

**LOCATION:**

Air Resources Board  
Byron Sher Auditorium, Second Floor  
1001 I Street  
Sacramento, California 95814

**PUBLIC MEETING AGENDA**

**November 19, 2009**

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(This facility is accessible to persons with disabilities.)

**TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO: <http://www.arb.ca.gov/lispub/comm/bclist.php>**

**November 19, 2009**

**9:00 a.m.**

**CONSENT CALENDAR:**

The consent calendar agenda item will be voted on by the Board immediately after the start of the public meeting. Consent items may be removed from the consent calendar by a Board member or by someone in the audience who would like to speak on that item. The following agenda item is on the consent calendar:

**Consent Item#**

**09-9-5: Public Hearing to Consider the Repeal of the 2007 Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures and Readopt the Prior EWIR Regulations and Emission Test Procedures**

*Staff has proposed a repeal of the 2007 amendments to the EWIR Regulations and to readopt the original 1988 EWIR Regulations.*

**Attached is the Proposed Resolution. Please go to <http://www.arb.ca.gov/board/ma/2009/ma111909.htm> for resolution attachments.**

**DISCUSSION ITEMS:**

**Note:** The following agenda items may be heard in a different order at the Board meeting.

**Agenda Item #**

**09-9-6: Public Meeting to Update the Board on Health Impacts of Diesel Particulate Matter Emissions**

*Staff will summarize the scientific evidence showing adverse health effects from exposure to diesel particulate matter (PM). In 1998, California identified diesel exhaust PM as a toxic air contaminant based on its potential to cause cancer, premature death, and other health problems. Diesel engines also contribute to California's fine PM 2.5 air quality problems. Those most vulnerable are children whose lungs are still developing and the elderly who may have other serious health problems.*

**09-9-1: Public Meeting to Present Information on the New Drive Clean Website**

*Staff will present the Board with an overview of the new Drive Clean website. This website is a buying guide for clean and efficient vehicles, featuring smog and global warming scores for cars certified in California.*

**09-9-2: Public Meeting to Report to the Board on Regional Targets Advisory Committee Recommendations on Methodologies for Setting Targets Under Senate Bill 375**

*Staff will present to the Board the Regional Targets Advisory Committee's final recommendations to ARB on methodologies for setting regional greenhouse gas reduction targets pursuant to Senate Bill 375 (Steinberg, Chapter 728, Statutes of 2008).*

**09-9-3: Public Meeting to Update the Board on 2009 Air Quality Legislation**

*The Legislative Director and staff from the ARB Legislative Office will present a review of air quality legislation from the first year of the 2009-2010 Legislative Session.*

**09-9-4: Public Meeting to Update the Board on the Implementation of the California Global Warming Solutions Act of 2006 (Assembly Bill 32) and the Climate Change Scoping Plan**

*Staff will present the Board with a summary of activities related to climate change, including an update on the implementation of the Assembly Bill 32 and the Climate Change Scoping Plan.*

**CLOSED SESSION – LITIGATION**

*The Board will hold a closed session, as authorized by Government Code section 11126(e), to confer with, and receive advice from, its legal counsel regarding the following pending or potential litigation:*

*Central Valley Chrysler-Jeep, Inc. et al. v. Goldstene, U.S. Court of Appeals, Ninth Circuit, No. 08-17378 on appeal from U.S. District Court (E.D. Cal. - Fresno).*

*Fresno Dodge, Inc. et al. v. California Air Resources Board et al., Superior Court of California (Fresno County), Case No. 04CE CG03498.*

*General Motors Corp. et al. v. California Air Resources Board et al., Superior Court of California (Fresno County), Case No. 05CE CG02787.*

*Green Mountain Chrysler-Plymouth-Dodge-Jeep, et al. v. Crombie, 508 F.Supp.2d 295, U.S. District Court Vermont (2007), appeal to U.S. Court of Appeals, Second Circuit, Nos. 07-4342-cv(L) and 07-4360-cv(CON).*

*California Business Properties Association, et al. v. California Air Resources Board, et al., Superior Court of California (Sacramento), Case No. 34-2009-80000232.*

*Pacific Merchant Shipping Association v. Goldstene, U.S. District Court, EDCA, Case No. 2:09-CV-01151-MCE-EFB.*

*American Trucking Association, et al. v. U.S. Environmental Protection Agency, et al., U.S. Court of Appeals, District of Columbia Circuit, Case No. 09-1090.*

*Yamaha Motor Corporation, USA v. James Goldstene, et al., Superior Court of California (San Diego County), Case No. 37-2009-00094919-CU-MC-CTL.*

*Personnel – Potential Litigation*

**OPPORTUNITY FOR MEMBERS OF THE BOARD TO COMMENT ON MATTERS OF INTEREST**

*Board members may identify matters they would like to have noticed for consideration at future meetings and comment on topics of interest; no formal action on these topics will be taken without further notice.*

**OPEN SESSION TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD ON SUBJECT MATTERS WITHIN THE JURISDICTION OF THE BOARD**

*Although no formal Board action may be taken, the Board is allowing an opportunity to interested members of the public to address the Board on items of interest that are within the Board's jurisdiction, but do not specifically appear on the agenda. Each person will be allowed a maximum of three minutes to ensure that everyone has a chance to speak.*

**THE AGENDA ITEMS LISTED ABOVE MAY BE CONSIDERED IN A DIFFERENT ORDER AT THE BOARD MEETING.****TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO:**

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

**IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE CLERK OF THE BOARD:**

**OFFICE: (916) 322-5594**

**1001 I Street, Floor 23, Sacramento, California 95814**

**ARB Homepage: [www.arb.ca.gov](http://www.arb.ca.gov)**

**To request a special accommodation or language needs for any of the following:**

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

**Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:**

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.



**PUBLIC MEETING AGENDA**

**INDEX**

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**November 19, 2009 at 9:00 a.m.**

<b><u>Agenda #</u></b>		<b><u>Pages</u></b>
<b>Consent Item:</b>		
<b>09-9-5</b>	<b>Public Hearing to Consider the Repeal of the 2007 Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures and Readopt the Prior EWIR Regulations and Emission Test Procedures</b>	<b>1-78</b>
<b>Discussion Items:</b>		
<b>09-9-6</b>	<b>Public Meeting to Update the Board on Health Impacts of Diesel Particulate Matter Emissions</b>	<b>---</b>
<b>09-9-1</b>	<b>Public Meeting to Present Information on the New Drive Clean Website</b>	<b>---</b>
<b>09-9-2</b>	<b>Public Meeting to Report to the Board on Regional Targets Advisory Committee Recommendations on Methodologies for Setting Targets Under Senate Bill 375</b>	<b>79-150</b>
<b>09-9-3</b>	<b>Public Meeting to Update the Board on 2009 Air Quality Legislation</b>	<b>---</b>
<b>09-9-4</b>	<b>Public Meeting to Update the Board on the Implementation of the California Global Warming Solutions Act of 2006 (Assembly Bill 32) and the Climate Change Scoping Plan</b>	<b>---</b>



## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to consider amendments to repeal the 2007 amendments to California's Emission Warranty Information Reporting and Recall (EWIR) Regulations and emission test procedures (referred to collectively as the "2007 EWIR amendments") and to readopt the prior EWIR regulations and test procedures.

DATE: November 19, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a one-day meeting of the Board, which will commence at 9:00 a.m. on November 19, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before November 19, 2009 to determine the order of agenda items.

If you require a special accommodation or need this document in an alternate format or language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2112, 2122, 2136, 2141, title 13, California Code of Regulations (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 Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, 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 last amended October 17, 2007, and "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto Cycle Engines," adopted December 12, 2002, 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.

**Background:** 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.

The 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 catalytic converters was able to implement such a narrow remedy that, in ARB's opinion, many vehicles with defective catalytic converters 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.

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.

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.

**Proposed Amendments:** 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 version of the EWIR regulation adopted by the Board 1988 be readopted. 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 no emission warranty information reporting or recall regulation.

### **COMPARABLE FEDERAL REGULATIONS**

The proposed amendments to the 2007 EWIR regulation and readoption of the prior EWIR regulation 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.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Staff Report: Initial Statement of Reasons for the Proposed Rulemaking – Public Hearing to Consider the Repeal of the 2007 Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures and Readopt the Prior EWIR Regulations and Emission Test Procedures."

Copies of the ISOR and the full text of the proposed regulatory amendment language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below, or may be obtained from the

Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on November 19, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed amendments may be directed to the agency contact persons, Mr. Tom Valencia, Manager, In-Use Compliance Section, at (626) 575- 6741 or Ms. Vickie Stoutingburg-Alewine, Air Pollution Specialist, In-Use Compliance Section, at (626) 575-6802.

Further, the agency representative and designated back-up contact person to who nonsubstantive inquiries concerning the proposed administrative actions may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011 or Ms. Amy Whiting, Regulations Coordinator (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposed amendments are based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2009/ewirpsip09/ewirpsip09.htm>.

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Since the proposal is the repeal of the 2007 EWIR regulation 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 regulation amendments.

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 regulation 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 cost would have be roughly equivalent. Repealing the 2007 EWIR regulation 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 regulation 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 regulation 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 business.

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.

### **SUBMITTAL OF COMMENTS**

Interested members of the public may also present comments orally or in writing at the hearing and may be submitted by postal mail or by electronic submittal before the hearing. To be considered by the Board, written comments not physically submitted at the meeting must be received **no later than 12:00 noon, Pacific Standard Time, November 18, 2009**, and addressed to the following:

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>

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, 20 copies of any written submission. Also, ARB requests that written and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulatory action.

### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107 and 43806; and Vehicle Code section 28114. This action is proposed to implement, interpret and make specific sections Health and Safety Code

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; and Vehicle Code section 28114.

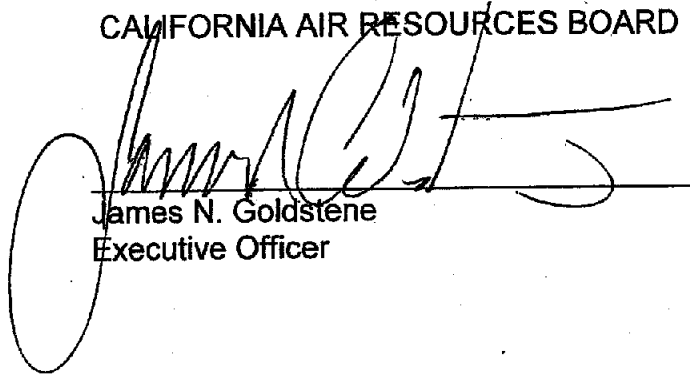
### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD



James N. Goldstene  
Executive Officer

Date: September 22, 2009

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.arb.ca.gov](http://www.arb.ca.gov).*

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**

Date of Release: October 2, 2009  
Scheduled for Consideration: November 19, 2009

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.

## Table of Contents

EXECUTIVE SUMMARY.....	ii
I. Introduction.....	1
II. History of the Program.....	2
A. 1982 In-Use Recall Program.....	2
B. Original 1988 EWIR Program.....	2
C. 2007 EWIR Amendments.....	3
III. Legal Challenges to the 2007 EWIR Amendments.....	4
IV. Why is Repeal Necessary.....	4
V. Proposed Action.....	5
VI. Comparable Federal Regulations.....	5
VII. Air Quality, Environmental, and Economic Impacts.....	6
A. Environmental Justice.....	6
B. Economic Impacts.....	6
C. Costs to State and Local Agencies.....	8
D. Costs to Engine & Motor Vehicle Manufacturers.....	8
E. Potential Impacts on Other Businesses.....	8
F. Potential Impacts on Business Competitiveness.....	9
G. Potential Impacts on Employment.....	9
H. Regulatory Alternatives.....	9
VIII. Summary and Staff Recommendation.....	9
IX. References.....	10

Appendix A Proposed Regulations Changes

## 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.

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**

Date of Release: October 2, 2009  
Scheduled for Consideration: November 19, 2009

**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~~