From:	Frank Bohanan
To:	ARB Clerk of the Board
Subject:	Comments for ampts2020
Date:	Monday, July 20, 2020 11:15:22 AM
Attachments:	New Rev Response 071420.pdf

Please include the following comment, as well as those made in the attached file, in the docket for this agenda item.

"Please accept the attached comments for your consideration. They are made on behalf of multiple stakeholders/affected parties in the automotive aftermarket. Please implement these revisions.

The primary point is that aftermarket companies are not OEMs. They do not have the resources, capabilities, expertise, nor time of the OEMs. They simply cannot be expected to meet the exact same requirements made of the OEMs. There must be flexibility and leniency in their implementation. This has been the historic understanding of CARB. This was adequately considered in the original procedures being revised. This was also reaffirmed in the Initial Statement of Reasons, page 12, in the comments for "(c)(1) Vehicle or Engine Selection {Section V (a)(1,2)}:

"Since aftermarket part manufacturers are often small businesses, some of the more costly tests have been excluded from the evaluation of add-on or modified parts. To further minimize testing costs, aftermarket part manufacturers have been required to test the vehicle or engine that represents the worst case for emission impacts."

However, this proposal still increases stringency in significant and burdensome ways. In many cases, to levels identical to what is required of the OEMs. This is simply not feasible in terms of things like requiring evaporative testing, demonstration of full OBD compliance under all conditions for useful life, submitting EO applications by individual test group, and real world testing, to name just a few examples. These new requirements directly contradict the above statements, and the historic recognition by CARB relative to the limitations inherent in the aftermarket.

Please implement the recommended revisions contained in the comments provided. I intended to participate in the Board meeting (remotely, of course) and will be more than happy to address any questions which may arise due to these comments.

Thank you for your consideration,

Frank Bohanan
GreenSpeed Automotive"

Proposed Regulation Order: Procedures For Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines

Comments by Frank Bohanan

II. DEFINITIONS

- "California Smog Check Program" - The greater stringency of the proposed revisions introduces additional risk relative to the Smog Check Program. This is primarily due to the added emphasis on OBD and in-use compliance requirements. While the Smog Check test protocol is generally considered to be less stringent than the new vehicle certification tests used in these procedures, it is, nonetheless, different. As such, it introduces unknown variables over time which applicants cannot anticipate or compensate for. This is especially true should there be a change in standards and/or testing methods, both of which have occurred with some regularity in the past. In recognition of this, applicants must not be held liable by CARB with regard to any enforcement action based on failures encountered in the Smog Check program, should there be any changes made to it from the time an EO was granted. Even OEMs with their far greater resources have difficulty with this requirement to meet what is essentially an unknown future standard and/or change is testing protocol.

- The term "Defeat Device" is used in this proposal, in particular in "Section X. Audit Testing". However, it has not been defined. A suitable definition should be provided.

- "Drivability" - Since this will be used as a criteria for determining whether or not an EO will be granted there needs to be greater clarity relative to it. The definition needs to reference specific guidelines and criteria later in the proposal which better explain how this will be evaluated and what metrics will be used for doing so. As it is currently proposed this term is quite vague and arbitrary. Applicants must know how their products/devices will be judged in this regard so they can best assure compliance.

- "Evaporative Testing" - The standards and procedures referenced are not feasible for smaller aftermarket companies. They are intended for much larger OEMs with vastly greater resources and expertise. Smaller companies simply cannot afford the expense of these testing procedures. It is simply not possible to demonstrate compliance in a cost-effective manner which could be amortized by the sale of the products involved. The testing costs are simply too great to spread over the sales volumes involved without having to increase prices beyond what the market will bear. Furthermore, OEMs are able to use specific test vehicles and/or prototypes which have been properly prepared for such testing whereas the aftermarket must rely solely upon in-use vehicles of unknown history/condition to attempt to meet such stringent standards. This is unreasonable. For these and other reasons to be provided and explained later, CARB must delete these requirements and rely only upon engineering analysis and/or bench testing to demonstrate compliance with these standards.

- "Fill Pipe Testing" - The comments provided for "Evaporative Testing" apply here.

- "In-Use Monitoring Performance Ratios" - The comments provided for "Evaporative Testing" apply here. Furthermore, the expertise, development processes and resources required to properly ensure compliance with this requirement are virtually nonexistent in the aftermarket. This is further complicated by the fact each OEM takes a different technical approach to this matter in particular, as well as OBD in general. While an OEM only has to master their specific methodology, a formidable task on its own, an aftermarket applicant would have to do so for each of the different OEMs it develops products for. This is, quite simply, an impossible task. For these and other reasons to be provided and explained later, CARB must delete these requirements and rely only upon engineering analysis and/or bench testing to demonstrate compliance with these standards.

- The term "Real World Testing" and references to "additional screening tests" are used in this proposal, in particular in "Section X. Audit Testing". However, they have not been defined. A suitable definition(s) should be provided. It is not reasonable to expect to later hold applicants liable for conditions for which no criteria were given.

- "Refueling Testing" - The comments provided for "Evaporative Testing" apply here.

III. Application Submission Requirements

- While the proposals contained herein will very likely reduce the processing time required by CARB staff relative to each application submitted, this will be significantly offset by a very substantial increase in the number of applications which will need to be submitted by each applicant to cover their products. This is primarily due to the significantly more granular "Vehicle or Engine Coverage Requirements in III (d). I will provide some recommendations as to how this may be mitigated later, when that section is addressed. Furthermore, while the process for "updating" existing EOs will be significantly simplified this too will be somewhat offset by the fact that these existing EOs will likely need to be split up into a greater number of separate EOs to conform to these requirements. This combination of new requirements will certainly result in a significantly greater number of applications being submitted by each applicant.

- (a)(8) Category VIII - Other Categorized Parts: In keeping with the precedent established by the existing procedures, CARB must develop "General Compliance Criteria" for each of the subcategories listed. This will aid both applicants and CARB staff with regard to improving the processing of applications. I further recommend that the following categories be added to the list shown:

    - Supplemental Electronic Gauges/Monitors - Display data only, no capability to rewrite software/calibrations in the OEM ECU.
    - OBD "Dongles" - Used for Bluetooth-enabled scan tool apps, vehicle tracking (insurance, fleets, etc.). Scan tool and data read only.

- (a)(9) Category IX - Add-On or Modified Part(s) Not Covered by Categories II through VIII above.: As with (a)(8) above, General Compliance Criteria and guidelines for at least some product/device types must be developed by CARB for this section. Some products referenced in this section include staged performance kits, transmissions,

hybrid conversion kits, EGR coolers, camshafts, cylinder heads, etc. CARB staff surely has some additional information they can provide to the industry both with regard to what criteria they will use to evaluate these products as well as practical guidelines to help ensure compliance based on their experience with these products.

- (b)(4) Application Requirements: The requirement to provide specific installation instructions for "each kit or stand-alone part number" is an unnecessary burden. The current practice of providing "typical" instructions for each different design iteration of a given product (rather than, essentially, by test group) is more than sufficient, especially since each application will now be so much more narrowly defined by OEM, etc. There is a very high likelihood that all of the products on a given application will be sufficiently similar in terms of design that there is nothing to be gained by such duplication. Furthermore, applicants do not publish all of their instruction manuals concurrently. CARB has stated during the workshops for these procedures that they would not hold up an application by requiring that all instruction manuals be submitted with the application. So long as they were received by the time the EO application is finalized the application would be allowed to be processed. This is a much-needed and appreciated degree of flexibility. It would be further enhanced by limiting the criteria for submission of manuals to differences in design within an application. This would allow for a manual of a given "typical" design to be used across multiple kits and/or applications. This would be more stringent than the current requirements due to the greater resolution of each application under the new requirements, yet it would offer some relief from the unnecessarily stringent requirement in the proposal.

- (b)(5) The requirement for applicants to include potential "impacts relative to any affected parts, components or systems, identified by part name and number" is both vague and unfeasible. Aftermarket companies do not have the resources to run extended development fleets to accumulate mileage and observe all potential impacts. They also lack the proprietary information needed to conduct a thorough engineering analysis. Furthermore, obtaining part names and numbers is burdensome in many instances since, unlike for the OEM, this information is generally not readily available to the public for all individual components (many are only sold as part of an assembly, etc.). While it is clearly reasonable for CARB to request some estimation of the potential impact of a given product on the base vehicle, this level of detail is not feasible, nor is it well enough defined. The inclusion of the components listed in the individual categories is clearly helpful but, as written, the proposal can include virtually anything on the vehicle. CARB should clarify the language of the proposal to limit the scope to only those items listed AND eliminate the requirement for OEM part numbers. An excellent example of this would be the current ECU Modification Questionnaire that is required whenever there will be changes to the OEM software. This requests a specific listing of modifications along with some estimations of their potential impact. These are limited and well defined. While there was no specific mention of this form, it should be revised to be consistent with this proposal and also to be a model for better defining, and limiting, the information requested relative to potential impacts.

- (b)(8) The requirement for applicants to collect VIN is simply not feasible due mainly to the nature of the supply chain. Applicants sell their products in many different ways, though different types of 3rd parties. As CARB well knows, these can be distributors, retailers, installers, online drop shippers, and directly to the consumer, etc. In most of these methods there simply is no reliable way to obtain the information from the end

user/consumer with any degree of certainty. During the workshops the point was made that the return rate for warranty/registration cards, etc., is incredibly low. The suggestion was made that the applicant could provide a registration card which includes the VIN, and which MUST be sent back for the consumer to obtain the EO label needed to pass Smog Check. While those subject to Smog Check may have some motivation to comply, those living elsewhere do not and would likely not send the information back. This would be problematic at change of ownership and when out of state vehicles are brought into CA. Even when subject to Smog Check the initial new vehicle exemption period would likely result in a very low return rate. Simply put, the device manufacturer is unable to control the actions of their distributors and/or the consumer relative to compliance with this request. For these and other reasons of a more technical nature (having to do with the differences between OEM ECUs and the information which may be retrieved from them) this section must be deleted.

- (c) CARB has previously discussed its intent to allow electronic submission of EO applications. A commitment to do so, along with the potential concepts discussed, should be included in this proposal. This should also apply to the proposed "Letter of Intent" in the proposal. Such secure, traceable e-submissions are now common.

- (d)(1)(C) While there can be very significant differences in emission control systems between different types of aspiration and fueling, this is rarely the case in terms of cylinder count. OEMs tend to model combustion in an individual cylinder and then simply try to duplicate that the requisite number of times, as needed. The most common model is based on a cylinder of 0.5L capacity, thus yielding a 2.0L 4-cylinder, 3.0L 6-cylinder, etc., with almost identical emission control/OBD and other systems. It simply makes sense for OEMs to have as much commonality as possible to reduce costs and development times, etc., so they do. To reduce the number of applications required to be submitted without causing any additional emissions impact a single worst case must be used instead of an application for each different cylinder count. The other differences (aspiration, fuel injection type, etc.) would all still require separate applications but eliminating cylinder count as one of the discriminations would cut the application count by half or more in most cases. This would be a welcome relief not only for the applicants but for CARB staff as well since they would have fewer applications to review. Any cases with significant differences would still be caught by the other parameters so the emission impact would be nil, if anything.

- (d)(2) Requiring applicants to list the test groups to be excluded carries with it the responsibility for CARB to keep its listing of test groups/engine families updated in a timely fashion. OEMs may revise their EOs for many reasons, thus rendering some posted information obsolete. CARB must ensure such revisions are posted promptly.

IV. Evaluation and Testing Criteria

- (a) Drivability and Performance - This section is too ambiguous to give applicants proper guidance. The specific criteria CARB will use to evaluate these parameters must be provided. For example, what will be the acceptable deviation in idle speed? How much variation in idle speed will be considered acceptable? Does "performance" mean output (HP, Torque, BSFC, etc.) or does it mean 0-60 mph times, etc.? What

will be evaluated under "cruise"? The generic categories listed in the proposal must be further detailed with specific criteria to provide applicants with the information they need to ensure compliance with them. Furthermore, how does a applicant determine if a product would be such that a vehicle/engine owner "would be encouraged to tamper"? What are the criteria which will be used to determine that? CARB must provide far more specific guidance and/or criteria with regard to these requests if they expect applicants to comply with them. If that will not be the case then this section should be removed from the proposal.

- (b)(1) As was stated previously, aftermarket applicants do not have the resources of OEMs. They cannot run extensive durability and development fleets to try to account for every future possibility relative to what "would affect" their product's interaction with the vehicle/engine under any/all conditions. This is simply not possible. If the Executive Officer has specific concerns relative to this matter then they must be included in the test letter with the criteria which will be used for evaluation.

- (b)(2) The statements made in (b)(1) apply here as well. "Quality of Workmanship" is a highly subjective matter. Even OEMs do not agree on it as they all have their own internal quality standards and processes which differ greatly. Aftermarket companies, again, do not have the resources to match OEM-level quality in every respect, even if they knew what the criteria were. Furthermore, it is not clear if this requirement applies only to items directly related to emissions or not. If the Executive Officer subjectively determines that a product does not meet "OEM quality levels" for appearance, fit, finish, etc., yet it still complies with the applicable emission standards, will the EO be granted? If this section is to be included and enforced then greater clarity and specificity is needed co applicants can ensure compliance with it. If the Executive Officer has specific concerns relative to this matter then they must also be included in the test letter with the criteria which will be used for evaluation.

- (c) On-Board Diagnostic Requirements: Aftermarket companies simply cannot provide the same level of confidence in how their products will affect any given vehicle over its entire useful life that an OEM can. They do not have the resources, expertise, nor time to run the extensive development programs the OEMs run. Even then, the OEMs will tell you they have concerns they could not account for every possibility, which their many field fixes and recalls, etc., would validate. Therefore, the language in this section must be revised to read "The applicant SHOULD be responsible" and " the devices will not LIKELY affect" in the first sentence. This level of flexibility is necessary for the aftermarket companies due to their relative lack of capability. While they will still make every effort to ensure there are no negative effects on the OBD system with their products installed, they simply cannot guarantee it with compete certainty. Neither can the OEMs, really, but they are required to and have the resources and capability to provide a significantly higher level of confidence in doing so. The current requirement to proved several scans over the course of the test protocol along with mileage accumulation to ensure readiness codes set and no DTCs result fro the installation of the device have proven adequate to demonstrate the OBD system is unaffected. In addition, the requirements of Smog Check further serve to highlight any problems which may result in the future. It is clearly not in the interest of any applicant to have such things occur. Therefore, the suggested revisions above must be implemented and the current method of taking multiple scans be retained.

- (d) Most of the comments for this section have already been made so I will not repeat them but just incorporate them again by reference. The primary message is that aftermarket companies are not OEMs. They do not have the resources, capabilities, expertise, nor time of the OEMs and thus cannot be expected to meet the same requirements of the OEMs. This has been the historic understanding of CARB and it was adequately considered in the original procedures which this proposal seeks to revise. This is reaffirmed in the Initial Statement of Reasons, page 12, in the comments for "(c)(1) Vehicle or Engine Selection {Section V (a)(1,2)}:

  > *"Since aftermarket part manufacturers are often small businesses, some of the more costly tests have been excluded from the evaluation of add-on or modified parts. To further minimize testing costs, aftermarket part manufacturers have been required to test the vehicle or engine that represents the worst case for emission impacts."*

  However, this proposal increases stringency in very significant and burdensome ways. In many cases, to levels identical to what is required of the OEMs. This is simply not feasible in terms of things like requiring evaporative testing, demonstration of full OBD compliance under all conditions for useful life, EO applications by individual test group, and real world testing, to name just a few examples. These new requirements directly contradict the above statements, and the historic recognition by CARB relative to the limitations inherent in the aftermarket. I will use a few specific examples from Sections (d)(1) - (f)(2) to validate these claims:

  - The possible requirement for full vehicle evaporative testing (SHED, ORVR, fill pipe, etc.) is simply not reasonable, especially when the potential for multiple re-tests and additional testing due to more applications being submitted exists. The cost of these tests are not within the reach of the vast majority of aftermarket companies. There are very few test labs capable of performing these tests available to the aftermarket. The necessity of having to test in-use vehicles (rather than new vehicles or prototypes which have been carefully prepped and stored in controlled environments prior to testing, as the OEMs do) puts aftermarket companies at a severe disadvantage, even if they could afford the testing. Compliance with the evaporative testing requirements must be accomplished via engineering analysis and, in very rare cases, via component bench testing. Full vehicle testing is simply not a reasonable requirement for most aftermarket companies if even a single test protocol were to be run, let alone if many more will need to be run. Many factors such as the system materials, volume, vapor path/impingement, flow obstructions, HCT specifications and location, fuel delivery (GDI vs PFI, etc.), etc., can be used to very effectively determine if the aftermarket product is likely to have any significant effect on evaporative emissions. <u>These options must be used in lieu of requiring full vehicle evap. testing for relevant add-on or modified parts</u>.

  - Due to the difficulty aftermarket companies often have in locating suitable test vehicles CARB must keep the number of test vehicles which will be required to a minimum. OEMs have an unlimited supply of in-house test vehicles, the aftermarket does not. With a greater number of applications the problem becomes even more acute. <u>CARB must be flexible in allowing a single vehicle to be used for multiple applications whenever possible. Furthermore, only one</u>

"worst case" vehicle should be required per application. CARB implies in the proposal that more than one vehicle may need to be tested for a given application. That should be a matter for CARB to do internally for confirmatory testing, if necessary, not a requirement of the applicant (unless the initial vehicle fails, of course). Furthermore, OEMs have no limitation with regard to how long they may keep a vehicle available for testing. Since aftermarket companies generally use customer vehicles or rentals, they generally cannot retain a vehicle for a prolonged test period due to cost and liability concerns.

- The ability to vehicle test engines originally certified to HD/engine testing standards is greatly appreciated. However, CARB must recognize that test vehicles in this class will be even harder to find and thus provide more flexibility.

- The prior comments relative to Categories VIII & IX relative to additional sub-categories, specific criteria, guidelines, etc., apply here as well.

- OEMs must certify their vehicles/engines by individual test group and evap. family. Aftermarket companies previously had far great flexibility in combining test groups, including from different OEMs. The new criteria for application submittal effectively eliminate that. However, there are still instances where groups/families may be combined without any potential effect on emissions. CARB must allow applicants the flexibility to combine test groups/families when it is feasible to do so. This will reduce costs for applicants by reducing the number of applications which must be submitted, and the number of vehicles which need to be acquired. CARB will also benefit from the reduction in applications with only a very slight, if any, increase in the complexity of a very small number of applications which may attempt to use this option.

V. Test Vehicle or Engine Selection and Testing:

- (a) As stated in the prior section, Due to the difficulty aftermarket companies often have in locating suitable test vehicles CARB must keep the number of test vehicles which will be required to a minimum. OEMs have an unlimited supply of in-house test vehicles, the aftermarket does not. With a greater number of applications the problem becomes even more acute. The ability to test other vehicles within a test group so long as the worst case parameters are used is a degree of flexibility that is greatly appreciated. CARB must be flexible in allowing a single vehicle to be used for multiple applications whenever possible. Furthermore, only one "worst case" vehicle should be required per application. CARB implies in the proposal that more than one vehicle may need to be tested for a given application. That should be a matter for CARB to do internally with confirmatory testing, if necessary, not a requirement of the applicant (unless the initial vehicle fails, of course). Furthermore, OEMs have essentially no limitation with regard to how long they may keep a vehicle available for testing. Since aftermarket companies generally use customer vehicles or rentals, they generally cannot retain a vehicle for a prolonged test period due to cost and liability concerns.

- (a)(1)(B) As stated previously, CARB must ensure the OEM certification database is updated in a timely fashion so applicants can be confident they have the correct

information when submitting their applications. OEM revisions do occur and a delay in posting the updated information will result in unnecessary delays and wasted time.

- (a)(1)(D) This criteria is very vague. CARB must provide additional guidelines and/or more specific criteria to help ensure applicants know what they must comply with.

- (a)(1)(2) The added flexibility of testing engines certified to HD engine dyno test procedures on a chassis dyno is greatly appreciated. However, some additional guidance would be beneficial with regard to which vehicle to use and/or which is considered the worst case. This vehicle class has very high vehicle-to-vehicle variations in terms of configurations, weights, etc. It would be better for all concerned if CARB were to provide some additional guidance with regard to vehicle selection.

- (b)(2) With current emission standards being as numerically lower as they currently are, and likely to get lower still, the 10% increase allowed over the baseline emission test is insufficient. Test-to-test variability alone can consume most, if not all, of that tolerance in many cases. The original procedures also had the option of using a fixed number (1 gm.) which is clearly no longer acceptable with the much lower standards of today. However, the concept of a fixed number option still has merit. CARB must remove the discretionary aspect of the comparison to an existing standard being met by another vehicle or engine in a similar weight class. Thus, if the modified test results exceed those of the baseline test by more than 10%, but are "below any existing emission standards for a vehicle or engine in a similar weight class" then the Executive Officer shall (not "may consider") accept the data and grant the EO.

- (b)(3) Additional or Alternate Testing: Once again, CARB must recognize that aftermarket companies do not have the resources, etc., of the OEMs and thus such requirements for additional testing must be limited accordingly. This subject has already been discussed so I will not repeat my comments other than to say those exclusions must not be limited only to the testing that's been required of the OEMs. They must also include any other testing which the applicant was not properly advised of at the time of the EO application. CARB cannot hold applicants liable for meeting standards and requirements they were not given proper, advance notice to evaluate comply with at the time of application submission. Those too must be excluded.

- (c) While it is certainly possible for an applicant to demonstrate compliance to the SAE J1978 & J1939 standards for "a" scan tool, is not reasonable, or feasible, to require they must ensure such compliance with all such tools. That would be beyond the capabilities of virtually any aftermarket company except perhaps those which have a close relationship with an OEM or a scan tool manufacturer. It would not be possible for the majority of aftermarket companies to provide such broad assurance.

  The subject of in-use monitoring performance has also been addressed previously. It is not possible for aftermarket companies to conduct the extensive development and verification procedures the OEMs do to meet these in-use requirements so they must be deleted. Like the OEMs, the potential liability of a failed Smog Check is an incentive to ensure nothing is intentionally done to affect the OBD system in-use. However, unlike the OEMs, the aftermarket does not have the capability to verify this with a high degree of confidence (and surely without certainty) in advance.

- (e) Test Laboratory: The ability of an OEM to use an in-house laboratory instead of an independent laboratory represents a significant advantage over aftermarket companies. This is especially true with regard to the ability to have access to the vehicle during testing. CARB must not allow OEMs to unfairly benefit from this.

VI. Criteria for Category I Application Requests

- The inclusion of a provision for expedited processing of the applications in this category is greatly appreciated. The ability to submit applications electronically must be added as soon as is feasible to further streamline the application process.

- (d) Consolidation of Executive Orders: The new application criteria will result in a dramatic increase in the number of applications which will be submitted. CARB must grandfather in older EOs so they don't have to be split up to conform to the new filing standards. It would clearly not be practical to try to split up some of the older EOs that have hundreds of vehicle applications on them. It also is unnecessary for older vehicles which do not have the same level of technology in their emission control systems. The proposed procedures must, of course, only apply to new applications but there must be some provision to carry over existing EOs onto new applications without always having to split them up. Clearly, that will not always be needed.

VII. Action on Application

- (a) Basis of Evaluation - Over the years, CARB has used its discretion to provide a degree of flexibility when evaluating EO applications. It has done so by allowing alternative testing methods, data from prior applications/products, bench testing, similarity of design, operative analysis, and more. With the increased stringency of this proposal, and its more OEM-like level of stringency, such flexibility and creativity will be even more critical to helping to ensure compliance. Simply put, increased stringency is counterproductive if it has the effect of reducing compliance due to cost, technical difficulty, and/or competitive pressures, etc. The "carrot" of more streamlined, efficient, and timely processing of EO applications must not be counteracted by the "stick" of overly stringent requirements and increased costs.

- (b) As was stated previously, applicants must not be held to requirements which they were not properly made aware of at the time of application submittal. CARB has the opportunity via the test memo to specify whatever procedures (based upon how the original vehicle/engine was certified) it believes are required for the EO to be granted. Subsequent testing, be it for confirmatory purposes or otherwise, must not introduce new requirements for which the applicant had no opportunity to assess for compliance prior to submitting its application. Doing so would constitute a new, higher level of stringency beyond both what these procedures require, and what is allowed by statute.

VIII. Labeling Requirements

- The mandate to provide documentation or an engineering analysis to prove compliance with the durability requirements for the product information label must also absolve the applicant from any future liability should the label fail to survive for the useful life of the vehicle. The applicant must rely upon the information provided to it by the label supplier, which will be the basis of its documentation and analysis. If the label does not meet the standards or specifications promised by the label supplier over the course of the vehicle's useful life there must be no liability for such by the applicant. Aftermarket companies do not have the resources to run accelerated aging and/or other verification procedures like the OEMs do. They must rely solely upon the information provided by the label supplier. Therefore, after having demonstrated good faith and intent via the submission of the required documentation/analysis, they must not be held liable if the label should fail to live up to the promises of its supplier.

IX. Issuing an Executive Order

- As was previously stated, the requirement for applicants to provide vehicle VIN information (per Section III (b)(8)) within 45 days of a request by CARB is simply not feasible due to the nature of the supply chain for add-on or modified parts AND the unreliable nature of end user/consumer behavior relative to the return of warranty/registration cards, etc. CARB must delete this request from this proposal.

X. Audit Testing

- With regard to CARB's right to perform audit testing, there must be, as a practical matter, a time limit stated. The proposal implies this right is essentially indefinite, or at least for the useful life of the applicable vehicle(s). CARB would likely be very challenged, in most cases, to find a product to purchase "off the shelf" 15 years or so after an EO was granted. Furthermore, it is not reasonable to expect the applicant to retain an inventory of every product for which it has been granted an EO, even after it may have been discontinued. Since such optional testing would be motivated only for confirmation and/or enforcement, the application must be given a defined limitation on what their potential liability may be so they can assure compliance.

- Again, as was stated previously, applicants must not be held to requirements which they were not properly made aware of at the time of application submittal. CARB has the opportunity via the test memo to specify whatever procedures (based upon how the original vehicle/engine was certified) it believes are required for the EO to be granted. Subsequent testing, be it for confirmatory purposes or otherwise, must not introduce new requirements for which the applicant had no opportunity to assess compliance prior to submitting its application. Doing so would constitute a new, higher level of stringency beyond both what these procedures require, and what is allowed by statute. OEMs have the resources to conduct PEMS testing to ensure they will be compliant for such "real world" testing, aftermarket applicants do not. OEMs are also very well versed in what constitutes a "defeat device" yet these procedures do not even define the term. CARB must, at a minimum, define what it considers one to be.