

State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER ADOPTION OF THE 2008 AMENDMENTS TO
THE CALIFORNIA ZERO EMISSION VEHICLE REGULATION**

Public Hearing Date: March 27, 2008
First Public Availability Dates: July 25 - August 15, 2008
Second Public Availability Date: October 3, 2008
Deadline for Public Comment: October 20, 2008

At its March 27, 2008 public hearing, the Air Resources Board (ARB or the Board) approved, with modifications, staff's proposed amendments to title 13, California Code of Regulations (CCR), sections 1900, 1961, 1962, 1962.1 and associated test procedures, and the new title 13, CCR, section 1962.1 and its new associated test procedures. These regulations relate to the Zero Emission Vehicle (ZEV) program requirements for auto manufacturers to develop and commercialize ZEV technologies.

The Board's Action:

Following the Board's direction at the public hearing to modify the original proposal, staff provided a Notice of Public Availability of Modified Text with the modified text on July 25, 2008 (first notice). Based on the comments received in response to the first notice, staff is providing this Second Notice of Public Availability of Modified Text (second notice) to further modify the regulatory text and to solicit public comment on these latest proposed modifications.

Modified Text Being Made Available

Staff has prepared regulatory text that includes the Board's approved and directed modifications, other conforming modifications needed to clarify regulatory intent and harmonize the regulatory provisions as directed by the Board, and further modifications in response to comments received during the first post-Board hearing public comment period. Attachment A includes staff's additional modifications to the regulatory text. A note in Attachment A explains how the texts of both the initial and the additional modifications are shown. With this notice, the modified text in Attachment A is being made available for public comment prior to final action by the Board's Executive Officer to all who commented or testified on the original proposal or who requested notification. All of the documents are available online for public inspection at ARB's internet website for this rulemaking at: <http://www.arb.ca.gov/regact/2008/zev2008/zev2008.htm>. They are also available from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

Summary of Proposed Additional Modifications

Travel Provision

The Board directed staff to modify the “travel provision” to ensure that states administering the California ZEV requirements pursuant to section 177 of the federal Clean Air Act (42 U.S.C. § 7507) (hereafter, know as “section 177 states”) are not overwhelmed by banked ZEV credits earned in California. The impact of California banked credits in section 177 states could potentially result in very few or no advanced technology partial ZEVs (AT PZEV) and partial ZEVs (PZEV) being delivered for sale in those states. In the first notice, staff modified the travel provision to provide for proportionality of California’s credits to a section 177 state’s credits. This was accomplished by multiplying ZEV credits earned in another state by a ratio of a manufacturer’s section 177 state sales to its California sales for a given model year. Staff received comment from auto manufacturers that this proportionality equation might have unintended consequences if the carry forward and carry back provisions are used in combination with the travel provision. Staff also received comment regarding the model year first affected by the proportional travel provision.

Responding to these comments, staff has further modified the text. Proportionality continues, but is proposed to begin in model year 2010. The further modification also specifies that a credit earned in a section 177 state is earned at a proportional value in the section 177 state, while credit is earned in the full amount in California. Lastly, a manufacturer complying with the alternative path requirements in the 2010 and 2011 model years in a section 177 state will not be affected by proportionality if those credits are produced in California. The maximum number of credits allowed for compliance in the section 177 state for the 2010 and 2011 model years, however, is limited to the section 177 state’s alternative path minimum ZEV percentage. Any credits earned in California and used in a section 177 state beyond the minimum alternative path ZEV percentage are subject to proportionality. Section 1962.1(d)(5)(E) has been modified to reflect these further changes.

Minimum ZEV Percentage

Due to an error in calculating the included percentage of light-duty trucks in the heavier weight category (LDT2s), staff released an incorrect percentage for the minimum ZEV percentage that must be met during the 2012 through 2014 timeframe. The correct ZEV percentage is 0.79%. For this reason, both the minimum and maximum percentages found in the table in section 1962.1(b)(2)(D)3. have been modified along with the maximum percentage allowed for Enhanced AT PZEVs found in section 1962.1(b)(2)(D)1.

Transportation Systems Credits

The first notice’s modified text disallowed the use of additional credits earned by transportation systems for the portion of the ZEV requirement that must be met with ZEVs (minimum ZEV floor). Staff received comment from auto manufacturers that disallowing the use of transportation system credits in the minimum ZEV floor would

greatly discourage the use of ZEVs in transportation systems. Agreeing that the use of ZEVs in transportation systems furthers the Board's overall ZEV commercialization and environmental goals, staff has modified the text to allow use of credits earned by ZEVs placed in transportation systems to meet up to one tenth of the portion that must be met by ZEVs. Section 1962.1(b)(2)(D)4 has been modified to reflect these changes.

Additional Modifications

CCR, title 13, Section 1962

1962(b)(1)(C): Staff received comment from auto manufacturers concerning the unnecessary inclusion of the LDT2 percentage for model year 2007. This was an oversight and the provision has been modified to exclude the 2007 model year to be consistent with a January 16, 2007 advisory to auto manufacturers.

CCR, title 13, Section 1962.1

1962.1(b)(1)(B): In response to auto manufacturers' comments, staff has modified the language in this section to base the 2012 and subsequent model-year requirements on a rolling average of the fourth, fifth, and sixth year previous to the compliance model year. Manufacturers are also allowed to base their annual sales on the same model year in which they are complying. Manufacturers are allowed to switch every year between these two methods. For example, a manufacturer complying for model year 2014 would be allowed to use the average number of vehicles produced and delivered for sale from model years 2008 through 2010, or projected sales volumes for model year 2014.

1962.1(b)(2)(B)1.b. and (b)(2)(B)1.b.ii.: Auto manufacturers commented that the modifications in the first notice inappropriately allowed manufacturers complying with the alternative path requirements to switch between applicable sales volume determination methods during the 2009 through 2011 model years. Because the alternative path requirements have been based on designated periods or time frames, staff agrees with this comment and has deleted language that would have allowed manufacturers to switch between applicable sales volume determination methods.

1962.1(b)(2)(D)1., (b)(2)(D)2., and (b)(2)(D)3.: Auto manufacturers commented that the allowed use of Type 0 ZEVs needed to be more explicitly stated. Staff concurs and has modified the regulatory text in each provision and the table to reflect the allowed use of Type 0 ZEVs in meeting the ZEV requirements. Section 1962.1(b)(2)(D)3. also has been reworded to improve clarity.

1962.1(c)(3)(A): An auto manufacturer commented requesting the zero-emission vehicle miles traveled (VMT) allowance for an Enhanced AT PZEV with a equivalent all electric range (EAER) of exactly 10 miles. Staff has added the allowance to the table in section 1962.1(c)(3)(A) (change shown in double underline) as: EAER>≡ 10 miles.

1962.1(c)(4)(A): An auto manufacturer commented requesting allowance of cryogenic storage for the high pressure hydrogen storage. Since cryogenic storage of hydrogen could be at a lower pressure than allowed by the language released in the first notice, staff modified the language to include storage at cryogenic temperatures as another basis for the advance componentry allowance.

1962.1(c)(4)(B)1.: An auto manufacturer commented requesting ARB to delete a provision from section 1962.1(c)(4)(B)1. that only allowed hybrid electric vehicles to receive credit if they qualified for a zero-emission VMT allowance. To correct this oversight in the first notice modifications, the sentence has been deleted.

1962.1(d)(5)(B): The South Coast Air Quality Management District commented with a proposal that the fast refueling requirements for Type IV and V ZEVs be deleted to allow for plug-in fuel cell vehicles within the regulation. Though maintaining the fast refueling requirements for Type IV and V ZEVs, staff has modified the provision to allow the Executive Officer to waive the requirements if a vehicle utilizes more than one ZEV fuel and to base the amount of credit earned on UDDS ZEV range.

1962.1(d)(5)(F)3.: Auto manufacturers commented regarding the required length of the neighborhood electric vehicle (NEV) warranty requirements added during the first notice. Staff has modified the language to clarify the intent of a 24-month warranty.

1962.1(g)(8): Auto manufacturers commented on the modifications in the first notice regarding the penalty for failure to meet the ZEV requirements. Staff has deleted “production period” from this provision and reverted back to the original language released in the Initial Statement of Reasons: specified time period. A cross-reference to section 1962.1(g)(7)(A) has also been added to clarify that the ZEV deficit can be made up within the time period specified by that section.

1962.1(j)(2) and 1962.1(j)(9): Due to the changes in sections 1962.1(d)(5)(E) and 1962.1(g)(8), definitions in section 1962.1(j) have been modified: “production period” has been removed and “section 177 state” has been added.

Other Modifications:

Modifications that correspond with those described for the regulations are also proposed for the incorporated test procedures. For both the regulations and the test procedures, staff also proposes other nonsubstantive modifications for clarification such as correcting typographical, grammatical or numbering errors, and correcting references and cross references. All modifications are shown in the proposed regulatory text in Attachment A.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 1900, 1961, 1962, and 1962.1 and associated test procedures, and the new title 13, CCR, section 1962.1 and its associated test

procedures, along with other modifications, after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications that may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if warranted.

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

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

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

Facsimile submittal: (916) 322-3928

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

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