

## UPDATED INFORMATIVE DIGEST

### AMENDMENTS TO CALIFORNIA'S EMISSION WARRANTY INFORMATION REPORTING AND RECALL REGULATIONS AND EMISSION TEST PROCEDURES

**Sections Affected:** Amendments to title 13, California Code of Regulations (CCR), sections 1958, 1956.8, 1961, 1976, 1978, 2112, 2122, 2136, 2141, the newly proposed Article 5, sections 2166-2174; the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as last amended June 22, 2006; "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," as last amended July 24, 2003; "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy Duty Otto Cycle Engines," as last amended December 12, 2002; "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," as last amended June 22, 2006; and "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," as last amended June 22, 2006.

#### Background

California Health and Safety Code (H & S Code) section 43105 authorizes the Air Resources Board (ARB) to order a recall or other corrective action for violations of its emission standards or test procedures. Under this same authority, ARB has wide discretion to determine the facts constituting compliance with these emission standards and test procedures, to fashion corrective action, including recalls and other remedies, for noncompliance, and to adopt procedures for making these determinations. H & S Code section 43106 requires that production vehicles or engines must be, in all material respects substantially the same as the certification test vehicles manufacturers use to obtain ARB's certification.

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.

In 1988, as an expansion to the 1982 in-use program, ARB adopted procedures for tracking and reporting emission-related component failures affecting on-road vehicles. These warranty reporting 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 one percent level and has additional reporting requirements when a component's warranty claim rate exceeds four percent on an engine family or test group basis. When an emission-control component's warranty rate exceeds a true four 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 warranty submittals acknowledge that fact, the staff considers the situation 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-, medium-, and heavy-duty trucks, California-certified engines used in such vehicles, and motorcycles.

In some cases, usually involving relatively small vehicle populations or simple defects, in which manufacturers have reported valid warranty claims in excess of four percent for an emission control device, manufacturers have agreed to correct the situation by recalling the affected vehicles and installing more durable emission control devices. In other cases manufacturers have agreed to extend the emission control warranties on the components in question. However, in many other cases no corrective action has occurred. In two notable cases that involved large vehicle populations and more complex defects, Daimler-Chrysler Corporation and Toyota Motor Corporation 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.

To address manufacturers' reluctance to provide corrective action for systemic emission component failures, ARB adopted amendments requiring the on-road motor vehicle industry to provide corrective action for emission-related components experiencing systemic failure rates as determined under the emission warranty reporting program. Staff identified three aspects of the existing regulation that needed improvement, specifically: (1) the proof required to demonstrate violations of ARB's emission standards or test procedures, (2) the corrective action available to ARB to address the violations and, (3) the manner in which emissions warranty information is reported to the ARB. The objective of the warranty reporting program is to obtain more corrective actions to more vehicles that have systemic defective emission control devices or systems as compared to the current regulations.

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applicable emission standards and comply with applicable 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.

In amending these regulations, staff worked cooperatively with light-/medium- and heavy-duty vehicle manufacturers and associations, aftermarket trade associations, and other interested parties in various meetings and via phone calls during the 2006 and 2007 calendar years. The staff held a public workshop on May 2, 2006, to discuss ARB's initial intent to amend the regulation. On October 20, 2006, staff issued its Initial Statement of Reasons which presented the proposed amendments for consideration by the Board at the December 7, 2006 public hearing. At the conclusion of the December 7, 2006 hearing, the Board decided to continue this item to allow staff's conceptual changes proposed at the hearing to be finalized and provide staff additional time for outstanding issues to be resolved with industry. The staff was directed to return within six months with a final proposal for the Board to consider. After the December 7, 2006 hearing, staff issued a supplemental staff report on January 23, 2007, providing over 80 specific changes to the original proposal and addressed many of industry's concerns. A second workshop was held on February 14, 2007, to discuss final changes to the proposed regulations before re-presenting the staff's proposal to the Board in March 2007.

### **Description of Regulatory Action**

On March 22, 2007, the Board conducted a public hearing to consider staff's proposal to amend the warranty reporting regulations including the modifications presented since the original hearing in December 2006. At the hearing itself, staff proposed further modifications to the original proposal. These revisions include language that will:

- Limit the duration of the extended warranty corrective action period to the vehicle's or engine's certified useful life.
- Allow manufacturers a public hearing process to contest the Executive Officer's decision to order manufacturers to provide extended warranties.
- Require manufacturers to provide a certification statement attesting that their vehicles' or engines' emission control devices are durable and are designed to operate properly and in compliance with all applicable requirements for the full useful life of the vehicles or engines.
- Allow manufacturers screening criteria for removing non-representative component failures that may have resulted due to repairs that were performed solely for customer satisfaction purposes, repairs that were misdiagnosed, for component failures that were a result of customer

abuse, neglect or improper maintenance or for component failures the will not cause an emissions increase under any conceivable circumstance.

At the conclusion of the hearing, the Board adopted Resolution 06-44, in which the Board approved the adoption of the proposed regulations with the modifications presented by staff and directed staff to work with industry to finalize the regulatory package through use of the 15-day modified text process.

Staff's revised proposed regulations and test procedures, with the modified text clearly indicated, were made available to the public for a 15-day comment period on June 4, 2007. Two written comments were received during the comment period. Staff responded to all comments received during the regulatory process, including the comments submitted in response to the notice of modified text, in its Final Statement of Reasons regarding this rulemaking.

### **Comparable Federal Regulations**

Current California emissions warranty reporting requirements are more stringent and comprehensive than their federal counterparts. (See, generally 40 C.F.R. Part 85, in particular 40 C.F.R. sections section 85.1901 and 85.1903.) Federal law requires a onetime report – the emissions defect information report (EDIR) – describing the defect, the vehicles it affects and its impact on emissions. California law calls for similar information to the EDIR, but requires the manufacturer to file follow-up reports for escalating failure rates – the three progressive reports – Emission Warranty Information Report (EWIR), Field Information Report (FIR) and Emissions Information Report (EIR). Unlike federal law, California law explicitly ties the warranty information to the recall process, requiring the ARB to evaluate the need for a recall after the submission of the EIR. (title 13, CCR, section 2148.) Federal law has a different, potentially less stringent standard for ordering vehicle recalls than California does. Federal law allows a recall when a substantial number of vehicles do not conform to emission standards (42 U.S.C. section 7541(c)), while California regulations require a demonstration that a class or category of vehicles contains a defect that will cause the vehicles on average to exceed emission standards over their useful lives. In 1990, U.S. Environmental Protection Agency formally found that ARB's emissions warranty reporting and recall regulations were within the scope of previous waivers of federal preemption. (55 Fed. Reg. 28823 (July 13, 1990).)

Although they are somewhat different, the two reporting regimes and the two recall standards have been comparably effective in prompting recalls where manufacturers have agreed to assume responsibility for correcting emissions related defects – but both the federal and state regulations have had limited success where manufacturers object to and contest the recalls, especially in complex cases. If adopted, the amendments modify and streamline California's requirements for defect reporting. These requirements would still be more extensive than the comparable federal requirements. The proposed

amendments would also provide additional grounds for requiring a vehicle recall or other corrective action to remedy systemic defects revealed in emissions warranty reporting which could be proven without the resource intensive emissions testing that is required under current federal law and California regulations. This might lead to the implementation of more recalls or remedial actions when high rates of warranty failures are reported, than would be the case under current California or federal law in this area.

### **Benefits of the Proposal**

Increasing numbers of on-road vehicle manufacturers are avoiding corrective action for emission related components that are failing at systemic rates. The amendments would curtail this. Quantifying the air quality benefits is difficult, especially for failing emission components replaced in the field but if known emission component failures are being corrected early within a vehicle's lifetime, California will benefit from the expected low emission levels to which these vehicles were originally certified. Also, the staff believes manufacturers will build more durable parts to avoid costly repairs and embarrassing media attention involving their product. Staff has already seen improvements to vehicle durability through programs like the ARB's In-Use Compliance Testing Program. In the early stages of this program, on road vehicle manufacturers were failing emissions compliance at rates approaching 100 percent. After conducting several expensive recalls, most manufacturers have built in the needed durability into their emission control systems and now experience in-use compliance testing failure rates of less than five percent. Unfortunately, ARB cannot in-use compliance test every certified engine family or test group in California nor can it anticipate when emission components break within the emissions warranty period. Under the amendments, staff believes that systemic emission component failures will be remedied in a timely manner. When combining all recall related vehicle programs (in-use compliance testing, on-board diagnostic testing, and warranty reporting), ARB can be assured that manufacturers will put forth well built and durable vehicles to withstand the stringent emission requirements of California.

### **Cost to Public Agencies and to Businesses and Persons Affected**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary costs or

savings to state or local agencies. ARB will not experience an impact on the current budget but two additional staff persons may be needed in the future to oversee and monitor warranty reporting and corrective action activity at an ongoing cost of \$200,000 per year if manufacturers do not change their quality control practices and in fact experience many corrective action issues as a result of this regulatory amendment.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that although the proposed regulatory action may require two additional staff persons as noted above, it will not affect the elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Initial Statement of Reasons.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not adversely affect small businesses because any associated cost of extended warranty repairs being performed by the dealer instead of independent repair facilities is insignificant. The cost impact analysis on independent repair facilities was provided as part of the staff supplemental ISOR dated January 23, 2007.

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.

The Board has determined that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the amendments were intended, or would be as effective as and less burdensome to affected private persons, than the amended regulation. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.