

## **Appendix A-8**

### Proposed Regulation Order

#### Section 1962.7

[Note: The entire text of section 1962.7 set forth below is new language in “normal type” proposed to be added to title 13, California Code of Regulations]

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

### Chapter 1. Motor Vehicle Pollution Control Devices

#### Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

Section 1962.7                      In-Use Compliance, Corrective Action and Recall Protocols  
for Zero Emission for 2026 and Subsequent Model Year  
Passenger Cars and Light-Duty Trucks.

Appendix A-8

**Proposed Regulation Order**

Title 13, California Code of Regulations

Adopt Section 1962.7, title 13, California Code of Regulations, to read as follows:

Date of Release: April 12, 2022  
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**§ 1962.7. In-Use Compliance, Corrective Action and Recall Protocols for Zero Emission for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks.**

- (a) *Applicability.* This section shall apply to 2026 and subsequent model year zero-emission vehicles and plug-in hybrid electric vehicles certified for sale in California.
- (b) *Purpose.* It is the purpose of this article to implement authority granted the state board in Part 5, Division 26 of the Health and Safety Code to monitor vehicles from manufacture through distribution to consumers to determine compliance with applicable laws. This section establishes a zero-emission in-use verification report to be submitted by the manufacturer to CARB, establishes enforcement testing procedures to be used by CARB to periodically evaluate vehicles for compliance, and establishes procedures and requirements for corrective actions.
- (c) *Definitions.* For this section, the following definitions apply in addition to the definitions in California Code of Regulations (CCR), title 13, section 1962.4, and associated test procedures.

“Corrective action” refers to action taken by a manufacturer to remedy a nonconformity. The entire duration of corrective action implementation is a “corrective action campaign.” Corrective action includes three categories:

“Voluntary corrective action” means an inspection, repair, adjustment, modification, or other program voluntarily initiated and conducted by a manufacturer.

“Influenced corrective action” means an inspection, repair, adjustment, modification, or other program initiated and conducted by a manufacturer as a result of enforcement testing conducted by CARB or any other information provided to the manufacturer by CARB.

“Ordered corrective action” means an inspection, repair, adjustment, or modification program that CARB requires a manufacturer to conduct to correct any nonconformance.

## Appendix A-8

"Motor vehicle class" means a group or set of vehicles subject to enforcement testing that have been determined by the Executive Officer to share common or similar propulsion-related hardware, electric drive components, battery chemistries, battery thermal management, or control strategies.

"Nonconformity," "nonconformance," or "noncompliance" means the condition where a class or category of vehicles fails to meet the applicable requirements of CCR, title 13, section 1962.4, within their useful lives or exceeds the number of failures specified to require corrective action under the warranty requirements of CCR, title 13, section 1962.8(g).

"Test sample group" means a group of production vehicles in a designated motor vehicle class that is selected and tested as part of the CARB enforcement testing program set forth in subsection (e).

"Vehicle owner" has the same meaning as "owner" as defined in section 460 of the Vehicle Code.

- (d) *Zero Emission Vehicle In-Use Verification Reporting.* A manufacturer shall submit zero-emission vehicle in-use verification reports as follows:
  - (1) *Minimum sample size.* For each test group, vehicle and battery data from a minimum of 30 in-use vehicles shall be collected and submitted to the Executive Officer, except as provided below.
    - (A) *Small volume manufacturer.* A small volume manufacturer may, in its sampling plan under subsection (d)(4), propose an alternative minimum sample size for a test group. The manufacturer shall provide the sales volume of the test group and information and analysis to justify the manufacturer's proposed sample size. The Executive Officer shall approve the manufacturer's proposed sample size within the sampling plan upon determining, on a case-by-case basis and using good engineering judgment, that the proposed sample size would provide representative results for the particular test group.

## Appendix A-8

- (B) *Low sales volume test group.* A large or intermediate volume manufacturer with a low sales volume test group may incorporate in its sampling plan under subsection (d)(4), in lieu of a fixed minimum sample size, a sampling method for the low sales volume test group that is identical to a sampling method previously approved by the Executive Officer for the manufacturer's higher sales volume test group(s). The manufacturer must notify the Executive Officer if it elects this option when submitting its sampling plan for its low sales volume test group under subsection (d)(4). This option is not available for high sales volume test groups.
  
- (2) *Sampling Interval.* The data shall be collected at two separate points during the useful life of each test group.
  - (A) *Low Mileage.* The first collection point shall be from vehicles that have been in service for more than 3 years and that have accumulated more than 36,000 miles on the vehicle odometer. Data collection shall be completed within 4 years of the end of production of the test group.
  
  - (B) *Midpoint Mileage.* The second collection point shall be from vehicles that have been in service for more than 6 years and that have accumulated more than 60,000 miles but less than 150,000 miles on the vehicle odometer. Data collection shall be completed within 7 years of the end of production of the test group.

## Appendix A-8

- (C) *Modification of Deadlines.* The manufacturer may request Executive Officer approval of modification of the deadlines for collection of the data under subsection § (d)(2) at least 120 days before the specified date. Along with such request, the manufacturer shall provide documentation regarding the time that the manufacturer reasonably believes is necessary to comply with the requirement and an explanation of why compliance is not or could not be timely. The Executive Officer shall approve the modification, on a case-by-case basis, upon finding the manufacturer has demonstrated that, despite the manufacturer's reasonable diligence, such modification is necessary for the manufacturer to reasonably collect the required data from the minimum number of vehicles within the required accumulated odometer range. The Executive Officer shall determine the reasonable extension of time on a case-by-case basis considering both the evidence provided by the manufacturer and what effect any delay caused by granting the extension may have on effective enforcement, vehicle owners, or the health, welfare, and economy of the State. The Executive Officer shall notify the manufacturer of their decision in writing at least 45 days before the time requirement for which the manufacturer has requested the extension.
- (3) *Required Data.* The collected data from each vehicle shall include:
- (A) Date of collection;
  - (B) Vehicle odometer reading; and
  - (C) All applicable standardized data specified in CCR, title 13, section 1962.5, including battery state of health (SOH).

## Appendix A-8

- (4) *Sampling Plan.* Each manufacturer shall submit a plan to the Executive Officer containing a proposed sampling method and anticipated timeline to collect the data in accordance with the requirements of this subsection. The manufacturer shall submit the plan no later than 12 months before data collection would begin for vehicles in the test group. The Executive Officer shall approve the sampling plan upon determining that it meets the requirements of this section, provides for effective collection of data within the required timeframe from vehicles that are representative of California drivers and temperatures, and does not, by design, exclude or include specific vehicles in an attempt to collect data only from vehicles with the greatest or least, respectively, amount of battery or electric range degradation.
- (5) *Reporting Requirements.* The data shall be submitted in an electronic format compatible with standard desktop computer applications for spreadsheets or comma-separated value (CSV) files. The report shall contain the following information:
  - (A) Manufacturer's corporate name
  - (B) Test group information by test group and model year
  - (C) The individual vehicle data required to be collected per subsection (d)(3).
- (6) The data for each test group shall be submitted within 30 days after the completion of data collection for the applicable sampling interval.
- (e) *Enforcement Testing for Zero-Emission Vehicles.* Zero emission vehicles are subject to periodic evaluation by CARB to verify compliance as follows:
  - (1) Compliance and Enforcement Testing.
    - (A) *Compliance Testing.* As part of the evaluation of vehicles to determine compliance, the Executive Officer may test any production vehicle that has been certified for sale in California. Such testing does not impose any requirement on any manufacturer and cannot, by itself, be a basis for any nonconformance finding.



## Appendix A-8

- (B) *Enforcement Testing.* Based upon compliance testing or any other information, including data from zero emission in-use verification reports, warranty information reports, and field information reports, the Executive Officer may conduct enforcement testing pursuant to subsections § (e)(2) through (4) below.
- (2) Vehicle Selection for Enforcement Testing
  - (A) Determining the Motor Vehicle Class.
    - 1. *Criteria for Determining the Motor Vehicle Class.* Upon deciding to conduct enforcement testing, the Executive Officer shall determine the motor vehicle class to be tested. In determining the scope of the motor vehicle class to be tested, the Executive Officer shall use good engineering judgment to consider the similarities and differences in the propulsion systems and batteries of potentially affected vehicles, including whether vehicles share similar propulsion-related hardware, electric drive components, battery chemistries, battery thermal management, or control strategies.
    - 2. *Default Motor Vehicle Class.* The default motor vehicle class is the test group used by the manufacturer to certify the vehicles to be tested.
    - 3. *Use of a Subgroup of a Test Group.* Upon concluding, using good engineering judgment and on a case-by-case basis, that a subgroup of vehicles differs from other vehicles in the identified test group and that a reasonable basis exists to find that the differences may directly impact the results of enforcement testing, the Executive Officer may determine that a subgroup of the test group is the appropriate motor vehicle class for testing.

## Appendix A-8

4. *Use of Multiple Test Groups.* Upon concluding that vehicles from several test groups (which may include test groups from different model years) share common characteristics that provide a reasonable basis to conclude that the results of enforcement testing would be applicable to vehicles in more than one test group, the Executive Officer may determine, on a case-by-case basis and using good engineering judgment, that the appropriate motor vehicle class for enforcement testing includes vehicles from more than one test group.
  5. *Exclusion of Motor Vehicle Class That Exceeds Useful Life.* Except for testing to determine whether a battery SOH indication or other standardized data requirement has been designed to deactivate or designed to report less accurately based on age or mileage, the Executive Officer shall not conduct enforcement testing of a motor vehicle class in which the vehicles, on average, exceed the useful life required under the applicable regulation. For purposes of this section, the Executive Officer shall determine that vehicles, on average, exceed the useful life if the motor vehicle class: exceeds 10 years in age for light-duty vehicles subject to a 10-year and 150,000 mile useful life; exceeds 14 years in age for light-duty vehicles with a gross vehicle weight rating (GVWR) of less than or equal to 6,000 pounds that are subject to a 15-year and 150,000 mile useful life; or exceeds 12 years in age for light-duty vehicles with a GVWR of greater than 6,000 pounds and less than or equal to 8,500 pounds that are subject to a 15-year and 150,000 mile useful life.
- (B) *Size of Test Sample Group.* After determining the motor vehicle class to be tested, the Executive Officer shall determine the appropriate number of vehicles to include in the test sample group for enforcement testing in accordance with the following:

## Appendix A-8

1. *Durability Test Sample Size.* For durability testing, the Executive Officer shall follow the provisions of CCR, title 13, section 2137 regarding test sample size. In accordance with section 2137, the Executive Officer shall test vehicles that have been procured following the protocol of subsection § (e)(2)(C) below and meet the selection criteria of subsection (e)(2)(D)1. below to determine the durability characteristics of the motor vehicle class being tested.
2. *SOH Test Sample Size.* For standardized battery SOH parameter accuracy testing, the Executive Officer shall follow the provisions of CCR, title 13, section 2137 regarding test sample size. In accordance with section 2137, the Executive Officer shall test vehicles that have been procured following the protocol of subsection § (e)(2)(C) and meet the selection criteria of subsection (e)(2)(D) to determine the in-use SOH parameter performance of the motor vehicle class being tested.
3. *Other Standardized Data Test Sample Size.* In determining compliance with the standardized data requirements of CCR, title 13, section 1962.5 (excluding durability and SOH), the Executive Officer shall determine, on a case-by-case basis and using good engineering judgment, the number of vehicles meeting the selection criteria of subsection (e)(2)(D)4. needed to assure that the results of such testing may be reasonably attributed to the motor vehicle class. The Executive Officer's determination shall be based upon the nature of the potential noncompliance and the scope of the motor vehicle class. The test sample group may be as few as two test vehicles.

(C) Protocol for Procuring Vehicles for Test Sample Group.

Appendix A-8

1. *Procuring Vehicles for Durability and SOH Testing.* To procure vehicles for durability and SOH testing, the Executive Officer shall obtain from the Department of Motor Vehicles a list of all vehicles in the motor vehicle class within a specified geographical area that responded to requests by mail to participate in state testing, select vehicles from those that responded to the solicitation, and inspect selected vehicles to determine whether they meet the criteria of the test sample group. In selecting vehicles for durability testing, the Executive Officer shall include only vehicles meeting the criteria set forth in subsection (e)(2)(D)1. below. In selecting vehicles for SOH testing, the Executive Officer shall include only vehicles meeting the criteria set forth in subsection (e)(2)(D)3. below
2. *Procuring Vehicles for Other Testing.* For all other testing, the Executive Officer shall, on a case-by-case basis, determine the appropriate manner for procuring vehicles. In making the determination, the Executive Officer shall consider the nature of the potential noncompliance and the scope of the motor vehicle class. If the Executive Officer concludes, using good engineering judgment, that a reasonable basis exists to believe that a vehicle operator's driving or maintenance habits would not substantially impact test results to determine noncompliance, they may procure vehicle(s) by any means and from any sources that assure effective collection and testing of vehicles. In all cases, however, the Executive Officer shall include only vehicles meeting the criteria set forth in (e)(2)(D)4. below.

(D) Vehicles to be included in a Test Sample Group.

1. *Defining Vehicles to be Included in Durability Test Sample Group.* In selecting vehicles to be included in a test sample group for enforcement durability testing, the Executive Officer shall include only vehicles that:
  - a. Are California certified and registered.
  - b. Have mileage that is equal to or less than 90% useful-life and have an age within useful-life.

## Appendix A-8

- c. Have not been tampered with or equipped with add-on or modified parts that would have a permanent effect on battery degradation or vehicle range.
- d. Have no indication of abuse (e.g., racing, overloading, or other misuse), neglect, improper maintenance, or other factors that would have a permanent effect on electric range.
- e. Have no detected or known malfunction(s) that would affect the electric range. CARB may repair a vehicle with a detected or known malfunction and then include the vehicle in the test sample group if the Executive Officer, on a case-by-case basis and using good engineering judgment, determines that such action is reasonably necessary. The decision to repair a vehicle imposes no additional responsibilities on the manufacturer and is undertaken solely by CARB for assessing compliance.
- f. Have had no major repair of the vehicle resulting from collision.
- g. Have not had any portion of the battery pack replaced with non-OEM replacement parts.
- h. Have no problem that might jeopardize the safety of laboratory personnel.
- i. Have no indication of excessive vehicle to grid operation.
- j. Have no indication of excessive direct current (DC) charging.
- k. Have no indication of excessive usage of the vehicle at high battery temperatures.

## Appendix A-8

2. *Defining "Excessive" for Durability Test Sample Group.* For the purposes of determining 'excessive' for subsections (e)(2)(D)1.i., (e)(2)(D)1.j., and (e)(2)(D)1.k., the Executive Officer shall use good engineering judgment to establish a specific limit or otherwise exclude specific vehicles that they deem to have levels of such vehicle to grid, DC charging activity, or usage at high battery temperatures unrepresentative of the majority of users or representing usage that could not have reasonably been foreseen by the manufacturer when the vehicle was originally manufactured. The Executive Officer shall consider the reasonable frequency, distribution, and impact on battery degradation of vehicle-to-grid and DC charging activities, usage at high battery temperatures, adherence to the manufacturer's recommendations or guidelines for such activities, and any other relevant information in establishing excessive use or conditions on a case-by-case basis for each durability test sample group.
3. *Defining Vehicles to be Included in SOH Test Sample Group.* In selecting vehicles to be included in a test sample group for battery SOH parameter accuracy testing, the Executive Officer shall include only vehicles that:
  - a. Are California certified and registered.
  - b. Have an indication that the battery SOH parameter has been updated within the last 4,000 miles as reported in the standardized data parameters required per CCR, title 13, section 1962.5. CARB may operate the vehicle, in a manner consistent with the manufacturer's instructions to consumers, sufficient to update the SOH parameter, and then include the vehicle in the test sample group.

## Appendix A-8

- c. Have no detected or known malfunction(s) that would affect the battery SOH parameter accuracy. CARB may repair a vehicle with a detected or known malfunction, operate the vehicle in a manner consistent with the manufacturer's instructions to consumers, sufficient to update the SOH parameter, and then include the vehicle in the test sample group if the Executive Officer, on a case-by-case basis and using good engineering judgment, determines that such action is reasonably necessary. The decision to repair a vehicle imposes no additional responsibilities on the manufacturer and is undertaken solely by CARB for assessing compliance.
  - d. Have not been tampered with or equipped with add-on or modified parts that would cause the vehicles not to comply with the battery SOH accuracy requirements of CCR, title 13, section 1962.5.
  - e. Have not had any portion of the battery pack replaced with non-OEM replacement parts.
  - f. Have mileage and age that are less than or equal to useful life for the subject vehicles.
4. Defining Vehicles to be Included in Other Test Sample Group. In selecting vehicles to be included in a test sample group for enforcement testing of any other requirement (not covered by subsections (e)(2)(D)1. or (e)(2)(D)3. above), the Executive Officer shall include only vehicles that:
    - a. Are California certified and registered.
    - b. Have not been tampered with or equipped with add-on or modified parts that would cause the vehicle not to comply with the standardization requirements of CCR, title 13, section 1962.5.

## Appendix A-8

- c. Have no detected or known malfunction(s) that would affect the ability of the vehicle to report the required standardized data and are unrelated to the standardization issue being evaluated. CARB may repair a vehicle with a detected or known malfunction and then include the vehicle in the test sample group if the Executive Officer, on a case-by-case basis and using good engineering judgment, determines that such action is reasonably necessary. The decision to repair a vehicle imposes no additional responsibilities on the manufacturer and is undertaken solely by CARB for assessing compliance.
  - d. Have mileage and age that are less than or equal to the useful life for the subject vehicles.
5. *Removal of Vehicles Failing to Meet Applicable Criteria.* If the Executive Officer discovers, whether by evidence presented by the manufacturer as provided in subsection (e)(7) or through any other source, that a vehicle fails to meet one or more of the applicable criteria of subsection (e)(2)(D)1. through (e)(2)(D)4., the Executive Officer shall remove the vehicle from the test sample group. On a case-by-case basis and using good engineering judgment, the Executive Officer may replace any vehicle removed with an additional vehicle selected in accordance with subsections § (e)(2)(C) and § (e)(2)(D) above. Test results relying on data from the removed vehicle shall be recalculated without using the data from the removed vehicle.
- (3) Enforcement Testing Procedures.
- (A) *Durability Testing.* After the test sample group has been selected and procured, the Executive Officer shall conduct electric range testing in accordance with the 2026 ZEV and PHEV Test Procedures as incorporated by reference under CCR, title 13, section 1962.4, subsection (d)(1).



## Appendix A-8

- (B) *Battery SOH Parameter Accuracy Testing.* For battery SOH parameter accuracy testing, after the test sample group has been selected and procured, the Executive Officer shall collect SOH data from the test vehicles as reported in the standardized data parameters required per CCR, title 13, section 1962.5 and conduct testing to determine usable battery energy in accordance with the 2026 ZEV and PHEV Test Procedures as incorporated by reference under CCR, title 13, section 1962.4, subsection (d)(1).
  - (C) *Other Testing.* After the test sample group has been selected and procured, the Executive Officer shall perform testing (including via special test equipment) that the Executive Officer deems necessary, on a case-by-case basis using good engineering judgment, to assess compliance with any other requirement of CCR, title 13, section 1962.5 under a condition for which a manufacturer must meet such requirement.
- (4) Additional Testing.
- (A) *Ability to Conduct Additional Testing.* Based upon testing of a motor vehicle class conducted under subsection § (e)(3) and after review of all evidence available at the conclusion of such testing, the Executive Officer may elect to conduct further testing of a subgroup of vehicles from the motor vehicle class if the Executive Officer determines, using good engineering judgment, that:
    - 1. a subgroup of tested vehicles differs sufficiently from other vehicles in the tested motor vehicle class, and
    - 2. a reasonable basis exists to believe that the identified differences indicate that the subgroup may be nonconforming whereas the tested motor vehicle class as a whole is not.
  - (B) In any testing of a subgroup of vehicles under subsection § (e)(4), the Executive Officer shall follow the vehicle selection and testing procedures set forth in subsections § (e)(2) and § (e)(3) above.
- (5) *Finding of Nonconformance After Enforcement Testing.* After conducting enforcement testing pursuant to subsections § (e)(3) and (e)(4) above, the Executive Officer shall make a finding of nonconformance of the vehicles in the identified motor vehicle class per subsections (e)(2)(A) or (e)(4) if any of the following is true:

## Appendix A-8

- (A) *Durability Finding of Nonconformance Criteria.* The results of the durability tests indicate that more than 50 percent of the vehicles in the test sample group fall below 80 percent of the certified all-electric range value.
- (B) *Battery SOH Parameter Accuracy Finding of Nonconformance Criteria.* The results of battery SOH parameter accuracy testing indicate that more than 30 percent of the vehicles in the test sample group report an SOH that corresponds to a usable battery energy greater than measured usable battery energy by more than 5 percent of the certified usable battery energy.
- (C) *All Other Testing.*
  - 1. The results of the testing indicate that at least 30 percent of the vehicles in the test sample group do not comply with the requirements of CCR, title 13, section 1962.4, that are not otherwise specified.
  - 2. The results of the testing indicate that at least 30 percent of the vehicles in the test sample group do not comply with one or more of the requirements of CCR, title 13, section 1962.5, that are not otherwise specified, while the vehicle is in a propulsion system active mode such that off-board equipment designed to access the standardized data parameters cannot obtain valid and correct data.
- (6) Executive Officer Notification to the Manufacturer Regarding Determination of Nonconformance.
  - (A) *Notify in Writing.* Upon making a determination of nonconformance under subsection § (e)(5) above, the Executive Officer shall notify the manufacturer in writing.
  - (B) *Information Included in Notice of Determination of Nonconformance.* The Executive Officer shall include in the notice:
    - 1. a description of each group or set of vehicles in the motor vehicle class covered by the determination;
    - 2. the factual basis for the determination, including a summary of the test results relied upon for the determination;

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

3. a statement that the Executive Officer shall provide to the manufacturer, upon request, all records material to the Executive Officer's determination and not otherwise subject to an exemption from disclosure under the California Public Records Act, Government Code section 6250 et seq.;
4. a provision allowing the manufacturer no less than 90 days from the date of issuance of the notice to provide the Executive Officer with any information contesting the findings set forth in the notice; and
5. a statement that if a final determination is made that the motor vehicle class is nonconforming, the manufacturer may be subject to appropriate corrective action, such as recall, along with monetary penalties.

(C) *Manufacturer Response to Notice of Determination of Nonconformance.* Within the time period set by the Executive Officer in subsection (e)(6)(B)4. and any extensions of time granted under subsection (e)(6)(G), the manufacturer may provide to the Executive Officer any test results, data, or other information derived from vehicle testing or data collection to rebut or mitigate the results of the CARB testing, as follows.

1. For durability testing and battery SOH parameter accuracy testing:
  - a. *Evidence of Inappropriate Inclusion of Vehicle in Test Sample Group.* The manufacturer may submit evidence to demonstrate that vehicles in the test sample group used by the Executive Officer were inappropriately selected, procured, or tested in support of a request to have those vehicles excluded from the test sample group in accordance with subsection (e)(2)(D)5.

## Appendix A-8

- b. *Evidence of Non-Representative Vehicle in Test Sample Group.* The manufacturer may submit evidence that it believes demonstrates certain vehicles within the test sample group are not sufficiently representative of the motor vehicle class. If the manufacturer elects to conduct additional testing or data collection of vehicles in the motor vehicle class and submit the results of such testing or data collection to the Executive Officer, the manufacturer shall:
  - i. Present evidence that it has followed the vehicle procurement and test procedures set forth in subsections (e)(2) and § (e)(3) above, or
  - ii. If the manufacturer elects to use different procurement and testing procedures, submit a detailed description of the procedures used and evidence that such procedures provide an equivalent level of assurance that the results are representative of the motor vehicle class.
2. § (e)(5) *Information Regarding Appropriate Test Sample Group Size.* If the manufacturer objects to the size of the test sample group or the method used to procure vehicles in the test sample group used by the Executive Officer pursuant to subsection (e)(2)(B) or (e)(2)(C), the manufacturer shall set forth what it considers to be the appropriate size and procurement method, the reasons therefore, and test data from vehicles that confirm the manufacturer's position.
3. *Other Information.* A manufacturer may provide any other evidence that is relevant to whether vehicles certified for sale and operated in California comply with a requirement for which the Executive Officer has made a finding of nonconformance under subsection § (e)(5).

## Appendix A-8

- (D) *Late Submission of Manufacturer Required Response to Notice of Determination of Nonconformity.* The Executive Officer may, but is not required to, accept any information submitted by a manufacturer pursuant to subsection § (e)(6)(C) after the time established for submission of such information has passed, except that the Executive Officer shall accept information where the manufacturer could not have reasonably foreseen the need for providing the information within the required time period. With any late submission, the manufacturer shall provide an explanation of why such information was not timely submitted. In determining whether to accept late information, the Executive Officer shall consider the lateness of the submission, the manufacturer's reasons for why such information was not timely presented, the materiality of the information to the Executive Officer's final determination, and what effect any delay may have on effective enforcement, vehicle owners, or the health, welfare, or economy of the State.
- (E) *Additional Testing.* The Executive Officer shall conduct any additional testing that the Executive Officer deems necessary, after reviewing information submitted pursuant to subsection (C)(C) and based on good engineering judgment, to confirm compliance with any requirement of this regulation under a condition for which a manufacturer must meet such requirement. The Executive Officer shall notify the manufacturer of such additional testing within 60 days of receiving information submitted pursuant to subsection (e)(6)(C).
- (F) *Final Determination.*

## Appendix A-8

1. *Executive Officer Notice of Final Determination.* After receipt of any information submitted by the manufacturer pursuant to subsection § (e)(6)(C) above, the Executive Officer shall consider all relevant information submitted by the manufacturer. Within 60 days after either receipt of all information submitted by the manufacturer pursuant to subsection (e)(6)(C) or completing any additional testing that the Executive Officer deemed necessary under subsection (e)(6)(E) above, whichever is later, the Executive Officer shall notify the manufacturer of their final determination regarding the finding of nonconformity of the vehicles in the motor vehicle class. The determination shall be made using good engineering judgment after considering all of the information collected and received, including all information that has been received from the manufacturer.
  2. *Information Included in Notice of Final Determination.* The notice must include a description of each test group(s), or subgroups thereof, that has been determined to be nonconforming and set forth the factual bases for the determination.
- (G) *Time Extensions.* A manufacturer may request an extension of the time requirement set forth in subsection § (e)(6)(B) at least 20 days before the specified deadline. Along with such request, the manufacturer shall provide documentation regarding the time that the manufacturer reasonably believes is necessary to conduct its own testing and an explanation of why such information could not be more expeditiously presented. The Executive Officer shall grant a manufacturer a reasonable extension of time upon the manufacturer demonstrating that despite the exercise of reasonable diligence, the manufacturer has been unable to produce relevant evidence in the time initially provided. The Executive Officer shall determine the reasonable extension of time considering both the evidence provided by the manufacturer and what effect any delay caused by granting the extension may have on effective enforcement, vehicle owners, or the health, welfare, or economy of the State. The Executive Officer shall notify the manufacturer of their decision in writing at least 7 days before the time requirement specified in subsection § (e)(6)(B) for which the manufacturer has requested the extension.

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

### (f) Corrective Action

- (1) *Voluntary Corrective Action.* If a manufacturer initiates a voluntary corrective action campaign, the manufacturer shall notify the Executive Officer of the corrective action at least 45 days before owner notification is to begin. The manufacturer shall also submit a voluntary corrective action plan for approval, as prescribed under subsection § (g)(1) below, at least 30 days before owner notification is to begin.
- (2) *Influenced Corrective Action.* Upon being notified by the Executive Officer, pursuant to subsection (e)(6)(F), that a motor vehicle class is nonconforming, the manufacturer may, within 45 days from the date of service of such notification, elect to conduct influenced corrective action of all vehicles within the motor vehicle class for the purpose of correcting the nonconformance and shall convey such election to the Executive Officer in writing. Upon such an election, the manufacturer shall submit an influenced corrective action plan for approval, as prescribed under subsection (g)(1) below, within 90 days of being notified by the Executive Officer, pursuant to subsection (e)(6)(F), that a motor vehicle class is nonconforming § (g)(1). If the manufacturer fails to submit an influenced corrective action plan for approval after electing to conduct influenced corrective action, the manufacturer may be subject to an ordered corrective action pursuant to subsection (f)(3).
- (3) Ordered Corrective Action.
  - (A) If the Executive Officer has determined based upon enforcement testing conducted pursuant to subsection § (e) above, information received from the manufacturer, or other relevant information that a motor vehicle class is nonconforming, the Executive Officer may require the manufacturer to undertake ordered corrective action.
  - (B) In requiring corrective action, the Executive Officer shall use good engineering judgment to consider all circumstances relevant to the nonconformity and the following factors:
    1. Whether the manufacturer identified and informed CARB about the nonconformance(s) or whether CARB identified the nonconformance(s) prior to being informed by the manufacturer.
    2. The number of nonconformances.

## Appendix A-8

3. The impact of the nonconformance on vehicles and vehicle owners in terms of safety, vehicle performance, durability, electric range, charging, displayed estimation of battery health or durability if applicable, cost of future repairs, and drivability.
  4. The impact of the nonconformance on the ability of the service and repair industry to make effective repairs in terms of accessibility of fault information, conformance of any data link connector, and reporting of inaccurate or misleading vehicle information.
  5. Whether the manufacturer submitted incorrect information or failed to submit required information regarding the identified nonconformance at the time of certification pursuant to CCR, title 13, section 1962.4 and the extent to which the incorrect or incomplete information was material to the granting of certification.
- (4) Notice to Manufacturer for an Ordered Corrective Action.
- (A) The Executive Officer shall notify the manufacturer in writing of ordered corrective action.
  - (B) The notice of ordered corrective action must:
    1. specifically set forth the corrective action that is being ordered,
    2. include a description of the test group(s), or subgroup(s) thereof, that has been determined be nonconforming,
    3. set forth the factual bases for the determination, and



## Appendix A-8

4. designate a date at least 45 days from the date of such notice by which the manufacturer shall submit a plan, pursuant to section § (g)(1) below, outlining the corrective action to be undertaken consistent with the Executive Officer's order. All plans shall be submitted within the time limit specified in the notice. A manufacturer may request an extension of the corrective action plan submittal date at least 20 days before the specified date. Along with such request, the manufacturer shall provide documentation regarding the time that the manufacturer reasonably believes is necessary to develop its corrective action plan and an explanation of why such information could not be more expeditiously presented. The Executive Officer shall grant a manufacturer a reasonable extension of time upon the manufacturer demonstrating that despite the exercise of reasonable diligence, the manufacturer is unable to provide a corrective action plan in the time initially provided. The Executive Officer shall determine the reasonable extension of time considering both the evidence provided by the manufacturer and what effect any delay caused by granting the extension may have on effective enforcement, vehicle owners, or the health, welfare, or economy of the State. The Executive Officer shall notify the manufacturer of their decision in writing at least 7 days before the time requirement for which the manufacturer has requested the extension.
- (5) Availability of Hearing to Contest Corrective Actions.
- (A) Within 45 days from the date of receipt of the notice required under section § (f)(4) above, the manufacturer may request a hearing pursuant to the procedures set forth in CCR, title 17, section 60055.1, et seq., to contest the findings of nonconformity, the necessity of any ordered corrective action, or the scope of any ordered corrective action.
  - (B) Notwithstanding the provisions of CCR, title 17, section 60055.17(a)(1), administrative hearings conducted pursuant to a request filed under section § (f)(5)(A) above shall be referred to the Office of Administrative Hearings, which shall otherwise follow the procedures established in CCR, title 17, section 60055.1 et seq.

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

- (C) If a manufacturer requests a hearing pursuant to section § (f)(5)(A) above and if the Executive Officer's determination of nonconformity is affirmed at the hearing, the manufacturer shall submit the required corrective action plan in accordance with section § (g)(1) below within 30 days after receipt of the Board's decision pursuant to CCR, title 17, section 60055.38.

### (g) Requirements for Implementing Corrective Actions

#### (1) Corrective Action Plans.

- (A) A manufacturer initiating corrective action (whether voluntary, influenced, or ordered) shall develop a corrective action plan that contains the following information, unless otherwise specified:
1. A description of each test group, or subgroup thereof, covered by the corrective action, including the number of vehicles, test groups, or subgroups within the identified class(es), the make(s), model(s), and model years of the covered vehicles, and such other information as may be required to identify the covered vehicles.
  2. A description of the nonconformance and the specific modifications, alterations, repairs, adjustments, or other changes to correct the nonconformance, including data or engineering evaluation supporting the specific corrections.
  3. A description of the method that the manufacturer will use to determine the names and addresses of vehicle owners and the manufacturer's method and schedule for expeditiously and effectively notifying service facilities and vehicle owners of the corrective action in accordance with subsection (g)(4).
  4. A copy of all instructions that the manufacturer will use to notify service facilities about the required corrective action and the specific corrections, if any, that will be required to be made to nonconforming vehicles, including the content and placement of a label indicating any corrective action that has been performed in accordance with subsection (g)(5).

## Appendix A-8

5. A description of the procedure to be followed by vehicle owners to obtain corrective action for the nonconforming vehicles. This must include the date, on or after which the owner can have required corrective action performed, the time reasonably necessary to perform the labor to remedy the nonconformity, and the designation of facilities at which the nonconformity can be remedied.
6. If some or all of the nonconforming vehicles are to be corrected by persons other than dealers or authorized warranty agents of the manufacturer, a description of such class of service agents and what steps, the manufacturer will take to assure that such agents are prepared and equipped to perform the proposed corrective action, including a copy of all instructions mailed to such service agents.
7. A copy of the letter of notification to be sent to vehicle owners.
8. A proposed schedule for expeditiously implementing the corrective action, including identified increments of progress towards full implementation. The proposed schedule may include a proposed duration of quarterly reporting that is shorter or longer, given the nature and extent of the nonconformance and substance of the corrective action campaign, than the default reporting duration under subsection (g)(7)(A) if the proposed reporting duration extends at least four consecutive quarters beyond the proposed schedule for implementation. The Executive Officer shall approve the proposed alternate reporting duration upon determining that the reporting would extend at least at least four consecutive quarters beyond the corrective action campaign detailed in the corrective action plan.
9. A description of the method that the manufacturer will use to assure that an adequate supply of parts will be available to initiate the corrective action campaign on the date set by the manufacturer and that an adequate supply of parts will continue to be available throughout the campaign.

## Appendix A-8

10. A description of the anticipated capability of the vehicles to properly function as certified and appropriate for their age and mileage after the corrective action, including any remaining impact on electric range, drivability, performance, durability, or safety, plus supporting data or engineering evaluation.
11. The Executive Officer shall request any additional information, reports, or analysis that the Executive Officer, on a case-by-case basis, finds reasonably necessary to evaluate the corrective action plan.

### (B) Approval and Implementation of Corrective Action Plans.

1. The Executive Officer shall approve a corrective action plan upon determining that the plan complies with the provisions of subsection § (g)(1)(A) above and effectively corrects the nonconformity. In determining whether a corrective action plan effectively corrects the nonconformity, the Executive Officer shall use good engineering judgment to evaluate the following factors:
  - a. The capability of the vehicles to properly function as certified and appropriate for the age and mileage of the vehicle after the corrective action and the extent of any ongoing impact to the electric range, drivability, performance, durability, or safety of the motor vehicle class covered by the corrective action; and
  - b. The reasonable expeditiousness of implementation, taking into account any logistical constraints and the potential effects of delay on vehicle owners or on the health, welfare, or economy of the State.
2. Within 30 days of receiving an influenced or ordered proposed corrective action plan, the Executive Officer shall determine and notify the manufacturer in writing whether it has been approved. A voluntary corrective action plan shall be deemed approved unless disapproved by the Executive Officer within 30 days after the Executive Officer's receipt of the corrective action plan.

## Appendix A-8

3. If the Executive Officer disapproves an ordered corrective action plan, the Executive Officer shall notify the manufacturer in writing of the disapproval and the reasons for the determination. The manufacturer shall submit a revised corrective action plan that fully addresses the reasons for the Executive Officer's disapproval within 10 days of receipt of the disapproval notice.
  4. Upon receipt of the approval notice of an ordered corrective action plan from the Executive Officer, the manufacturer shall, within 45 days of receipt of the notice, begin to notify vehicle owners and implement the corrective action campaign.
  5. If the Executive Officer disapproves a voluntary or influenced corrective action plan, the Executive Officer shall notify the manufacturer in writing of the disapproval and the reasons for the determination. The manufacturer shall accept any proposed modifications to the plan as suggested by the Executive Officer, resubmit a revised corrective action plan that fully addresses the reasons for the Executive Officer's disapproval within 30 days, or be subject to an Executive Officer order that the manufacturer undertake appropriate corrective action pursuant to subsection (f)(3) above.
  6. A manufacturer must implement a corrective action plan as approved by the Executive Officer and at no cost to vehicle owners. Failure to do so shall be considered a violation of this section.
- (2) Modification.
- (A) A manufacturer shall submit a modified corrective action plan upon determining that its reasonably diligent implementation of an approved corrective action plan is not effectively correcting the nonconformity. A modified corrective action plan must meet the requirements of subsection (g)(1)(A) and shall be approved by the Executive Officer according to subsection (g)(1)(B).

## Appendix A-8

- (B) The Executive Officer shall require a manufacturer to modify an approved corrective action plan upon determining that the manufacturer's diligent implementation of the approved corrective action plan is not effectively correcting the nonconformity. The Executive Officer shall notify the manufacturer according to subsection (f)(4). A modified corrective action plan must meet the requirements of subsection (g)(1)(A) and shall be approved by the Executive Officer according to subsection (g)(1)(B).
- (3) Eligibility for Corrective Action.
  - (A) The manufacturer may not condition a vehicle owner's eligibility for corrective action on the proper maintenance or use of the vehicle.
  - (B) The manufacturer shall not be obligated to repair a component which has been modified or altered such that the corrective action cannot be performed without additional cost.
- (4) Notice to Vehicle Owners.
  - (A) The manufacturer shall notify owners of vehicles in the motor vehicle class covered by the corrective action. The notice must be made by first-class mail or by such other means as approved in the corrective action plan under subsection (g)(1), on a case-by-case basis, that will ensure notice is provided to the owners of vehicles in the specific motor vehicle class. On a case-by-case basis, when necessary to assure effective notification to the owners of vehicles in the specific motor vehicle class, the Executive Officer may require the use of certified mail or electronic notice instead of or in addition to first-class mail.
  - (B) The manufacturer shall use all reasonable means necessary to locate vehicle owners, including motor vehicle registration lists available from the California Department of Motor Vehicles and commercial sources such as R.L. Polk & Co.
  - (C) The notice must contain the following:
    1. For ordered corrective actions, a statement: "The California Air Resources Board has determined that your vehicle (has or may have) an identified issue that violates (California or California and Federal) standards and regulations and requires corrective action."

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

2. For voluntary and influenced corrective actions, a statement: "Your vehicle (has or may have) an identified issue that requires corrective action," if applicable as determined by the Executive Officer.
3. A statement that the nonconformity of any such vehicles will be remedied at the expense of the manufacturer.
4. A statement that eligibility for corrective action may not be denied solely on the basis that the vehicle owner used parts not manufactured by the original equipment vehicle manufacturer, or had repairs performed by outlets other than the vehicle manufacturer's franchised dealers.
5. Instructions to the vehicle owners on how to obtain corrective action, including instructions on whom to contact (i.e., a description of the facilities where the vehicles should be taken for the corrective action), the first date that a vehicle may be brought in for corrective action, and the time that it will reasonably take to correct the nonconformity.
6. The statement: "In order to assure your full protection under the vehicle warranty provisions, it is recommended that you have your vehicle serviced as soon as possible. Failure to do so could be determined as lack of proper maintenance of your vehicle."
7. A telephone number and email address for vehicle owners to report difficulty in obtaining corrective action.
8. A card to be used by a former vehicle owner in the event the vehicle to be recalled has been sold and the former owner can provide the manufacturer with contact information for the new owner. Such card must be addressed to the manufacturer, have postage prepaid, and provide a space in which the name and address of the new owner may be provided.
9. If the corrective action involves recall, the notice must also provide:

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

- a. A clear description of the components that will be affected by the corrective action and a general statement of the measures to be taken to correct the nonconformity.
  - b. A statement describing the adverse effects, if any, of an uncorrected nonconformance on the range, performance, durability, drivability, or safety of the vehicle.
  - c. A statement that after corrective action has been taken, the manufacturer will have the service facility issue a certificate showing that a vehicle has been corrected under the recall program, and that such a certificate will be required to be provided to the Department of Motor Vehicles as a condition for vehicle registration.
- (D) A notice sent pursuant to this subsection (g)(4) or any other communication sent to vehicle owners or dealers may not contain any statement, expressed or implied, that the vehicle is compliant.
- (E) The Executive Officer shall inform the manufacturer of any other content or procedural requirements pertaining to the notification under subsection § (g)(4) that the Executive Officer has determined, on a case-by-case basis, are reasonable and necessary to assure the effectiveness of the specific corrective action campaign.
- (5) Label Indicating that Corrective Action Has Been Performed.
- (A) If the corrective action involves recall, the manufacturer shall require those who perform inspections or recall repairs to affix a label to each vehicle that has been inspected or repaired.
  - (B) The label must be placed in a location commonly accessed by repair technicians when verifying key parameters or configuration specifications of the vehicle. Such locations are commonly in proximity to the vehicle emission control information label, which is typically found under the hood of the vehicle or in the doorjamb, which is where other vehicle-specific information is typically located.



## Appendix A-8

- (C) The label must be fabricated of a material suitable for the location in which it is installed so that it does not readily deteriorate and is not readily removable.
- (D) The label must contain a corrective action campaign number and a code identifying the facility at which the corrective action was performed, both designated by the manufacturer.
- (E) Manufacturers are exempt from the label requirements of subsections (g)(5)(A) through (g)(5)(D) if the following conditions are met:
  - 1. The corrective action involves only software or software calibration repairs or changes and does not involve hardware repairs or changes;
  - 2. The manufacturer keeps a record of the VINs of all vehicles that were inspected or repaired; and
  - 3. Upon request from the Executive Officer, the manufacturer provides information about running changes, field fixes, service campaigns, and recalls for any given VIN from all vehicles affected by the nonconformity.

## Appendix A-8

- (6) Proof of Performance of Corrective Action Certificate for Recalls. If the required corrective action involves a recall, the manufacturer shall provide, through its service agents, a certificate to owners of vehicles that have had the corrective action performed that confirms the vehicle has been recalled and the required inspection or repairs have been performed. The certificate must be identical to the format prescribed by the Executive Officer pursuant to CCR, title 13, sections 2117 and 2129.
- (7) Reporting and Record Keeping Requirements.
  - (A) Reporting. The manufacturer shall report on the progress of the corrective action campaign by submitting reports for eight consecutive quarters, unless otherwise specified in the approved corrective action plan under subsection (g)(1), commencing with the calendar-year quarter immediately after the corrective action campaign begins. The reports shall be submitted no later than 25 days after the close of each calendar-year quarter. For each corrective action campaign, the quarterly report must contain the following:
    1. The test group and the corrective action campaign number designated by the manufacturer and a brief description of the nature of the campaign.
    2. The date owner notifications began and date completed.
    3. The number of vehicles involved in the corrective action campaign.
    4. The number of vehicles known or estimated to be nonconforming and an explanation of the means by which this number was determined.
    5. The number of vehicles inspected during the campaign since its inception.
    6. The number of vehicles found to be affected by the nonconformity during the campaign since its inception.
    7. The number of vehicles receiving corrective action during the campaign since its inception.

## Appendix A-8

8. The number of vehicles determined to be unavailable for corrective action, during the campaign since its inception, due to exportation, theft, scrapping, or other reasons (specify).
9. The number of vehicles, during the campaign since its inception, determined to be ineligible for corrective action under subsection§ (g)(3)(B).
10. An initial list, using the following data elements and designated positions, indicating all vehicles subject to recall that the manufacturer has not been invoiced for, or a subsequent list indicating all vehicles subject to the recall that the manufacturer has been invoiced for since the previous report. The data elements must be written in "ASCII" code without a comma separating each element. For example: XTY32A71234E-9456123408-25-91A. The add flag (see below) should reflect the vehicles for which the manufacturer has not been invoiced and the delete flag should reflect changes since the previous report.

Data Elements	Positions
• File Code (designated by DMV)	1
• License Plate Number	2-8
• Last three VIN positions	9-11
• Recall ID Number	12-17
• Mfg. ID Number	18-22
(Mfg. Occupational License Number)	
• Recall Start Date (mmddyyyy)	23-30
• Add or Delete Flag (A/D)	31
• Complete VIN	32-48
(File Code "L" or "S")	

## Appendix A-8

11. A copy of any service bulletins issued during the reporting period by the manufacturer to franchised dealerships or other service agents that relate to the nonconformance and the corrective action and that have not previously been reported to the Executive Officer.
  12. A copy of all communications transmitted to vehicle owners that relate to the nonconforming vehicles and the corrective action and that have not been previously reported to the Executive Officer.
- (B) If the manufacturer determines that any of the information submitted to the Executive Officer pursuant to subsection § (g) has changed or is incorrect, the manufacturer shall submit the revised information, with an explanation.
- (C) The filing of any report under this subsection shall not affect the manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any other provisions of law.
- (D) Record Keeping. The manufacturer shall maintain the following records in a form suitable for inspection, such as computer files, for no less than one year beyond the useful life of the vehicles and shall make them available to the Executive Officer upon request.
1. Names and addresses of vehicle owners:
    - a. To whom notification was sent;
    - b. Whose vehicles were repaired or inspected under the corrective action campaign;
    - c. Whose vehicles were determined to be ineligible or unavailable for corrective action as described under subsections (g)(7)(A)8. and (g)(7)(A)9.
  2. The information gathered by the manufacturer to compile the reports required under this subsection.
  3. Facility locations corresponding to facility codes created pursuant to the label requirements of subsection § (g)(5)(D).

Date of Release: April 12, 2022

Date of Hearing: June 9, 2022

## Appendix A-8

- (8) Extension of Time. A manufacturer may request an extension of a deadline set forth in subsection § (g) at least 20 days before the specified date. Along with such request, the manufacturer shall provide documentation regarding the time that the manufacturer reasonably believes is necessary to comply with the requirement and an explanation of why compliance is not or could not be timely. The Executive Officer shall grant a manufacturer a reasonable extension of time upon the manufacturer demonstrating that despite the exercise of reasonable diligence, the manufacturer is unable to comply in the time initially provided. The Executive Officer shall determine the reasonable extension of time on a case-by-case basis considering both the evidence provided by the manufacturer and what effect any delay caused by granting the extension may have on effective enforcement, vehicle owners, or the health, welfare, and economy of the State. The Executive Officer shall notify the manufacturer of their decision in writing at least 7 days before the time requirement for which the manufacturer has requested the extension.
- (h) Penalties. The Executive Officer may seek penalties pursuant to the applicable provisions of the Health and Safety Code, including under sections 43016 and 43212, for violations of the requirements of this section and CCR, title 13, section 1962.4. In determining the civil penalty amounts that CARB may seek, the Executive Officer shall consider the civil penalty policy published by CARB under Health and Safety Code section 43024.
- (i) Electronic submittal. Unless otherwise specified, reports, documentation, and requests under this Section must be provided to the California Air Resources Board through the electronic Document Management System available through the website: <https://arb.ca.gov/certification-document-management-system>.
- (j) Severability. Each provision of this section is severable, and in the event that any provision of this section is held to be invalid, the remainder of this article remains in full force and effect.

Note: Authority cited: Sections 38510, 38560, 39002, 39003, 39039, 39601, 39602.5, 43013, 43018, 43018.5, 43101, 43106, and 43600, Health and Safety Code. Reference: Sections 39601, 39602.5, 43013, 43016, 43018, 43018.5, 43101, 43105, 43106, 43212, and 43600, Health and Safety Code.