



June 22, 2007

Comments of the

**Motorcycle Industry Council, Inc.**

Re: Proposed 15-Day Notice Final Amendments

To CARB Proposed Warranty Information

and Reporting and Recall Regulatory Amendments

The Motorcycle Industry Council, Inc. (MIC) submits these comments on behalf of its more than 300 members, who are manufacturers and distributors of motorcycles, scooters, parts and accessories, as well as allied trades members such as publishing, insurance and consulting companies.

1. Incorporation of Prior Comments – MIC has submitted extensive comments at prior stages of this rulemaking, all of which are incorporated herein by reference. We reiterate that the board has exceeded its jurisdiction by approving regulations that authorize recall even if vehicles are still in compliance with the standards to which they were certified, and that the hearing process in the regulations, by restricting the record in a manner that prevents meaningful review of a recall determination, is violative of state and federal due process requirements.
2. Need for Full 45-Day Comment Period – In its comments submitted prior to the March 22, 2007 hearing MIC requested that the staff re-notice this matter for a full, 45-day comment period so that regulated stakeholders and the public would have sufficient time to review and prepare comments. This request was based on the extensive changes to the proposed regulations amounting to a near-wholesale re-writing of the regulations. The need for a full comment period is even more imperative now, because the staff presentation at the March 22 hearing contained a large amount of new explanatory and technical material that had never been presented before. The new material went far beyond the scope of explaining the wording changes being made to the regulations. Neither MIC nor other interested persons had any advance opportunity to review that material and prepare comments, and were precluded from even making comments at the hearing due to the short time limit that was placed on oral comments. This process of loading the record with new staff material at the last minute did not comply with the California Administrative Procedure Act or basic fairness tenets of due process. MIC therefore requests that this 15-day comment period be halted, and that a proper 45-day comment period be commenced (including the preparation and advance publication of a revised staff report containing all staff technical and legal arguments).

2. Need for Revised Text re Economic Impacts – The 15-day revisions contain new wording that inserts “economic impacts” as something to be considered by the Executive Officer at several points in the regulatory process. This wording was not previously presented to the Board or the public for review. No explanation for this change is given, but it appears to be responsive to industry comments. MIC supports the idea of making this change, although this change by no means addresses or corrects the other serious problems with this rulemaking noted in our previous comments. However, we are concerned that the term “economic impacts” is not defined, such that the delegation to the Executive Officer to interpret this term is overbroad and unguided, and therefore subject to abuse of discretion. MIC recommends that a reasonable definition of this term be added, and that the definition be proposed for public comment before it is adopted.

Another problem is that the text of this change is confusing and ineffective, and needs re-drafting. As written, the text does not assure that economic impacts will in fact be considered. For example, the new wording in section 2166(d) states that the Executive Officer may, but is not required, to consider economic impacts “except as provided in 2168(f)”. This wording requires section 2168(f) to be the place where consideration of economic impacts is authorized. Unfortunately, 2168(f) as now re-written does not refer to economic impacts, so the cross-reference to 2168(f) leads nowhere. The same problem afflicts cross-references to 2168(f) in new section 2168(k) and the new wording in section 2174.

To correct this problem, and to allow economic impacts in fact to be considered, we suggest that the words “but is not required” and “except” in section 2166(d) be deleted, and that the first sentence in section 2168(f) be revised to read as follows:

(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, or that correction of the failure will have an undue economic burden on the manufacturer, then no corrective action shall be required for the affected vehicles or engines.

The underlined wording above shows MIC’s recommended change to the new staff wording if these provisions are not re-noticed for public comment with a proper definition of the term “economic impacts” as recommended above.