

§ 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.* These procedures shall apply to California certified 2026 and subsequent model year zero-emission light-duty vehicles sold in California pursuant to Health and Safety Code section 43102.
- (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 in order to monitor vehicles from manufacture through distribution, to and in the hands of 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 remedial actions.
- (c) *Definitions.* For this section, the following definitions apply in addition to the definitions in California Code of Regulations, title 13, section 1962.4, and associated test procedures apply.

“Corrective Action” refers to any action taken by the manufacturer to remedy a noncompliance or nonconformity. Corrective action may include recall, extended warranty, or other action ordered or deemed necessary by the Executive Officer. The Executive Officer shall require direct notification of corrective action to vehicle owners.

“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" or "noncompliance" means the Executive Officer has made a finding in accordance with section (e)(5) that a class or category of vehicles fail to meet the applicable requirements of California Code of Regulations, title 13, section 1962.4, within their useful lives or a finding of nonconformance with the warranty requirements in accordance with California Code of Regulations, title 13, section 1962.8(g).

"Quarterly reports" refer to the following calendar periods: January 1- March 31, April 1-June 30, July 1-September 30, October 1-December 31.

“Test Sample Group” means a group of production vehicles in a designated motor vehicle class that are selected and tested as part of the CARB enforcement testing program set forth in subsection (e).

- (d) *Zero Emission Vehicle In-Use Verification Report*. 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 are required to be collected and submitted to the Executive Officer.
 - (2) *Sampling Interval*. The data shall be collected at two separate nominal points during the useful life of each test group.
 - (A) *Low Mileage*. The first collection point shall target vehicles that have nominally been in service for more than 3 years represented by vehicles that have accumulated more than 36,000 miles and less than 50,000 miles on the vehicle odometer. Except as noted in subsection (d)(2)(C), 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 target vehicles that have nominally been in service for more than 6 years represented by vehicles that have accumulated more than 60,000 miles and less than 90,000 miles on the vehicle odometer. Except as noted in subsection (d)(2)(C), data collection shall be completed within 7 years of the end of production of the test group.
 - (C) *Modification of Deadlines*. The manufacturer may request Executive Officer approval of modification of the deadlines in subsection (d)(2) for collection of the data. The Executive Officer shall approve the modification upon finding the manufacturer has demonstrated that such modifications are necessary to reasonably collect data from vehicles within the required accumulated odometer range.
 - (3) *Required Data*. The collected data from each vehicle shall include:
 - (A) Date of collection
 - (B) Vehicle odometer
 - (C) All applicable standardized data specified in California Code of Regulations, title 13, 1962.5, including battery state of health (SOH)
 - (4) *Sampling Plan*. Manufacturers shall submit a plan to the Executive Officer for review and approval of the sampling method, timeline to collect the data, and reporting format. The Executive Officer shall approve the plan upon determining that it provides for effective collection of data 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 least 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 (e.g., Excel™ spreadsheet, CSV file). The report shall contain the following information:
 - (A) Manufacturer's corporate name
 - (B) Test group information (Test group, 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 business days after the completion of data collection for the applicable sampling interval and shall be submitted electronically.

- (e) *Enforcement Testing for Zero-Emission Vehicles.* Zero-emission vehicles are subject to periodic evaluation by CARB to verify compliance as follows:
- (1) *Preliminary Testing and Evaluation.*
 - (A) *Routine Testing.* As part of their evaluation of vehicles to determine compliance, the Executive Officer may routinely conduct testing on any production vehicles that have been certified for sale in California.
 - (B) *Enforcement Testing.* Based upon such 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.*
 - (i) *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 consider the similarities and differences in the propulsion systems and batteries of potentially affected vehicles. Among other things, the Executive Officer shall consider whether vehicles share similar propulsion-related hardware, electric drive components, battery chemistries, battery thermal management, or control strategies.
 - (ii) *Default Motor Vehicle Class.* The default motor vehicle class is the test group used by the manufacturer to certify the vehicles to be tested.
 - (iii) *Use of a Subgroup of a Test Group.* Upon concluding that a subgroup of vehicles differs from other vehicles in the identified test group and that a reasonable basis exists to believe that the differences may directly impact the type of testing that will be performed, the Executive Officer may determine that a subgroup of the test group is the appropriate motor vehicle class for testing.
 - (iv) *Use of Multiple Test Groups.* Similarly, upon concluding that vehicles from several test groups (which may include test groups from different model years) share such common characteristics that a reasonable basis exists to believe that results of enforcement testing may be applicable to a motor vehicle class larger than a specific test group, the Executive Officer may determine that the appropriate motor vehicle class includes more than one test group.
 - (v) *Exclusion of Motor Vehicle Class Who Exceeds Useful Life.* Except for testing to determine if a battery SOH indication or other standardized data requirement has been designed to deactivate or designed to report less accurately based on age and/or mileage, the Executive Officer may not conduct testing of a motor vehicle class whose vehicles, on average, exceed useful life of the motor vehicle class. For purposes of the determination of this average, the Executive Officer shall use the accrual rates appropriate for vehicles in the motor vehicle class as defined in EMFAC2000 “Public Meeting to Consider Approval of Revisions to the

State's On-Road Motor Vehicle Emissions Inventory: Technical Support Document, Section 7.1, 'Estimation of Average Mileage Accrual Rates from Smog Check Data,'" May 2000, [*language forthcoming to update reference to EMFAC2021 version*] incorporated by reference.

- (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 guidelines:
- (i) *Durability Test Sample Size.* For durability testing, the Executive Officer shall follow the provisions of California Code of Regulations, title 13, section 2137 regarding test sample size. In accordance with section 2137, the Executive Officer shall test 10 vehicles that have been procured following the protocol of subsection (e)(2)(C) below and meet the selection criteria of subsection (e)(2)(D)(i) below to determine the durability characteristics of the motor vehicle class being tested.
 - (ii) *SOH Test Sample Size.* For standardized battery state of health (SOH) parameter accuracy testing, the Executive Officer shall [... *TBD*...] to determine the in-use SOH parameter performance of the motor vehicle class being tested.
 - (iii) *Other Standardized Data Test Sample Size.* In determining compliance with any other standardized data requirements of California Code of Regulations, title 13, section 1962.5, the Executive Officer shall determine, on a case by case basis, the number of vehicles meeting the selection criteria of subsection (e)(2)(D)(iv) needed to assure that the results of such testing may be reasonably inferred to the motor vehicle class. The Executive Officer's determination shall be based upon the nature of the noncompliance and the scope of the motor vehicle class. The test sample group could be as few as two test vehicles.
- (C) *Protocol for Procuring Vehicles for Test Sample Group.*
- (i) *Procuring Vehicles for Durability Testing.* For durability testing, the Executive Officer shall procure vehicles consistent with the procurement process followed by the Executive Officer under California Code of Regulations, title 13, section 2137 (e.g., obtaining lists of all vehicles in the motor vehicle class within a specified geographical area, mailing postcards soliciting participation of vehicles within the specified area, selecting vehicles from those that responded to the solicitation, inspecting selected vehicles to determine whether appropriate to include in sample group, etc.). In selecting vehicles for durability testing, the Executive Officer shall include only vehicles meeting the criteria set forth in subsection (e)(2)(D)(i) below.
 - (ii) *Procuring Vehicles for SOH Testing.* For battery SOH parameter accuracy testing, the Executive Officer shall procure vehicles [*forthcoming language to describe requirements for procuring vehicles*]. For battery SOH parameter accuracy testing, the Executive Officer shall include only vehicles meeting the criteria set forth in section (e)(2)(D)(iii) below.

- (iii) *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 their determination, the Executive Officer shall consider the nature of the noncompliance and the scope of the motor vehicle class. If the Executive Officer concludes 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 that assures effective collection and testing of vehicles (e.g., rental car agencies, fleet vehicles, etc.). In all cases, however, the selection process must ensure proper selection of vehicles in accord with subsection (e)(2)(D)(iv) below.
- (D) Vehicles to be included in a Test Sample Group.
- (i) *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 or less than 90% useful-life and have an age within useful-life.
 - 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. At its discretion, CARB may elect to repair a vehicle with a detected or known malfunction and then include the vehicle in the test sample group.
 - f. Have had no major repair of the vehicle resulting from collision.
 - g. Have no problem that might jeopardize the safety of laboratory personnel.
 - h. Have no indication of excessive vehicle to grid operation.
 - i. Have no indication of excessive direct current (DC) charging.
 - j. Have no indication of excessive operation of the vehicle at high battery temperatures [...wording TBD to allow exclusion of upper percentile of vehicles used/parked at high battery temperatures...]
- (ii) *Defining "Excessive" for Durability Test Sample Group.* For the purposes of determining 'excessive' for subsections (e)(2)(D)(i)h., (e)(2)(D)(i)i., and (e)(2)(D)(i)j., the Executive Officer shall use good engineering judgment to establish a specific limit or otherwise exclude specific vehicles that it deems to have levels of such vehicle to grid, DC charging activity, and/or operation 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 Board shall consider its knowledge of the in-use

frequency, distribution, and impact on battery degradation of such vehicle to grid, DC charging activities, and/or operation at high battery temperatures, the manufacturer's recommendations or guidelines for such activities, and any other relevant information in establishing its criteria.

- (iii) *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. At its discretion, CARB may elect to 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.
 - c. Have no detected or known malfunction(s) that would affect the battery SOH parameter accuracy. CARB may elect to 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.
 - 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 California Code of Regulations, 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.
- (iv) *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 sections (e)(2)(D)(i) or (e)(2)(D)(iii) 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 California Code of Regulations, title 13, section 1962.5.
 - 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. At its discretion, the CARB may elect to repair a vehicle with a detected or known malfunction and then include the vehicle in the test sample group.
 - d. Have mileage and age that are less than or equal to useful life for the subject vehicles.

- (v) *Removal of Vehicles Failing to Meet Applicable Criteria.* If the Executive Officer discovers, by either evidence presented by the manufacturer as provided in subsection (e)(7) or on their own, that a vehicle fails to meet one or more of the applicable criteria of subsection (e)(2)(D)(i) through (e)(2)(D)(iv), the Executive Officer shall remove the vehicle from the test sample group. 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 may conduct electric range testing with the test procedures used by the Executive Officer in accordance with California Code of Regulations, title 13, section 1962.4 and incorporated test procedure.
- (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 may collect data reported as SOH from vehicles and conduct testing to determine usable battery energy in accordance with California Code of Regulations, title 13, section 1962.4 and incorporated test procedure.
- (C) *Other Testing.* Testing for compliance with any other requirement of California Code of Regulations, title 13, section 1962.5. After the test sample group has been selected and procured, the Executive Officer may perform one or more of the following tests:
- (i) On-road or dynamometer testing.
- (ii) Any other testing determined to be necessary by the Executive Officer. This may include, but is not limited to, the use of special test equipment to verify compliance with standardization requirements.
- (4) *Additional Testing.*
- (A) *Ability to Conduct Additional Testing.* Based upon testing of a motor vehicle class conducted with in 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 has determined that:
- (i) a subgroup of tested vehicles differs sufficiently enough from other vehicles in the tested motor vehicle class, and
- (ii) a reasonable basis exists to believe that the identified differences may indicate that the subgroup may be nonconforming whereas the tested motor vehicle class as a whole is not.
- (B) *Reference to Motor Vehicle Class.* Hereinafter all references to motor vehicle class shall be applicable to the subgroup meeting the conditions of subsection (e)(4)(A) above.

- (C) 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 sections (e)(2) and (e)(3) above.
- (5) *Finding of Nonconformance After Enforcement Testing.* After conducting enforcement testing pursuant to section (e)(3) and (e)(4) above, the Executive Officer shall make a finding of nonconformance of the vehicles in the identified motor vehicle class if:
- (A) *Durability Finding of Nonconformance Criteria.* The results of the durability tests indicate that more than 30 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 10 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.
- (i) The results of the testing indicate that at least 30 percent of the vehicles in the test sample group do not comply with the same requirement of California Code of Regulations, title 13, section 1962.4.
- (ii) 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 California Code of Regulations, title 13, section 1962.5 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 the determination of nonconformance in 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:
- (i) a description of each group or set of vehicles in the motor vehicle class covered by the determination
- (ii) the factual basis for the determination, including a summary of the test results relied upon for the determination;
- (iii) a statement that the Executive Officer shall provide to the manufacturer, upon request and consistent with the California Public Records Act, Government Code section 6250 et seq., all records material to the Executive Officer's determination;
- (iv) 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

- (v) a statement that if a final determination is made that the motor vehicle class is nonconforming, the manufacturer may be subject to appropriate remedial action, including recall and monetary penalties.
- (C) *Manufacturer Required Response to Notice of Determination of Nonconformance.* Within the time period set by the Executive Officer in subsection (e)(6)(B)(iv) and any extensions of time granted under subsection (e)(6)(H), the manufacturer shall provide the Executive Officer, consistent with paragraphs (e)(6)(B)(i) through (e)(6)(B)(iii) below, with any test results, data, or other information derived from vehicle testing or data collection that may rebut or mitigate the results of the CARB testing.
- (i) 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 vehicles excluded from the test sample group in accordance with subsection (e)(2)(D)(v).
 - b. *Evidence of Non-Representative Vehicle in Test Sample Group.* The manufacturer may submit evidence to rebut results derived from the test sample group that it can demonstrate 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:
 - 1. Present evidence that it has followed the vehicle procurement and test procedures set forth in subsections (e)(2) and (e)(3) above, or
 - 2. 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.
 - 3. Present any other evidence that provides an equivalent level of proof that vehicles operated in California comply with the requirement found to be noncompliant in subsection (e)(5).
 - (ii) *Information Regarding Appropriate Test Group Sample 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)(iii) or (e)(2)(C)(iii), 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.
- (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 unless the manufacturer could not have reasonably foreseen the need for providing the information within the time period provided. In determining whether to accept late information, the Executive Officer will 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 and the health and welfare of the State.
- (E) The requirements of subsection (e)(6) shall not be construed to abridge the manufacturer's right to assert any privilege or right provided under California law.
- (F) *Additional Testing.* After receipt of any information submitted by the manufacturer pursuant to subsection (e)(6)(C) above, the Executive Officer shall consider all information submitted by the manufacturer and may conduct any additional testing that the Executive Officer find necessary.
- (G) *Final Determination.*
- (i) *Executive Officer Notice of Final Determination.* Within 60 days after completing any additional testing that the Executive Officer deemed necessary under subsection (e)(6)(F) above, the Executive Officer shall notify the manufacturer of his or her final determination regarding the finding of nonconformity of the vehicles in the motor vehicle class. The determination shall be made after considering all of the information collected and received, including all information that has been received from the manufacturer.
- (ii) *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.
- (H) *Time Extensions.* The Executive Officer may for good cause extend the time requirements set forth in subsection (e)(6). In granting additional time to a manufacturer, the Executive Officer shall consider, among other things, any documentation submitted by the manufacturer regarding the time that it reasonably believes is necessary to conduct its own testing, why such information could not have been more expeditiously presented, and what effect any delay caused by granting the extension may have on effective enforcement and the health and welfare of the State. 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.
- (f) *Remedial Action*
- (1) *Voluntary Recalls.* If a manufacturer initiates a voluntary recall campaign, the manufacturer shall notify the Executive Officer of the recall at least 45 days before owner notification is to begin. The manufacturer shall also submit a voluntary recall plan for approval, as prescribed under subsection (g)(1) below. A voluntary

recall plan shall be deemed approved unless disapproved by the Executive Officer within 30 days after receipt of the recall plan.

(2) *Influenced Recalls.*

(A) *Manufacturer Election of Influenced Recalls.* Upon being notified by the Executive Officer, pursuant to subsection (e)(6)(G), that a motor vehicle class is nonconforming, the manufacturer may, within 45 days from the date of service of such notification, elect to conduct an influenced recall of all vehicles within the motor vehicle class for the purpose of correcting the nonconformance. Upon such an election, the manufacturer shall submit an influenced recall plan for approval, as prescribed under subsection (g)(1) below.

(B) *Right for Executive Officer to Order Remedial Action.* If a manufacturer does not elect to conduct an influenced recall under subsection (f)(2)(A) above, the Executive Officer may order the manufacturer to undertake appropriate remedial action, up to and including the recall and repair of the nonconforming vehicles.

(3) *Ordered Remedial Action.*

(A) If the Executive Officer has determined based upon enforcement testing conducted pursuant to section (e) above or information received from the manufacturer that a motor vehicle class is nonconforming, they may require the manufacturer to undertake remedial action up to and including recall of the affected motor vehicle class.

(B) In making his or her findings regarding remedial action, the Executive Officer shall consider the capability of the vehicles to properly function as certified and appropriate for the age and mileage of the vehicle. This determination shall be based upon consideration of all relevant circumstances including, but not limited to, those set forth below.

(i) 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.

(ii) The number of nonconformances.

(iii) The impact of the nonconformance on vehicle owners (e.g., electric range, charging, displayed estimation of battery health or durability, cost of future repairs, driveability, etc.).

(iv) The impact of the nonconformance on the ability of the service and repair industry to make effective repairs (e.g., difficulty in accessing fault information, nonconformance of the data link connector, etc.).

(v) Whether the manufacturer submitted false, inaccurate, or incomplete documentation regarding the identified nonconformance at the time of certification pursuant to title 13, CCR section 1962.4 and the extent to which the false, inaccurate, or incomplete documentation was material to the granting of certification.

(4) *Assessment of Monetary Penalties.* The Executive Officer may seek penalties pursuant to the applicable provisions of the Health and Safety Code for violations of the requirements of title 13, CCR section 1962.4. In determining the penalty

amounts that CARB may seek, the Executive Officer shall consider all relevant circumstances including the factors set forth below:

- (A) Whether the manufacturer self-reported the nonconformity or CARB discovered the nonconformity independent of the manufacturer.
 - (B) The nature and degree of the nonconformity and whether the manufacturer should reasonably have discovered the nonconformity and taken corrective action by voluntary recall or running changes during the production year.
 - (C) The economic benefits, if any, gained by the manufacturer from not complying with the provisions of title 13, CCR section 1962.4.
 - (D) The manufacturer's history of compliance.
 - (E) The preventative efforts taken by the manufacturer to avoid noncompliance, including any programs followed by the manufacturer to ensure compliance.
 - (F) The manufacturer's efforts to correct the nonconformity once it was identified.
 - (G) The innovative nature and magnitude of effort, including the cost of any other proposed remedial action, necessary to correct the nonconformity.
 - (H) The deterrent effect of the penalty.
 - (I) Whether the manufacturer has failed to provide complete and accurate information required to be submitted at the time of certification pursuant to title 13, CCR section 1962.4.
 - (J) The nature and degree that production vehicles differ from the vehicles that have been certified by CARB.
- (5) Notice to Manufacturer for an Ordered Remedial Action.
- (A) The Executive Officer shall immediately notify the manufacturer upon the Executive Officer determining the type of remedial action to be taken.
 - (B) For remedial actions other than the assessment of monetary penalties, the notice must:
 - (i) specifically set forth the remedial action that is being ordered,
 - (ii) include a description of the test group(s), or subgroup(s) thereof, that has been determined be nonconforming,
 - (iii) set forth the factual bases for the determination, and
 - (iv) designate a date at least 45 days from the date of receipt of such notice by which the manufacturer shall submit a plan, pursuant to section (g)(1) below, outlining the remedial action to be undertaken consistent with the Executive Officer's order. Except as provided in section (f)(6)(C) below, all plans shall be submitted to the Chief, Emissions Certification and Compliance Division, 4001 Iowa Ave, Riverside, CA 92507, within the time limit specified in the notice. The Executive Officer may grant the manufacturer an extension of time for good cause.
 - (C) For cases in which CARB elects to seek monetary penalties pursuant to authority granted under the Health and Safety Code, the Executive Officer shall issue a notice to the manufacturer that he or she will be filing a complaint in the appropriate administrative or civil court forum seeking penalties against the manufacturer for violations of title 13, CCR section 1962.4. The notice must include a description of the test group(s), or

- subgroup(s) thereof, that have been determined to be nonconforming and set forth the factual bases for the determination.
- (6) Availability of Public Hearing to Contest Remedial Actions Other than Determination to Seek Monetary Penalties.
- (A) Within 45 days from the date of receipt of the notice that is required under section (f)(5) above, the manufacturer may request a public hearing pursuant to the procedures set forth in title 17, CCR section 60055.1, et seq., to contest the findings of nonconformity, the necessity for, or the scope of any ordered remedial action. Pursuant to those procedures, the Executive Officer has the initial burden of presenting evidence that those parts of the Executive Officer's determination specifically challenged are supported by the facts and applicable law. (Title 17, CCR section 60055.32(d)(1).) Each issue of controversy shall be decided based upon the preponderance of the evidence presented at the hearing. (Title 17, CCR section 60055.32(h).)
- (B) Notwithstanding the provisions of title 17, CCR section 60055.17(a)(1), administrative hearings conducted pursuant to a request filed under section (f)(6)(A) above shall be referred to the Office of Administrative Hearings, which shall otherwise follow the procedures established in title 17, CCR section 60055.1 et seq.
- (C) If a manufacturer requests a public hearing pursuant to section (f)(6)(A) above and if the Executive Officer's determination of nonconformity is confirmed at the hearing, the manufacturer shall submit the required remedial action plan in accordance with section (g)(1) below within 30 days after receipt of the Board's decision.
- (g) Requirements for Implementing Remedial Actions
- (1) Remedial Action Plans.
- (A) A manufacturer initiating a remedial action (voluntary, influenced, or ordered), other than payment of monetary penalties, shall develop a remedial action plan that contains the following information, unless otherwise specified:
- (i) A description of each test group, or subgroup thereof, covered by the remedial 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.
- (ii) A description of the nonconformance and, in the case of a recall (whether voluntary, influenced, or ordered), the specific modifications, alterations, repairs, adjustments, or other changes to correct the nonconformance, including data and/or engineering evaluation supporting the specific corrections.
- (iii) 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 notifying the service facilities and vehicle owners of the remedial action.

- (iv) A copy of all instructions that the manufacturer will use to notify service facilities about the required remedial action and the specific corrections, if any, that will be required to be made to nonconforming vehicles.
 - (v) A description of the procedure to be followed by vehicle owners to obtain remedial action for the nonconforming vehicles. This must include the date, on or after which the owner can have required remedial 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.
 - (vi) If some or all of the nonconforming vehicles are to be remedied by persons other than dealers or authorized warranty agents of the manufacturer, a description of such class of service agents and what steps, including a copy of all instructions mailed to such service agents, the manufacturer will take to assure that such agents are prepared and equipped to perform the proposed remedial action.
 - (vii) A copy of the letter of notification to be sent to vehicle owners.
 - (viii) A proposed schedule for implementing the remedial action, including identified increments of progress towards full implementation.
 - (ix) A description of the method that the manufacturer will use to assure that an adequate supply of parts will be available to initiate the remedial action campaign on the date set by the manufacturer and that an adequate supply of parts will continue to be available throughout the campaign.
 - (x) A description of the impact, if any, and supporting data and/or engineering evaluation, that the proposed remedial action will have on electric range, driveability, performance, durability, and safety of the motor vehicle class covered by the remedial action.
 - (xi) Any other information, reports, or data which the Executive Officer may reasonably determine to be necessary to evaluate the remedial action plan.
- (B) Approval and Implementation of Remedial Action Plans.
- (i) If the Executive Officer finds that the remedial action plan is designed effectively to address the required remedial action and complies with the provisions in section (g)(1)(A) above, he or she shall notify the manufacturer in writing within 30 days of receipt of the plan that the plan has been approved.
 - (ii) The Executive Officer shall approve a voluntary, influenced, or ordered remedial action plan if the plan contains the information specified in section (g)(1)(A) above and is designed to notify the vehicle owner and implement the remedial action in an expeditious manner.
 - (iii) In disapproving an ordered remedial action plan, the Executive Officer shall notify the manufacturer in writing of the disapproval and the reasons for the determination. The manufacturer shall resubmit a revised remedial action plan that fully addresses the reasons for the Executive Officer's disapproval within 10 days of receipt of the disapproval notice.

- (iv) Upon receipt of the approval notice of the ordered remedial 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 remedial action campaign.
 - (v) If the Executive Officer disapproves a voluntary or influenced remedial action plan, the manufacturer shall either accept the proposed modifications to the plan as suggested by the Executive Officer, resubmit a revised remedial 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 remedial action pursuant to section (f)(2)(B) above.
 - (vi) Upon receipt of the voluntary or influenced remedial action approval notice from the Executive Officer, the manufacturer shall begin to notify vehicle owners and implement the remedial action campaign according to the schedule indicated in the remedial action plan.
- (2) Eligibility for Remedial Action.
- (A) The manufacturer may not condition a vehicle owner's eligibility for remedial 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 remedial action cannot be performed without additional cost.
- (3) Notice to Owners.
- (A) The manufacturer shall notify owners of vehicles in the motor vehicle class covered by the remedial order. The notice must be made by first-class mail or by such other means as approved by the Executive Officer. When necessary, the Executive Officer may require the use of certified mail for ordered remedial actions to assure effective notification.
 - (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:
 - (i) For ordered remedial 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."
 - (ii) For voluntary and influenced remedial actions, a statement: "Your vehicle (has or may have) an identified issue that requires corrective action," if applicable as determined by the Executive Officer.
 - (iii) A statement that the nonconformity of any such vehicles will be remedied at the expense of the manufacturer.
 - (iv) A statement that eligibility for remedial 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.

- (v) Instructions to the vehicle owners on how to obtain remedial action, including instructions on whom to contact (i.e., a description of the facilities where the vehicles should be taken for the remedial action), the first date that a vehicle may be brought in for remedial action, and the time that it will reasonably take to correct the nonconformity.
 - (vi) The statement: "In order to assure your full protection under the zero emission vehicle and battery 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."
 - (vii) A telephone number and email address for vehicle owners to call to report difficulty in obtaining remedial action.
 - (viii) A card to be used by a vehicle owner in the event the vehicle to be recalled has been sold. Such card should be addressed to the manufacturer, have postage paid, and shall provide a space in which the owner may indicate the name and address of the person to whom the vehicle was sold or transferred.
 - (ix) If the remedial action involves recall, the notice must also provide:
 - a. A clear description of the components that will be affected by the remedial 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 remedial 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 section 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 requirements pertaining to the notification under section (g)(3) which the Executive Officer has determined as reasonable and necessary to assure the effectiveness of the recall campaign.
- (4) Label Indicating that Recall Repairs Have Been Performed.
- (A) If the required remedial action involves recall of a test group(s), or subgroup(s) thereof, the manufacturer shall require those who perform inspections and/or recall repairs to affix a label to each vehicle that has been inspected and/or repaired.
 - (B) The label must be placed in a location approved by the Executive Officer and must be fabricated of a material suitable for such location in which it is installed and which is not readily removable.

- (C) The label must contain the remedial action campaign number and a code designating the facility at which the remedial action or inspection to determine the need for remedial action was performed.
- (5) Proof of Performance of Remedial Action Certificate. If the required remedial action involves a recall, the manufacturer shall provide, through its service agents, to owners of vehicles that have had the remedial action performed, a certificate that confirms that the vehicle has been recalled and that required inspection and/or repairs have been performed. The certificate must be in a format prescribed by the Executive Officer, however, the Executive Officer may not require a format different in any way from the format of the certificate required in title 13, CCR sections 2117 and 2129.
- (6) Record Keeping and Reporting Requirements.
 - (A) The manufacturer shall maintain sufficient records to enable the Executive Officer to conduct an analysis of the adequacy of the remedial action.
 - (B) Unless otherwise specified by the Executive Officer, the manufacturer shall report on the progress of the remedial action campaign by submitting reports for eight consecutive quarters commencing with the quarter immediately after the recall campaign begins. The reports shall be submitted no later than 25 days after the close of each calendar quarter to Division Chief, Emissions Certification and Compliance Division. For each recall campaign, the quarterly report must contain the following:
 - (i) The test group and the remedial action campaign number designated by the manufacturer and a brief description of the nature of the campaign.
 - (ii) The date owner notifications began and date completed.
 - (iii) The number of vehicles involved in the remedial action campaign.
 - (iv) The number of vehicles known or estimated to be nonconforming and an explanation of the means by which this number was determined.
 - (v) The number of vehicles inspected during the campaign since its inception.
 - (vi) The number of vehicles found to be affected by the nonconformity during the campaign since its inception.
 - (vii) The number of vehicles receiving remedial action during the campaign since its inception.
 - (viii) The number of vehicles determined to be unavailable for inspection or remedial action, during the campaign since its inception, due to exportation, theft, scrapping, or other reasons (specify).
 - (ix) The number of vehicles, during the campaign since its inception, determined to be ineligible for remedial action under section (g)(2)(B).
 - (x) 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 list must be supplied in a standardized computer format to be specified by the Executive Officer. 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. The Executive Officer may change the frequency of this submittal depending on the needs of enforcement. The Executive Officer may not, however, require a frequency or format for this submittal that is different in any way from the frequency or format determined by the Executive Officer as required for reporting of data in title 13, CCR sections 2119(a)(10) and 2133(a)(10).

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 if personalized license plate	32-48
(File Code "L" or "S")	

- (xi) 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 remedial action and have not previously been reported to the Executive Officer.
- (xii) A copy of all communications transmitted to vehicle owners that relate to the nonconforming vehicles and the required remedial action and have not been previously reported to the Executive Officer.
- (C) If the manufacturer determines that any of the information submitted to the Executive Officer pursuant to section (g) has changed or is incorrect, the manufacturer shall submit the revised information, with an explanation.
- (D) The manufacturer shall maintain in a form suitable for inspection, such as computer files, and shall make available to the Executive Officer or his or her authorized representative upon request, the names and addresses of vehicle owners:
 - (i) To whom notification was sent;
 - (ii) Whose vehicles were repaired or inspected under the recall campaign;
 - (iii) Whose vehicles were determined not to be eligible for remedial action because the vehicles were modified, altered, or unavailable due to exportation, theft, scrapping, or other reason specified in the answer to sections (g)(6)(B)(viii) and (g)(6)(B)(ix).
- (E) The information gathered by the manufacturer to compile the reports required by these procedures must be retained for no less than one year beyond the useful life of the vehicles and must be made available to authorized personnel of CARB upon request.

- (F) The filing of any report under the provisions of these procedures must not affect the manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any other provisions of law.
- (7) Extension of Time. Upon request of the manufacturer, the Executive Officer may extend any deadline set forth in section (g) upon finding that the manufacturer has demonstrated good cause for the requested extension.
- (h) Penalties for Failing to Comply with the Requirements of Section (g).
 - (1) In addition to the penalties that may be assessed by the Executive Officer pursuant to section (f) because of a manufacturer's failure to comply with the requirements of title 13, CCR section 1962.4, a manufacturer may be subject to penalties for failing to comply with the requirements of section (g).
 - (2) If a manufacturer fails to comply with a voluntary or influenced remedial action plan, the Executive Officer may order remedial action pursuant to section (f) above.
- (i) 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 39039, 38510, 38560, 39002, 39003, 39601, 39602.5, 43006, 43013, 43016, 43018, 43018.5, 43101, and 43600, Health and Safety Code. Reference: Sections 39002, 39039, 39601, 39602.5, 43006, 43013, 43016, 43018, 43106, and 43600, Health and Safety Code.