

State of California  
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and Modified Text**

**CALIFORNIA EVALUATION PROCEDURE FOR NEW AFTERMARKET DIESEL  
PARTICULATE FILTERS INTENDED AS MODIFIED PARTS FOR 2007 THROUGH  
2009 MODEL YEAR ON-ROAD HEAVY-DUTY DIESEL ENGINES**

Public Hearing Date: April 22, 2016  
Public Availability Date: January 20, 2017  
Deadline for Public Comment: February 6, 2017

At its April 22, 2016, public hearing, the Air Resources Board (ARB or Board) approved for adoption the proposed amendment to California's regulation regarding aftermarket parts (title 13, California Code of Regulations (CCR), section 2222), and the proposed incorporated document "California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 Through 2009 Model Year On-Road Heavy-Duty Diesel Engines" (Procedure). The primary purpose of this proposed regulatory action is to establish a procedure that will allow ARB to evaluate whether new aftermarket diesel particulate filters (DPFs) for 2007 through 2009 model year on-road heavy-duty diesel engines meet the criteria to be exempted from the anti-tampering prohibitions of Vehicle Code section 27156.

The Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications.

The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website:

<https://www.arb.ca.gov/regact/2016/aftermarket2016/aftermarket2016.htm>

The text of the modified regulatory language of title 13, CCR, section 2222 is shown in Attachment 1. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in ~~double strikethrough~~ and double underline format, respectively.

The text of the modified Procedure is shown in Attachment 2. The originally proposed regulatory language is shown in clear text, as it was a new procedure. New deletions and additions to the proposed language that are made public with this notice are shown in ~~strike~~through and underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in Attachments 1 and 2.

### **Summary of Proposed Modifications**

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

The following changes have been made to title 13, California Code of Regulations section 2222(k):

1. Section 2222(k)(6) has been modified by inserting commas after the words “diesel particulate filter” and “new aftermarket diesel particulate filter.” This modification is nonsubstantive.

The following changes have been made to the “California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 through 2009 Model Year On-Road Heavy-Duty Diesel Engines,” incorporated by reference in title 13, CCR, section 2222(k):

1. Section (b) Definitions,

“Cold start”. The term “cool-down period” was inserted after “natural” for consistency with the term “forced cool-down period” that appears in the same sentence. This definition also initially cited to title 40, Code of Federal Regulations (CFR) sections 86.1334-84 and 86.1335-90 as they existed on January 18, 2001 and September 5, 1997, respectively. Although such federal regulations were listed as reference documents in the Procedure (sections (o)(3) and (4)), the definition inadvertently did not expressly incorporate those federal regulations. The proposed amendments therefore expressly incorporate by reference the subject federal regulations into the definition.

“Hot start”. This definition initially cited to section 86.1327-90 of title 40, CFR part 86, as it existed on September 5, 1997. Although that federal regulation was listed as reference document in the Procedure (section (o)(5)), the definition inadvertently did not expressly incorporate that federal regulation. The proposed

amendments therefore expressly incorporate by reference the subject federal regulation into the definition.

“Used DPF”. The reference to the definition of a “Replacement part” in title 13, CCR, section 1900(b)(23) has been changed to section 1900(b)(20), to reflect recent amendments to the regulatory text that were made as part of another rulemaking action. Section 1900(b) was renumbered following the July 25, 2016 repeal of subsections (b)(3)-(5).

2. Section (d)(1)(H). The language was modified to clarify what data an applicant must submit as part of the exemption process and to also clarify that all data collected from the initial development of the product to the date the applicant submits a final aftermarket DPF exemption must be submitted upon request.
3. Section (d)(3)(F). This section was modified to clarify that the preliminary application follows the format specified in section (d)(7) and that section (d)(7) also identifies what information the applicant submits as part of the preliminary application. This change was made to avoid any confusion between format and information requirements.
4. Section (d)(4)(B)1. This section was modified to make it more consistent with other sections of the Procedure that specify applicable warranty, record keeping, and reporting requirements (sections (l)(1)(H)5 and (l)(1)(H)6). The initially proposed section inadvertently only referenced an applicant’s requirement to submit a warranty report to ARB if the cumulative number of valid warranty claims exceeds four percent of total sales. The proposed amendments clarify that an applicant’s requirement to submit a warranty report to ARB is also triggered if the cumulative number of valid warranty claims meets or exceeds 25 claims.
5. Section (d)(4)(B)1. This section was modified to make it more consistent with other sections of the Procedure that specify applicable warranty, record keeping, and reporting requirements (sections (l)(1)(H)5 and (l)(1)(H)6). The initially proposed section inadvertently only referenced an applicant’s requirement to submit a warranty report to ARB if the cumulative number of valid warranty claims exceeds four percent of total sales. The proposed amendments clarify that an applicant’s requirement to submit a warranty report to ARB is also triggered if the cumulative number of valid warranty claims meets or exceeds 25 claims.
6. Section (d)(4)(B)1. The statement that the warranty must be included in the final application package was removed as it is redundant with requirements in other sections of the Procedure, primarily the application process and owner’s manual requirements (sections (d)(7)6.C, (d)(7)6.D, (j)(6)(C), (j)(7), (l)(1)(I), and (l)(2)(L)).

7. Section (d)(7)1.2.2. The initially proposed language “the engines on which the OEM DPF are found” was removed, because this information is redundant, given the remaining requirements in this section to identify the engine family name, engine model and/or calibration of the engine in this section. “Engine” was also inserted prior to “calibration” to clarify that the required information pertains to engine calibration information.
8. Sections (d)(7)2.3, 2.4, and 2.5. These sections were modified by adding the words “Description of” at the beginning of each section, to clarify the information specified by those sections and for grammatical consistency.
9. Sections (d)(7)2.6.2, (k)(1)(A), (o)6, and (o)45. These sections initially cited to a federal regulation as “Federal Motor Carrier Safety Administration, Subpart G, *Miscellaneous Parts and Accessories, Section 393.83 Exhaust Systems*”. This citation has been modified to *Miscellaneous Parts and Accessories*, title 49, CFR part 393, subpart G, section 393.83 (Dec. 7, 1988). In addition, although that federal regulation was listed as a reference document in the Procedure (section (o)(6)), the above mentioned sections inadvertently did not expressly incorporate such federal regulation into those sections. The proposed amendments therefore expressly incorporate by reference the subject federal regulation into Section (d)(7)2.6.2.
10. Section (d)(7)2.10.1.2. Language was added to clarify that applicants must provide a discussion of the potential ramifications of not following prescribed maintenance requirements for the aftermarket DPF (including potential ramifications for the aftermarket DPF, the engine, or engine components) or may alternately specify that the maintenance procedures for the aftermarket DPF are identical to the maintenance procedures for the OEM DPF. Although this Procedure allows for the approval of DPFs which are not identical to the OEM DPF, it is possible that in some cases the aftermarket DPF may be so similar to the OEM DPF that OEM’s DPF maintenance practices are applicable. The option of using the OEM’s procedures in such cases provides the applicant more flexibility for complying with the Procedure’s requirements.
11. Section (d)(7)2.10.3. Language was modified to clarify that if cleaning of the aftermarket DPF is allowed, the directions provided must be consistent with the OEM engine manufacturer’s directions such that ECU and error codes are appropriately handled. It also clarifies that the applicants must identify any hazardous materials associated with spent components or materials cleaned from the aftermarket DPF. This provides consistency with other areas of the Procedure where these requirements are also discussed (sections (j)(9)(A)3 and (j)(9)(B)4).
12. Sections (d)(7)3.1.2-3.1.9. These sections were modified by adding the words “Discussion of” at the beginning of each section, to clarify the information required by those sections and for consistency.

13. Section (d)(7)4.3.3.1. This section was modified for clarity. The language originally required identifying the application owner associated with the field durability demonstration. This section pertains to the field durability demonstration, and “application” in this context meant the vehicle, duty cycle, and engine used to comply with this requirement. However, the Procedure consistently uses the term “application” to refer to the submission of documents and information associated with an application for exemption for an aftermarket DPF. Using the word “vehicle” prevents any unnecessary confusion, and therefore the proposed amendment now requires identifying the vehicle owner associated with the field durability demonstration.
14. Section (d)(8)(C). The language in this section was modified for clarity. Section (d)(8) deals with the review and approval of the preliminary application and section (d)(8)(C) specifically states the timeframe in which an applicant can resubmit a new preliminary aftermarket DPF exemption application as no earlier than 60 days from when ARB notifies the applicant that the application is terminated via letter. The original language used the word “suspension” to identify this letter, which is inconsistent with (d)(8)(B), which states the application will be terminated. As such the word “suspension” was replaced with “termination.”
15. Section (d)(9)(C). The term “application” in the second sentence of this section was deleted as it was extraneous, in light of the remaining sentence that ARB will issue an Executive Order (EO) if its Executive Officer determines the information submitted in the preliminary and final applications for exemption sufficiently satisfy the criteria of this Procedure. The term “Evaluation” in the second sentence of this section was also deleted because it was duplicative of the term “Procedure”.
16. Section (e)(1)(A). Table 1-1 in this section identifies a number of ASTM Test Methods used to determine specified properties of diesel fuel. Although such ASTM Test Methods were listed as a reference documents in the Procedure (sections (o)(8)-(17)), Table 1-1 inadvertently did not expressly incorporate by reference such ASTM Test Methods. The proposed amendments therefore expressly incorporate by reference each of the ASTM Test Methods into Table 1-1.
17. Section (f)(2)(G). The language in this section was modified for clarity and consistency. The DPFs used for the 200-hour field demonstrations do not require emissions testing, as also stated in section (h)(5).
18. Section (f)(3)(A). The language in this section was modified to specify that all testing must be performed with the test engine in a proper state of maintenance and meeting its original certified emissions level, for consistency with other sections of the Procedure that specify all testing is performed with the test engine

in a proper state of maintenance and meeting its original certified emissions level (sections (d)(7)4.1.3, (d)(7)4.3.2.3, (f)(2)(A), (f)(4)(A), (f)(4)(C), and (g)(2)(A)5). This change is necessary to provide applicants clear direction regarding the testing requirements of the Procedure.

19. Section (f)(5)(B)6. This section cites to specific provisions of the CFR. Although such CFR provisions were listed as a reference in the Procedure (section (o)(22)), this section inadvertently did not expressly incorporate by reference such specific provisions of the CFR. The proposed amendments therefore expressly incorporate by reference applicable requirements of title 40, CFR part 86 subpart N, as they existed on February 12, 2016, into this section.
20. Section (f)(5)(B)8. The second sentence of this section was modified to clarify that methods (i) and (ii) mentioned in this section expressly pertain to the methods specified above in Section (f)(5)(B)7. In addition, this section cites to specific provisions of the CFR. Although such CFR provisions were listed as a reference in the Procedure (section (o)(22)), this section inadvertently did not expressly incorporate by reference such specific provisions of the CFR. The proposed amendments therefore expressly incorporate by reference applicable requirements of title 40, CFR part 86 subpart N, as they existed on February 12, 2016, into this section.
21. Section (f)(7)(A)1. The language in this section was modified for clarity. This section addresses testing of the aftermarket DPF after the field trial. The existing language refers to the test engine by the term “approved,” which is inconsistent with other references in the emissions testing section, which utilize the term “appropriate” (sections (f)(1)(E), (f)(2)(A), (f)(5), and (f)(6)). Therefore, the term “approved” has been changed to the term “appropriate.”
22. Section (f)(7)(A)2. The second sentence of this section contains an inadvertent and incorrect reference to the second stage of testing, and consequently this sentence has been modified by substituting the third stage of testing for the second stage of testing. This change was made to eliminate any confusion regarding when the presence of diagnostic codes must be monitored and reported before commencing the third stage of emissions testing.
23. Section (f)(8)(B). This section cites to specific provisions of the CFR. Although such provisions were listed as a reference documents in the Procedure (section (o)(22)), this section inadvertently did not expressly incorporate by reference such specific provisions of the CFR. The proposed amendments therefore expressly incorporate by reference applicable provisions of title 40, CFR part 86 subpart N, as they existed on February 12, 2016 into this section.
24. Section (f)(8)(D). Table 2-1, “Test Cycles for Emissions Testing,” inadvertently included a typographical error and listed “1 FTP” twice for the engine with

aftermarket DPF configuration. The extra listing was removed to make it consistent with the testing requirements in section (f)(5)(B)2 of the Procedure.

25. Section (f)(11)(D), Table 2-2, “Toxics sampling/analysis methods”. This table specifies methods and procedures to measure specified substances. Although such methods and procedures were listed as a reference documents in the Procedure (section (o)(35)-(41)), Table 2-2 inadvertently did not expressly incorporate by reference such specific methods and procedures. The proposed amendments therefore expressly incorporate by reference those methods and procedures into the Procedure.
26. Section (g)(2). The heading of this section inadvertently transposed “DPF” and “Aftermarket DPF”. The proposed amendments correct this error to clarify that this section sets forth the “New Aftermarket DPF Unit Laboratory Aging Protocol.”
27. Section (g)(2)(D). This section has been modified to correct an inadvertent transposition of “new” and “aftermarket DPF”.
28. Section (g)(2)(D)1. This section was modified to correct an inadvertent transposition of “new” and “aftermarket DPF”.
29. Section (g)(3)(D). The section heading was modified to clarify that the subject parameters must be monitored/recorded over 500 hours of the entire field service accumulation.
30. Section (j)(5)(A). This section was modified by inserting an internal citation to the provision of this Procedure that requires manufacturers and installers to resolve warranty claims within a 30 day timeframe (section (l)(1)(D)). This modification will help clarify the criteria that may trigger a recall of new aftermarket DPFs.
31. Section (j)(10)(A)(6). The section was modified to clarify that a swapped aftermarket DPF must directly fit in the place of the original aftermarket DPF and must additionally be positioned in the correct filter orientation.
32. Section (j)(10)(A)(7). The section was modified to correct an inadvertent transposition of “exemption” and “EO”.
33. Section (j)(10)(B)3. The section was modified for clarity, as the words “end user” and “fleet” had been used interchangeably and inconsistently. This could have caused confusion regarding what information applicants were required to keep in the event that such applicants elected to allow DPF swapping. The modified section now clearly specifies that the specified information must be kept by fleets as swapping applies only to common ownership fleets (section (j)(10)(A)(5)).
34. Section (l)(1)(C). This section was modified to clarify that the provisions of the product warranty regarding the repair or replacement of restoring an engine due

to failure of a new aftermarket DPF also extend to lessees. This modification does not add an additional requirement to the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPFs which are sold or leased.

35. Section (I)(1)(D). This section was modified to clarify that failure of a lessee of a new aftermarket DPF to ensure scheduled maintenance or to keep maintenance records may allow an applicant to disallow a warranty claim. This modification does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPFs which are sold or leased. Furthermore, this modification is consistent with section (I)(1)(H)6.(ii) of this Procedure.
36. Section (I)(1)(E). This section was modified to clarify that if a claim is denied, the applicant must provide a grounds for denial letter to the owner or lessee of a new aftermarket DPF, rather than only to the owner. This modification does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPFs which are sold or leased.
37. Section (I)(1)(F). The section was modified to clarify that the applicant must provide a warranty card with each new aftermarket DPF intended for lease, sale, or use, rather than just sale or use. This does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPF which are sold or leased.
38. Section (I)(1)(G). This section was modified to clarify that a copy of the owner's manual and governing Executive Order must be provided with sold or leased aftermarket DPFs, rather than just those that are sold. This does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPF which are sold or leased.
39. Section (I)(1)(H)4. This section was modified to clarify that a claim brought by a lessee or owner of a new aftermarket DPF within the warranty period must be reported as a claim, rather than just those brought by the owner of the aftermarket DPF. This does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPF which are sold or leased.
40. Section (I)(1)(H)6(ii)c. This section was modified to clarify that the total number of claims includes those for sales and leases, rather than just sales. This does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPF which are sold or leased.
41. Section (I)(1)(H)6(ii)o. This section was modified to clarify that a warranty report required under section (I)(1)(H)6 must include, if an applicant denies a warranty claim, the reason(s) for its denial of the warranty claim.

42. Section (I)(1)(I). The heading of this section and the first sentence of this section were modified to reflect the fact that this section specifies multiple statements, rather than only a single statement.

This section was also modified to clarify that the product warranty statement requirements, including the WARRANTY RESPONSIBILITY statements, apply to both sold and leased aftermarket DPFs, rather than just sold aftermarket DPFs, and apply to both owners and lessees of aftermarket DPFs, rather than just owners. This does not add an additional requirement on the applicant, as section (I)(1)(A) identifies that the warranty applies to new aftermarket DPF which are sold or leased.

43. Section (I)(2)(H). This section was modified to clarify that the installer must be able to provide direction to the owner or lessee of an aftermarket DPF, rather than just the owner. This does not add an additional requirement to the installer, as section(I)(2)(C) states the extent of the warranty provided by the installer is the same as that provided by the new aftermarket DPF applicant in section (I)(1), and section (I)(2)(L) explicitly states that the installation warranty includes lease situations.
44. Section (I)(2)(I). This section was modified to clarify that the installer must provide a grounds for denial letter to owners and lessees of new aftermarket DPFs if a claim is denied, rather than just the owner. This does not add an additional requirement to the installer, as section(I)(2)(C) states the extent of the warranty provided by the installer is the same as that provided by the new aftermarket DPF applicant in section (I)(1), and section (I)(2)(L) explicitly states that the installation warranty includes lease situations.
45. Section (I)(2)(J). This section was modified to clarify that an installer must also provide a copy of a grounds for denial letter to new aftermarket DPF lessees, as well as owners of new aftermarket DPFs and applicants of new aftermarket DPFs. This requirement is consistent with the installer's obligations to an aftermarket DPF owner. This does not add an additional requirement to the installer, as section(I)(2)(C) states the extent of the warranty provided by the installer is the same as that provided by the new aftermarket DPF applicant in section (I)(1), and section (I)(2)(L) explicitly states that the installation warranty includes lease situations.
46. Section (I)(2)(K)3. This section was modified to clarify that the installation warranty report includes leased and owned devices rather than just owned devices. This does not add an additional requirement to the installer, as section(I)(2)(C) states the extent of the warranty provided by the installer is the same as that provided by the new aftermarket DPF applicant in section (I)(1), and section (I)(2)(L) explicitly states that the installation warranty includes lease situations.

47. Section (l)(2)(L). The heading of this section and the first sentence of this section were modified to reflect the fact that this section specifies multiple statements, rather than only a single statement.

This section was also modified to clarify that an owner or lessee must be provided with a copy of the installer warranty statement, rather than just the owner. This does not add an additional requirement to the installer, as section(l)(2)(C) states the extent of the warranty provided by the installer is the same as that provided by the new aftermarket DPF applicant in section (l)(1), and section (l)(2)(L) explicitly states that the installation warranty includes lease situations.

48. In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

### **Agency Contacts**

Inquiries concerning the substance of the proposed regulation may be directed to Shawn Daley, Manager, Retrofit Assessment Section, (626) 575-6972, or Susan Reed, Air Pollution Specialist, (626) 575-6847.

### **Public Comments**

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than 5:00 pm on the due date to the following:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

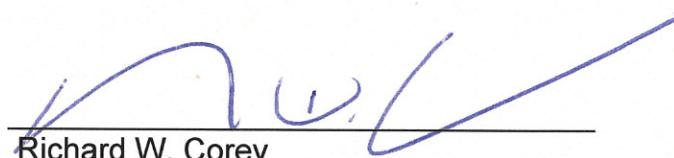
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey  
Executive Officer

Date: January 20, 2017

Attachments

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at [www.arb.ca.gov](http://www.arb.ca.gov).*