

State of California
Air Resources Board

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO CALIFORNIA'S EMISSION WARRANTY INFORMATION REPORTING AND RECALL REGULATIONS AND EMISSION TEST PROCEDURES TO CONSIDER THE REPEAL OF THE 2007 AMENDMENTS TO CALIFORNIA'S EMISSION WARRANTY INFORMATION REPORTING (EWIR) AND RECALL REGULATIONS AND EMISSION TEST PROCEDURES AND READOPT THE PRIOR EWIR REGULATIONS AND EMISSION TEST PROCEDURES

Sections Affected:

Amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141, title 13, California Code of Regulations (CCR), and the following related test procedures which are incorporated by reference: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted

August 5, 1999, and as last amended May 2, 2008, "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and last amended October 17, 2007, and "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto Cycle Engines," adopted December 12, 2002, as last amended October 17, 2007, and repeal of sections 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, and 2174. This will have the effect of readopting title 13, CCR, sections 2111-2149, as they existed prior to the 2007 EWIR amendments.

Background:

In 1982, the Board adopted regulations establishing a recall program for in-use vehicles. In this program, staff would procure and test approximately ten similar, well-maintained, low-mileage vehicles (typically three years old, and thus within the five year "useful life" period which, at the time, was the period in which the vehicles were required to meet emission standards.) The tests were identical to tests used by manufacturers to certify the vehicles to ARB's emission standards. If the test vehicles on average exceeded emission standards, ARB ordered a recall for all vehicles produced in the tested group. Manufacturers implemented ARB's order by notifying owners to take their cars to dealers for repair, where manufacturers paid the dealers to take the steps necessary to reduce the vehicles' emissions to below applicable emission standards. This often involved replacing defective parts with parts of improved durability. In the early years of the program, many vehicles failed to meet emission standards and were recalled, but over time manufacturers improved the

durability of their emission control components, and the failure rate and number of recalls declined.

Nevertheless, staff found that in a significant number of cases two or three of the ten vehicles in the test group had defective emission control components. Because compliance with emission standards was determined by averaging the results of all ten vehicles tested, in most of these cases the test group did not exceed emission standards on average, and no recall or other corrective action could be ordered. Staff believed, however, that these 20 percent to 30 percent failure rates of important emission control components occurring at low mileage accumulations were unacceptable because they meant that the chance of additional failures was real and would result in high emissions in substantial portions of the in-use fleet. Existing resources limited testing to a small fraction of the several hundred vehicle models the ARB certifies each year. In addition, the useful life period over which the vehicle manufacturer was responsible for maintaining emission compliance was extended by regulation to 100,000 miles or more. This required either testing vehicle models several times over their useful lives, or testing older models and delay detecting problems that may have existed for years. During this period, vehicular on-board diagnostic systems (OBD) became common and began to provide valuable information on what specific emissions parts were failing during emissions warranty periods.

The circumstances led staff to propose a more efficient and comprehensive program to identify and recall vehicles with defective emission related parts and systems, which the Board adopted in 1988. This new program was called the Emission Warranty Information Reporting and Recall (EWIR) program (1988 EWIR regulations). Vehicle manufacturers were required to keep records of emission control parts that were returned under warranty claims, report if the number exceeded a certain threshold and then determine the actual failure rate (e.g., some returned parts replaced under warranty could be excluded because they may not actually be defective due mechanics having misdiagnosed the problem). When the validated failure rate of an emissions part exceeded 4 percent within the warranty period, ARB ordered a recall and manufacturers usually complied.

Over a hundred recalls resulted from this program. However, in a number of cases, the recalls were so extensive and costly that vehicle manufacturers balked at conducting them. Manufacturers claimed that the law required ARB to show that every subgroup of vehicles with the defective part exceeded emission standards, even though in some subgroups the rate of warranty claims reached 70 percent. Although ARB disagreed with the manufacturers' position, an administrative law judge ruled in the manufacturers' favor. Based on this ruling, another manufacturer with an extensive problem of defective catalysts was able to implement such a narrow remedy that, in ARB's opinion, many vehicles with defective catalysts were not repaired and the chances of more vehicles experiencing similar failures over their useful lives is great. Utilizing this ruling, other manufacturers resisted ARB's attempts to correct other instances of emission control component failures.

Based on this experience, ARB staff developed a revised emission warranty information reporting regulation. The revised program, adopted by the Board in 2007 (the 2007 EWIR amendments), was based on the requirement that in certifying a vehicle for sale in California, a manufacturer is required to demonstrate the durability of its emission control system design over a vehicle's useful life through a testing program, and, if a substantial number of the allegedly durable parts fail in use, the manufacturer has violated the certification test procedure and a recall can be ordered on the basis of the excessive parts failure alone. As a result, no emission testing by ARB was needed, and neither was a demonstration that the vehicles exceeded emissions standards on average. Simply put, under the 2007 EWIR amendments, if four percent of a particular emission control part fails to perform during the warranty period, the vehicle manufacturer must remedy the defect. Also, the burden of warranty reporting was reduced, and an alternative to recall involving extending the emission warranty was provided as well. These features reduced the cost of compliance for vehicle manufacturers, provided, of course, that the instances of emission control failure were relatively limited. From the staff's standpoint, this revised program provided a greater assurance that defective parts would be replaced, and in instances where the percentage of parts that fail in-use remained low (i.e. parts failure was not expected to occur on every vehicle before the end of the vehicle's life), the consumer was protected by the extended warranty and the manufacturer did not face the cost or stigma of recalling every vehicle.

Following the adoption of the 2007 EWIR amendments, the Automotive Service Councils of California and associated industry groups, and the Engine Manufacturers Association, filed petitions for writs of mandate challenging them. On December 16, 2008, a judge upheld most of the 2007 EWIR amendments, but ruled that the four percent corrective action threshold did not constitute a "test procedure" as that term is used in the Health and Safety Code. As a result, ARB could not order a recall or other remedy under the 2007 EWIR amendments based the failure of emission control parts.

Although the judge's ruling invalidated only this one portion of the amended regulation, ARB staff has concluded that the remaining sections of the amended regulation are unenforceable because they depend on the four percent failure rate corrective action trigger to have any real effect. As a result, the staff recommended the 2007 EWIR amendments be repealed, and that version of the EWIR regulation adopted by the Board 1988 be readopted. Although there are limits and weaknesses in the previous, 1988 EWIR regulation, it resulted in many recalls of defective parts and vehicles and increased durability of emissions components. Thus, it is a better option than no emission warranty information reporting or recall regulation.

Description of Regulatory Action

On November 19, 2009, the Board conducted a public hearing to consider staff's proposal to repeal the 2007 amendments to California's EWIR and recall regulations and emission test procedures and readopt the prior EWIR regulations and emission test procedures. The staff report, as well as the 15-day changes, was considered by the Board under the consent protocol process.

At the conclusion of the hearing, the Board unanimously approved the 2007 EWIR amendments and changes as part of Resolution 09-54.

There was a 15-day change document completed relating to the regulations, which was a non-substantive change regarding the repeal language. There were no comments received concerning the 15-day change.

Comparable Federal Regulations

The proposed amendments to the 2007 EWIR regulation and readoption of the prior EWIR regulation have requirements that are similar to the federal defect reporting procedures. (See, generally 40 C.F.R. Part 85, in particular 40 C.F.R. sections 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. However, the federal defect reporting requirement is wanting compared to ARB's emission warranty reporting program because under the federal rule manufacturers are permitted to determine their own process for reporting and lacks oversight for determining the true cause of a specific failure.