PROPOSED WITH 15-DAY MODIFICATIONS

State of California
AIR RESOURCES BOARD

Resolution 09-54

November 19, 2009

Agenda Item No.: 09-9-5

WHEREAS, sections 39002 and 39003 of the Health and Safety Code charge the Air Resources Board (ARB or Board) with responsibility for systematically attacking the serious air pollution problems caused by motor vehicles;

WHEREAS, section 39600 of the Health and Safety Code declares that the Board shall do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, section 39601(a) of the Health and Safety Code declares that the Board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emissions of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State, that the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, and that vehicle emission standards applied to new motor vehicles and to used motor vehicles equipped with motor vehicle pollution control devices are standards with which all motor vehicles must comply;

WHEREAS, section 43013(a) of the Health and Safety Code authorizes the Board to adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the Board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes in Division 26 of the Health and Safety Code, unless preempted by federal law;

WHEREAS, section 43013(b) of the Health and Safety Code directs the Board, consistent with section 43013(a), to adopt standards and regulations for light-duty and heavy-duty motor vehicles, and for medium-duty motor vehicles, as determined and specified by the Board;

WHEREAS, section 43105 of the Health and Safety Code authorizes the Board to require manufacturers of certified vehicles or engines to take corrective action specified by the Board, which may include recall, if those vehicles or engines have violated emission standards or test procedures;

WHEREAS, section 43105 also authorizes the Board to establish the procedures for determining, and the facts constituting, compliance or failure of compliance with emission standards or test procedures;

WHEREAS, section 43106 of the Health and Safety Code states that each new motor vehicle or engine required to meet the emission standards established pursuant to section 43101 shall be, in all material respects, substantially the same in construction as the (certification) test vehicle or engine, as the case might be, which has been certified by the Board;

WHEREAS, section 43018 of the Health and Safety Code requires the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date;

WHEREAS, section 43205 of the Health and Safety Code requires manufacturers to warrant to the ultimate purchaser and each subsequent purchaser that each motor vehicle or motor vehicle engine is: (1) designed, built, and equipped so as to conform, at the time of sale, with the applicable emissions standards specified in Part 5, and (2) free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life;

WHEREAS, in 1982 the Board adopted regulations that established ARB's first in-use vehicle recall program; the regulations were intended to reduce vehicular emissions by: (1) ensuring that noncompliant vehicles are identified, recalled, and repaired to meet the applicable emission standards and comply with the test procedures in customer use, and (2) encouraging manufacturers to improve the design and durability of emission control components to avoid the expense and adverse publicity of a recall;

WHEREAS, in 1988, as an expansion to the 1982 in-use program, the Board adopted the Emissions Warranty Information Reporting (EWIR) regulations (title 13, California Code of Regulations (CCR), sections 2141-2149) for tracking emission-control component defects affecting on-road vehicles. The EWIR regulations require manufacturers to review all emission-related warranty claims on a quarterly basis to determine the number of repairs or replacements made for each component. Each manufacturer must report warranty activity that exceeds a 1 percent level and has additional reporting requirements when a component's warranty claim rate exceeds 4 percent on an engine family or test group basis. When an emission-control component's EWIR rate exceeds a true 4 percent level, the defect is considered to be systemic in nature. Should in-use vehicles or engines exhibit a systemic defect and the manufacturer's EWIR submittals acknowledge that fact, this is considered to be a

violation of test procedure requirements and possibly emission standards. The warranty reporting regulations apply to all on-road 1990 and newer model-year passenger cars, light-duty, medium-duty, and heavy-duty trucks, California-certified engines used in such vehicles, and motorcycles;

WHEREAS, after the Board adopted the EWIR regulations, the Board adopted regulations (Cal. Code Regs., title 13, sections 1968.1-1968.5) requiring on-board diagnostic (OBD) systems on most new vehicles sold in the state; these requirements offer ways of determining vehicles' compliance with emission standards and test procedure requirements that were not taken into account when the EWIR regulations were originally adopted;

WHEREAS, in some cases in which a manufacturer has reported valid warranty claims in excess of 4 percent for an emission control device under the EWIR regulations, the manufacturer has agreed to correct the situation by recalling the affected vehicles and installing more durable emission control devices; these cases have usually involved relatively small vehicle populations or simple defects. In other instances manufacturers have agreed to extend the emission control warranties on the components in question. In many other cases, however, no corrective action has occurred. In two notable cases that involved large vehicle populations and more complex defects, two manufacturers claimed (over ARB's objection) that despite evidence of a pervasive defect in the emission control components or systems of their vehicles, ARB was not authorized to order that the defect be corrected since the affected vehicles allegedly did not exceed emission standards, on average for all vehicles, over their useful lives;

WHEREAS, based on the Board's statutory authority and its experience in the implementation and administration of the EWIR regulations, the staff identified three aspects of the regulations that needed improvement. In 2007, the staff proposed amendments ("the 2007 amendments") to the EWIR regulations that would result in corrective action for more vehicles that have defective emission control devices or systems, thereby reducing emissions;

WHEREAS, ARB staff conducted public workshops on May 2, 2006 and February 14, 2007, and met with stakeholders several times in order to include the public and affected stakeholders in the regulatory development process. Based on these meetings and workshops, the staff: released the original proposed amendments on October 20, 2006; and suggested further modifications to the October 20, 2006 proposal on December 7, 2006; January 23, 2007; February 8, 2007; March 12, 2007; and at the hearing on March 22, 2007. The original amendments as modified were unanimously approved by the Board at its March 22, 2007 hearing and given final approval by the Office of Administrative Law on December 8, 2007;

WHEREAS, the 2007 amendments would have changed the proof necessary for determining if a group of vehicles is in violation of emission standards or test procedures. Once a group of vehicles exceeds a valid warranty claim rate threshold of 4 percent or 50 vehicles, whichever is greater, ("warranty claims threshold"), it would be

considered to be in violation of test procedures and the manufacturer would be required to implement a recall and/or other corrective action, as specified.

WHEREAS, 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 service industry 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 4 percent failure rate;

WHEREAS, on December 16, 2008, the Superior Court Judge upheld most of the EWIR amendments; however, the judge's ruling invalidated the most vital portion of the 4 percent failure rate trigger that authorized the Executive Officer to order a recall or other corrective action. The judge ruled that the 4 percent failure rate did not constitute a violation of a "test procedure" as that term is used in the Health and Safety Code section 43105;

WHEREAS, ARB staff concluded that the remaining provisions of the amended regulation are unenforceable because they depend on the 4 percent failure rate corrective action trigger to have any real effect; the staff is therefore proposing that the 2007 EWIR amendments be repealed, and that version of the EWIR regulation adopted by the Board in 1988 be readopted;

WHEREAS, the staff's proposed amendments as set forth in Attachment A hereto consist of the following: proposed 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.

WHEREAS, the proposed amendments will have the effect of readopting title 13, CCR, sections 2111-2149, as they existed prior to the 2007 EWIR amendments;

WHEREAS, although there are limits and weaknesses in the 1988 EWIR regulations, they have resulted in many recalls of defective parts and vehicles and increased durability of emissions components;

WHEREAS, the 1988 California EWIR regulations are more stringent and comprehensive than their federal counterparts.

WHEREAS, in developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Costs to affected businesses will return to the status quo of the 1988 EWIR regulatory program any cost impacts are expected to be slight, absorbable, or positive;

WHEREAS, 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 businesses are necessary for the health, safety, and welfare of the people of the State of California;

WHEREAS, pursuant to section 43101 of the Health and Safety Code and section 11346.3 of the Government Code, the Board has considered and assessed the effects of the proposed amendments on the economy of the State;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the Board finds regarding the proposed repeal of the 2007 amendments that:

> Despite advances in reducing emissions from passenger cars, light-duty trucks and medium-duty vehicles, heavy-duty vehicles, motorcycles and engines used in such vehicles, California still has one of the most severe air pollution problems in the United States;
>
> To meet Federal and California Clean Air Act emissions reductions requirements, ARB must continue to seek reductions from all sources under its authority, including in-use vehicles when large-scale violations of emission standards or certification test procedures occur;
>
> While it is clear that new vehicles or engines must meet emissions standards when first sold, it is as important that the emission-control components installed by the manufacturer must be both effective and durable in customer use;
>
> ARB certification test procedures require that the manufacturer demonstrate that the emission-control components utilized to comply with the applicable emission standards are both effective and durable for the vehicles' certified useful life

period and statutes require that production vehicles are substantially the same in construction in all material respects to vehicles submitted for certification testing;

ARB's prior EWIR program requires manufacturers to monitor their emission warranty activity and report when warranty repair rates exceeds certain thresholds, and while the reporting process and staff's ability to require appropriate repairs for systemic
emission-control defects have not been totally successful, they are superior to no EWIR program at all or an unenforceable EWIR program; and

WHEREAS, the Board further finds that:

The amendments approved herein will not have a significant adverse environmental impact;

The amendments approved herein should help ensure that benefits from California's motor vehicle (and engine) emission control program are achieved statewide, and should not adversely impact any community in the State, including low-income or minority communities;

The economic and cost impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons for this regulatory action;

No new reporting requirements on California businesses are established by the proposed amendments; in fact, reporting requirements have been reduced; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected private persons and businesses than the amendments approved herein; this conclusion is based on the experience gained in the EWIR program that basing recalls or other corrective action solely on violations of emissions standards is not sufficiently effective because doing so prevents many necessary corrective actions from taking place.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2112, 2122, 2136, and 2141, title 13, California Code of Regulations, 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 as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the proposed amendments as approved herein, after making the modified regulatory language, with such other conforming modifications as may be appropriate, available for public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he or she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the amendments adopted herein will not cause the California emission standards and test procedures for new motor vehicles and engines to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. Environmental Protection Agency pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that to the extent that is necessary, the Executive Officer shall, upon adoption, forward the amendments to U.S. EPA with a request for a waiver or confirmation that the amendments are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the federal Clean Air Act, as appropriate.

BE IT FURTHER RESOLVED that the Board directs ARB staff to work with vehicle and engine manufacturers, industry groups and affected businesses to educate affected stakeholders about the requirements contained in the adopted regulatory amendments.

BE IT FURTHER RESOLVED that the Board directs ARB staff to ensure compliance with the regulation through enforcement actions as necessary.

Resolution 09-54

November 19, 2009

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures, and Readoption of the Prior EWIR Regulations and Emission Test Procedures, as set forth in Appendix A of the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, released October 2, 2009.

Attachment B: Staff's Suggested Modifications to the Original Proposal.

ATTACHMENT A TO RESOLUTION 09-54

Proposed Regulations Changes

Proposed Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures, and Readoption of the Prior EWIR Regulations and Emission Test Procedures, as set forth in Appendix A of the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, released October 2, 2009.

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.]

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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.~~

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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,~~

43107, ~~43202, 43204, 43205, 43205.5, 43206, 43210, 43211, 43212, 43213 and 43806,~~ Health and Safety Code; and Cal. Stats. 83, Ch. 103.

§ 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.

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

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

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

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

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

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

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

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

Section (a). [No change.]

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

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

§ 2111. Applicability.

(a) These procedures shall apply to:

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

* * * * *

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

§ 2122. General Provisions.

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

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

§ 2136. General Provisions.

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

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

§ 2141. General Provisions.

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

* * * * *

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

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

~~§ 2166. General Provisions.~~

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

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

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

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

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

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

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

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

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

§ 2166.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2167. Emission Warranty Information Report.

(a) A manufacturer shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2168. Supplemental Emissions Warranty Information Report.

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

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

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

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

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

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

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

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

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

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

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

(1) The manufacturer's corporate name.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2172.1. Ordered or Voluntary Corrective Action Plan.

(a) Unless a public hearing is requested by the manufacturer, the manufacturer shall submit a recall or corrective action plan to the Chief, Mobile Source Operations Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731, within the time limit specified in the notification issued pursuant to Section 2172. The Executive Officer may grant the manufacturer an extension upon good cause shown.

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

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

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

be made. Nonconformities shall be addressed by replacing a non-conforming component with an improved, conforming component.

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

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

(5) If some or all of the nonconforming vehicles or engines are to be remedied by persons other than dealers or authorized warranty agents of the manufacturer, a description of such class of persons and a statement indicating that the participating members of the class will be properly equipped to perform such remedial action.

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

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

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

(9) Any other information, reports, or data which the Executive Officer may reasonably determine to be necessary to evaluate the recall plan or other corrective action.

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

§ 2172.2. Approval and Implementation of Corrective Action Plan.

If the Executive Officer finds that the recall or corrective action plan is designed effectively to correct the nonconformity and complies with the provisions of Section 2172.1, he or she will so notify the manufacturer in writing. Upon receipt of the approval notice from the Executive Officer, the manufacturer shall commence implementation of the approved plan. Notification of

vehicle or engine owners and the implementation of repairs shall commence within 45 days of the receipt of notice unless the manufacturer can show good cause for the Executive Officer to extend the deadline.

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

§ 2172.3. Notification of Owners.

(a) Manufacturers shall notify vehicle or engine owners of a recall or other corrective action by first class mail or by such other means as approved by the Executive Officer. For good cause, the Executive Officer may require the use of certified mail to ensure an effective notification.

(b) The manufacturer shall use all reasonable means necessary to locate vehicle or engine owners. For good cause, the Executive Officer may require the manufacturer to use motor vehicle registration lists available from State or commercial sources to obtain the names and addresses of vehicle or engine owners to ensure effective notification.

(c) The Executive Officer may require subsequent notification by the manufacturer to vehicle or engine owners by first class mail or other reasonable means. For good cause, the Executive Officer may require the use of certified mail to ensure effective notification.

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

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

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

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

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

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

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

(7) A description of the procedure which the vehicle or engine owner should follow to obtain correction of the nonconformity including the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to correct the nonconformity, and a designation of the facilities at which the nonconformity can be remedied.

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

(9) A card to be used by a vehicle or engine owner in the event the vehicle or engine to be recalled has been sold. Such card should be addressed to the manufacturer, have postage paid, and shall provide a space in which the owner may indicate the name and address of the person to whom the vehicle or engine was sold.

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

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

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

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

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

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

§ 2172.4. Repair Label.

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

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

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

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

§ 2172.5. Proof of Correction Certificate.

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

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

§ 2172.6. Preliminary Tests.

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

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

§ 2172.7. Communication with Repair Personnel.

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

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

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

§ 2172.8. Recordkeeping and Reporting Requirements.

(a) The manufacturer shall maintain sufficient records to enable the Executive Officer to conduct an analysis of the adequacy of the recall or corrective action campaign. The records shall include, for each class or category of vehicle or engine, but need not be limited to, the following:

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

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

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

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

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

(6) Number of inspected vehicles or engines.

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

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

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

(10) A listing of the identification numbers of vehicles or engines subject to recall but for whose repair the manufacturer has not been invoiced. This listing shall be supplied in a standardized computer data storage format to be specified by the Executive Officer. The frequency of this submittal, as specified in subsection (c) below, may be changed by the Executive Officer depending on the needs of recall enforcement.

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

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

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

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

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

(d) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, and shall make available to the Executive Officer or his or her authorized representative upon request, lists of the names and addresses of vehicle or engine owners:

(1) To whom notification was given;

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

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

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

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

§ 2172.9. Extension of Time.

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

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

§ 2173. Penalties.

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

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

§ 2174. Availability of Public Hearing.

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

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

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

California Environmental Protection Agency
AIR RESOURCES BOARD

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

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

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

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

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

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

* * * *

F. Requirements and Procedures for Durability Demonstration

* * * *

4. §86.1823 Durability demonstration procedures for exhaust emissions.

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

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State of California
AIR RESOURCES BOARD

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

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

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

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

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

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

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

* * * *

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

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

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

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State of California
AIR RESOURCES BOARD

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

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

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

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

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

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

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

* * * *

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

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

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State of California
AIR RESOURCES BOARD

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

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

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

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

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

Subpart S Requirements

I. General Certification Requirements for Refueling Emissions

* * * *

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

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

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State of California
AIR RESOURCES BOARD

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

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

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

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

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

PART I. GENERAL CERTIFICATION REQUIREMENTS FOR EVAPORATIVE EMISSIONS

* * * *

PART II. DURABILITY DEMONSTRATION

* * * *

2. Durability Demonstration Procedures for Evaporative Emissions

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

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ATTACHMENT B TO RESOLUTION 09-54

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

STAFF SUGGESTED MODIFICATIONS
PRESENTED AT THE NOVEMBER 19, 2009 HEARING
OF THE AIR RESOURCES BOARD

*Note: This document contains staff's suggested modifications to the originally proposed regulatory text set forth in Appendix A to the Staff Report: Initial Statement of Reasons, released on October 2, 2009. The proposed modifications to the 2007 Amendments inadvertently included language, in the "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, which is now being deleted and indicated by ~~double strikeout~~. The 2007 amendment language that is being repealed is shown as underlined and strike out (e.g., ~~regulation~~). The symbol "*******" indicates that the regulatory language not being amended is not shown. The text of all proposed modifications will be made available to the public for a comment period of at least 15 days*

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

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

Subpart S Requirements

I. General Certification Requirements for Refueling Emissions

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

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

~~Beginning with 2010 model-year vehicles or engines, at the time of certification manufacturers shall state, based on good engineering judgment and available information, that the emission control devices on their vehicles or engines are durable and are designed and will be manufactured to operate properly and in compliance with all applicable requirements for the full useful life (or allowable maintenance interval) of the vehicles or engines. Also, vehicles and engines tested for certification shall be, in all material respects, substantially the same as production vehicles and engines. If it is determined pursuant to title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174 that any emission control component or device experiences a systemic failure because valid failures for that component or device meet or exceed four percent or 50 vehicles (whichever is greater) in a California-certified engine family or test group, it~~

~~constitutes a violation of the foregoing test procedures and the Executive Officer of the Air Resources Board may require that the vehicles or engines be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174. Certification applications may not be denied based on the foregoing information provided that the manufacturer commits to correct the violation.~~

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