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FROM: Ms. Amy Whiting
Regulations Coordinator
Office of Legal Affairs

DATE: April 9, 2013

SUBJECT: Section 100 Changes without Regulatory Effect – Incorporated Test Procedures

The Air Resources Board (ARB or Board) hereby submits the attached Form 400, regulation text, and two incorporated test procedure documents related to amendments made to the LEV III GHG ZEV Regulation for Federal Compliance in December 2012. ARB previously filed this Section 100 action in OAL File Number 2013-0207-01N, but was unable to compile the final documents needed for approval by OAL's determination deadline. The file was previously assigned to Richard Smith, and we were very close to meeting the final requirement for approval. Therefore, ARB requests this new filing be assigned to Richard Smith for review. In addition, ARB would also like to respectfully request a quick review, if possible. With that stated, ARB hereby requests nonsubstantive corrections as specified in the following test procedures:

- (1) California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012; and
- (2) California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles, as last amended December 6, 2012.

These test procedures contain emissions standards and testing requirements that a manufacturer may use to certify engines for use in medium-duty vehicles (8,501 – 14,000 pounds gross vehicle weight rating (GVW)) and heavy-duty vehicles ($\geq 14,001$ pounds GVW) without requiring the manufacturer to test the engines in actual vehicles. As will be explained later in this statement, these are referred to in some regulatory language as "incomplete vehicles." Test procedure number (2) above also includes chassis-based emission standards and testing requirements that only apply to "complete" heavy-duty vehicles ($\geq 14,001$ pounds GVW) and do require

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manufacturers to test the engines in actual vehicles. However, since the chassis-based requirements in test procedure number (2) do not apply to medium-duty vehicles, they are not relevant for the purposes of this filing. (Chassis-based emission standards and test procedures for medium-duty vehicles are contained in the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," (see Attachment 4) incorporated by reference in title 13, CCR, 1961.2.) Test procedures numbers (1) and (2), above, are incorporated by reference in title 13, CCR, 1956.8 subsections (b) and (d) and were amended twice in 2012. The first amendment was in OAL File Number 2012-0625-03S, which was identified as the Low-Emission Vehicle III Greenhouse Gas rulemaking and was approved by OAL and filed with the Secretary of State on August 7, 2012.

The second amendment was in OAL File Number 2012-1206-01S, which was identified as LEV III GHG ZEV Regulation for Federal Compliance. These latter amendments were to accept manufacturer demonstrated compliance with the final national passenger motor vehicle greenhouse gas regulations for the 2017 through 2025 model years, as an option to achieve compliance with California's greenhouse gas regulations for those model years. Those amendments were approved by OAL and filed with the Secretary of State on December 31, 2012 (Attachment 1). Dates in the two incorporated test procedures indicating the model years before and after which Medium-Duty Vehicles 8,501 to 10,000 pounds GVW must certify to the LEV III chassis standards were inadvertently changed during this action. The LEV III standards are those contained in section 1961.2, as indicated in the first sentence of the *Introduction* to this section, which states the following:

This section 1961.2 contains the California "LEV III" exhaust emission standards for 2015 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles. (See Attachment 2.)

For test procedure number (1) above, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," as last amended December 6, 2012, the incorrect dates are located in the table and in the footnote on page 3. For test procedure number (2) above, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," as last amended December 6, 2012, the incorrect dates are located on pages 2 and 3, under 11. Emission standards for diesel heavy-duty engines and vehicles. A. California provisions. 5. Standards for Medium-Duty Engines. 5.1 Requirements Specific to Heavy-Duty Engines Used in Medium-Duty Vehicles 8,501 to 10,000 pounds GVW., and 5.3 Exhaust Emission Standards for Medium-Duty Engines.

The incorrect dates in the test procedures described above incorrectly state in two places that medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 pounds GVW must meet LEV III chassis standards beginning with the 2022 model year. Additionally, the 2019 model year, the last year before compliance with the LEV III chassis standards is required, is incorrectly stated in four places as the 2021 model year. The incorrect dates conflict with the regulation text codified in title 13, CCR, 1961.2, *Introduction*, which states the following in the last sentence:

Introduction. ... All medium duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 lbs. GVW, including incomplete otto-cycle medium-duty vehicles and medium-duty vehicles that use diesel cycle engines, must be certified to the LEV III chassis standards and test procedures set forth in this section 1961.2 in 2020 and subsequent model years. (See Attachment 2.)

The incorrect dates also conflict with 13, CCR, 1956.8 subsection (c)(1)(B), footnote B to the table and subsection (h)(2), footnote A to the table. (Section 1956.8 subsection (c)(1)(B) contains the emission standards for Otto-cycle (or gasoline) engines used in medium- and heavy-duty vehicles, while section 1956.8 subsection (h)(2) contains the emission standards for diesel engines used in medium- and heavy-duty vehicles.) Both footnotes state:

For the 2020 and subsequent model years, medium-duty vehicles 8,501 to 10,000 pounds GVW must certify to the primary emission standards and test procedures for complete vehicles specified in section 1961.2, title 13, CCR. (See Attachment 3.)

Together these regulations correctly state that all medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 pounds GVW must meet LEV III chassis standards beginning with the 2020 model year. The errors in the dates in the two test procedure documents are inconsistent and conflict with the dates in these regulations.

Although there appear to be inconsistencies in some of the language in the LEV III related regulations and the two test procedures, none actually exist for the following reasons:

- (1) It appears that there is an inconsistency between those medium-duty vehicles described in 1961.2, *Introduction*, as being "less than or equal to 10,000 pounds GVW" and those described in section 1956.8 subsection (c)(1)(B), footnote B to the table and subsection (h)(2), footnote A to the table as being "8,501 to 10,000 pounds GVW." However, an inconsistency does not actually exist, since all medium-duty vehicles are $\geq 8,501$ pounds GVW. Thus the

regulatory reference to medium-duty vehicles as " $\leq 10,000$ pounds GVW" and the phrase " $\leq 10,000$ pounds GVW" is consistent with reference to medium-duty vehicles as "8,501-10,000 pounds GVW" in other regulations and the two test procedures.

- (2) Ultra-Low-Emission Vehicle (ULEV) and Super-Ultra-Low-Emission Vehicle (SULEV) emission standards are referred to in test procedure (2) above. Currently all engines that are certified for use in medium-duty vehicles must meet either ULEV or SULEV emission standards. Chassis standards for these categories are part of the LEV III emission standards in section 1961.2 subsection (a)(1). In 2020 and subsequent model years, medium-duty vehicles 8,501 to 10,000 pounds GVW that were previously allowed to certify to ULEV or SULEV engine emission standards must be certified to LEV III standards as indicated in 1961.2 Introduction. Thus, the last model year in which medium-duty vehicles are allowed to meet ULEV or SULEV emission standards should correctly state in test procedure number (2) the 2019 model year, not the 2021 model year.
- (3) Section 1956.8(c)(1)(B) footnote B, and (h)(2) footnote A refer to complete vehicles, whereas, section 1961.2 introduction refers to "includes incomplete vehicles." A "complete vehicle" is one that has the primary load carrying device or container attached at the time the vehicle leaves the control of the manufacturer of the engine. Complete vehicles are usually required to certify using chassis standards and test procedures. An "incomplete vehicle" is one that does not have the primary load carrying device or container attached at the time the vehicle leaves the control of the manufacturer of the engine. Incomplete vehicles are historically not required to certify using chassis standards and test procedures. So, they are typically certified using engine standards and test procedures. Both complete and incomplete medium-duty vehicles 8,501 to 10,000 pounds GVW are required to meet LEV III standards beginning with the 2020 model year. Per section 1956.8(c)(1)(B) footnote B, and (h)(2) footnote A and the introduction to section 1961.2, the emission standards and test procedures in section 1961.2 apply to both complete and incomplete medium-duty vehicles 8,501 to 10,000 pounds GVW, thus making these regulations consistent with each other.
- (4) Section 1956.8(c)(1)(B) footnote B, and (h)(2) footnote A are linked to the emission standards for engines used in medium-duty vehicles contained in the tables. These footnotes refer to "the primary emission standards and test procedures" in section 1961.2. The first sentence in the *Introduction* to section 1961.2 establishes these standards as the primary emission standards for 2015 and subsequent model year medium-duty vehicles by stating, "This section 1961.2 contains the California "LEV III" exhaust emission standards for

2015 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles," thus making the primary emission standards consistent with the LEV III standards beginning with the 2020 model year. The last sentence in the third paragraph of the *Introduction* then confirms that "All medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 lbs. GVW, including incomplete otto-cycle medium-duty vehicles and medium-duty vehicles that use diesel cycle engines, must be certified to the LEV III chassis standards and test procedures set forth in this section 1961.2 in 2020 and subsequent model years," thus making all three regulations consistent with each other.

As stated above, these three regulations, taken together, consistently state that all medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 pounds GVW must meet LEV III chassis standards beginning with the 2020 model year.

On November 15, 2012, amendments were proposed to both the introduction to title 13, CCR, section 1961.2 and to section E.1.1.2 of the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" (Attachment 4) to clearly state that we intend all medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 pounds gross vehicle weight rating (GVW) to meet LEV III chassis standards beginning with the 2020 model year.

Appendix J of the Initial Statement of Reasons for that rulemaking action (see Attachment 5) justifies this change to title 13, California Code of Regulations (CCR), section 1961.2 (page J-3) and to the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" (page J-14) with the following statements:

On page J-3 of Appendix J, the Board expressed its intent to clarify the requirement for medium-duty vehicles to comply with the LEV III chassis standards by the 2020 model year in Section 1961.2 with the following statement:

It is necessary to add text to the introduction to clarify that all medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 pounds GVW must meet LEV III chassis standards beginning with the 2020 model year, as apparent from title 13, CCR section 1956.8 subsection (c)(1)(B), footnote B to the table and subsection (h)(2), footnote A to the table. (See page J-3 of Attachment 5.)

Similarly, on page J-14 of Appendix J, the Board expressed its intent to clarify the requirement for medium-duty vehicles to comply with the LEV III chassis standards by the 2020 model year in the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" with the following statement:

Introductory paragraph: It is necessary to add language to this introductory paragraph to clarify that these standards apply to all medium-duty vehicles 8,501 to 10,000 pounds GVW beginning with the 2020 model year, as apparent from title 13, CCR section 1956.8 subsection (c)(1)(B), footnote B to the table and subsection (h)(2), footnote A to the table. (See page J-14 of Attachment 5.)

Although it is not apparent from the statements on pages J-3 and J-14 of Appendix J, cited above that the "LEV III chassis standards" mentioned on page J-3 and "these standards" mentioned on page J-14 refer to the identical standards, the actual text in section 1961.2 and in the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" to which these statements refer is essentially identical (i.e., the chassis standards and test procedures referenced in "this section 1961.2" in the first indented paragraph, below, are identical to the chassis standards and test procedures "in this section E.1.1.2" in the second indented paragraph, below).

The text added to the *Introduction* of section 1961.2, which is described on page J-3, states:

All medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 lbs. GVW, including incomplete otto-cycle medium-duty vehicles and medium-duty vehicles that use diesel cycle engines, must be certified to the LEV III chassis standards and test procedures set forth in this section 1961.2 in 2020 and subsequent model years.

The text added to the Introductory paragraph of the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," which is described on page J-14, states:

All medium-duty vehicles with a gross vehicle weight rating of less than or equal to 10,000 lbs. GVW, including incomplete Otto-cycle medium-duty vehicles and

medium-duty vehicles that use diesel cycle engines, must be certified to the LEV III chassis standards and test procedures set forth in this section E.1.1.2 in 2020 and subsequent model years.

Further, the intent of our Board not to change the 2019 and 2020 dates is evident from the absence of any statements to that effect in Appendix J, pages 31 and 32, where changes to the two test procedures were discussed. (See Attachment 5.) It is clear in these statements that there is no necessity or intent to change the dates in the two test procedures.

Because the inadvertent changes to the dates in the two test procedures now conflict with other regulations related to LEV III compliance and with the intent of the Board, changing the dates back to what they were in the Low-Emission Vehicle III Greenhouse Gas rulemaking (OAL File Number 2012-0625-03S) are non-regulatory changes for consistency, will not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory provision in any California Code or Regulations provision, and should be considered changes without regulatory effect. Please contact me at (916) 322-6533, or Sarah Carter at (626) 575-6845 if you have any questions regarding this matter.

Attachments