

State of California
AIR RESOURCES BOARD

Resolution 75-7

February 19, 1975

WHEREAS, Section 39051(c) of the Health and Safety Code authorizes the Air Resources Board to adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act of the Government Code;

WHEREAS, Section 39154 of the Health and Safety Code now prohibits the sale and registration of new motor vehicles failing to comply with the rules and regulations established by the Board pursuant to Section 39051(c); and

WHEREAS, the Board finds it necessary to amend its enforcement regulations to conform to the provisions of Section 39154 as amended;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby amends Sections 2100, 2108 and 2109 of Article 2 of Subchapter 2 of Chapter 3 of Title 13 of the California Administrative Code to read as set forth below;

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to file said amendments with the Secretary of State as an emergency to be effective immediately upon their filing and that the facts constituting the necessity therefore are as follows:

The Board's administrative enforcement procedures need immediate clarification and reorganization to remove problems which have recently come to the Board's attention so that it can take immediate and effective action against violations of its standards and test procedures.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to schedule a timely hearing for confirmation of these amendments as permanent regulations of the Board.

Add a new subsection (1) to Section 2100, to read:

(1) "Recall" means:

(1) The issuing of notices directly to consumers that vehicles in their possession or control should be corrected, and/or

(2) Efforts actively to locate and correct vehicles in the possession or control of consumers.

Amend Section 2108 to read:

2108. Order of Executive Officer. Failure to comply with any order of the Executive Officer issued pursuant to this article may result in the revocation or conditioning of approval in the manner specified in Section 2109.

Amend Section 2109 to read:

2109. Enforcement Action. (a) When this section is invoked pursuant to other sections of this article, the Executive Officer shall require the manufacturer forthwith to submit a plan to bring all vehicles into compliance. The Executive Officer shall order execution of the plan with such changes and additions as he determines to be necessary. The plan may include correction of vehicles under manufacture, correction of vehicles in the possession or control of the manufacturer and dealers, and correction of vehicles in the possession or control of consumers (by correction upon service whether or not by warranty, by correction following notification of recall by mail, or by correction following efforts actively to locate and correct all such vehicles). The plan may include the temporary cessation of sales by the manufacturer and an effort to do everything within its power to prevent the sale of vehicles in the possession or control of dealers, until the vehicles are corrected. The Executive Officer may order any one or more of the foregoing actions, or any other action reasonably necessary to bring all vehicles into compliance. If a vehicle is recalled pursuant to this section, the manufacturer shall make all necessary corrections specified by the Board without charge to the registered owner of the vehicle or, at the manufacturer's election, reimburse the registered owner for the cost of making such necessary corrections.

If the corrective action ordered pursuant to this subsection includes a recall, the manufacturer may, within 5 calendar days of its receipt of the recall, notify the Executive Officer of its desire to contest the necessity or scope of the recall. Any such notification shall specify the basis of the manufacturer's objection. Upon receipt of such notification, the Executive Officer shall stay the recall until the Board affords the manufacturer the opportunity, at a public hearing, to present evidence in support of its objections. A stay of a recall shall not, unless otherwise ordered, stay any other portion of a plan required herein or any other order issued pursuant to this article.

(b) If the Executive Officer finds that any corrective action ordered pursuant to subsection (a) has not been taken or taken promptly, sale and registration of all new motor vehicles with engines from engine families which are found under other sections of this article not to comply with an applicable law, emission standard or test procedure and for which such corrective action has been ordered, shall be prohibited pending a hearing by the Board to consider whether approval of such vehicles shall be revoked or conditioned. The Board shall schedule such a hearing promptly. The Board may revoke or condition approval if it finds that the corrective action ordered by the Executive Officer was reasonable and that the manufacturer failed to comply or to comply promptly.