on a variety of grounds, including allegations that ARB had no authority to undertake corrective actions based solely on a four percent failure rate. On December 16, 2008, the judge upheld most of the regulation as amended, but ruled

the four percent corrective action threshold did not constitute a “test procedure” as that term is used in the H&SC. As a result ARB could not order a recall or other remedy based on an excessive number of defective emission control parts alone based on this being a violation of the certification test procedures.

Although the judge’s ruling invalidated only this one portion of the amended regulation, ARB staff has concluded that the remaining sections of the amended regulation are unenforceable because they depend on the four percent failure rate corrective action trigger to have any real effect. As a result, the staff is recommending the 2007 EWIR amendments be repealed, and that the version of the EWIR regulation adopted by the Board in 1988 be readopted or allowed to remain in effect. Although there are limits and weaknesses in the previous, 1988 EWIR regulation, it resulted in many recalls of defective parts and vehicles and increased durability of emissions components. Thus, it is a better option than having no emission warranty information reporting or recall regulation at all.

### **Staff Recommendations**

The amended EWIR regulations apply to 2010 and subsequent model year on-road vehicles and engines as set forth in sections 1958, 1956.8, 1961, 1976, 1978, 2112, 2122, 2136, 2141 and new Article 5, sections 2166-2174, 13 CCR, set forth in the proposed Regulation Order and the associated test procedures (see Appendix A). Based on the judge’s ruling, the staff proposes to repeal these regulations and readopt or allow to remain in effect the previous EWIR regulations per 13 CCR, sections 2111-2149 and related test procedures for the 2010 and subsequent model year vehicles and engines.

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**I. Introduction**

This report addresses the California Air Resources Board (ARB or "Board") adopted amendments to the Recall and Emission Warranty Information Reporting (EWIR) Regulations contained in the California Code of Regulations, Title 13 (13 CCR), Division 3, Chapter 2, sections 2112, 2122, 2136, 2141, 2166-2174, and also, the emission test procedures 13 CCR, sections 1956.8, 1958, 1961, 1976 and 1978 and why they need to be repealed. These amendments were created to streamline, refine, and enhance the prior EWIR program to ensure the adherence with the applicable test procedures, the durability of emission-control components installed by vehicle and engine manufacturers and provide corrective action when components fail to perform properly. The amended EWIR regulations would have increased the effectiveness of the program, and reduced overall administrative costs. Due to a decision rendered in an action filed in Los Angeles Superior Court upholding a challenge to the legal authority supporting one aspect of the amendments, ARB staff believes the amended EWIR regulations must be repealed, and replaced with the regulations that were in place prior to the 2007 amendments.

## **II. History of the Program**

### **A. 1982 In-Use Recall Program**

In 1982, the Board adopted regulations establishing a recall program for in-use vehicles. In this program, staff would procure and test approximately ten similar, well-maintained, low-mileage vehicles (typically three years old, and thus within the five year “useful life” period which, at the time, was the period in which the vehicles were required to meet emission standards.) The tests were identical to tests used by manufacturers to certify the vehicles to ARB’s emission standards. If the test vehicles on average exceeded emission standards, ARB ordered a recall for all vehicles produced in the tested group. Manufacturers implemented ARB’s order by notifying owners to take their cars to dealers for repair, where manufacturers paid the dealers to take the steps necessary to reduce the vehicles’ emissions to below applicable emission standards. This often involved replacing defective parts with parts of improved durability. In the early years of the program, many vehicles failed to meet emission standards and were recalled, but over time manufacturers improved the durability of their emission control components, and the failure rate and number of recalls declined.

Nevertheless, staff found that in a significant number of cases two or three of the ten vehicles in the test group had defective emission control components. Because compliance with emission standards was determined by averaging the results of all ten vehicles tested, in most of these cases the test group did not exceed emission standards on average, and no recall or other corrective action could be ordered. Staff believed, however, that these 20 percent to 30 percent failure rates of important emission control components occurring at low mileage accumulations were unacceptable because they meant that the chance of additional failures was real and would result in high emissions in substantial portions of the in-use fleet. Existing resources limited testing to a small fraction of the several hundred vehicle models the ARB certifies each year. In addition, the useful life period over which the vehicle manufacturer was responsible for maintaining emission compliance was extended by regulation to 100,000 miles or more. This required either testing vehicle models several times over their useful lives, or testing older models and delay detecting problems that may have existed for years. During this period, vehicular on-board diagnostic systems (OBD) became common and began to provide valuable information on what specific emissions parts were failing during emissions warranty periods.

### **B. Original 1988 EWIR Program**

These circumstances led staff to propose a more efficient and comprehensive program to identify and recall vehicles with defective emission related parts and systems, which the Board adopted in 1988. This new program was called the Emission Warranty Information Reporting and Recall (EWIR) program (1988 EWIR regulations). Vehicle manufacturers were required to keep records of emission control parts that were returned under warranty claims, report if the number exceeded a certain threshold



and then determine the actual failure rate (e.g., some returned parts replaced under warranty could be excluded because they may not actually be defective due to mechanics having misdiagnosed the problem). When the validated failure rate of an emissions part exceeded 4 percent within the warranty period, ARB ordered a recall and manufacturers usually complied.

Over a hundred recalls resulted from this program. However, in a number of cases, the recalls were so extensive and costly that vehicle manufacturers balked at conducting them. Manufacturers claimed that the law required ARB to show that every subgroup of vehicles with the defective part exceeded emission standards, even though in some subgroups the rate of warranty claims reached 70 percent. Although ARB disagreed with the manufacturers' position, an administrative law judge ruled in the manufacturers' favor. Based on this ruling, another manufacturer with an extensive problem of defective catalysts was able to implement such a narrow remedy that, in ARB's opinion, many vehicles with defective catalysts were not repaired and the chances of more vehicles experiencing similar failures over their useful lives is great. Utilizing this ruling, other manufacturers resisted ARB's attempts to correct other instances of emission control component failures.

### C. 2007 EWIR Amendments

Based on this experience, ARB staff developed a revised emission warranty information reporting regulation. The revised program, adopted by the Board in 2007 (the 2007 EWIR amendments), was based on the requirement that in certifying a vehicle for sale in California, a manufacturer is required to demonstrate the durability of its emission control system design over a vehicle's useful life through a testing program, and, if a substantial number of the allegedly durable parts fail in use, the manufacturer has violated the certification test procedure and a recall can be ordered on the basis of the excessive parts failure alone. As a result, no emission testing by ARB was needed, and neither was a demonstration that the vehicles exceeded emissions standards on average. Simply put, under the 2007 EWIR amendments, if four percent of a particular emission control part fails to perform during the warranty period, the vehicle manufacturer must remedy the defect. Also, the burden of warranty reporting was reduced, and an alternative to recall involving extending the emission warranty was provided as well. These features reduced the cost of compliance for vehicle manufacturers, provided, of course, that the instances of emission control failure were relatively limited. From the staff's standpoint, this revised program provided a greater assurance that defective parts would be replaced, and in instances where the percentage of parts that fail in-use remained low (i.e. parts failure was not expected to occur on every vehicle before the end of the vehicle's life), the consumer was protected by the extended warranty and the manufacturer did not face the cost or stigma of recalling every vehicle.

### **III. Legal Challenges to the 2007 EWIR Amendments**

Following the adoption of the 2007 EWIR amendments, the Automotive Service Councils of California and associated industry groups, and the Engine Manufacturers Association, filed petitions for writs of mandate challenging them. On December 16, 2008, a judge upheld most of the 2007 EWIR amendments, but ruled that the four percent corrective action threshold did not constitute a “test procedure” as that term is used in the Health and Safety Code. As a result, ARB could not order a recall or other remedy under the 2007 EWIR amendments based the failure of emission control parts.

### **IV. Why is Repeal Necessary**

The judge’s December 16, 2008 decision invalidated the most crucial aspect of the amendments, the four percent emission-control component failure rate standard upon which the amendments authorized ARB to order recall or other corrective action. After analyzing the decision’s impact on the remaining 2007 EWIR amendments, ARB’s staff has concluded that the amendments are unenforceable without the four percent failure rate corrective action standard. Since the basis for determining whether a systemic failure of an emission-control component (the four percent failure rate corrective action standard) is legally void and the rest of the amended EWIR regulations in new Article 5, 13 CCR, sections 2167-2168 that establish rules, standards, and procedures for determining a systemic failure are based on the four percent failure rate corrective action standard, the remainder of the amendments have little purpose without the ability to enact corrective action. Therefore, it would be pointless to attempt to implement the EWIR regulations as they were amended in 2007 without the four percent failure rate corrective action standard. Consequently, based on all these circumstances, ARB staff believes repealing the amendments is necessary and beneficial towards air quality because it will allow the prior version of the EWIR program to remain in effect.

If the repeal is not adopted, starting with the 2010 model year vehicles and engines, manufacturers will only have to report EWIRs once a year and only when the warranty failure rate for a given component for a given test group/engine family reaches four percent. When these failure rates reach ten percent, the ARB can only attempt to negotiate a corrective action plan with the manufacturer but there is no authority for ARB to require any such action. The manufacturer can simply disregard the problem and do nothing. Therefore, it is staff’s recommendation that the 2007 EWIR regulation amendments be repealed. This will have the effect of readopting or allowing to remain in effect, the previous EWIR regulations adopted by the Board in 1988 per 13 CCR, sections 2111-2149 for the 2010 and subsequent model year vehicles and engines.

In practice, the EWIR regulations will revert back to the 1988 EWIR regulations that were in effect prior to the 2007 EWIR amendments. Although there are limits and weaknesses in the previous 1988 EWIR regulations, it resulted in many recalls of defective parts and vehicles and increased durability of emissions components. As

mentioned above, having the 1988 EWIR program in effect is preferable to having no emission warranty information reporting or recall regulation.

## **V. Proposed Action**

Although the judge's ruling invalidated only one portion of the amended 2007 EWIR regulation, ARB staff has concluded that the remaining sections of the amended regulation are unenforceable because they depend on the four percent failure rate corrective action trigger to have any real effect. As a result, the staff is recommending the 2007 EWIR amendments be repealed, and that version of the EWIR regulation adopted by the Board 1988 be readopted and or allowed to remain in effect. Although there are limits and weaknesses in the 1988 EWIR regulation, it resulted in many recalls of defective parts and vehicles and increased durability of emissions components. Thus, it is a better alternative than having no emission warranty information reporting or recall regulation.

The following sections of Title 13 California Code of Regulations (CCR) and related test procedures are affected by the staff's proposal: Amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2112, 2122, 2136, 2141, Title 13, CCR, and the following related test procedures which are incorporated by reference: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted August 5, 1999, and as last amended May 2, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," adopted December 12, 2002, and as last amended October 14, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto Cycle Engines," adopted December 27, 2000, and as last amended October 17, 2007, "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, and repeal of sections 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, and 2174. This will have the effect of readopting Title 13, CCR, sections 2111-2149, as they existed prior to the 2007 EWIR amendments.

## **VI. Comparable Federal Regulations**

The proposed amendments to the 2007 EWIR regulations and readoption of the prior EWIR regulations have requirements that are similar to the federal defect reporting procedures. (See, generally 40 C.F.R. Part 85, in particular 40 C.F.R. sections 85.1901 and 85.1903.) Federal law requires a onetime report – the Emissions Defect Information Report (EDIR) – describing the defect, the vehicles it affects and its impact on emissions. However, the federal defect reporting requirement is wanting compared to ARB's proposed emission warranty reporting program because under the federal rule

manufacturers are permitted to determine their own process for reporting and lacks oversight for determining the true cause of a specific failure.

## **VII. Air Quality, Environmental, and Economic Impacts**

The original EWIR program adopted in 1988 will continue to have a positive impact on air quality by ensuring that many California-certified vehicles or engines which have been identified as having systemic emission-control components defects are subjected to corrective actions. The benefits will be somewhat less than had the 2007 EWIR amendments been implemented, however that is not possible given the recent court decision.

### **A. Environmental Justice**

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Senate Bill 115, Solis; Stats 1999, Ch. 690; Government Code section 65040.12 (c)). The Board has created a structure for incorporating environmental justice into the ARB's programs consistent with the directives of State law. The policies developed relate to all communities in California, but recognize that environmental justice issues have been raised more in the context of low income and minority communities, which occasionally experience greater exposures to some pollutants as a result of the cumulative impacts of air pollution from multiple mobile, commercial, industrial, area wide, and other sources.

However, over the past twenty years, there has been significant progress towards improving the air quality in California much to the credit of the ARB, local air districts, and federal air pollution control programs. Unfortunately, there are still some communities that continue to be faced with higher exposures than others as a result of the cumulative impacts of air pollution from multiple mobile and stationary sources and therefore, may suffer an unbalanced level of adverse health effects.

The anticipated emissions reductions from repealing the 2007 EWIR amendments will still provide some benefit by reverting back to the original EWIR regulations and will affect all vehicles statewide.

### **B. Economic Impacts**

Since the proposal is to repeal of the 2007 EWIR amendments and readopt the prior regulations, the impacts are to reverse the original expected costs and benefits that would have resulted from the adoption of the 2007 EWIR amendments. The economic impacts of the 2007 EWIR amendments are discussed at length in the October 20, 2006 Initial Statement of Reasons (ISOR) and the January Supplemental ISOR supporting the 2007 EWIR amendments. Both the October 20, 2006 ISOR and

the January Supplemental ISOR supporting the 2007 EWIR amendments are incorporated by reference here.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs to the ARB. The staff had expected the need for two additional staff at a cost of \$200,000 a year to implement and enforce the 2007 EWIR amendments starting in 2010. Those two staff will no longer be needed if the amendments are repealed. In addition, no costs would be created to any other State agency, or in federal funding to the State as a result of the repeal. The repeal/readoption will not create costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies.

The businesses impacted by the proposed repeal would be manufacturers of California motor vehicles. There are presently 35 domestic and foreign corporations that manufacture California-certified passenger cars, light-duty trucks, and medium-duty gasoline and diesel fueled vehicles, 20 heavy-duty engine manufacturers, and over 60 motorcycle manufacturers. Only one motor vehicle manufacturing plant (NUMMI) is located in California. The originally proposed amendments would have resulted in reporting cost savings due to a reduced reporting requirement, however, the repeal would eliminate this benefit to the manufacturers. In addition, since manufacturers are fully expected and required to comply with emission standards and regulations, enforcement costs to manufacturers would have been negligible with the amendments, with the exception for those manufacturers that had high defective emission component rates and their resulting corrective action. While it was speculated the amendments would have resulted in more corrective actions in general, it was also estimated the industry wide costs would have to be roughly equivalent. Repealing the 2007 EWIR amendments is expected to result in fewer corrective actions; however, the same effect is expected industry wide, and there will be very little impact compared to what the costs are today.

The Executive Officer has also determined, pursuant to Title 1, CCR, section 4, that the repeal of the 2007 EWIR amendments will not affect small businesses. The 2007 amendments had assumed slight, absorbable or positive impacts, and the repeal is simply status quo. Additionally, as with the 2007 EWIR amendments, their repeal should have no potential impact on the independent service and repair industry and aftermarket parts manufacturers since the amended regulations deal with mainly new vehicles and engines that are still within their certified useful life period.

In developing this amendment, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. In fact a savings could be realized by businesses.

The Executive Officer has made an initial determination, pursuant to Government Code section 11346.5(a)(8), that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would have minor or no impact on the creation and elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to the businesses are necessary for the health, safety, and welfare of the people of the State of California.

#### C. Costs to State and Local Agencies

Since there will be fewer corrective actions required, there won't be a need for additional ARB staff to ensure the corrective actions are taken, and consequently, there will be no costs incurred by state agencies as a result of the repeal of the 2007 EWIR amendments.

#### D. Costs to Engine and Motor Vehicle Manufacturers

The businesses to which the repeal of the amended regulations are addressed and for which compliance will be required are manufacturers of motor vehicles and engines. There are presently 35 domestic and foreign corporations that manufacture California-certified passenger cars, light-duty trucks, and medium-duty gasoline and diesel fueled vehicles that would be subject to the proposed repealed amendments. With the repeal of the 2007 EWIR amendments, the costs to engine and motor vehicle manufacturers will be increased, although minimal, since the original EWIR program, which will go back in place, had more extensive reporting requirements.

#### E. Potential Impacts on Other Businesses

The repeal of the 2007 EWIR amendments should have no potential impact on the independent service and repair industry and aftermarket parts manufacturers since the amended regulations deal with mainly new vehicles and engines that are still within their certified useful life period, and corrective actions resulting from recalls must be done by a car dealer in the original program as well as the amended program that is proposed for repeal.

#### F. Potential Impacts on Business Competitiveness

The repeal of the 2007 EWIR amendments is not expected to have an effect on the ability of California businesses to compete with businesses in other states.

#### G. Potential Impacts on Employment

The repeal of the 2007 EWIR amendments is not expected to have an impact on employment.

#### H. Regulatory Alternatives

Repeal the four percent trigger for recall: One regulatory alternative would be to repeal the one section of the 2007 EWIR amendments found invalid by the judge, and leave the rest of the 2007 EWIR amendments in place. Staff rejected this approach because the remaining elements of the amended EWIR program would not require corrective actions and thus the program would be largely ineffective.

Repeal the EWIR program entirely: Staff rejected this approach because the original program, despite its limitations, has resulted in many corrective actions that have reduced emissions.

Repeal the 2007 EWIR amendments and readopt the original EWIR program adopted by the Board in 1988: Staff is proposing this approach because it addresses the court decision while retaining an EWIR program that can be implemented (as it was from 1988 on) and results in lower emissions.

### **VIII. Summary and Staff Recommendation**

Based on the judge's ruling, the staff proposes to repeal the 2007 EWIR amendments. Subsequently, staff proposes to readopt or reinstate the previous EWIR regulations per 13 CCR, sections 2111-2149 for the 2010 and subsequent model year vehicles and engines.

## **IX. References**

1. California Code of Regulations (CCR), Title 13, sections 1956.8, 1958, 1961, 1976, and 1978, sections 2111-2149 adopted November 1988.
2. California Code of Regulations (CCR), Title 13, sections 1956.8, 1958, 1961, 1976, and 1978, sections 2111, 2122, 2136, 2141 and new Article 5, sections 2166-2174 as amended March 2007.
3. Tentative Decision, December 12, 2008 and Peremptory Writ of Mandate, January 14, 2009 Superior Court of California, County of Los Angeles, Case No. BS112735.
4. Staff Report: Initial Statement of Reasons (ISOR): Public Hearing To Consider Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures, October 20, 2006.
5. Supplemental Staff Report: Mail-Out #MSO 2007-01, Notice of Public Workshop Regarding Proposed Amendments to the Procedures for Reporting Failures of Emission-Related Components and Corrective Actions; Supplement to the Initial Statement of Reasons, January 23, 2007



Appendix A:

Proposed Regulations Changes

## **CALIFORNIA'S EMISSION WARRANTY INFORMATION REPORTING AND RECALL REGULATIONS AND EMISSION TEST PROCEDURES**

Set forth below are the proposed amendments to title 13, of the California Code of Regulations. Proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. Amendments to these regulations that were adopted by the Board on May 28, 2009 as part of a rulemaking for plug-in hybrid electric vehicles, but which have not yet been approved by the Office of Administrative Law are indicated in dotted underline to indicate additions and ~~italics double strikeout~~ to indicate deletions. Amendments to these regulations that will be considered for adoption by the Board on September 25, 2009 as part of a rulemaking to modify passenger vehicle greenhouse gas regulations are indicated in broken underline to indicate additions and ~~ALL CAPITAL ITALICS DOUBLE STRIKEOUT~~ to indicate deletions. Portions of the regulations not being changed are indicated by asterisks (\*\*\*\*\*) or by [No change].

Amend sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, and 2141, title 13, California Code of Regulations, to read as follows:

### **§ 1956.8. Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles.**

- (a) [No change.]
- (b) The test procedures for determining compliance with standards applicable to 1985 and subsequent model heavy-duty diesel engines and vehicles and the requirements for participation in the averaging, banking and trading programs, are set forth in the "California Exhaust Emission Standards and Test Procedures for 1985 through 2003 Model Heavy-Duty Diesel Engines and Vehicles," adopted April 8, 1985, as last amended December 12, 2002, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," adopted December 12, 2002, as last amended ~~October 14, 2008~~ [insert date of amendment for this rulemaking], and the "California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-Electric Vehicles, in the Urban Bus and Heavy-Duty Vehicle Classes," adopted October 24, 2002, which are incorporated by reference herein.
- (c) [No change]
- (d) The test procedures for determining compliance with standards applicable to 1987 and subsequent model heavy-duty Otto-cycle engines and vehicles are set forth in the "California Exhaust Emission Standards and Test Procedures for 1987 through 2003 Model Heavy-Duty Otto-Cycle Engines and Vehicles," adopted April 25, 1986, as last amended December 27, 2000, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," adopted December 27, 2000, as last amended ~~October 17, 2007~~ [insert date of amendment for this rulemaking], the "California Non-Methane Organic Gas Test Procedures," adopted July 12, 1991, as last amended July 30, 2002, and the "California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-

Electric Vehicles, in the Urban Bus and Heavy-Duty Vehicle Classes," adopted October 24, 2002, which are incorporated by reference herein.

(e) [No change.]

\* \* \* \* \*

Note: Authority cited: Sections ~~39500~~, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, and 43106, 43107 ~~and~~ 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, ~~39667~~, 43000, ~~43009.5~~, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, ~~43105~~, 43106, ~~43107~~, 43202, 43204, ~~43205~~, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

**§ 1958. Exhaust Emission Standards and Test Procedures – Motorcycles Motorcycle Engines Manufactured on or After January 1, 1978.**

\* \* \* \* \*

*Introduction.* [No change.]

Sections (a) through (c)(4). [No change.]  
Amend (c) by adding (5) below:

~~(5) Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California certified engine family or test group, it constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.~~

\* \* \* \* \*

Note: Authority cited: Sections ~~39500~~, 39600, 39601, 43013, ~~43018, 43100~~, 43101, ~~43102~~, 43104, and 43105, 43106, 43107 ~~and~~ 43806, Health and Safety Code. Reference: Sections 39002, 39003, ~~39500~~, ~~39667~~, 43000, ~~43009.5~~, 43013, 43017, 43018, 43100, 43101, ~~43101.5, 43102~~, 43104, and 43105, 43106,

**§ 1961. Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.**

\* \* \* \* \*

*Introduction.* [No change.]

Sections (a) through (c). [No change.]

(d) *Test Procedures.* The certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” as amended ~~May 2, 2008~~ ~~[INSERT DATE OF AMENDMENT FOR THE PLUG-IN HYBRID ELECTRIC VEHICLE RULEMAKING]~~ ~~[insert date of amendment for the passenger vehicle greenhouse gas rulemaking]~~ ~~[insert date of amendment for this rulemaking]~~, and the “California Non-Methane Organic Gas Test Procedures,” as amended July 30, 2002, which are incorporated herein by reference. In the case of hybrid electric vehicles and on-board fuel-fired heaters, the certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the “California Exhaust Emission Standards and Test Procedures for 2005 ~~and Subsequent~~ through 2008 Model Zero-Emission Vehicles, and 2001 ~~and Subsequent~~ through 2008 Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes,” incorporated by reference in section 1962 and the “California Exhaust Emission Standards and Test Procedures for 2009 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes.” incorporated by reference in section 1962.1.

\* \* \* \* \*

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43101, 43104, ~~and 43105 and 43106~~, Health and Safety Code. Reference: Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204 and 43205, Health and Safety Code.

**§ 1976. Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.**

Sections (a) through (b). [No change.]

(c) The test procedures for determining compliance with the standards in subsection (b) above applicable to 1978 through 2000 model-year vehicles are set forth in “California Evaporative Emission Standards and Test Procedures for 1978-2000 Model Motor Vehicles,” adopted by the state board on April 16, 1975, as last amended August 5, 1999, which is incorporated herein by reference. The test procedures for determining compliance with standard applicable to 2001 and subsequent model-year vehicles are set forth in the “California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor

Vehicles,“ adopted by the state board on August 5, 1999, and as last amended ~~October 17, 2007~~ [insert date of amendment for the plug-in hybrid electric vehicle rulemaking] [insert date of amendment for this rulemaking], which is incorporated herein by reference.

Sections (d) through (f). [No change.]

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43101, 43104, 43105 and 43106, Health and Safety Code. Reference: Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, and 43205, Health and Safety Code.

## **§ 1978. Standards and Test Procedures for Vehicle Refueling Emissions.**

Section (a). [No change.]

(b) The test procedures for determining compliance with standards applicable to 1998 through 2000 gasoline, alcohol, diesel, and hybrid electric passenger cars, light-duty trucks, and medium-duty vehicles are set forth in the: “California Refueling Emissions Standards and Test Procedures for 1998-2000 Model Year Motor Vehicles,” as amended August 5, 2000, which is incorporated herein by reference. The test procedures for determining compliance with standards applicable to 2001 and subsequent gasoline, alcohol, diesel, and hybrid electric passenger cars, light-duty truck, and medium-duty vehicles are set forth in the “California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles,” adopted August 5, 1999, and last amended ~~October 17, 2007~~ [insert date of amendment for the plug-in hybrid electric vehicle rulemaking] [insert date of amendment for this rulemaking], which is incorporated herein by reference.

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43101, 43104, 43105 and 43106, Health and Safety Code. Reference: Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, and 43205, Health and Safety Code.

## **§ 2111. Applicability.**

(a) These procedures shall apply to:

(1) California-certified 1982 and subsequent ~~through the 2009~~ model-year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, motorcycles, and California-certified 1997 and subsequent model-year off-road motorcycles and all-terrain vehicles, and 2007 and subsequent model-year off-road sport vehicles, off-road utility vehicles, and sand cars, including those federally certified vehicles which are sold in California pursuant to Health and Safety Code section 43102,

\* \* \* \* \*

Note: Authority cited: Sections 39600, 39601, 43013, 43018 and 43105 ~~and 43106~~, Health and Safety Code. Reference: Sections 43000, 43009.5, 43013, 43018, 43101, 43104, 43105, 43106, 43107 and 43204-43205.5, Health and Safety Code.

**§ 2122. General Provisions.**

The provisions regarding applicability of the ordered recall procedures and the definitions shall be the same as those set forth in Title 13, California Code of Regulations, Sections 2111 and 2112. ~~The provisions of this Article shall apply to the vehicles and engines specified in section 2111 manufactured up to and including the 2009 model year, plus their useful lives. This Article shall not apply to vehicles and engines manufactured for the 2010 model year and thereafter.~~

Note: Authority cited: Sections 39600, 39601, 43013, 43018 and 43105 ~~and 43106~~, Health and Safety Code. Reference: Health and Safety Code Sections 43000, 43009.5, 43013, 43018, 43101, 43104, 43105, 43106, 43107 and 43204-43205.5, Health and Safety Code.

**§ 2136. General Provisions.**

The provisions regarding applicability of the enforcement test procedures and the definitions shall be the same as those set forth in Title 13, California Code of Regulations, Sections 2111 and 2112, ~~and beginning with the 2010 model year, Sections 2166 and 2166.1. If the Executive Officer determines that an emissions or test procedure violation exists under Health and Safety Code 43105, he/she may order a recall or corrective action to correct the affected vehicles or engines.~~

Note: Authority cited: Sections 39600, 39601, 43013, 43018 and 43105 ~~and 43106~~, Health and Safety Code. Reference: Health and Safety Code Sections 43000, 43009.5, 43013, 43018, 43101, 43104, 43105, 43106, 43107 and 43204-43205.5, Health and Safety Code.

**§ 2141. General Provisions.**

(a) The provisions regarding applicability of the failure reporting procedures and the definitions shall be the same as those set forth in Title 13, California Code of Regulations, Sections 2111 and 2112, except that this Section 2141 does not apply to off-road compression-ignition engines, as defined in Section 2421. ~~The provisions of this Article shall apply to the vehicles and engines specified in section 2111 manufactured up to and including the 2009 model year, plus their useful lives. This Article shall not apply to vehicles and engines manufactured for the 2010 model year and thereafter.~~

\* \* \* \* \*

Note: Authority cited: Sections 39600, 39601, and 43105 ~~and~~ 43106, Health and Safety Code. Reference: Sections 43000, 43009.5, 43018, 43101, 43104, 43105, 43106, 43107 and 43204-43205.5, Health and Safety Code.

## **~~Article 5. Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action~~**

### **~~§ 2166. General Provisions.~~**

~~(a) The provisions of this article apply to:~~

~~(1) California-certified 2010 and subsequent model-year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and motorcycles.~~

~~(2) California-certified engines used in such vehicles.~~

~~(b) For the purposes of this article, the definitions shall be the same as those set forth in Title 13, California Code of Regulations, Section 2035 (c) and Section 2166.1.~~

~~(c) These procedures shall not apply to zero-emission vehicles and those vehicles certified under Health and Safety Code 44201.~~

~~(d) The Executive Officer may waive any or all of the requirements of this Article if he or she determines that the requirement constitutes an undue burden on the manufacturer. In making this determination, the Executive Officer may, but is not required to, consider the emissions impact, except as provided in 2168(f), or the economic impact of the requirement.~~

~~(e) This article contains procedures for reporting emissions warranty information and procedures for determining, and the facts constituting, compliance or failure of compliance with and violations of test procedures based on emissions warranty information. This article also contains procedures for requiring recalls or other corrective action based on such information. Nothing in this article shall limit the Executive Officer's authority pursuant to Health and Safety Code section 43105 to require recalls or other corrective action in other types of situations.~~

~~(f) Each part of this article shall be deemed severable, and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effect.~~

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

**§ 2166.1. Definitions.**

~~(a) "Capture rate" means the percentage of in-use vehicles subject to recall which must be corrected to bring the class or category of vehicles into compliance. The number of vehicles subject to recall shall be based on the actual number of vehicles in use as verified by the Department of Motor Vehicles registration records, or vehicle or engine registration records compiled and prepared by R. L. Polk and Company or a comparable source at the time a recall is initiated.~~

~~(b) "Corrective Action" refers to any action taken by the manufacturer to remedy a violation of emission standards or test procedures. Corrective action may include recall, extended warranty, or other action ordered by the Executive Officer. The Executive Officer may order direct notification of corrective action to vehicle or engine owners.~~

~~(c) "Days", when computing any period of time, means normal working days on which a manufacturer is open for business, unless otherwise noted.~~

~~(d) "Emission control component" or "emission related component" means a device, system, or assembly described in the manufacturer's approved application for certification which is considered to be a "warranted part" pursuant to Title 13, California Code of Regulations, Division 3, Chapter 1, Article 6 and subject to this Article.~~

~~(e) "Emission Warranty Claim" means an adjustment, inspection, repair or replacement of a specific emission-related component within the statutory warranty period for which the vehicle or engine manufacturer is invoiced or solicited by a repairing agent for compensation pursuant to Title 13, California Code of Regulations, Division 3, Chapter 1, Article 6 and subject to this Article.~~

~~(f) "Executive Officer" means the Executive Officer of the Air Resources Board or his or her authorized representative.~~

~~(g) "Exhaust after treatment device" means any device or system designed to oxidize, reduce or trap post combustion exhaust emissions, including those components that transport the exhaust emissions from the engine to the after treatment device, described in the manufacturer's application for certification, and installed on a vehicle or engine certified for sale in California.~~

~~(h) "Extended Warranty" means corrective action required by the Executive Officer that extends the warranty time and mileage periods for a specific emissions-related component pursuant to this article. For passenger cars, light duty trucks, medium duty vehicles and engines, and heavy-duty vehicles and engines used in such vehicles, the extended warranty shall be equal to the applicable certified useful life period of that vehicle or engine. The Executive Officer may order direct notification of corrective action to vehicle or engine owners. The extended warranty on hybrid electric vehicle battery packs used for vehicle propulsion shall be limited to the lesser of 1) the applicable useful life of the vehicle or 2) 10 years.~~

~~(i) "Emission Warranty Information Reporting Termination Point" means the point at which the requirement to submit the Emission Warranty Information Reports terminates. Emission Warranty Information Reports shall be updated until one year after the statutory warranty time~~



period for a given model year ends (e.g., a 2010 model year engine family with a three year or 50,000 mile warranty period would be reported until the end of the 2013 calendar year). The only exception is PZEV vehicles which will be limited to a 12 year reporting period and the seven year or 70,000 mile high price components will be limited to a reporting period of 5 years.

(j) "Influenced Emission Recall" means an inspection, repair, adjustment, or modification program initiated and conducted by a manufacturer or its agent or representative as a result of any evidence of noncompliance to remedy any nonconformity for which direct notification of vehicle or engine owners is necessary.

(k) "Nonconformity" or "noncompliance" exists whenever an engine family, test group or subgroup of vehicles is determined to be in violation of test procedures pursuant to this Article.

(l) "Ordered Recall" or "recall" means an inspection, repair, adjustment, or modification program required by the Executive Officer and conducted by the manufacturer or its agent or representative to remedy any nonconformity for which direct notification of vehicle or engine owners may be required.

(m) "Quarterly reports" refer to the following calendar periods: January 1– March 31, April 1– June 30, July 1– September 30, October 1– December 31.

(n) "Systemic Failure" means any emission control component as defined in this article, found to have valid failures that represent at least four percent or 50 vehicles or engines (whichever is greater) of the vehicles or engines of a California certified engine family or test group, pursuant to this Article.

(o) "Ultimate purchaser" has the same meaning as defined in section 39055.5 of the Health and Safety Code.

(p) For the purposes of this article, "useful life" means the following, however, nothing in this subsection alters the applicability provisions of section 2166.

(1) For Class I motorcycles and motorcycle engines (50 to 169 cc or 3.1 to 10.4 cu. in.), a period of use of five years or 12,000 kilometers (7,456 miles), whichever first occurs.

(2) For Class II motorcycles and motorcycle engines (170 to 279 cc or 10.4 to 17.1 cu. in.), a period of use of five years or 18,000 kilometers (11,185 miles), whichever first occurs.

(3) For Class III motorcycles and motorcycle engines (280 cc and larger or 17.1 cu. in. and larger), a period of use of five years or 30,000 kilometers (18,641 miles), whichever first occurs.

(4) For 2001 and subsequent model year medium duty low emission, ultra low emission and super ultra low emission vehicles certified to the primary standards in section 1961(a)(1), and motor vehicle engines used in such vehicles, a period of use of ten years or 120,000 miles, whichever occurs first. For 2001 and subsequent medium duty low emission, ultra low emission and super ultra low emission vehicles certified to the optional 150,000 mile standards in section 1961(a)(1), and motor vehicle engines used in such vehicles, a period of use of fifteen years or 150,000 miles, whichever occurs first. For all other 1995 and subsequent model year medium-

duty vehicles and motor vehicle engines used in such vehicles, a period of use of eleven years or 120,000 miles, whichever occurs first.

(5) For those passenger cars and light-duty trucks certified to the primary standards in section 1961(a)(1), the useful life shall be ten years or 120,000 miles, whichever occurs first. For 2001 and subsequent passenger car and light-duty truck low-emission, ultra-low-emission and super-ultra-low-emission vehicles certified to the optional 150,000-mile standards in section 1961(a)(1), and motor vehicle engines used in such vehicles, a period of use of fifteen years or 150,000 miles, whichever occurs first. For those 2003 and subsequent model-year passenger cars, light-duty trucks, and medium-duty vehicles, certified pursuant to Title 13, California Code of Regulations, section 1962, a period of use of fifteen years or 150,000 miles, whichever occurs first.

(6) For 2004 and subsequent model-year light-heavy-duty diesel engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbons emissions standards, a period of use of 10 years or 110,000 miles, whichever first occurs, or any alternative useful life period approved by the Executive Officer.

(7) For 2004 and subsequent model-year medium-heavy-duty diesel engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbons emissions standards, a period of use of ten years or 185,000 miles, whichever first occurs; or any alternative useful life period approved by the Executive Officer.

(8) For 2004 and subsequent model-year heavy-heavy-duty diesel engines, 2004 and subsequent model-year heavy-duty diesel urban buses, 2004 and subsequent model-year heavy-duty diesel engines to be used in urban buses, and 2004 and subsequent model-year hybrid-electric urban buses for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbon emissions standards, a period of use of 10 years or 435,000 miles, or 22,000 hours, whichever first occurs, or any alternative useful life period approved by the Executive Officer.

(A) The useful life limit of 22,000 hours of this definition is effective as a limit to the useful life only when an accurate hours meter is provided by the manufacturer with the engine and only when such hours meter can reasonably be expected to operate properly over the useful life of the engine.

(B) For an individual engine, if the useful life hours limit of 22,000 hours is reached before the engine reaches 10 years or 100,000 miles, the useful life shall become 10 years or 100,000 miles, whichever occurs first, as required under Clean Air Act section 202(d) (42 U.S.C. 7521(d)).

(9) For 2004 and subsequent model-year heavy-duty Otto-cycle engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbon emissions standards, a period of use of 10 years or 110,000 miles, whichever first occurs.

(q) "Valid failure" or "valid failure rate" means an emission-control component or emission-related component that was properly diagnosed and replaced under warranty by an authorized

warranty station and represents the true and accurate failures of a specific component after legitimate screening (as specified in Section 2168) of the applicable warranty data authorized and acceptable to the Executive Officer, pursuant to this Article.

(r) "~~Vehicle or engine manufacturer~~" means the manufacturer granted certification for a motor vehicle or motor vehicle engine.

(s) "~~Violation of test procedures~~" means violation of any portion of any test procedure made applicable to motor vehicles by Division 26, Part 5 of the Health and Safety Code or by Division 3 of Title 13 of the California Code of Regulations or any test procedure violation determined pursuant to this article.

(t) "~~Voluntary Recall~~" means an inspection, repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer or its agent or representative to remedy any nonconformity, pursuant to this Article, for which direct notification of vehicle or engine owners may be necessary.

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

### **~~§ 2167. Emission Warranty Information Report.~~**

(a) A manufacturer shall:

(1) Review California emission warranty claim records for each California certified engine family or test group on a quarterly basis to determine and compile by cumulative total the number of claims made for emission related components. The data compiled shall be based on all emission warranty claims, without any prescreening of data as to the validity of the claims. In the case of heavy duty vehicles or engines, a manufacturer may use nationwide data for monitoring emission warranty claims of a California certified engine family or test group which is also certified by the United States Environmental Protection Agency.

(2) Categorize emission warranty claims for each engine family or test group by the specific emission control component replaced or repaired, or in the case of multiple components with the same part number that are replaced in single service event, shall be counted as one warranted repair for that service event.

(3) On the basis of data obtained subsequent to the effective date of these regulations, file an emission warranty information report for each calendar year if the cumulative number of unscreened emission warranty claims for a specific emission related component or repair represent at least four percent or fifty (whichever is greater) of the vehicles or engines of a California certified engine family or test group.

~~(4) The filing of an emission warranty information report for a partial zero emission vehicle shall be limited to exhaust after treatment devices, computer related repairs including calibration updates, and any emission control device not subject to the 15 year or 150,000 mile emission control warranty provisions for such vehicles. A zero emission energy storage device used for traction power (such as battery, ultracapacitor, or other electric storage device) is not required to be reported. The Executive Officer may add emission-related components to this list as technology changes.~~

~~(b) The emission warranty information report shall be submitted in an electronic format as specified by the ARB. The file must be structured so that the test group or engine family name and the part number are the primary file keys. These two data fields are unique and cannot be duplicated within the data file or changed in subsequent Emission Warranty Information Report submissions unless approved by the ARB database administrator. The electronic file shall include the following information:~~

~~(1) The California certified test group or engine family.~~

~~(2) Part number, labor operation code or some other nomenclature that uniquely identifies a given component within a test group or engine family.~~

~~(3) The name of the specific emission-related component being replaced or repaired. The component name may not be changed in subsequent Emission Warranty Information Reports unless approved by the ARB database administrator.~~

~~(4) A repair code to indicate if the emission-related component was repaired or replaced.~~

~~(5) The warranty coverage pursuant to Title 13, California Code of Regulations, Division 3, Chapter 1, Article 6 for each reported component.~~

~~(6) The California sales volume, the number of cumulative claims and percentage of vehicles or engines in each engine family or test group for which a warranty replacement or warranty repair of a specific emission-related component was identified (i.e., the percentage of vehicles or engines is equal to the cumulative number of unscreened emission warranty claims for a specific emission-related component or repair divided by the sales volume of the California-certified engine family or test group).~~

~~(7) Time frame of the Emission Warranty Information Report being submitted.~~

~~(8) The models of the test group or engine family for each component being repaired or replaced.~~

~~(9) An action status report code as dictated by the ARB database administrator.~~

~~(c) Emission warranty information reports shall be submitted not more than 25 days after the end of each calendar year until the emission warranty information reporting termination point is reached. The Executive Officer may request that a manufacturer file quarterly emission warranty information reports for a specific emission-related component(s) for a specified period of time. Emission warranty information reports and updates shall be submitted and provided on electronic~~

media to the Chief, Mobile Source Operations Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731 and/or can be emailed to a designated ARB staff.

~~(d) The records described in this section shall be made available to the Executive Officer upon request.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

### **§ 2168. Supplemental Emissions Warranty Information Report.**

~~(a) A manufacturer shall file a Supplemental Emissions Warranty Information Report within 60 days after an emission warranty information report as specified in Section 2167 indicates that a cumulative total of unscreened emission warranty claims for a specific emission related component represents at least ten percent or 100 components (whichever is greater) of the vehicles or engines of a engine family or test group. The manufacturer must continue to update and report the Supplemental Emissions Warranty Information Report on a quarterly basis. A manufacturer shall submit an updated Supplemental Emissions Warranty Information Report within 60 days after each calendar quarter until the emission warranty information reporting termination point is reached for the specific emission component being reported or corrective action is launched for the reported emission component. With the approval of the Executive Officer, manufacturers may delay or terminate the submission of the Supplemental Emissions Warranty Information Report.~~

~~(b) If a manufacturer demonstrates to the satisfaction of the Executive Officer that a systemic emission component failure has occurred early within the statutory emission warranty period, as defined below, then the Executive Officer may decide not to require the manufacturer to perform corrective action on the affected vehicles or engines. To prove that a systemic emission related component failure occurred early within the statutory emission warranty period, the manufacturer must demonstrate in the Supplemental Emissions Warranty Information Report to the Executive Officer's satisfaction, that a systemic failure exists in a specific subgroup of vehicles or engines within an engine family or test group and has been satisfactorily corrected under warranty within 18 months after the last vehicle or engine of the affected engine family or test group in a model year was manufactured. In such a case, the manufacturer may not be subject to additional corrective action for the subject engine family, test group or subgroup, but must demonstrate to the Executive Officer the upper limit of the early emission component failure rate and the date it will terminate. Should the emission component failure rate exceed the rate established by the manufacturer by an additional valid failure rate of four percent or 50 vehicles (whichever is greater) the manufacturer must re-file a Supplemental Emissions Warranty Information Report pursuant to this Article (making it subject to further corrective action) or implement the corrective action as ordered pursuant to sections 2169-2171.~~

~~(c) Subject to approval of the Executive Officer, as part of the Supplemental Emissions Warranty Information Report, the manufacturer may be allowed to screen out or remove emission warranty~~

~~claims for components that were subsequently determined to have failed due to abuse, neglect or improper maintenance, or for any warranty repairs that that were performed solely for customer satisfaction purposes or due to misdiagnosis. The manufacturer must demonstrate to the satisfaction of the Executive Officer, using good engineering judgment based on emission component failure analysis data and representative statistical sampling, that the emission components replaced or repaired under these emission warranty claims are free from mechanical defects and perform to the manufacturer's specifications and all other applicable requirements.~~

~~(d) As part of the Supplemental Emissions Warranty Information Report, the manufacturer may be allowed to screen out or remove emission warranty claims for secondary component failures that directly resulted from an established primary emission component failure. The manufacturer must demonstrate to the satisfaction of the Executive Officer that the primary failure is the direct cause for the secondary component failure and that secondary failure will cease after the primary failure is corrected.~~

~~(e) A Supplemental Emissions Warranty Information Report may not be required if the manufacturer commits to perform a recall on any emission control component by notifying the ARB of its commitment in writing. In such a case, the manufacturer may screen the components to be recalled from the Emission Warranty Information Report. However, if the recall applies to a sub-group of vehicles or engines, or if the recall is not deemed acceptable by the Executive Officer, the uncorrected vehicles or engines are still subject to reporting requirements and corrective action pursuant to this Article. Also, if the components replaced under recall fail within the warranty period reaching four percent or 50 vehicles or engines (whichever is greater) within an engine family or test group, the manufacturer must report these emission warranty claims pursuant to this Article and may be required to perform corrective action.~~

~~(f) If a manufacturer demonstrates to the satisfaction of the Executive Officer that a systemic emission component failure will not have an emissions impact under any conceivable circumstance, then no corrective action shall be required for the affected vehicles or engines. The Executive Officer need not base this determination on emissions testing.~~

~~(g) If a manufacturer demonstrates to the satisfaction of the Executive Officer that a computer OBD recalibration or update is not being performed to correct an emissions exceedance or an OBD compliance issue, then no corrective action shall be required for the affected vehicles or engines.~~

~~(h) All Supplemental Emissions Warranty Information Reports shall be submitted to the Chief, Mobile Source Operations Division, 9480 Telstar Avenue Suite No. 4, El Monte, CA 91731 and shall contain the following information in substantially the format outlined below.~~

~~(i) Upon the manufacturer's request and with the approval of the Executive Officer, any reported emission component that is replaced as part of a corrective action may be waived from further reporting requirements.~~

~~(j) The Supplemental Emission Warranty Information report shall be submitted in an electronic format as specified by the ARB. Supplemental Emissions Warranty Information Reports shall contain the following data:~~

~~(1) The manufacturer's corporate name.~~

~~(2) Each Supplemental Emissions Warranty Information Report shall be filed individually for each emission-related component that reached the specified reporting level as indicated in (a) of this section. Manufacturers shall designate a unique supplemental emissions warranty information report number to assist in tracking individual emission-related component problems. The nomenclature format for assigning a tracking number shall follow the sequence using the manufacturer's four digit name designation followed by the letters SEWIR, the calendar year filed and then a three digit sequential number. An example of this format would be as follows: MFRX SEWIR 2010 001.~~

~~(3) A description of each class or category of California-certified vehicles or engines affected including make, model, model year, engine family or test group and such other information as may be required to identify the vehicles or engines affected. The description shall include those engine families or test groups related to the affected engine family or test group through common certification test data allowed under Title 40, Code of Federal Regulations, Section 86.085-24(f), as amended December 10, 1984 or Title 40 Code of Federal Regulations, Section 86.1839-01, as adopted May 4, 1999 ("carry-over" and "carry-across" engine families).~~

~~(4) A description of the emission-related component that failed, the failure, the probable cause of failure and the emission-related component part number. A description of all other vehicles that contain the failing component. A description of whether the failure has been detected by the On-Board Diagnostic system in the affected vehicles or engines as required by title 13 CCR sections 1968.1-1968.5, 1971.1 or by the Engine Manufacturer Diagnostic system in the affected vehicles or engines as required by title 13 CCR section 1971.~~

~~(5) Manufacturers conducting computer recalibrations or reflashes shall explain the vehicle conditions/parameters that are being changed by the recalibration action. The manufacturer must also indicate if OBD compliance requirements are being remedied.~~

~~(6) Any information necessary to make the demonstrations provided in subsections (b)-(g) above.~~

~~(7) A statement whether the cumulative total of valid failures for a specific emission-related component represents at least 4 percent or 50 (whichever is greater) of the vehicles or engines within a California-certified engine family or test group. On the basis of data obtained and reported pursuant to this article, a manufacturer may determine that a cumulative total of valid failures for a specific emission-related component is found to exist in less than 4 percent or 50 (whichever is greater) of the vehicles or engines of a California-certified engine family or test group. If this is the case, the manufacturer must supply the following information:~~

~~(A) The number and percentage of vehicles or engines in each engine family or test group for which a failure of a specific emission-related component was identified.~~

~~(B) The total number and percentage of unscreened emission warranty claims and failures of a specific emission-related component projected to occur during the engine family's or test group's useful life and a description of the method used to project this number.~~

~~(C) An estimated date when the failure of a specific emission-related component will reach 4 percent or 50 (whichever is greater).~~

~~(D) If the failure of a specific emission-related component is found to exist in less than 4 percent or 50 (whichever is greater), provide a brief explanation why the vehicles with this specific component replacement or repair are being repaired.~~

~~(k) The Executive Officer shall determine whether the valid failure rate of a specific emission-related component has reached the level of a systemic failure, based on the information provided pursuant to this section. In making this determination, the Executive Officer need not consider economic impacts, or, except as provided in section 2168 (f), emissions impacts. The Executive Officer may request that any information submitted pursuant to this section be supplemented.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

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#### ~~§2169. Recall and Corrective Action for Failures of Exhaust After-Treatment Devices.~~

~~(a) A manufacturer shall recall an engine family, test group or subgroup of vehicles or engines to correct the systemic failure of an exhaust after-treatment device, as defined in Section 2166.1 when valid failures for the exhaust after-treatment device meet or exceed four percent or 50 (whichever is greater) of the vehicles or engines within an engine family or test group, as determined by the Executive Officer pursuant to Section 2168.~~

~~(b) — At the sole discretion of the Executive Officer, the manufacturer shall perform corrective action, including, but not limited to, providing an extended warranty as defined in Section 2166.1, for the circumstances specified in (a), either as an alternative to or supplement to the corrective action specified in (a).~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### ~~§ 2170. Recall and Corrective Action for Other Emission-Related Component Failures (On-Board Diagnostic-Equipped Vehicles and Engines).~~

~~(a) In the case of any vehicle or engine equipped with an ARB approved on board diagnostic (OBD) system in accordance with Section 1968.1 1968.5 and 1971.1, the manufacturer shall perform corrective action, including, but not limited to, providing an extended warranty as defined in Section 2166.1, to correct the systemic failure of emission control components other than exhaust after-treatment devices, when valid failures for any emission control component in~~



the engine family or test group meet or exceed four percent or 50 (whichever is greater) of the vehicles or engines within an engine family or test group, as determined by the Executive Officer pursuant to Section 2168.

(b) At the sole discretion of the Executive Officer, the manufacturer shall conduct a recall for the circumstances specified in (a), either as an alternative to or supplement to the corrective action specified in (a).

(c) At the sole discretion of the Executive Officer, manufacturers that warrant their vehicles, engines or components as defined in Title 13, California Code of Regulations, Division 3, Chapter 1, Article 6 for the full useful life period may not, be required to perform corrective action on systemic failures of emission control components (with the exception of exhaust after-treatment devices), found to meet or exceed four percent or 50 (whichever is greater) of the vehicles or engines within an engine family or test group.

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

**~~§ 2171. Recall and Corrective Action for Vehicles without On-Board Diagnostic Systems, Vehicles with Non-Compliant On-Board Diagnostic Systems, or Vehicles with On-Board Computer Malfunction.~~**

(a) If vehicles or engines not equipped with on-board diagnostic (OBD) systems, or OBD-equipped vehicles or engines that do not detect emission control failures as required by title 13 CCR sections 1968.1-1968.5 and 1971.1, have systemic failures of emission control components (including exhaust after treatment devices), found to meet or exceed four percent or 50 (whichever is greater) valid failures within an engine family or test group, the required corrective action will be the recall of all affected vehicles or engines in the engine family or test group as determined by the Executive Officer pursuant to Section 2168. If vehicles or engines have systemic failures of on-board computers, found to meet or exceed four percent or 50 (whichever is greater) valid failures within an engine family or test group the required corrective action will also be the recall of all affected vehicles or engines, as determined by the Executive Officer pursuant to Section 2168.

(b) At the sole discretion of the Executive Officer, the manufacturer shall perform corrective action, including, but not limited to, providing an extended warranty as defined in Section 2166.1, for the circumstances specified in (a), either as an alternative to or supplement to the recall specified in (a).

(c) At the sole discretion of the Executive Officer, manufacturers that warrant their vehicles, engines or components as defined in Title 13, California Code of Regulations, Division 3, Chapter 1, Article 6 for the full useful life period may not, be required to perform corrective action on systemic failures of emission control components (with the exception of exhaust after-

treatment devices), found to meet or exceed four percent or 50 (whichever is greater) of the vehicles or engines within an engine family or test group.

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

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## **~~§ 2172. 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 class or category of vehicles or engines 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.~~

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

### **~~§ 2172.1. Ordered or Voluntary Corrective Action Plan.~~**

~~(a) 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 Section 2172. The Executive Officer may grant the manufacturer an extension upon good cause shown.~~

~~(b) The recall or corrective action plan shall contain the following:~~

~~(1) A description of each class or category of vehicles or engines to be recalled or subject to corrective action, including the engine family, test group or sub-group thereof, the model year, the make, the model, and such other information as may be required to identify the vehicles or engines to be recalled or subjected to corrective action.~~

~~(2) A description of the nonconformity and the specific modifications, alterations, repairs, corrections, adjustments or other changes to be made to bring the vehicles or engines into conformity with the requirements of this article including a brief summary of the data and technical studies which 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.

~~(3) A description of the method by which the manufacturer will determine the names and addresses of vehicle or engine owners and the method by which they will be notified.~~

~~(4) A description of the procedure to be followed by vehicle or engine owners 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 perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied. The repair shall be completed within a reasonable time designated by the Executive Officer from the date the owner delivers the vehicle or engine for repair. This requirement becomes applicable on the date designated by the manufacturer as the date on or after which the owner can have the nonconformity remedied.~~

~~(5) If some or all of the nonconforming vehicles or engines are to be remedied by persons other than dealers 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.~~

~~(6) A copy of the letter of notification to be sent to vehicle or engine owners.~~

~~(7) A description of the system by which the manufacturer will ensure that an adequate supply of parts will be available to perform the repair under the recall or corrective action plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.~~

~~(8) A copy of all necessary instructions to be sent to those persons who are to perform the repair under the recall or corrective action plan.~~

~~(9) 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.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

### **§ 2172.2. Approval and Implementation of Corrective Action Plan.**

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 Section 2172.1, he or she will so notify the manufacturer in writing. Upon receipt of the approval notice from the Executive Officer, the manufacturer shall commence implementation of the approved plan. Notification of

~~vehicle or engine owners and the implementation of repairs 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.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

### **~~§ 2172.3. Notification of Owners.~~**

~~(a) Manufacturers shall notify vehicle or engine owners 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.~~

~~(b) The manufacturer shall use all reasonable means necessary to locate vehicle or engine owners. 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 vehicle or engine owners to ensure effective notification.~~

~~(c) The Executive Officer may require subsequent notification by the manufacturer to vehicle or engine owners 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.~~

~~(d) The notification of vehicle or engine owners shall contain the following:~~

~~(1) The statement: "The California Air Resources Board has determined that your (vehicle or engine) has an emission control component problem that requires corrective action".~~

~~(2) A statement that the nonconformity of any such vehicles or engines will be remedied at the expense of the manufacturer.~~

~~(3) A statement that eligibility may not be denied solely on the basis that the vehicle or engine owner used parts not manufactured by the original equipment vehicle manufacturer, or had repairs performed by outlets other than the vehicle or engine manufacturer's franchised dealers.~~

~~(4) A clear description of the components which will be affected by the recall or other corrective action and a general statement of the measures to be taken to correct the nonconformity.~~

~~(5) A statement that such nonconformity, if not repaired, may cause the vehicle or engine to fail an emission inspection or Smog Check test when such tests are required under State law.~~

~~(6) A description of the adverse effects, if any, that an uncorrected nonconformity would have on the performance, fuel economy, or driveability of the vehicle or engine or to the function of other engine components.~~

~~(7) A description of the procedure which the vehicle or engine owner 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 at which the nonconformity can be remedied.~~

~~(8) A statement that a certificate showing that the vehicle or engine has been repaired under the recall program shall be issued by the service facilities and that such a certificate may be required as a condition of vehicle registration or operation, as applicable.~~

~~(9) A card to be used by a vehicle or engine owner in the event the vehicle or engine to be recalled has been sold. Such 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 vehicle or engine was sold.~~

~~(10) The statement: "In order to ensure your full protection under the emission warranty made applicable to your (vehicle or engine) by State or Federal law, and your right to participate in future recalls, it is recommended that you have your (vehicle or engine) serviced as soon as possible. Failure to do so could be determined to be a lack of proper maintenance of your (vehicle or engine)."~~

~~(11) A telephone number provided by the manufacturer, which may be used to report difficulty in obtaining recall repairs.~~

~~(e) The manufacturer shall not condition eligibility for repair on the proper maintenance or use of the vehicle or engine except for strong or compelling reasons and with approval of the Executive Officer; however, the manufacturer shall not be obligated to repair a component which has been removed or altered so that the recall action cannot be performed without additional cost.~~

~~(f) No notice sent pursuant to Section 2172.1(b)(8), above, nor any other communication sent to vehicle or engine owners or dealers shall contain any statement, express or implied, that the nonconformity does not exist or will not degrade air quality.~~

~~(g) The manufacturer shall be informed of any other requirements pertaining to the notification under this section which the Executive Officer has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### **~~§ 2172.4. Repair Label.~~**

~~(a) The manufacturer shall require those who perform the repair under the recall plan to affix a label to each vehicle or engine repaired or, when required, inspected under the recall plan.~~

~~(b) The label shall be placed in a location as approved by the Executive Officer and shall be fabricated of a material suitable for such location and which is not readily removable.~~

~~(c) The label shall contain the recall campaign number and a code designating the facility at which the repair, inspection for repair, was performed.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### **~~§ 2172.5. Proof of Correction Certificate.~~**

~~The manufacturer shall require those who perform the recall repair to provide the owner of each vehicle or engine repaired with a certificate, through a protocol and in a format prescribed by the Executive Officer, which indicates that the noncomplying vehicle or engine has been corrected under the recall program.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### **~~§ 2172.6. Preliminary Tests.~~**

~~The Executive Officer may require the manufacturer to conduct tests on components and vehicles or engines incorporating a proposed correction, repair, or modification reasonably designed and necessary to demonstrate the effectiveness of the correction, repair, or modification.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### **~~§ 2172.7. Communication with Repair Personnel.~~**

~~The manufacturer shall provide to the Executive Officer a copy of all communications which relate to the recall plan directed to dealers and other persons who are to perform the repair. Such copies shall be mailed to the Executive Officer contemporaneously with their transmission to dealers and other persons who are to perform the repair under the recall plan.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102,~~

43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.

**§ 2172.8. Recordkeeping and Reporting Requirements.**

~~(a) The manufacturer shall maintain 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 class or category of vehicle or engine, but need not be limited to, the following:~~

~~(1) Engine family involved and recall or corrective action campaign number as designated by the manufacturer.~~

~~(2) Date owner notification was begun, and date completed.~~

~~(3) Number of vehicles or engines involved in the recall or corrective action campaign.~~

~~(4) Number of vehicles or engines known or estimated to be affected by the nonconformity.~~

~~(5) Number of vehicles or engines inspected pursuant to the recall plan and found to be affected by the nonconformity.~~

~~(6) Number of inspected vehicles or engines.~~

~~(7) Number of vehicles or engines receiving repair under the recall plan.~~

~~(8) Number of vehicles or engines determined to be unavailable for inspection or repair under the recall plan due to exportation, theft, scrapping, or for other reasons (specify).~~

~~(9) Number of vehicles or engines determined to be ineligible for recall action due to removed or altered components.~~

~~(10) A listing of the identification numbers of vehicles or engines subject to recall but for whose repair the manufacturer has not been invoiced. 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 subsection (c) below, may be changed by the Executive Officer depending on the needs of recall enforcement.~~

~~(11) Any service bulletins transmitted to dealers which relate to the nonconformity and which have not previously been submitted.~~

~~(12) All communications transmitted to vehicle or engine owners which relate to the nonconformity and which have not previously been submitted.~~

~~(b) If the manufacturer determines that the original responses to subsections (a)(3) and (4) of these procedures are incorrect, revised figures and an explanatory note shall be submitted.~~

Responses to subsections (a)(5), (6), (7), (8), and (9) shall be cumulative totals.

~~(c) Unless otherwise directed by the Executive Officer, the information specified in subsection (a) of these procedures shall be included in six quarterly reports, beginning with the quarter in which the notification of owners was initiated, or until all nonconforming vehicles or engines involved in the campaign have been remedied, whichever occurs sooner. Such reports shall be submitted no later than 25 days after the close of each calendar quarter.~~

~~(d) 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 vehicle or engine owners:~~

~~(1) To whom notification was given;~~

~~(2) Who received remedial repair or inspection under the recall plan; and~~

~~(3) Who were denied eligibility for repair due to removed or altered components.~~

~~(e) The records and reports required by these procedures shall be retained for not less than one year beyond the useful life of the vehicles or engines involved, or one year beyond the reporting time frame specified in subsection (c) above, whichever is later.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

### **~~§ 2172.9. Extension of Time.~~**

~~The Executive Officer may extend any deadline in the plan if he or she finds in writing that a manufacturer has shown good cause for such extension.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

### **~~§ 2173. Penalties.~~**

~~Failure by a manufacturer to carry out all recall or corrective action campaigns ordered by the Executive Officer pursuant to this article shall constitute a violation of this article and Health and Safety Code Section 43105. Civil penalties may be assessed for that violation and for any other violation of any other requirement of this article.~~



~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

#### **§ 2174. Availability of Public Hearing.**

~~(a) The manufacturer may request a public hearing pursuant to the procedures set forth in Sections 60040 to 60053, Title 17, California Code of Regulations to contest the finding of nonconformity pursuant to this Article and the necessity for or the scope of any ordered recall, or other ordered corrective action. Notwithstanding any other provision of law, including title 13 or title 17 of California Code of Regulations, the record in any public hearing conducted pursuant a request made under this section shall be limited to: (i) the information provided to the Executive Officer under sections 2167-2168 and the Executive Officer's response thereto prior to the date the Executive Officer's notification is issued pursuant to section 2172, (ii) the Executive Officer's notification issued pursuant to section 2172, and (iii) new relevant evidence that could not, with reasonable diligence have been discovered and included in the information provided to the Executive Officer under sections 2167-2168 for the Executive Officer's notification issued pursuant to section 2172. At the hearing evidence of economic impact and evidence of emissions impact, except as provided in Section 2168(f), is irrelevant.~~

~~(b) If a manufacturer requests a public hearing pursuant to subsection (a) above, and if the Executive Officer's determination of nonconformity is confirmed at the hearing, the manufacturer shall submit a recall or corrective action plan identical to the one required by Section 2172.1 within the time periods specified in the Executive Officer's notification under section 2172 from receipt of the Board's decision.~~

~~Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806, Health and Safety Code; and Section 28114, Vehicle Code. Reference: Sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806, Health and Safety Code; and Section 28114, Vehicle Code.~~

California Environmental Protection Agency  
AIR RESOURCES BOARD

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES  
FOR 2001 AND SUBSEQUENT MODEL  
PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY  
VEHICLES**

Adopted: August 5, 1999  
Amended: December 27, 2000  
Amended: July 30, 2002  
Amended: September 5, 2003 (corrected February 20, 2004)  
Amended: May 28, 2004  
Amended: August 4, 2005  
Amended: June 22, 2006  
Amended: October 17, 2007  
Amended: May 2, 2008  
Amended: [Insert date of PHEV amendment]  
Amended: [Insert date of GHG amendment]  
Amended: [Insert date of amendment]

Note: The proposed amendments to this document are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions compared to the test procedures as last amended May 2, 2008. The document in which the amendments are being shown is a version that contains changes that were initially approved by the Board on May 28, 2009 for adoption as part of the “Rulemaking to Consider Plug-in Hybrid Electric Vehicle (PHEV) Test Procedure Amendments and Aftermarket Parts Certification Requirements Adoption” and changes that were initially approved by the Board on September 25, 2009 as part of a rulemaking to modify passenger vehicle greenhouse gas regulations (GHG). Neither of these rulemakings is yet final. Changes to this document as approved on May 28, 2009 are indicated by dotted underline to indicate additions and ~~italics double strikeout~~ to indicate deletions compared to the May 2, 2008 version. Changes to this document that were initially approved by the Board on September 25, 2009 are indicated in broken underline to indicate additions and ~~ALL-CAPITAL-ITALICS-DOUBLE STRIKEOUT~~ to indicate deletions compared to the document approved by the Board on May 28, 2009. Existing intervening text that is not amended is indicated by “\* \* \* \*”.

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES  
FOR 2001 AND SUBSEQUENT MODEL  
PASSENGER CARS, LIGHT-DUTY TRUCKS AND MEDIUM-DUTY VEHICLES**

The provisions of Subparts B, C, and S, Part 86, Title 40, Code of Federal Regulations, as adopted or amended on May 4, 1999 or as last amended on such other date set forth next to the 40 CFR Part 86 section title listed below, and to the extent they pertain to exhaust emission standards and test procedures, are hereby adopted as the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," with the following exceptions and additions.

**PART I: GENERAL PROVISIONS FOR CERTIFICATION AND IN-USE  
VERIFICATION OF EMISSIONS**

\* \* \* \*

**F. Requirements and Procedures for Durability Demonstration**

\* \* \* \*

**4. §86.1823 Durability demonstration procedures for exhaust emissions.**

4.1 §86.1823-01 ~~OCTOBER 6, 2000~~ February 26, 2007. [No change.] Amend as follows: Add the following sentences to the first paragraph: Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California-certified engine family or test group, it constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.

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State of California  
AIR RESOURCES BOARD

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES  
FOR 2004 AND SUBSEQUENT MODEL  
HEAVY-DUTY DIESEL-ENGINES AND VEHICLES**

Adopted:	December 12, 2002
Amended:	July 24, 2003
Amended:	September 1, 2006
Amended:	July 26, 2007
Amended:	October 17, 2007
Amended:	October 14, 2008

Note: The proposed amendments to this document are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions compared to the test procedures as amended on October 14, 2008. Existing intervening text that is not amended is indicated by “\* \* \* \*”.

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES  
FOR 2004 AND SUBSEQUENT MODEL  
HEAVY-DUTY DIESEL-ENGINES AND VEHICLES**

The following provisions of Subparts A, I, and N, Part 86, Title 40, Code of Federal Regulations, as adopted or amended by the U.S. Environmental Protection Agency on the date set forth next to the 40 CFR Part 86 section listed below, and only to the extent they pertain to the testing and compliance of exhaust emissions from heavy-duty diesel engines and vehicles, are adopted and incorporated herein by this reference as the “California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles,” except as altered or replaced by the provisions set forth below.

**PART 86 – CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES**

**I. GENERAL PROVISIONS FOR CERTIFICATION AND IN-USE VERIFICATION OF EMISSIONS.**

\* \* \* \*

26. Mileage and service accumulation; emission measurements. [§86.004-26]

October 6, 2000. [No change.] Amend as follows: Add the following sentences to the first paragraph.

~~Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California-certified engine family or test group, it constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.~~

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**State of California  
AIR RESOURCES BOARD**

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES  
FOR 2004 AND SUBSEQUENT MODEL  
HEAVY DUTY OTTO CYCLE ENGINES**

Adopted: December 27, 2000  
Amended: December 12, 2002  
Amended: July 26, 2007  
Amended: October 17, 2007  
Amended: [INSERT DATE OF AMENDMENT]

Note: The proposed amendments to this document are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions compared to the test procedures as amended on October 17, 2007. Existing intervening text that is not amended is indicated by “\* \* \* \*”.

**CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST  
PROCEDURES FOR 2004 AND SUBSEQUENT MODEL  
HEAVY DUTY OTTO CYCLE ENGINES**

The following provisions of Subparts A, N, and P, Part 86, Title 40, Code of Federal Regulations (“CFR”), as adopted or amended by the U.S. Environmental Protection Agency on the date set forth next to the 40 CFR Part 86 section listed below, and only to the extent they pertain to the testing and compliance of exhaust emissions from heavy-duty Otto-cycle engines, are adopted and incorporated herein by this reference as the “California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines,” with the following exceptions and additions.

**Part I. GENERAL PROVISIONS FOR CERTIFICATION AND IN-USE  
VERIFICATION OF EMISSIONS**

**Subpart A - General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy Duty Vehicles**

\* \* \* \*

26. **Mileage and service accumulation; emission measurements.** [§86.004-26 October 6, 2000. [No change] Amend as follows: Add the following sentences to the first paragraph:

~~Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California-certified engine family or test group, it constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.~~

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State of California  
AIR RESOURCES BOARD

**CALIFORNIA REFUELING EMISSION STANDARDS AND TEST  
PROCEDURES  
FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES**

Adopted: August 5, 1999  
Amended: September 5, 2003  
Amended: June 22, 2006  
Amended: October 17, 2007  
Amended: [insert amended date]

Note: Proposed amendments to this document are shown in underline to indicate additions and ~~strikeouts~~ to indicate deletions compared to the test procedures as last amended October 17, 2007. The text of modifications made subsequent to the January 23, 2009 Board Hearing, and described in the Notice of Availability of Modified Text (15-day Notice), is shown in double-underline to indicate additions and ~~double-strikeout~~ to indicate deletions. Existing intervening text that is not amended is indicated by a row of asterisks ( \* \* \* \* ).



**CALIFORNIA REFUELING EMISSION STANDARDS AND TEST  
PROCEDURES  
FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES**

The provisions of Title 40, Code of Federal Regulations (CFR), Part 86, Subparts B (as adopted or amended by the U.S. Environmental Protection Agency (U.S. EPA) on the date listed) and S (as adopted on May 4, 1999, or as last amended on such other date set forth next to the 40 CFR Part 86 section title listed below) to the extent they pertain to the testing and compliance of vehicle refueling emissions for passenger cars, light-duty trucks and medium-duty vehicles, are hereby adopted as the “California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles” with the following exceptions and additions.

**Subpart S Requirements**

**I. General Certification Requirements for Refueling Emissions**

\* \* \* \*

**G. §86.1825-01 Durability Demonstration procedures for refueling emissions.**

~~§86.1825-01 October 6, 2000. Amend as follows: Add the following sentence to the first paragraph: Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall demonstrate that the emission control devices on their vehicles or engines will not exceed a valid failure rate of 4% or 50 vehicles, whichever is greater, in an engine family, test group or subgroup over the useful life of the vehicles or engines they are installed in. If any emission control device fails at this rate, that constitutes a violation of these test procedures and it entitles the Executive Officer of the Air Resources Board to require that the vehicles or engines they are installed in be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174.~~

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State of California  
AIR RESOURCES BOARD

**CALIFORNIA EVAPORATIVE EMISSION STANDARDS AND TEST  
PROCEDURES  
FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES**

Adopted: August 5, 1999  
Amended: June 22, 2006  
Amended: October 17, 2007  
Amended: [insert amended date]

Note: Proposed amendments to this document are shown in underline to indicate additions and ~~strikeouts~~ to indicate deletions compared to the test procedures as last amended October 17, 2007. The text of modifications made subsequent to the January 23, 2009 Board Hearing, and described in the Notice of Availability of Modified Text (15-day Notice), is shown in double-underline to indicate additions and ~~double-strikeout~~ to indicate deletions. Existing intervening text that is not amended is indicated by a row of asterisks ( \* \* \* \* )

**CALIFORNIA EVAPORATIVE EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES**

The provisions of Title 40, Code of Federal Regulations (CFR), Part 86, Subparts A and B as adopted or amended as of July 1, 1989, and Subpart S as adopted or amended on May 4, 1999, insofar as those subparts pertain to evaporative emission standards and test procedures, are hereby adopted as the California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Years, with the following exceptions and additions:

**PART I. GENERAL CERTIFICATION REQUIREMENTS FOR EVAPORATIVE EMISSIONS**

\* \* \* \*

**PART II. DURABILITY DEMONSTRATION**

\* \* \* \*

**2. Durability Demonstration Procedures for Evaporative Emissions**

~~Beginning with 2010 model year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California certified engine family or test group, it constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.~~

\* \* \* \*