

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text and Supporting Documents

PUBLIC HEARING TO CONSIDER AMENDMENTS TO CALIFORNIA'S
EMISSION WARRANTY INFORMATION REPORTING AND RECALL
REGULATIONS AND EMISSION TEST PROCEDURES

Public Hearing Date: December 7, 2006 and March 22, 2007

Public Availability Date: June 4, 2007

Deadline for Public Comment: June 25, 2007

The Originally Proposed Amendments

The Air Resources Board (ARB or the Board) administers regulations that establish procedures for reporting emission warranty information and requiring corrective action for systemic component failures. At its December 7, 2006 public hearing, the Board considered the adoption of sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141 and new language provided in Article 5 of title 13, California Code of Regulations (CCR) and the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy Duty Otto Cycle Engines," "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," and "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles." The proposed amendments were described in detail in Staff Report: Initial Statement of Reasons for Proposed Rulemaking for Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures (Staff Report) published on October 20, 2006. These amendments would:

- Establish the proof required to demonstrate violation of ARB's emission standards or test procedures;
- Clarify the corrective action available to ARB to address the violations; and
- Amend the manner in which emissions warranty information is reported to ARB.

The Board's Action

At the December 7, 2006 hearing, ARB staff presented this item but in response to testimony by industry, the Board continued the item to allow staff and industry additional time to resolve as many outstanding issues as possible. At the March 22, 2007 public hearing, the Board unanimously approved the proposal with modifications made to the original October 20, 2006 Staff Report. These modifications were approved by the Board as part of Resolution 06-44 (Appendix I), and were proposed in response to comments received after the Staff Report publication but before the March 22, 2007 hearing. Attachment A of Resolution 06-44 contains the amendments as originally proposed while Attachment B of Resolution 06-44 contains the modifications staff suggested at the hearing. The Resolution and its attachments are available online at the following ARB internet site:

<http://www.arb.ca.gov/regact/recall06/recall06.htm>. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified regulatory language available for a supplemental comment period of 15 days.

The Modified Text Being Made Available for Comment

The staff has completed the modified regulatory text and is making it available for public comment; it is attached as Appendix II and Appendix III. The following explains and identifies the modifications by section number, and is provided to give stakeholders the opportunity to review and respond with comments. The modifications being made available include both those in Attachment B to the Resolution and additional conforming or related modifications prepared by staff subsequent to the hearing. Most of the proposed modifications are either identical to text in Attachment B or implement a specific and approved modification in Attachment B; additional proposed modifications carry the descriptor "new conforming modification." All modifications are shown in single underline to indicate additions and in ~~single strikethrough~~ to indicate deletions, compared to the originally proposed amendments.

Summary of Rationale for the Proposed Modifications

The following explains and identifies the modifications by section number, and is provided to give stakeholders the opportunity to review and respond with comments.

PROPOSED MODIFICATIONS TO TITLE 13 CALIFORNIA CODE OF REGULATIONS

§1958. Exhaust Emission Standards and Test Procedures – Motorcycles, motorcycle engines Manufactured on or After January 1, 1978.

Initially, the language read that manufacturers shall demonstrate at the time of certification that their emission control devices would not exceed a valid failure rate of 4% or 50 vehicles. Industry expressed a concern on their ability to demonstrate at time of certification they would not exceed the 4% failure rate requirement. In response, the certification test procedures were modified to require that manufacturers instead include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation.

§2111. Applicability.

The (a)(1) provision was amended so that the applicability of this section ends with the 2009 model year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and motorcycles. Section (d) was eliminated because the changes to section (a)(1) duplicate the components of section (d).

§2136. General Provisions.

In the amended provision, staff inadvertently removed the provisions to perform in-use compliance testing on 2010 and subsequent model year vehicles or engines. Modifications were added to authorize ARB to continue in-use compliance testing on 2010 and subsequent model year vehicles and engines.

§2166. General Provisions.

The proposed provision (a)(1) was modified to remove the applicability reference of off-road motorcycles and all-terrain vehicles from Article 5, title 13, CCR. The reason for this change was that this language was not consistent with the current warranty reporting program as noted by the motorcycle industry.

Proposed provision (d) was modified such that the requirements of Article 5, title 13, CCR can be waived if the Executive officer determines that the requirements constitute an “undue” burden as opposed to an “unwarranted” burden as

originally proposed. A statement was also added that, when making a determination of an undue burden, the Executive Officer may, but is not required to, consider the economic impact or emissions impact of the requirement, except as provided in Section 2168(f), title 13, CCR. This statement was slightly modified subsequent to Attachment B as provided at the March 22nd hearing. (New Conforming Modification)

A severability clause was added as proposed provision (f) so that 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. (New Conforming Modification)

§2166.1. Definitions.

The proposed (c) definition for “Correlation factor” was removed from this section since it is not applicable to this article.

The proposed (d) definition for “Emission control component” or “emission-related component” was modified to be defined as the components described in the manufacturer’s approved application for certification of a warranted part pursuant to Article 6, title 13, CCR. The reason for this change was in response to industry’s request to simplify this definition for clarity.

The proposed (e) definition for “Emission Warranty Claim” was modified to clarify applicability as requested by industry.

The proposed (h) definition for “Extended Warranty” was modified so that corrective action only applies to the vehicles’ or engines’ useful life. Industry also requested modification for battery pack extended warranties on hybrid electric vehicles to be limited to the lesser of the vehicles’ useful life or 10 years.

The (i) definition of “Emission Warranty Information Reporting Termination Point” was added to indicate when applicable reporting periods will end. The reason for this inclusion was in response to industry’s request to define when reporting periods conclude.

The proposed (k) definition for “Nonconformity” or “noncompliance” excluded the words “emission standards” to clarify that nonconformities subject to Article 5, title 13, CCR, will be tied to violations of the test procedures only.

The proposed (n) definition for “Systemic Failure” was modified to define that the affected vehicles would be based on California certified engine families or test groups. The reason for this change was in response to industry’s request to define the applicability of Article 5, title 13, CCR to California vehicles.

The proposed (p)(8) definition for useful life was modified to include partial zero emission vehicles.

The proposed (r) definition for “Violation of emission standards” was removed and a new definition “Valid failure” or “valid failure rate” was added to represent the true and accurate failure rate of a specific emission component as performed under the vehicles’ or engines’ emissions warranty. The reason for this change was to clarify that nonconformities subject to Article 5, title 13, CCR, will be tied to violations of the test procedures only.

The proposed (u) definition “Voluntary Emission Recall” was changed to “Voluntary Recall” to clarify that nonconformities subject to Article 5, title 13, CCR, will be tied to violations of the test procedures only.

§2167. Emission Warranty Information Report.

The proposed provision (a)(1) was modified to ensure that collected warranty claims would be based on California warranty claims. The reason for this change was in response to industry’s request to clearly define “warranty claims” as “California warranty claims.”

The proposed provision (a)(2) was modified to count multiple repairs with the same part number (e.g., replacing three fuel injectors with the same part number) in a single service event as one warranted repair for that service event. The reason for this change was in response to industry’s request for handling a single service event with multiple components with identical part numbers being repaired or replaced.

With the exception of exhaust after-treatment devices and computer related repairs including calibration updates, the proposed provision (4) was modified so that manufacturers must report any emission-related component that is not subject to the partial zero emission vehicle warranty of 15 years or 150,000 miles excluding the emission energy storage device used for traction power.

The proposed provision (b) was modified to clarify that, when submitting the Emission Warranty Information Report, the test group or engine family name and part number name cannot be duplicated in subsequent reporting of these records. The database in which these files are stored will not allow for duplicate records to be uploaded into the system.

The proposed provision (b)(3) was modified stating that after filing an Emission Warranty Information Report file, the component name cannot be changed in subsequent filings without approval from the ARB database administrator. The reason for this change allows for meaningful analysis of the warranty data.

The proposed provision (b)(5) was modified to clarify that the warranty data is based on warranty repairs received under the California warranty regulations.

The reason for this change was in response to industry's request for this modification.

The proposed provision (b)(6) was modified to clarify how the warranty claims percentage is calculated.

The proposed provision (b)(9) was modified to clarify that the action status report code will be determined by the ARB database administrator.

The proposed provision (c) was modified to clarify that reporting will continue until the "Emission Warranty Information Reporting Termination Point" is reached. This termination point was clarified in Section 2166.1(i), title 13, CCR. §2168. Supplemental Emission Warranty Information Report.

The proposed provision (a) was modified to incorporate four changes to this section. The changes included: 1) amended language that the Supplemental Emission Warranty Information Report shall be filed 60 days "after" the Emissions Warranty Information Report reaches the specified trigger level, 2) deleted provisions to file the Supplemental Emission Warranty Information Report in an electronic format similar to the Emissions Warranty Information Report, 3) added language determining when to terminate filing the Supplemental Emission Warranty Information Report, and 4) added language that allows manufacturers to terminate filing a Supplemental Emission Warranty Information Report with approval of the Executive Officer. The reason for some of these changes was in response to industry's request for modifications to the reporting criteria.

The proposed provision (b) was eliminated and this criterion was moved to Section 2168(e). New language was added for (b) that allows for early systemic emission component failures that manifest themselves very early in the emission warranty period. If such a case is demonstrated by the manufacturer, the manufacturer may not be subject to additional corrective action as required under Article 5, title 13, CCR. Language was also included that if the failure rate for a specified emission component continues to rise beyond the manufacturers expected failure rate, the manufacturer would be required to perform corrective action for the identified emission component. The reason for this change was in response to industry's request to eliminate the need for corrective action for emission components that fail early within the normal emissions warranty period.

The proposed provision (c) was added to allow for screening criteria for removing warranty claims from the emission warranty information reporting database when emission components were replaced due to vehicle abuse, misdiagnosis or customer satisfaction issues. The reason for this change was in response to industry's request to provide screening mechanisms for evaluating emission components repaired or replaced improperly under the emissions warranty.

The proposed provision (d) was added to allow for secondary component failures to be removed or screened from the emission warranty information reporting database when emission components were replaced as a direct result from a primary component failure. The reason for this change was in response to industry's request to recognize that some component failures are replaced under the emissions warranty as a direct result of the failure of another component or system.

The proposed provision (e) was added so that manufacturers that voluntarily recall an emission component may not be required to report a Supplemental Emissions Warranty Information Report for these components. The reason for this change was in response to industry's request to not have to provide a Supplemental Emissions Warranty Information Report for emission components already replaced under recall.

The proposed provision (f) was added to address a systemic emission component failure that will have no emissions impact under any conceivable condition. Manufacturers that demonstrate this condition to the satisfaction of the Executive Officer will not have to perform further corrective action outside of normal warranty coverage. The reason for this change was in response to comments provided by industry.

The proposed provision (g) was added to address systemic OBD recalibration repairs that are not being installed to correct an emissions exceedance or an OBD compliance issue. In these cases manufacturers will not have to provide further corrective action outside of normal warranty coverage. The reason for this change was in response to industry's request to identify how OBD recalibration repairs will be handled under the warranty reporting program.

The proposed provision (e) has been moved to (j) and was modified to eliminate the requirement to electronically report the Supplemental Emissions Warranty Information Report in the same format as the Emissions Warranty Information Report. This provision allows ARB to specify the electronic format for the Supplemental Emissions Warranty Information Report at a later date.

The proposed provision (e)(2) has been moved to (j)(2) and clarifies that the Supplemental Emissions Warranty Information Report will be reported for each emission-related component that reaches the specified reporting levels indicated in Section 2168(a), title 13, CCR.

The proposed provision (e)(4) has been moved to (j)(4) and includes the citation for the heavy-duty Engine Manufacturer Diagnostic and OBD system sections of 1971 and 1971.1, respectively. The reason for this change was in response to industry's request for this modification.

The proposed provision (e)(7)(v) has been moved to (j)(7)(v) and was subsequently eliminated because this provision no longer applies to this section.

The proposed provision (k) was added so that the Executive Officer can request further details from the manufacturer supplying the Supplemental Emissions Warranty Information Report (e.g., presenting further details on why dealers are replacing emission components with no identified failure).

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

The proposed provision (a) was modified to clarify that exhaust after-treatment device failures be recalled for only those affected vehicles in an identified engine family or test group. The reason for this change was in response to industry's request for this modification.

The proposed provision (b) was modified to clarify that an extended warranty could be used as a supplement to recall action as required in provision (a). Manufacturers requested this change so that it was clear that the provision was not requiring a recall and an extended warranty for addressing exhaust after-treatment device failures in every case.

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

The proposed provision (c) was added for manufacturers that provide emissions warranty coverage for their vehicles or engines for the full useful life. Manufacturers who warrant to the full useful life may not have to provide corrective action for systemic emission component failures (with the exception of exhaust after-treatment devices).

§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.

The proposed provision (a) was modified to include the heavy-duty OBD regulatory citation title 13, CCR, section 1971.1. The reason for this change was in response to industry's request for this modification.

The proposed provision (b) was modified to clarify that an extended warranty could be used as a supplement to recall action as required in provision (a). Manufacturers requested this change so that it was clear that the provision was not requiring a recall and an extended warranty for addressing systemic failures in every case.

The proposed provision (c) was added for manufacturers that provide emissions warranty coverage for their vehicles or engines for the full useful life. Manufacturers who warrant to the full useful life may not have to provide corrective action for systemic emission component failures (with the exception of exhaust after-treatment devices).

§2172. Notification of Required Recall or Corrective Action by the Executive Officer.

This proposed provision was amended to allow manufacturers additional time to submit a corrective action plan as long as good cause is shown to the Executive Officer. The reason for this change was in response to industry's request to allow additional time, if needed, to file a corrective action plan.

§2172.1. Ordered or Voluntary Corrective Action Plan.

The proposed provision (a) was changed to clarify that a recall or corrective action plan shall be submitted to ARB's modified mailing address within the time frame specified in section 2172.

§2172.3. Notification of Owners

The proposed provision (d)(1) was amended revising the opening statement of the owner notification letter indicating that the vehicle or engine has a problem and requires corrective action. The reason for this change was in response to industry's request for this modification.

The proposed provision (d)(10) was amended eliminating the off-road motorcycle inclusion.

§2174. Availability of Public Hearing

The proposed provision (a) was amended to define what information may be supplied by the manufacturer to contest the finding of an ordered corrective action at a public hearing. The reason for this change was in response to comments provided by industry.

The proposed provision (b) was amended to clarify the time period in which a manufacturer must submit a recall or corrective action plan. The reason for this change was in response to industry's request for this modification.

PROPOSED MODIFICATIONS TO THE TEST PROCEDURES

As previewed in Attachment B to Resolution 06-44, staff has prepared amendments to the following test procedures.

“California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles”

Section Part I.F.4.1 was amended to require that manufacturers only include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation. The reason for this change was in response to comments provided by industry.

“California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles”

Section Part I.26 was amended to require that manufacturers only include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation. The reason for this change was in response to comments provided by industry.

“California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy Duty Otto Cycle Engines”

Section Part I.26 was amended to require that manufacturers only include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation. The reason for this change was in response to comments provided by industry.

“California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles”

Section Subpart S.I.G was amended to require that manufacturers only include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation. The reason for this change was in response to comments provided by industry.

“California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles”

Section Part II.2 was amended to require that manufacturers only include a statement that, at the time of certification, 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. Language was also added that vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. Finally, language was added that notifies the manufacturer that if it is determined 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 test procedures and the Executive may take corrective action. Staff also clarified that ongoing warranty actions may not delay new certification applications provided the manufacturer commits to correct the violation. The reason for this change was in response to comments provided by industry.

Staff has made other nonsubstantial modifications throughout the regulation and test procedures to correct grammatical and typographical errors, correct references and citations, and improve the overall clarity of these documents.

Additional Supporting Documents and Information Being Made Available

The regulatory documents for this rulemaking are available online at the following ARB internet site: <http://www.arb.ca.gov/regact/recall06/recall06.htm>

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141, 2166-2174, title 13, CCR, and the incorporated test procedures documents, after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal : <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

Appendices (3)

I – Resolution 06-44

II – Staff’s Modification to the Proposed Regulation Order

III – Test Procedures