

HEARING REPORT

**Prepared Pursuant to Section 4-168(d)
of the Connecticut General Statutes and
Section 22a-3a-3(d)(5) of the Department of Environmental Protection Rules of Practice**

**Regarding Regulations for the Abatement of Air Pollution:
Proposed Adoption of Section 22a-174-36b and
Proposed Amendment of Section 22a-174-36(i) of the
Regulations of Connecticut State Agencies**

Hearing Officer: Paul E. Farrell

Date of Hearing: May 7, 2004

Introduction

On March 5, 2004, the Deputy Commissioner of the Department of Environmental Protection (“Department”) signed a notice of intent to adopt section 22a-174-36b (“section 36b”) and amend section 22a-174-36(i) (“section 36(i)”) of the Regulations of Connecticut State Agencies (“R.C.S.A.”) concerning the second phase of the California Low Emission Vehicle Program. Pursuant to such notice, a public hearing was held on May 7, 2004. The public comment period for the proposed amendment and adoption also closed on May 7, 2004.

On May 10, 2004, the Governor of the State of Connecticut signed into law Public Act 04-84, which the General Assembly adopted on April 22, 2004. Public Act 04-84 directs the Commissioner of Environmental Protection (“Commissioner”) to adopt regulations by December 31, 2004, in accordance with the provisions of chapter 54 of the Connecticut General Statutes (“C.G.S.”), to implement the light duty motor vehicle emission standards of the state of California applicable to motor vehicles of model year 2008 and later. Furthermore, this Public Act directs the Commissioner to amend such regulations from time to time, in accordance with any changes in the standards made by the state of California.

I. Hearing Report Content

As required by section 4-168(d) of the C.G.S., this report describes the regulations proposed for hearing; the principal reasons in support of the Department’s proposed amendment and adoption; the principal considerations presented in oral and written comments in opposition to the Department’s proposed adoption and amendment; all comments and responses thereto on the proposed adoption and amendment; and the final wording of the proposed adoption and amendment. Commenters are identified in Attachment 1.

This report also includes a statement pursuant to C.G.S. section 22a-6(h).

II. Compliance with Section 22a-6(h) of the Connecticut General Statutes

Section 22a-6(h) of the C.G.S., as amended by section 5 of Public Act 03-76, requires the Commissioner to distinguish clearly, at the time of notice, all provisions of a proposed regulation or amendment thereto that differ from adopted federal standards and procedures, provided: (1) such proposed amendment pertains to activities addressed by adopted federal standards and procedures; and (2) such adopted federal standards and procedures apply to persons subject to the provisions of such proposed amendment. In addition, the Commissioner must provide an explanation for all such provisions in the regulation-making record required under chapter 54 of the C.G.S.

In accordance with the requirements of C.G.S. section 22a-6(h), the Hearing Officer made a written statement available upon publication of the public notice and at the public hearing. Such statement, incorporated into the administrative record for this matter, indicated that there are applicable federal tailpipe standards established in 40 CFR 86, known as Tier 2 standards, concerning classes of vehicles that would be subject to section 36b. The primary difference between Tier 2 and the California Low Emission Vehicle II (“LEV II”) standards set forth in section 36b is that LEV II requires automobile manufacturers to provide cars with lower emitting tailpipe emissions than cars built to meet the federal Tier 2 standards and also to comply with a more stringent emissions rate applicable to an entire fleet of vehicles sold. There are two additional differences between LEV II and the current federal Tier 2 standards:

- LEV II will require the sale of *advanced technology vehicles* instead of only “zero emission” or “electric” vehicles, and
- LEV II offers *lower toxic air pollutant emissions*. According to the United States Environmental Protection Agency’s (“EPA’s”) National Assessment of air toxics, mobile sources contribute 66% of all air toxics.

The Department has reviewed recent analysis performed by the Northeast States for Coordinated Air Use Management (“NESCAUM”) and believes California LEV II program is an effective program that should be adopted. The Department believes the LEV II program provides criteria pollutant, toxic and greenhouse gas emission benefits over the federal Tier 2 program. Relative to the federal Tier 2 program, the LEV II program by 2020 will provide an approximately 25 percent greater reduction in each of the following air toxins: benzene; 1,3 butadiene; formaldehyde; and acetaldehyde. The LEV II program will also reduce other toxins including toluene, acrolein and others. The LEV II program will also provide an approximate 15 percent reduction in total hydrocarbons (“HC”), and a 2-3 percent reduction in carbon dioxide (“CO₂”) and other climate change gases when the program is fully implemented. As a result of these differences, the LEV II program will provide better air quality for all of Connecticut and greater choices among cleaner vehicles for Connecticut consumers.

The Department believes the adoption of the LEV II program in Connecticut will substantially improve the emissions profile of subject vehicles, especially with respect to emissions of hazardous (i.e., toxic) air pollutants. This program is now in effect in the states of New York, Massachusetts, Maine and Vermont. The state of New Jersey recently adopted legislation mandating the adoption of LEV II standards. The state of Rhode Island has also initiated a stakeholder process to move forward in adopting the LEV II program by the end of 2004 to be effective with the 2008 model year.

There are two key requirements under the proposed regulations. First, light duty vehicle manufacturers must provide only new California-certified LEV II vehicles into the Connecticut market commencing with the 2008 model year. Second, each manufacturer must demonstrate that all such vehicles sold into this market, in aggregate, meet an average emission standard (also known as a fleet emissions standard). The fleet emissions standard becomes progressively more stringent over time but is flexible in that manufacturers have the opportunity to earn emission credits to partially offset future requirements. The proposed rules will also require the implementation of the advanced technology vehicle requirement, previously known as the “zero emissions vehicle” program.

III. Summary and Text of the Regulatory Amendments as Proposed

A. Section 22a-174-36b, Low Emission Vehicles II. This proposed new regulation will produce additional reductions of volatile organic compounds (“VOCs”) and hazardous air pollutants by requiring, commencing with the 2008 model year, light duty vehicle manufacturers to provide only vehicles certified to the California LEV II standards into the Connecticut market. Each manufacturer must demonstrate that all such vehicles sold into this market, in aggregate, meet an average emission standard (also known as a fleet emissions standard). Subject manufacturers will also be required to comply with the LEV II advanced technology vehicle requirements, warranty, recall and reporting provisions. The text of the regulation as proposed for public hearing is as follows:

Section 22a-174-36b. California Low Emission Vehicles II.

(a) Definitions and abbreviations. For the purposes of this section:

(1) "Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems, and crankcase ventilating systems.

(2) "CARB" means the California Air Resources Board.

- (3) "Certified" means the finding by CARB that a motor vehicle, motor vehicle engine, or motor vehicle engine family, or air contaminant emission control system has satisfied the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.
- (4) "Dual-fuel" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel that is stored separately on-board the vehicle.
- (5) "Emergency vehicle" means any publicly owned vehicle operated by peace officer in performance of his or her duties, any authorized vehicle used for fighting fires or responding to emergency fire calls, any publicly owned authorized vehicle used by emergency medical technicians or paramedics, or used for towing or servicing other vehicles, or repairing damaged lighting or electrical equipment, or an ambulance.
- (6) "Emission control label" means the permanent stickers required by CARB and affixed to all 2007 and subsequent model year passenger cars and light duty trucks, certified for sale in California.
- (7) "Emissions-related part" means any automotive part that affects any regulated emissions from a motor vehicle or motor vehicle engine that is subject to California or federal emissions standards, as set forth in California Code of Regulations, Title 13, section 1900(b)(3).
- (8) "EPA" means the United States Environmental Protection Agency.
- (9) "Executive Officer" means an Executive Officer of CARB.
- (10) "Fleet average emissions" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles that are subject to this section, sold in the State of Connecticut in any model year.
- (11) "Fuel-flexible" means a methanol-fueled motor vehicle that is engineered and designed for operation using any gasoline-methanol fuel mixture or blend.
- (12) "Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.
- (13) "Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the drive wheels by either a combustion engine and/or by battery powered electric motor.
- (14) "Light duty truck" or "LDT" means any 2007 and subsequent model-year motor vehicle

certified to the standards in California Code of Regulations, Title 13, section 1961(a)(1) having a gross vehicle weight rating of 8500 pounds or less, and any other motor vehicle rated at 6000 pounds or less, that is designed primarily for the purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

(15) "Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

(16) "Medium-duty vehicle" means any 2007 and subsequent model year heavy-duty, low-emissions, ultra-low-emission, super-ultra-low emission or zero-emission vehicle certified to the standards in California Code of Regulations, Title 13 section 1961(a)(1) or 1962 having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

(17) "Military tactical vehicles and equipment" means those vehicles defined by California Code of Regulations, Title 13, section 1905.

(18) "Model year" means "model year" as defined in 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 40 CFR 85.2304, inclusive.

(19) "New vehicle" means any passenger car or light duty truck with 7,500 miles or fewer on its odometer.

(20) "NMOG" means non-methane organic gas;

(21) "Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons having a design capacity of twelve persons or less.

(22) "Offset vehicle" means a vehicle that has been certified by the State of California as set forth in the California Code of Regulations, Title 13, section 1960.5.

(23) "PZEV" means partial ZEV as defined in California Code of Regulations, Title 13, section 1962.

(24) "Small volume manufacturer" means, except as otherwise provided in California Code of Regulations, Title 13, sections 1960.1(g)(2), 1960.1(h)(2) and 1960.1(n), any 2001 and subsequent model-year manufacturer with California sales less than 4,500 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model-years for which a manufacturer seeks certification; however, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

- (25) “SULEV” means a super-ultra-low-emission vehicle.
- (26) “TLEV” means a transitional-low-emission vehicle.
- (27) “ULEV” means an ultra-low-emission vehicle.
- (28) "Vehicle" means any motor vehicle.
- (29) “ZEV” means a zero-emission-vehicle.

(b) Applicability. This section shall apply to all 2008 and subsequent model year passenger cars and light duty trucks sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired or received, in the State of Connecticut except that this section shall not apply to those vehicles listed in subsections (c) and (d) of this section.

(c) Prohibitions and compliance requirements.

(1) Unless subject to an exemption listed in subsection (d) of this section, no person shall sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a new 2008 or subsequent model year vehicle in the State of Connecticut unless such vehicle is certified to California emission standards and meets:

- (A) The exhaust emission standards set forth in the California Code of Regulations, Title 13, sections 1956.8(g) or (h), 1960.1, 1961(a) or 1962(a);
- (B) The emission control label or smog index label requirements set forth in the California Code of Regulations, Title 13, section 1965;
- (C) The evaporative emission standards set forth in the California Code of Regulations, Title 13, section 1976;
- (D) The refueling emissions standards set forth in the California Code of Regulations, Title 13, section 1978;
- (E) The malfunction and diagnostic system requirements set forth in the California Code of Regulations, Title 13, 1968.1;
- (F) The assembly-line testing procedure requirements set forth in the California Code of Regulations, Title 13, section 2062; and
- (G) The specifications for fill pipes and openings of motor vehicle fuel tanks set forth in the California Code of Regulations, Title 13, section 2235.

(2) **ZEV mandate.** Beginning with the 2008 model year, each manufacturer's sales fleet of passenger cars and light duty trucks produced and delivered for sale in the State of Connecticut shall contain at least 10 percent ZEVs subject to the same requirements, including early credit and banking provisions, set forth in the California Code of Regulations, Title 13, section 1962 using Connecticut specific vehicle numbers.

(3) All vehicle manufacturers shall comply with the fleet average, warranty, recall and other applicable requirements set forth in subsections (e), (f), (g), (h), (i), (j), and (k) of this section.

(d) Exemptions. The following vehicles shall not be subject to this section:

(1) A vehicle transferred by inheritance;

(2) A vehicle transferred by decree of divorce, dissolution or legal separation entered by a court of competent jurisdiction;

(3) A vehicle purchased by a nonresident prior to establishing residency in the State of Connecticut;

(4) A vehicle sold for the purpose of being wrecked or dismantled;

(5) A vehicle sold directly from one dealer to another dealer;

(6) A vehicle sold for registration out of state;

(7) A vehicle sold designed exclusively for off-highway use;

(8) A vehicle that has been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. 7521 and which is in the possession of a rental agency in Connecticut and is next rented with a final destination outside of Connecticut;

(9) An emergency vehicle;

(10) A military tactical vehicle;

(11) A vehicle exempted by California Health and Safety Code, section 43656; or

(12) A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident that was damaged or became inoperative beyond reasonable repair or was stolen while out of this state, provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen.

(e) **Emission Standards, warranty, recall and miscellaneous provisions.** Each manufacturer and each new 2008 and subsequent model-year passenger cars and light-duty trucks that are subject to this section shall comply with each applicable standard set forth in Table 36b-1 and incorporated by reference herein:

| Table 36b-1 | | |
|---|--|---------------------------------------|
| California Code of Regulations (CCR) | | |
| Title 13 | | |
| Provisions Incorporated by Reference | | |
| <u>Title 13 CCR</u> | <u>Title</u> | <u>Section</u> <u>Amended Date</u> |
| Chapter 1 Motor Vehicle Pollution Control Devices | | |
| Article 1 General Provisions | | |
| Section 1900 | Definitions | 12/19/03 |
| Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles) | | |
| Section 1956.8(g) and (h) | Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles | 12/14/03 |
| Section 1960.1 | Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles | 10/16/02 |
| Section 1961 | Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 12/04/03 |
| Section 1962 | Zero Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 12/19/03 |
| Section 1965 | Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles | 12/04/03 |
| Section 1968.1 | Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 11/27/99 |
| Section 1968.2 | Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 04/21/03 |
| Section 1968.5 | Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines | 04/21/03 |
| Section 1976 | Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions | 11/27/99 |

| | | |
|---|---|----------|
| Section 1978 | Standards and Test Procedures for Vehicle Refueling Emissions | 11/27/99 |
| Article 6 Emission Control System Warranty | | |
| Section 2035 | Purpose, Applicability and Definitions | 12/26/90 |
| Section 2036 | Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles. | 5/15/99 |
| Section 2037 | Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles | 11/27/99 |
| Section 2038 | Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles | 11/27/99 |
| Section 2039 | Emission Control System Warranty Statement. | 12/26/90 |
| Section 2040 | Vehicle Owner Obligations | 12/26/90 |
| Section 2046 | Defective Catalyst | 1/16/79 |
| Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing. | | |
| Article 1 Assembly Line Testing. | | |
| Section 2062 | Assembly-line Test Procedures 1998 and Subsequent Model-years. | 11/27/99 |
| Article 2 Enforcement of New and In-use Vehicle Standards | | |
| Section 2101 | Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action. | 11/27/99 |
| Section 2109 | New Vehicle Recall Provisions. | 11/27/99 |
| Section 2110 | Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model-Year. | 11/27/99 |
| Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls. | | |
| Section 2111 | Applicability. | 8/21/02 |
| Section 2112 | Definitions. | 11/15/03 |
| | Appendix A to Article 2.1. | 11/15/03 |
| Section 2113 | Initiation and Approval of Voluntary and Influenced Recalls. | 1/26/95 |
| Section 2114 | Voluntary and Influenced Recall Plans. | 11/27/99 |
| Section 2115 | Eligibility for Repair. | 1/26/95 |
| Section 2116 | Repair Label. | 1/26/95 |
| Section 2117 | Proof of Correction Certificate. | 1/26/95 |
| Section 2118 | Notification. | 1/26/95 |
| Section 2119 | Record keeping and Reporting Requirements. | 11/27/99 |

| | | |
|--|--|----------|
| Section 2120 | Other Requirements Not Waived. | 1/26/95 |
| Article 2.2 Procedures for In-Use Vehicle Ordered Recalls. | | |
| Section 2122 | General Provisions. | 1/26/95 |
| Section 2123 | Initiation and Notification of Ordered Emission-Related Recalls. | 1/26/95 |
| Section 2124 | Availability of Public Hearing. | 1/26/95 |
| Section 2125 | Ordered Recall Plan. | 1/26/95 |
| Section 2126 | Approval and Implementation of Recall Plan. | 1/26/95 |
| Section 2127 | Notification of Owners. | 1/26/95 |
| Section 2128 | Repair Label. | 1/26/95 |
| Section 2129 | Proof of Correction Certificate. | 1/26/95 |
| Section 2130 | Capture Rates and Alternative Measures. | 11/27/99 |
| Section 2131 | Preliminary Tests. | 1/26/95 |
| Section 2132 | Communication with Repair Personnel. | 1/26/95 |
| Section 2133 | Record keeping and Reporting Requirements. | 1/26/95 |
| Section 2135 | Extension of Time. | 1/26/95 |
| Article 2.3 In-Use Vehicle Enforcement Test Procedures. | | |
| Section 2136 | General Provisions. | 1/26/95 |
| Section 2137 | Vehicle Selection. | 12/28/00 |
| Section 2138 | Restorative Maintenance. | 11/27/99 |
| Section 2139 | Testing. | 8/21/02 |
| Section 2140 | Notification of In-Use Results. | 8/21/02 |
| Article 2.4 Procedures for Reporting Failure of Emission-Related Components. | | |
| Section 2141 | General Provisions. | 12/28/00 |
| Section 2142 | Alternative Procedures. | 2/23/90 |
| Section 2143 | Failure Levels Triggering Recall. | 11/27/99 |
| Section 2144 | Emission Warranty Information Report. | 11/27/99 |
| Section 2145 | Field Information Report. | 11/27/99 |
| Section 2146 | Emissions Information Report. | 11/27/99 |
| Section 2147 | Demonstration of Compliance with Emission Standards. | 8/21/02 |
| Section 2148 | Evaluation of Need for Recall. | 11/27/99 |
| Section 2149 | Notification of Subsequent Action. | 2/23/90 |
| Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks. | | |
| Section 2235 | Requirements. | 9/17/91 |
| | | |

(f) Fleet average requirements, reporting and projections, and Delivery reporting Requirements.

(1) The fleet average non-methane organic gas emission values from passenger cars and light-duty trucks produced and delivered for sale in the State of Connecticut by a manufacturer each model year shall not exceed the fleet average numbers set forth in California Code of Regulations, Title 13, sections 1960.1(g)(2) and 1961(b)(1), except as provided in section 1960.1(g)(2) and 1961(b)(1).

(2) A manufacturer that certifies vehicles equipped with direct ozone reduction technologies is eligible to receive NMOG credits for use in fleet average compliance determinations. A manufacturer shall submit to the commissioner an Executive Order for CARB, obtained in accordance with California Code of Regulations Title 13, section 1960.1(g)(1), which shall determine the value of such credits for vehicles delivered for sale in the State of Connecticut, when the manufacturer submits its annual NMOG fleet average report.

(3) Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this part in the State of Connecticut, pursuant to the provisions set forth in the California Code of Regulations Title 13, sections 1960.1(g)(2) and 1961(b)(1).

(4) Commencing with the 2009 model year, each manufacturer shall report to the commissioner, using the same format used to report such information to CARB, the average emissions of its fleet delivered for sale in the State of Connecticut. The report shall be submitted to the commissioner, or the commissioner's designee, no later than March 1 of the calendar year succeeding the end of the model year.

(5) Delivery Reporting Requirements. For the purposes of determining compliance with the requirements of this section, commencing with the 2009 model year, each manufacturer shall submit annually, to the commissioner, within sixty (60) days subsequent to the end of each model year, a report documenting total deliveries for sale of vehicles in each engine family over that model year in the State of Connecticut.

(g) Fleet Average Emissions Reporting Requirements.

(1) For the purposes of determining compliance with the requirements of subsections (c)(3) and (e) of this section, commencing with the 2008 model year, each manufacturer shall submit annually to the Department, within sixty (60) days subsequent to the end of each model year, a report which demonstrates that such manufacturer has met the fleet average emissions requirements for its fleet delivered for sale in Connecticut.

(2) Prior to the commencement of each model year, commencing with the 2008 model year, each manufacturer shall submit, to the Department, a projection of the fleet average emissions for vehicles to be delivered for sale in Connecticut during such model year.

(h) Fleet average enforcement.

(1) If the report issued by a manufacturer pursuant to subsection (g) of this section demonstrates noncompliance with the fleet average emission standards incorporated by reference into this section and set forth in Table 36b-1 of this section, during a model-year, the manufacturer must within sixty (60) days file a Fleet Average Enforcement Report with the commissioner documenting such noncompliance. The Fleet Average Enforcement Reports must identify all vehicle models delivered for sale into the State of Connecticut and their

corresponding certification standards and the percentage of each model delivered for sale into the State of Connecticut and California in relation to total fleet sales in the respective state.

(2) Failure to submit an Enforcement Report may result in penalties as permitted under chapter 446c of the Connecticut General Statutes in addition to any other penalties permitted by law for failure to comply with the fleet average.

(i) Reporting and Offset vehicle reporting.

(1) The manufacturer will submit one copy of the California Executive Order and Certificate of Conformity relating to certification of new motor vehicles for each engine family to be sold in the State of Connecticut to the commissioner within thirty (30) days of receiving the Executive Order from CARB.

(2) For the purposes of determining compliance with this section, the commissioner may require any vehicle manufacturer subject to this section to submit any documentation the commissioner deems necessary to the effective administration and enforcement of this section including all certification materials submitted to CARB.

(3) Offset vehicle reporting. Commencing with the 2007 model-year, by March 1 of the calendar year succeeding the end of the model-year, each manufacturer shall report to the commissioner the number of offset vehicles, categorized by model type, delivered for sale into the State of Connecticut during such model-year. The report shall also include the total number of the manufacturer's fleet delivered for sale into the State of Connecticut.

(j) Warranty Requirements.

(1) For all 2008 and subsequent model-year vehicles subject to the provisions of this section, each manufacturer shall provide a warranty to the ultimate purchaser and each subsequent purchaser that complies with the requirements set forth in California Code of Regulations, Title 13, sections 2035 through 2038, 2040 and 2046.

(2) For all 2008 and subsequent model-year vehicles subject to the provisions of this section, each manufacturer shall include the emission control system warranty statement that complies with the requirements set forth in California Code of Regulations, Title 13, sections 2039 modified as may be necessary to inform Connecticut vehicle owners of the applicability of the California warranty. The manufacturer shall also provide a telephone number on such statement appropriate for the State of Connecticut.

(k) Recalls.

(1) For all 2008 and subsequent model-year vehicles subject to the provisions of this section, each manufacturer shall undertake an action equivalent to that required by any order or

enforcement action taken by CARB, or any voluntary or influenced emission related recall initiated by any manufacturer pursuant to or required by California Code of Regulations, Title 13, sections 2101 through 2120, 2122 through 2133, and 2135 through 2149, unless within thirty (30) days of CARB approval of such recall, the manufacturer demonstrates to the commissioner that such recall is not applicable to vehicles registered in the State of Connecticut.

(2) Each manufacturer shall send to owners of vehicles registered in the State of Connecticut a notice that complies with the requirements set forth in California Code of Regulations, Title 13, sections 2118 or 2127, provided that such notice shall contain a telephone number appropriate for use by vehicle owners or operators in the State of Connecticut.

(I) Incorporation by reference. Availability and interpretation of referenced material.

(a) In accordance with the provisions of section 22a-174g of the Connecticut General Statutes, this section incorporates by reference certain sections of Title 13, California Code of Regulations. Table 36b-1 lists the sections of Title 13, California Code of Regulations incorporated by reference and the respective amended date for each section.

(b) Copies of the relevant sections of Title 13, California Code of Regulations incorporated by reference in this section are available by contacting:

Connecticut Department of Environmental Protection
Bureau of Air Management
Planning & Standards Division
79 Elm Street
Hartford, Connecticut 06106
(860) 424-3027

(c) For purposes of applying the incorporated sections of the California Code of Regulations, unless clearly inappropriate, "California" shall mean "Connecticut."

B. Subsection 22a-174-36(i), Low Emission Vehicles. This proposed new subsection to the existing national low emission vehicle rule will sunset section 36 upon the implementation of section 36b. The State of Connecticut is currently committed to the implementation of the national low emission vehicle program until the 2006 model year.

(i) Repeal provision. The California Low Emission Vehicle, National Low Emission Vehicle and all related provisions in this section shall be repealed upon the implementation date of section 22a-174-36b of the Regulations of Connecticut State Agencies.

Statement of Purpose:

To repeal the provisions of section 22a-174-36 and to adopt the California Low Emission Vehicle program, including all “zero emission vehicle” program elements, in accordance with section 177 of the Clean Air Act (“CAA”) commencing with 2008 model year and later vehicles.

IV. Principal Reasons in Support of the Proposed Amendments

The proposed adoption of section 36b is required pursuant to Public Act 04-84 and will provide additional emission reductions of VOCs and air toxins associated with motor vehicle emissions, such as: benzene; 1,3 butadiene; formaldehyde; and acetaldehyde.

V. Principal Considerations in Opposition to the Proposed Amendments

The principal considerations raised in opposition to the Department’s intended action are: (1) the adoption of the LEV II program is unnecessary because the federal Tier 2 program is equivalent to the LEV II program; (2) adopting the ZEV mandate without also adopting the California credit system or other measures to balance the Connecticut and California programs could violate either the “identity” provisions or the “third vehicle” prohibition set forth in section 177 of the federal CAA. All comments submitted are addressed in detail in Section VI of this report.

VI. Summary of Comments

All comments received concerned the proposed adoption of section 36b. General comments are set forth first followed by comments on specific provisions of section 36b.

A. General Comments

EPA Region 1 provided the following general comment on section 36b:

1. Comment: While recognizing Connecticut’s legal right to adopt the proposed regulations under section 177 of the federal CAA, EPA commented that there are substantial and significant benefits to remaining in the federal motor vehicle control program.

Response: The Department appreciates EPA’s acknowledgement of Connecticut’s authority to adopt the proposed regulations under section 177 of the federal CAA. The Department recognizes that while the federal Tier 2 program offers significant emission reductions, the California LEV II standards offer greater reductions. The Department understands that EPA has expressed concerns with studies from organizations such as NESCAUM with respect to the precise amount of the air quality benefit, but even EPA has stated in their comments that the California LEV II program provides greater environmental benefit relative to the federal Tier 2 program. Given the mobile source sector’s contribution to Connecticut’s persistent non-

attainment of federal health-based ambient air quality standards for ozone, the Department should continue to work closely with EPA in partnership to develop and implement all programs necessary to meet both the 1-hour and, more stringent, 8-hour ozone standards. To the extent the LEV II program is an 8-hour ozone attainment strategy, the Department should work with EPA to identify the appropriate State Implementation Plan (“SIP”) credit from the implementation of this program in Connecticut.

The American Lung Association of Connecticut provided the following general comment on section 36b:

2. Comment: The American Lung Association of Connecticut (“ALA CT”) supports the adoption of the low emission vehicle program in Connecticut. The ALA CT believes the standards will reduce toxic pollutants and smog thereby providing a healthier environment for the citizens of Connecticut. ALA CT stated this is especially important for those residents who are particularly susceptible to the harmful effects of air pollution, including children and the elderly.

Response: The Department notes ALA CT’s support of the proposed regulations.

Connecticut Clean Cars Alliance provided the following general comment on section 36b:

3. Comment: The Connecticut Clean Cars Alliance (“CCCA”), on behalf of more than 70 health, environmental and business organizations, expressed support of the proposed regulations. CCCA commented that the stronger standards will significantly reduce pollution from cars in the state and will lower the incidence of respiratory ailments, heart disease and cancer caused by air pollution.

Response: The Department notes the CCCA’s support of the proposed regulations.

Environment and Human Health, Inc. provided the following general comment on section 36b:

4. Comment: Environment and Human Health, Inc. (“EHHI”) commented that the implementation of the proposed regulations is essential given that passenger vehicle emissions are major contributors to the increased lung disease and heart attack health risks facing Connecticut. EHHI stated there are a large number of studies that directly relate observed health effects, such as heart attacks and asthmatic attacks, to episodic increases in pollutants near the residence of the afflicted individual.

Response: The Department notes EHHI’s support of the proposed regulations.

Connecticut Fund for the Environment provided the following general comments on section 36b:

5. Comment: Connecticut Fund for the Environment (“CFE”) commented that the implementation of the proposed regulation is essential given the results of a CFE report that demonstrated anticipated reductions in vehicle emissions and the associated health benefits for Connecticut residents upon full implementation of the California standards. The CFE study indicated that full implementation of the California emission standards in Connecticut would result in a 33% reduction in emissions of four air toxics¹ and reductions of 21% and 11% of VOCs and oxides of nitrogen (“NO_x”), respectively, from subject vehicles. CFE believes these reductions will be an important element of the state’s strategy to attain the new federal 8-hour ozone air quality standard in a manner that is fair and equitable to other emission sources within the state. CFE also stated their belief that implementing the California emission standards in Connecticut will not restrict consumer choice and will not raise vehicle prices.

Response: Every commenter recognizes that the LEV II program offers superior emission reduction benefits compared to the federal Tier 2 program. The comments differ, however, as to the precise nature of the benefit. The Department also recognizes the California program is more dynamic than the federal motor vehicle control program and will likely be revised before the federal program, with the potential of providing even greater emission reductions than currently anticipated. The Department should work with EPA to identify the appropriate amount of SIP credit in accordance with the Department’s response to comment 1 in this section.

6. Comment: CFE also fully supports the adoption of the zero emission vehicle (“ZEV”) component of the California low emission vehicle program. CFE stated this program is directly responsible for the development and deployment of advanced technology vehicles that would not otherwise be brought to market. CFE states that the ZEV program requirements can be met without the introduction of battery-electric vehicles (“BEVs”) and that the alternative compliance credit allocation programs implemented in the states of New York and Massachusetts should not be needed in Connecticut given the relatively late implementation date in this state.

Response: The Department should work to ensure the ZEV program is implemented in a way that is least disruptive to the state and to manufacturers. As such, the Department should explore, in accordance with comments submitted by and on behalf of motor vehicle manufacturers, whether the proposed regulations should be modified to include a transition program similar to that adopted in New York and Massachusetts (and under consideration in the state of Rhode Island). It should be noted that the state of Vermont is also considering an early introduction credit multiplier framework² consistent with the provisions of the Alternative Compliance Plans in the New York and Massachusetts LEV programs.

1 The four air toxics are 1,3 butadiene; formaldehyde; acetaldehyde; and benzene.

2 See “Response to Comments – 2003 Proposed Amendments to Vermont Air Pollution Control Regulations, Subchapter XI, Low Emission Vehicle Program,” March 12, 2004 at page 2.

The Alliance of Automobile Manufacturers provided the following general comments on section 36b:

7. Comment: The Alliance of Automobile Manufacturers (“AAM”) commented against the adoption of the proposed regulation and offered the following general comments in opposition:

- (A) The federal Tier 2 standards are equivalent to California’s LEV II standards. AAM attached a graphic representation of a MOBILE modeling run using Connecticut-specific vehicle miles traveled (“VMT”) estimates. The graphic representation of AAM sponsored air emissions modeling seems to demonstrate that LEV II offers marginally better emission reductions than federal Tier 2 by approximately 2-4 tons per day (combined NO_x and VOC) in 2020.
- (B) The cost of implementing the ZEV component of the program is very high. The costs of this adoption cannot be justified as in California because Connecticut does not have the same air quality needs as California, and Connecticut’s adoption of the ZEV mandate will not advance technology. AAM provided tables containing incremental vehicle costs associated with the ZEV mandate and associated dollars per ton of emissions reduction. Given the costs associated with implementation of the ZEV program in Connecticut, AAM also commented that the state should be prepared to incur significant implementation costs, including purchase incentives, administrative costs (for additional state employees), and costs associated with the infrastructure to support battery electric vehicles. AAM believes the total costs to be within a range of \$8-18.7 million with 30-70% of the cost attributed to ZEV purchase incentives.
- (C) Adoption of ZEV mandate “mid-stream” could be viewed as violating the section 177 “no third vehicle” requirement of the federal CAA because automobile manufacturers have not had the same amount of time to accrue early compliance credits as in California. Accordingly, AAM comments that many, if not all manufacturers would be required to develop BEVs or other ZEVs, AT PZEVs, and/or partial ZEVs (“PZEVs”) just for Connecticut in order to comply.
- (D) AAM comments that if the mix of vehicles sold in Connecticut varies substantially from that in California, then the manufacturers may be forced to restrict availability of certain models in Connecticut which could conflict with section 177 of the federal CAA or could force the manufacture of a “third vehicle” in order to meet fleet average non-methane organic gas (“NMOG”) standards.
- (E) There is no provision in the proposed regulations for allowing manufacturers the ability to generate early fleet average NMOG credits. Further, AAM states that Connecticut should not enforce the fleet average NMOG standard because doing so “could distort the market.” At a minimum, AAM suggests Connecticut defer enforcement of the fleet average NMOG standard until 2012 and provided regulatory language to do so.
- (F) AAM suggests that the ZEV program will be unenforceable because the

- Connecticut Department of Motor Vehicles does not currently allow the registration of low-speed BEVs. AAM suggests such action may require manufacturers to provide a “third vehicle” in violation of section 177 of the CAA.
- (G) Unique Connecticut warranty reporting requirements would not provide any new information to the Department that is not already included in reports prepared for the state of California. As such, AAM suggests California reports be allowed in lieu of Connecticut specific reports because under the California regulations because under a warranty-related recall all California certified vehicles would be included, regardless of the state in which they are operated.
 - (H) AAM suggests that Connecticut must adopt the California reformulated gasoline program in order to gain the full air quality benefits of this program.
 - (I) AAM states that because most auto dealers in Connecticut order vehicles that meet individual California tailpipe standards under EPA’s cross-border sales policy, Connecticut achieves the [air quality] benefits of the California program without the administrative burden associated with full implementation of the California program.
 - (J) In conclusion, AAM recommends Connecticut not adopt the California LEV II regulations. AAM states that LEV II will provide only marginal air quality benefits and likely no additional SIP credits. AAM recommends Connecticut continue to meet air quality objectives by leveraging federal programs and investing in incentives for advanced technology vehicles. AAM also identified eleven ‘reasonable’ steps Connecticut should take to improve its air quality.

Response: Responding to the AAM comments:

- (A) As stated in response to comment 5, every commenter, including AAM and their own modeling testimony, recognize that the LEV II program offers greater emission reductions than the federal Tier 2 program. The commenters disagree only as to the amount of the benefit.
- (B) Testimony on the cost to implement the ZEV program in California, while informative, cannot be reliably used to predict costs for Connecticut. California’s costs are of a far greater magnitude than those of Connecticut. California is the world’s fifth largest economy and the largest single U.S. motor vehicle market, as well as being a world leader in the development of emission control standards through intensive research by an extensive staff. Considering these factors, one would expect California’s costs to be significant. The situation in Connecticut is different in that the regulations and manufacturer certification processes are developed by California and later adopted by other states to maintain “identity” with California’s standards. Connecticut will not incur significant administrative costs and notes that Massachusetts implements their LEV program with no more than 2 FTEs. Connecticut will not incur the infrastructure costs identified by AAM, as infrastructure development is not an historical function of state government, although the state may choose to encourage and support

particular efforts in the future.

- (C) The timing of the adoption of the ZEV mandate in Connecticut does not violate the “third vehicle” prohibition of section 177 of the CAA and Connecticut has fully complied with the lead-time requirements of the CAA. Furthermore, the Connecticut ZEV program will not require the development of Connecticut-specific vehicles. It should be noted that the ZEV amendments, developed by CARB and based upon significant input from the automobile manufacturers, were designed so that the program would not depend on the use of BEVs for compliance. In accordance with the Department’s response to comments 11, 12 and 13, the Department intends to offer manufacturers sufficient opportunity to earn and bank credits through the early introduction of advanced technology vehicles so that the production of BEVs will be unnecessary. However, even if the manufacturers choose the compliance path that emphasizes BEVs, their production would not result in an unlawful “third vehicle” as that option is similarly available in California.
- (D) AAM’s concern that if [emphasis added] the mix of vehicles sold in Connecticut varies substantially from that in California, then the manufacturers may be forced to restrict availability of certain models in Connecticut which could conflict with section 177 of the federal CAA or could force the manufacture of a “third vehicle” in order to meet fleet average NMOG standards is without merit and underscores the necessity of the fleet NMOG average. AAM offered no additional data to support this hypothetical situation. While fleet mix may vary slightly from state to state and year to year, the fleet NMOG average is met in California, New York, Massachusetts, Vermont and Maine. This means the program works as expected in that even though the fleet mix may vary slightly by state, overall emissions are reduced due to the fleet average NMOG standard without the development of the so-called “third vehicle.” Again the “third vehicle” argument is without merit as Connecticut is proposing to adopt the identical California standards, as required by the CAA, and including California’s compliance provisions concerning the outcome should the fleet average NMOG standard be exceeded. Furthermore, the Department believes the “indirect sales limit” issue was decided in litigation brought by automobile manufacturers against the State of New York and Commonwealth of Massachusetts in *Motor Vehicle Manufacturers Assoc. v. State of New York DEC, et al*, 17 F3d. 521 (2nd Cir. 1994).
- (E) Consistent with the manner in which other states, such as the Commonwealth of Massachusetts, transitioned to the fleet NMOG standard, the Department should defer the fleet NMOG standard until model year 2011. The Department should, nonetheless, track fleet NMOG values by requiring manufacturers to report fleet NMOG values for 2008 and later model years. In addition, the Department should provide manufacturers with the opportunity to earn early fleet average NMOG credits based on voluntary early compliance. The Department should propose to adopt the following language in subsection (h)(1):

(1) If, **commencing with the 2011 model year and for each subsequent model year thereafter**, the report issued by a manufacturer pursuant to subsection (g) of this section demonstrates noncompliance with the fleet average emission standards incorporated by reference into this section and set forth in Table 36b-1 of this section, during a model-year, the manufacturer must within sixty (60) days file a Fleet Average Enforcement Report with the commissioner documenting such noncompliance. The Fleet Average Enforcement Reports must identify all vehicle models delivered for sale into the State of Connecticut and their corresponding certification standards and the percentage of each model delivered for sale into the State of Connecticut and California in relation to total fleet sales in the respective state.

- (F) The AAM's suggestion that the Connecticut ZEV program will be unenforceable because the Connecticut Department of Motor Vehicles does not currently allow the registration of low-speed BEVs is also without merit. The commenter is confusing the issue of whether a neighborhood BEV is a "motor vehicle" within the purview of section 177 of the CAA with the issue of whether a neighborhood BEV can be credited towards meeting the ZEV mandate. Connecticut allows the registration of electric motor vehicles. A neighborhood BEV, while not being a "motor vehicle" may, nonetheless, be offered for sale in Connecticut and credited towards compliance with the ZEV program requirements in certain settings, such as large college or industrial campuses. Simply stated, there is no prohibition in Connecticut against the sale of neighborhood BEVs, thus Connecticut is not violating the "third vehicle" prohibition of CAA section 177. In addition, California has redesigned the ZEV program so that compliance can be achieved without the sale of neighborhood (low-speed) BEVs.
- (G) Provided that all the requested information is submitted to the Department, there is nothing in the reporting requirements of section 36b that would preclude a manufacturer from using the same report format as used for CARB. As such, the Department should make no changes to these provisions.
- (H) Contrary to AAM's assertion, Connecticut need not adopt the California fuels program in conjunction with the LEV II program. Neither California nor federal vehicles are certified using gasoline. In addition, the federal low sulfur gasoline regulations will be in place by the time LEV II vehicles are being sold into Connecticut with the 2008 model year. The sulfur limits in federal gasoline at that time will be functionally equivalent to the levels now in California gasoline.
- (I) The Department is required to pursue the adoption of the LEV II program under Public Act 04-84. AAM's assertion that Connecticut should not adopt the LEV II program because the state receives the air quality benefit associated with EPA's cross-border sales policy does not address the legislative mandate to pursue the

adoption of this program. Furthermore, while LEV II vehicles may be sold into Connecticut, there is no mechanism for Connecticut to obtain SIP credit towards meeting applicable air quality goals until the program is adopted. AAM's statement also raises an interesting corollary issue: if numerous LEV vehicles are now being sold into Connecticut, would not formalizing the requirements regionally put Connecticut's automobile dealers on similar footing with their counterparts in New York and Massachusetts?

- (J) The Department cannot accept AAM's recommendation to not adopt the LEV II program as it conflicts with the legislative direction the General Assembly provided to the Department in Public Act 04-84.

The Ford Motor Company ("Ford") provided the following general comments on section 36b:

8. Comment: Connecticut should not adopt the ZEV program without providing for the accumulation and use of credits to offset some of the requirements. If Connecticut does not account for the use of early compliance credits in its ZEV program, manufacturers may need to develop BEVs to comply with the Connecticut program in violation of the "no third vehicle" prohibition set forth in section 177 of the CAA. Ford suggests a solution would be for Connecticut to create and allocate credits to manufacturers at a level equivalent to the number of credits earned by each manufacturer in California

Response: The Department should pursue a dual track whereby manufacturers would be provided either the opportunity to earn Connecticut ZEV credits through voluntary early compliance or be allocated a number of credits proportionally equivalent (based on comparative sales) to the number of credits held by each manufacturer in California as of January 1, 2008. As stated in response to comment 6, the Department should include alternative compliance mechanisms similar to that adopted in New York and Massachusetts and under consideration in Rhode Island. See the response to comment 11, below.

9. Comment: Ford comments that if Connecticut does not provide a framework for NMOG fleet average credits then manufacturers may be forced to produce a "third vehicle" or otherwise limit the sale of vehicles.

Response: As stated in response to comment 7(E), the Department is proposing to transition to the full implementation of the NMOG standard in a manner consistent with that employed by other Northeastern states. As such, a manufacturer shall be required to submit NMOG compliance reports for model year 2008. The commissioner will not require the submission of Fleet Average Enforcement Reports until the 2011 model year.

10. Comment: Ford comments that Connecticut should adopt the California fuels program.

Response: As stated in response to comment 7(H), Connecticut need not and should not adopt the California fuels program in conjunction with the LEV II program.

American Honda Motor Company (“Honda”) provided the following general comments on section 36b:

11. Comment: Honda recommends Connecticut provide an alternative compliance plan (“ACP”) option to facilitate the implementation of the ZEV mandate. Honda notes that the states of New York and Massachusetts have adopted similar ACP provisions whereby manufacturers submit voluntary ACPs that would provide multiplier credits for the early introduction of ZEVs, advanced technology partial zero emission vehicles (“AT-PZEVs”) and partial zero emission vehicles (“PZEVs”). Under the Honda ACP proposal, manufacturers, who elect to follow an alternative compliance path, would be subject to mandatory compliance one year sooner. Honda submitted the following ACP framework:

| Model Year | Requirement | PZEV Credit Multiplier | AT PZEV Credit Multiplier | ZEV Credit Multiplier |
|------------|-------------------------------------|------------------------|---------------------------|-----------------------|
| 2004 | Voluntary Early Introduction | 1.5 | 2.25 | 3 |
| 2005 | Voluntary Early Introduction | 1.5 | 2.25 | 3 |
| 2006 | Voluntary Early Introduction | 1.3 | 1.7 | 2 |
| 2007 | Mandatory Compliance | 1.15 | 1.3 | 1.5 |
| 2008 | Mandatory Compliance | 1.15 | 1.3 | 1.5 |
| 2009 | Equivalency with California Program | 1 | 1 | 1 |

Response: The Connecticut General Assembly by enacting Public Act 04-231, An Act Concerning Clean and Alternative Fueled Vehicles, has indicated a clear preference to bring advanced technology vehicles into Connecticut as soon as possible. Given this clear statement of legislative intent and as a means to successfully manage the transition to the full LEV II program, including the ZEV mandate, the Department should amend subsection (c)(2) and adopt a new subsection (m) to provide alternative compliance mechanisms consistent with those suggested by AAM, Honda and Ford. The Department should provide early credit in order to ramp-up for compliance with the ZEV program and to put auto manufacturers on an equal footing comparable to where such manufacturers would be with respect to California when the LEV II program commences in Connecticut.

The proposed change offers two distinct paths. A manufacturer may select only one path and must do so by March 1, 2005. The first path, set forth in subsection (m)(2) below, will provide

additional Connecticut ZEV credit based on the early introduction of specified vehicles into Connecticut. Each specific vehicle, after being credited with all California-approved credit, would be awarded additional credit as set forth in the Connecticut Multiplier. In no event would a manufacturer on the first path receive less credit than a manufacturer on the second path. The second path, set forth in subsection (m)(3) below, will provide each manufacturer who opts for this path, a one-time allocation of Connecticut ZEV credits proportionally equivalent to the number of ZEV credits possessed by such manufacturer in California on January 1, 2008.

The Department's amended approach and multiplier values are similar to that adopted by the State of New York, but distinct in that the Department's approach would not require the case-by-case negotiation and implementation of manufacturer specific compliance plans. The Department should, however, review and amend this proposed approach in the event that it unnecessarily prolongs the full implementation of the ZEV program in Connecticut. The newly proposed language is underlined, as follows:

(c)(2) ZEV mandate.

(A) Beginning with the 2008 model year, each manufacturer's sales fleet of passenger cars and light duty trucks produced and delivered for sale in the State of Connecticut shall contain at least the same percentage of ZEVs subject to the same requirements, including early credit and banking provisions, set forth in the California Code of Regulations, Title 13, section 1962 using Connecticut specific vehicle numbers.

(B) Alternative compliance mechanisms. As an alternative means of compliance with the requirements of subparagraph (A) of this subdivision, an automobile manufacturer may instead opt to comply with the provisions of subsection (m) of this section. If a manufacturer opts to utilize the alternative compliance mechanisms set forth in subsection (m) of this section, such manufacturer shall notify the commissioner in writing by March 1, 2005.

(m) Alternative compliance mechanisms.

(1) A manufacturer may, as an alternative means of compliance with the requirements of subsection (c)(2) of this section, proceed in accordance with the provisions of subdivision (2) or (3) of this subsection. A manufacturer who elects to follow an alternative compliance path set forth in either subdivision (2) or (3) of this subsection shall notify the commissioner of the elected compliance path by March 1, 2005.

(2) A manufacturer may earn Connecticut ZEV credits for the introduction into Connecticut of PZEVs, AT PZEVs and ZEVs beginning with 2004 model year provided that:

(A) The vehicle credit values for this alternative compliance path shall be the same as

in the California Code of Regulations, Title 13, section 1962.

- (B) After the credit value for a vehicle is established by CARB pursuant to California Code of Regulations, Title 13, section 1962, a Connecticut multiplier will be applied to such credit value for that vehicle in accordance with Table 36b-2. The Connecticut multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for Large Volume Manufacturers as identified in the California Code of Regulations, Title 13, section 1962(b)(2)(B).

Table 36b-2
Connecticut Multiplier

| <u>Model Year</u> | <u>Requirement</u> | <u>PZEV Credit Multiplier</u> | <u>AT PZEV Credit Multiplier</u> | <u>ZEV Credit Multiplier</u> |
|--------------------------|--|--------------------------------------|---|-------------------------------------|
| <u>2004</u> | <u>Voluntary Early Introduction</u> | <u>1.5</u> | <u>2.25</u> | <u>3</u> |
| <u>2005</u> | <u>Voluntary Early Introduction</u> | <u>1.5</u> | <u>2.25</u> | <u>3</u> |
| <u>2006</u> | <u>Voluntary Early Introduction</u> | <u>1.3</u> | <u>1.7</u> | <u>2</u> |
| <u>2007</u> | <u>Voluntary Early Introduction</u> | <u>1.15</u> | <u>1.3</u> | <u>1.5</u> |
| <u>2008</u> | <u>Mandatory Compliance</u> | <u>1.15</u> | <u>1.3</u> | <u>1.5</u> |
| <u>2009</u> | <u>Equivalency with California Program</u> | <u>1</u> | <u>1</u> | <u>1</u> |

- (C) Connecticut ZEV credit use, life, banking and trading will be calculated as per California Code of Regulations, Title 13, section 1962.
- (D) Each manufacturer operating under this alternative compliance path shall submit a compliance report to the commissioner along with annual sales reports no later than March 31st following the completed model year. The compliance report shall include vehicle sales organized by engine family and identify the number of Connecticut ZEV credits earned. Such report may be amended based on late sales.
- (E) Each manufacturer operating under this alternative compliance path shall make available for purchase or lease in Connecticut any advanced technology vehicle models, including all ZEVs except type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, section 1962(b)(2)(B), sold or leased in California.
- (F) The commissioner shall calculate the amount of credits earned based on the report

received pursuant to subparagraph (D) of this subdivision. The commissioner shall establish a compliance account for each manufacturer and allocate the credits earned to such compliance account. In the event that the number of credits earned under this subdivision is less than the number of credits that would have been awarded to a manufacturer under subdivision (3) of this subsection, the commissioner shall calculate the difference and apply a number of credits equal to such difference to such manufacturer's compliance account.

(3) The commissioner shall set aside a number of Connecticut ZEV credits proportionally equivalent to the number of ZEV credits possessed by the requesting manufacturer for use in the State of California on January 1, 2008. The commissioner shall notify such manufacturer of the number of ZEV credits available for use by May 31, 2008 and annually thereafter until such credits are fully consumed. Credits issued pursuant to this subdivision may only be used in Connecticut for compliance with the ZEV provisions of subsection (c)(2) of this section subject to the same requirements and limitations on credit use set forth in the California Code of Regulations, Title 13, section 1962 adjusted for Connecticut specific vehicle numbers. Furthermore, each manufacturer operating under this alternative compliance path shall:

(A) By March 1, 2008, provide the commissioner with the total number of vehicles sold in Connecticut and California for a three-year period prior to January 1, 2008;

(B) By March 1, 2008, provide the commissioner with the total number of banked California ZEV credits as of January 1, 2008;

(C) Until such time as full compliance is achieved with the requirements of subsection (c)(2) of this section, make available for purchase or lease in Connecticut any advanced technology vehicle models, including all ZEVs except type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, section 1962(b)(2)(B), that are sold, leased or offered for sale in California.

(4) Any manufacturer who fails to meet the requirements of its respective alternative compliance path shall be subject to full compliance with the ZEV mandate provisions set forth in subsection (c)(2) of this section.

12. Comment: Honda encourages all Northeast states to adopt consistent ACPs.

Response: The Department understands that New York and Massachusetts have adopted ACPs and that Vermont and Rhode Island are also considering the adoption of an ACP or an equivalent program. The Department should continue to work with neighboring states, to the extent practical, in order to provide a consistent framework to the large volume manufacturers subject to the ZEV provisions.

13. Comment: If Connecticut adopts an ACP in accordance with the previous comments, Honda suggests the ACP be modified to account for those manufacturers who intend to comply with the Fuel Cell Alternative component of the California ZEV program. See 13 CCR § 1962(b)(2)(D).

Response: The proposed changes outlined in response to comment 11, above, would cover those manufacturers who intend to comply with the Fuel Cell Alternative component of the California ZEV program.

B. Specific Comments

EPA Region 1 provided the following specific comments on section 36b:

1. Comment: EPA believes NESCAUM overstated the emission reduction benefits associated with the adoption of the California program. As such, EPA recommends the Department take steps to ensure the LEV SIP revision accounts for such benefits consistent with EPA's MOBILE6 model and associated guidance related to California LEV programs.

Response: As stated in response to comments VI.A.1. and VI.A.5., regardless of the precise value of the LEV II benefit, every commenter recognizes that the LEV II program offers superior emission reduction benefits compared to the federal tier 2 program. The Department should work with EPA to identify the appropriate amount of SIP credit for the LEV II program.

2. Comment: Noting the proposed regulation is intended to go into effect with the 2008 model year, EPA recommends the model year reference in subsections (a)(6), (a)(14) and (a)(16) be changed from model year 2007 to model year 2008.

Response: The Department should make the changes suggested by EPA and replace "2007" with "2008" in subsections (a)(6), (a)(14) and (a)(16).

3. Comment: EPA recommends the reporting requirements set forth in subsections (f) and (g) be clarified with respect to the year in which reporting is to commence.

Response: Reporting timeframes are established in terms of "model year." The proposed regulation uses the same definition of the term "model year" as does EPA in the Code of Federal Regulations. Some reporting requirements begin with the 2008 or 2009 model year. The reporting dates should be consistent throughout the regulation. As such, the Department should revise the proposed regulation to require all reporting requirements to begin commencing with the 2009 model year for activity occurring within the 2008 model year.

Connecticut Fund for the Environment provided the following specific comments on

section 36b:

4. Comment: In subsection (b), CFE suggests deleting the reference to subsection (c) as it creates confusion and ambiguity.

Response: The Department should make the requested revision.

5. Comment: CFE recommends clarifying the dealer-to-dealer exemption set forth in subsection (d)(4). CFE believe this exemption could be construed as permanently exempting any vehicle that is transferred into Connecticut through a dealer-to-dealer transaction (trade).

Response: The Department should not make the requested revision, as the primary means of enforcement on a vehicle-by-vehicle basis will be the state's motor vehicle registry. The Department of Motor Vehicles will not register vehicles that do not possess a valid California emissions control label.

6. Comment: CFE recommends adoption, by reference, of section 2121 of Title 13 of the California Code of Regulations. This section assesses specific penalties on manufacturers upon their failure to notify a vehicle owner or operator under an influenced recall. CFE believes that penalties are essential to ensure the manufacturers comply with the requirements and procedures for in-use vehicle voluntary and influenced recalls.

Response: While the Department appreciates CFE's approach to enhance the enforceability of the LEV II program in Connecticut, the Department should not make the requested revision. The Department maintains adequate legal authority under the Connecticut statutory and regulatory framework to establish and impose penalties on any non-compliant source.

7. Comment: CFE recommends adoption, by reference, of section 2134 of Title 13 of the California Code of Regulations. This section provides specific penalties for a manufacturer's failure to carry out all recall actions ordered by the commissioner pursuant to an in-use vehicle ordered recall.

Response: While the Department appreciates CFE's approach to enhance the enforceability of the LEV II program in Connecticut, the Department should not make the requested revision. As stated in response to comment VI.B.6., the Department maintains adequate legal authority under the Connecticut statutory and regulatory framework to establish and impose penalties on any non-compliant source.

8. Comment: CFE recommends the following language be adopted and the remaining sections re-numbered accordingly:

(1) Documentation and inspections.

- (1) *A manufacturer, a dealer or a transporter of new vehicles shall, upon request, provide to the commissioner any documentation that the commissioner determines to be necessary for the effective enforcement of this section.*
- (2) *The commissioner may inspect any new and used vehicles to determine compliance with this section.*
- (3) *Inspections may be conducted on any conveyance used to transport new vehicles or on any premises owned, operated, used, leased, or rented by a manufacturer or dealer.*
- (4) *During an inspection, any dealer or manufacturer shall make available to the commissioner any related records, including records documenting vehicle sales and records of emission related part repairs performed under warranty.*

Response: The Department should not make the suggested change, as it is not necessary given the substantial compliance assurance framework being developed for the LEV II program in Connecticut. Both the State of Connecticut Department of Motor Vehicles (“DMV”) and Department of Consumer Protection (“DCP”) are authorized to inspect motor vehicle dealerships. The Department understands that the DMV may also utilize the registration system to enforce the California LEV II standards. In addition, the Department is authorized to inspect these sources to verify any data submitted by vehicle manufacturers.

Alliance of Automobile Manufacturers (AAM) provided the following specific comments on section 36b:

9. Comment: Section 22a-174-36b(l) includes an incorporation by reference of the California regulations. Subsection (c) includes a provision that would substitute the term “Connecticut” for “California” in the incorporated texts, unless clearly inappropriate. AAM believes this language is subject to multiple interpretations and should explicitly state the applicable requirements rather than rely on incorporation by reference.

Response: As a technical revision, subdivisions (a) through (c) of subsection (l) are numbered incorrectly and should be re-numbered as subdivisions (1) through (3). With respect to AAM’s comments on incorporation by reference, see the response to comment 10, below.

Ford Motor Company (Ford) provided the following specific comments on section 36b:

10. Comment: Section 22a-174-36b(l) includes an incorporation by reference of the California regulations. Subsection (c) includes a provision that would substitute the term “Connecticut” for

“California” in the incorporated texts, unless clearly inappropriate. Ford believes this language is subject to multiple interpretations and should explicitly state the applicable requirements rather than rely on blanket incorporation by reference.

Response: The Department should not revise the proposal in response to this comment. Pursuant to section 177 of the CAA, automobile manufacturers are now implementing the California LEV program in four other states. Most of these states rely on regulatory incorporation by reference of the California standards in order to avoid legal challenges based on an alleged violation of the “identity” requirement (i.e., the requirement to adopt only California’s standards). As such, the Department sought and was granted legislative authority to incorporate California’s standards by reference. The Department adopted an approach similar to that employed by the state of Vermont as follows:

(3) For purposes of applying the incorporated sections of the California Code of Regulations, unless clearly inappropriate, “California” shall mean “Connecticut.”

For example, “delivered for sale in California” and “placed in service” are interpreted, except for the determination of whether a manufacturer is a large, medium, small or independent low volume manufacturer, as referring to vehicles in Connecticut. It is clearly inappropriate to insert “Connecticut” in lieu of “California” in the context of program elements that Connecticut has not adopted.

11. Comment: Subsections (f)(4), (f)(5) and (g)(1) of section 36b all contain end of year reporting requirements. Ford requests Connecticut accept the same report format that Ford sends to California completed with data specific to Connecticut. With respect to warranty reporting, Ford believes that unique Connecticut reporting will not provide any new information. As such, Ford requests Connecticut accept California Emissions-Related Components Failure reports in satisfaction of Connecticut warranty reporting requirements.

Response: Provided that all the requested information is submitted to the Department, there is nothing in subsections (f)(4), (f)(5) or (g)(1) that would preclude a manufacturer from using the same report format as used for CARB. As such, the Department should make no changes to these provisions.

12. Comment: Subsection (f)(2) of section 36b recognizes the use of direct ozone reduction technologies. Ford supports this flexibility and requests Connecticut broaden the treatment of these technologies, as is the case in California.

Response: As this commenter does not specify the type of flexibility sought for direct ozone reduction technology, the Department should maintain the provisions in the proposed regulation that would grant NMOG credits for vehicles incorporating such approved technology delivered for sale in Connecticut.

VII. Additional Comments of the Hearing Officer

The Department should make the following technical/grammatical corrections to the proposed regulations:

A. Section 36b

1. The addition of two new tables used to incorporate the Northeast State's phase-in multiplier for use in alternative compliance plans associated with the ZEV mandate, requires the subsequent re-numbering of Table 36b-1 to Table 36b-3 throughout section 36b.
2. A number of terms in subsection (a) are not used in the text of the regulation and should be deleted. These terms are: SULEV, TLEV and ULEV. The remaining definitions should be re-numbered accordingly.
3. Several new terms are added as a result of the proposed inclusion of an ACP provision. As a result, these terms, including ACP and AT PZEV should be listed and defined in section 36b(a). The remaining definitions should be renumbered accordingly.
4. The term "model-year" should be replaced with the term "model year" for consistency with the definition in section 36b(a).
5. Subsection (a) should be clarified to state any term related to the LEV II program that is not defined in section 36b is as defined in the California Code of Regulations, as follows:

Provided that any term related to the administration of the Low Emission Vehicles II program not defined in this subsection shall be as defined or described in Title 13 of the California Code of Regulations, for the purposes of this section: . . .
6. To correct a typographical error, the term "Executive Officer" in section 36b(a) should be changed to "Executive Order."
7. In subsection (e) the phrase "passenger cars and light-duty trucks that are. . ." should be changed for agreement with the remainder of the subsection to "passenger car and light-duty truck that is. . ."
8. In subsection (h) concerning Fleet average enforcement, the second subdivision should be deleted and the subsection renumbered accordingly. It is not necessary to include specific or general statutory provisions within this subsection as the entire regulation is subject to all applicable statutory enforcement provisions.

9. In accordance with Executive Order No. 30, subsection (i)(1), should be amended to require the electronic reporting of information when such information is available electronically by adding a final sentence as follows, "To the extent such reports are available electronically, the manufacturer shall submit such records in an electronic format acceptable to the commissioner."
10. To conform with regulation drafting criteria, the "will" in subsection (i)(1) should be changed to a "shall."
11. In subsection (i)(3), the phrase "2007 model year" should be changed to "2008 model year" to meet the model year requirements of Public Act 04-84.

B. Section 36(i)

No additional comments.

VIII. Final Text of Proposed Regulations

Section 1.

The Regulations of Connecticut State Agencies are amended by adding new section 22a-174-36b as follows:

(NEW)

Section 22a-174-36b. California Low Emission Vehicles II.

(a) Definitions and abbreviations. Provided that any term related to the administration of the Low Emission Vehicles II program not defined in this subsection shall be as defined or described in Title 13 of the California Code of Regulations, for the purposes of this section:

(1) "Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems, and crankcase ventilating systems.

(2) "AT PZEV" means advanced technology partial zero emission vehicle.

(3) "CARB" means the California Air Resources Board.

(4) "Certified" means the finding by CARB that a motor vehicle, motor vehicle engine, or motor vehicle engine family, or air contaminant emission control system has satisfied the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.

(5) "Dual-fuel" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel that is stored separately on-board the vehicle.

(6) "Emergency vehicle" means any publicly owned vehicle operated by a peace officer in performance of his or her duties, any authorized vehicle used for fighting fires or responding to emergency fire calls, any publicly owned authorized vehicle used by emergency medical technicians or paramedics, or used for towing or servicing other vehicles, or repairing damaged lighting or electrical equipment, or an ambulance.

(7) "Emission control label" means the permanent stickers required by CARB and affixed to all 2008 and subsequent model year passenger cars and light duty trucks, certified for sale in California.

(8) "Emissions-related part" means any automotive part that affects any regulated emissions from a motor vehicle or motor vehicle engine that is subject to California or federal emissions standards, as set forth in California Code of Regulations, Title 13, section 1900(b)(3).

(9) "EPA" means the United States Environmental Protection Agency.

(10) "Executive Order" means an Executive Order of CARB.

(11) "Fleet average emissions" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles that are subject to this section, sold in the State of Connecticut in any model year.

(12) "Fuel-flexible" means a methanol-fueled motor vehicle that is engineered and designed for operation using any gasoline-methanol fuel mixture or blend.

(13) "Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

(14) "Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the drive wheels by either a combustion engine and/or by battery powered electric motor.

(15) "Light duty truck" or "LDT" means any 2008 and subsequent model-year motor vehicle certified to the standards in California Code of

Regulations, Title 13, section 1961(a)(1) having a gross vehicle weight rating of 8500 pounds or less, and any other motor vehicle rated at 6000 pounds or less, that is designed primarily for the purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

(16) "Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

(17) "Medium-duty vehicle" means any 2008 and subsequent model year heavy-duty, low-emissions, ultra-low-emission, super-ultra-low emission or zero-emission vehicle certified to the standards in California Code of Regulations, Title 13 section 1961(a)(1) or 1962 having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

(18) "Military tactical vehicles and equipment" means those vehicles defined by California Code of Regulations, Title 13, section 1905.

(19) "Model year" means "model year" as defined in 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 40 CFR 85.2304, inclusive.

(20) "New vehicle" means any passenger car or light duty truck with 7,500 miles or fewer on its odometer.

(21) "NMOG" means non-methane organic gas;

(22) "Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons having a design capacity of twelve persons or less.

(23) "Offset vehicle" means a vehicle that has been certified by the State of California as set forth in the California Code of Regulations, Title 13, section 1960.5.

(24) "PZEV" means partial ZEV as defined in California Code of Regulations, Title 13, section 1962.

(25) "Small volume manufacturer" means, except as otherwise provided in California Code of Regulations, Title 13, sections 1960.1(g)(2), 1960.1(h)(2) and 1960.1(n), any 2001 and subsequent model-year manufacturer with California sales less than 4,500 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model-years for which a manufacturer seeks certification; however, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

(26) "Vehicle" means any motor vehicle.

(27) "ZEV" means a zero emission vehicle.

(b) Applicability. This section shall apply to all 2008 and subsequent model year passenger cars and light duty trucks sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired or received, in the State of Connecticut except that this section shall not apply to those vehicles listed in subsection (d) of this section.

(c) Prohibitions and compliance requirements.

(1) Unless subject to an exemption listed in subsection (d) of this section, no person shall sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a new 2008 or subsequent model year vehicle in the State of Connecticut unless such vehicle is certified to California emission standards and meets:

- (A) The exhaust emission standards set forth in the California Code of Regulations, Title 13, sections 1956.8(g) or (h), 1960.1, 1961(a) or 1962(a);
- (B) The emission control label or smog index label requirements set forth in the California Code of Regulations, Title 13, section 1965;
- (C) The evaporative emission standards set forth in the California Code of Regulations, Title 13, section 1976;
- (D) The refueling emissions standards set forth in the California Code of Regulations, Title 13, section 1978;
- (E) The malfunction and diagnostic system requirements set forth in the California Code of Regulations, Title 13, 1968.1;
- (F) The assembly-line testing procedure requirements set forth in the California Code of Regulations, Title 13, section 2062; and
- (G) The specifications for fill pipes and openings of motor vehicle fuel tanks set forth in the California Code of Regulations, Title 13, section 2235.

(2) **ZEV mandate.**

- (A) Beginning with the 2008 model year, each manufacturer's sales fleet of passenger cars and light duty trucks produced and delivered for sale in the State of Connecticut shall contain at least the same percentage of ZEVs subject to the

same requirements, including early credit and banking provisions, set forth in the California Code of Regulations, Title 13, section 1962 using Connecticut specific vehicle numbers.

- (B) Alternative compliance mechanisms. As an alternative means of compliance with the requirements of subparagraph (A) of this subdivision, an automobile manufacturer may instead opt to comply with the provisions of subsection (m) of this section. If a manufacturer opts to utilize the alternative compliance mechanisms set forth in subsection (m) of this section, such manufacturer shall notify the commissioner in writing by March 1, 2005.

(3) All vehicle manufacturers shall comply with the fleet average, warranty, recall and other applicable requirements set forth in subsections (e), (f), (g), (h), (i), (j), and (k) of this section.

(d) Exemptions. The following vehicles shall not be subject to this section:

- (1) A vehicle transferred by inheritance;
- (2) A vehicle transferred by decree of divorce, dissolution or legal separation entered by a court of competent jurisdiction;
- (3) A vehicle purchased by a nonresident prior to establishing residency in the State of Connecticut;
- (4) A vehicle sold for the purpose of being wrecked or dismantled;
- (5) A vehicle sold directly from one dealer to another dealer;
- (6) A vehicle sold for registration out of state;
- (7) A vehicle sold designed exclusively for off-highway use;
- (8) A vehicle that has been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. 7521 and which is in the possession of a rental agency in Connecticut and is next rented with a final destination outside of Connecticut;
- (9) An emergency vehicle;
- (10) A military tactical vehicle;
- (11) A vehicle exempted by California Health and Safety Code, section 43656; or
- (12) A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident that was damaged or

became inoperative beyond reasonable repair or was stolen while out of this state, provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen.

(e) Emission standards, warranty, recall and miscellaneous provisions.

Each manufacturer and each new 2008 and subsequent model year passenger car and light-duty truck that is subject to this section shall comply with each applicable standard set forth in Table 36b-1 and incorporated by reference herein:

| Table 36b-1 | | |
|---|---|------------------------------------|
| California Code of Regulations (CCR) | | |
| Title 13 | | |
| Provisions Incorporated by Reference | | |
| <u>Title 13 CCR</u> | <u>Title</u> | <u>Section Amended Date</u> |
| Chapter 1 Motor Vehicle Pollution Control Devices | | |
| Article 1 General Provisions | | |
| Section 1900 | Definitions | 12/19/03 |
| Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles) | | |
| Section 1956.8(g) and (h) | Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles | 12/14/03 |
| Section 1960.1 | Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles | 10/16/02 |
| Section 1961 | Exhaust Emission Standards and Test Procedures - 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 12/04/03 |
| Section 1962 | Zero Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 12/19/03 |
| Section 1965 | Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles | 12/04/03 |

| | | |
|---|---|----------|
| Section 1968.1 | Malfunction and Diagnostic System Requirements - 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 11/27/99 |
| Section 1968.2 | Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles | 04/21/03 |
| Section 1968.5 | Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines | 04/21/03 |
| Section 1976 | Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions | 11/27/99 |
| Section 1978 | Standards and Test Procedures for Vehicle Refueling Emissions | 11/27/99 |
| Article 6 Emission Control System Warranty | | |
| Section 2035 | Purpose, Applicability and Definitions | 12/26/90 |
| Section 2036 | Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles. | 5/15/99 |
| Section 2037 | Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles | 11/27/99 |
| Section 2038 | Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles | 11/27/99 |
| Section 2039 | Emission Control System Warranty Statement. | 12/26/90 |
| Section 2040 | Vehicle Owner Obligations | 12/26/90 |
| Section 2046 | Defective Catalyst | 1/16/79 |
| Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing. | | |
| Article 1 Assembly Line Testing. | | |

| | | |
|--|--|----------|
| Section 2062 | Assembly-line Test Procedures 1998 and Subsequent Model-years. | 11/27/99 |
| Article 2 Enforcement of New and In-use Vehicle Standards | | |
| Section 2101 | Compliance Testing and Inspection - New Vehicle Selection, Evaluation and Enforcement Action. | 11/27/99 |
| Section 2109 | New Vehicle Recall Provisions. | 11/27/99 |
| Section 2110 | Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model-Year. | 11/27/99 |
| Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls. | | |
| Section 2111 | Applicability. | 8/21/02 |
| Section 2112 | Definitions. | 11/15/03 |
| | Appendix A to Article 2.1. | 11/15/03 |
| Section 2113 | Initiation and Approval of Voluntary and Influenced Recalls. | 1/26/95 |
| Section 2114 | Voluntary and Influenced Recall Plans. | 11/27/99 |
| Section 2115 | Eligibility for Repair. | 1/26/95 |
| Section 2116 | Repair Label. | 1/26/95 |
| Section 2117 | Proof of Correction Certificate. | 1/26/95 |
| Section 2118 | Notification. | 1/26/95 |
| Section 2119 | Record keeping and Reporting Requirements. | 11/27/99 |
| Section 2120 | Other Requirements Not Waived. | 1/26/95 |
| Article 2.2 Procedures for In-Use Vehicle Ordered Recalls. | | |
| Section 2122 | General Provisions. | 1/26/95 |
| Section 2123 | Initiation and Notification of Ordered Emission-Related Recalls. | 1/26/95 |
| Section 2124 | Availability of Public Hearing. | 1/26/95 |
| Section 2125 | Ordered Recall Plan. | 1/26/95 |
| Section 2126 | Approval and Implementation of Recall Plan. | 1/26/95 |
| Section 2127 | Notification of Owners. | 1/26/95 |
| Section 2128 | Repair Label. | 1/26/95 |
| Section 2129 | Proof of Correction Certificate. | 1/26/95 |
| Section 2130 | Capture Rates and Alternative Measures. | 11/27/99 |
| Section 2131 | Preliminary Tests. | 1/26/95 |
| Section 2132 | Communication with Repair Personnel. | 1/26/95 |
| Section 2133 | Record keeping and Reporting Requirements. | 1/26/95 |
| Section 2135 | Extension of Time. | 1/26/95 |
| Article 2.3 In-Use Vehicle Enforcement Test Procedures. | | |
| Section 2136 | General Provisions. | 1/26/95 |

| | | |
|--|--|----------|
| Section 2137 | Vehicle Selection. | 12/28/00 |
| Section 2138 | Restorative Maintenance. | 11/27/99 |
| Section 2139 | Testing. | 8/21/02 |
| Section 2140 | Notification of In-Use Results. | 8/21/02 |
| Article 2.4 Procedures for Reporting Failure of Emission-Related Components. | | |
| Section 2141 | General Provisions. | 12/28/00 |
| Section 2142 | Alternative Procedures. | 2/23/90 |
| Section 2143 | Failure Levels Triggering Recall. | 11/27/99 |
| Section 2144 | Emission Warranty Information Report. | 11/27/99 |
| Section 2145 | Field Information Report. | 11/27/99 |
| Section 2146 | Emissions Information Report. | 11/27/99 |
| Section 2147 | Demonstration of Compliance with Emission Standards. | 8/21/02 |
| Section 2148 | Evaluation of Need for Recall. | 11/27/99 |
| Section 2149 | Notification of Subsequent Action. | 2/23/90 |
| Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks. | | |
| Section 2235 | Requirements. | 9/17/91 |
| | | |

(f) Fleet average requirements, reporting and projections, and delivery reporting requirements.

(1) The fleet average NMOG gas emission values from passenger cars and light-duty trucks produced and delivered for sale in the State of Connecticut by a manufacturer for each model year shall not exceed the fleet average numbers set forth in California Code of Regulations, Title 13, sections 1960.1(g)(2) and 1961(b)(1), except as provided in section 1960.1(g)(2) and 1961(b)(1).

(2) A manufacturer that certifies vehicles equipped with direct ozone reduction technologies is eligible to receive NMOG credits for use in fleet average compliance determinations. A manufacturer shall submit to the commissioner a CARB Executive Order, obtained in accordance with California Code of Regulations Title 13, section 1960.1(g)(1), which shall determine the value of such credits for vehicles delivered for sale in the State of Connecticut, when the manufacturer submits its annual NMOG fleet average report.

(3) Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this part in the State of Connecticut, pursuant to the provisions set forth in the California Code of Regulations Title 13, sections 1960.1(g)(2) and 1961(b)(1).

(4) Commencing with the 2008 model year, each manufacturer shall report to the commissioner, using the same format used to report such information to CARB, the average emissions of its fleet delivered for

sale in the State of Connecticut. The report shall be submitted to the commissioner, or the commissioner's designee, no later than March 1st of the calendar year succeeding the end of the model year.

(5) Delivery reporting requirements. For the purposes of determining compliance with the requirements of this section, commencing with the 2008 model year, each manufacturer shall submit annually, to the commissioner, within sixty (60) days subsequent to the end of each model year, a report documenting total deliveries for sale of vehicles in each engine family over that model year in the State of Connecticut.

(g) Fleet Average Emissions Reporting Requirements.

(1) For the purposes of determining compliance with the requirements of subsections (c)(3) and (e) of this section, commencing with the 2008 model year, each manufacturer shall submit annually to the Department, within sixty (60) days subsequent to the end of each model year, a report which demonstrates that such manufacturer has met the fleet average emissions requirements for its fleet delivered for sale in Connecticut.

(2) Prior to the commencement of each model year, commencing with the 2008 model year, each manufacturer shall submit, to the Department, a projection of the fleet average emissions for vehicles to be delivered for sale in Connecticut during such model year.

(h) Fleet average enforcement.

If, commencing with the 2011 model year and for each subsequent model year thereafter, the report issued by a manufacturer pursuant to subsection (g) of this section demonstrates noncompliance with the fleet average emission standards incorporated by reference into this section and set forth in Table 36b-1 of this section, during a model year, the manufacturer must within sixty (60) days file a Fleet Average Enforcement Report with the commissioner documenting such noncompliance. The Fleet Average Enforcement Reports must identify all vehicle models delivered for sale into the State of Connecticut and their corresponding certification standards and the percentage of each model delivered for sale into the State of Connecticut and California in relation to total fleet sales in the respective state.

(i) Reporting and offset vehicle reporting.

(1) The manufacturer shall submit one copy of the California Executive Order and Certificate of Conformity relating to certification of new motor vehicles for each engine family to be sold in the State of Connecticut to the commissioner within thirty (30) days of receiving the Executive Order from CARB. To the extent such reports are

available electronically, the manufacturer shall submit such records in an electronic format acceptable to the commissioner.

(2) For the purposes of determining compliance with this section, the commissioner may require any vehicle manufacturer subject to this section to submit any documentation the commissioner deems necessary to the effective administration and enforcement of this section including all certification materials submitted to CARB.

(3) Offset vehicle reporting. Commencing with the 2008 model year, by March 1st of the calendar year succeeding the end of the model year, each manufacturer shall report to the commissioner the number of offset vehicles, categorized by model type, delivered for sale into the State of Connecticut during such model year. The report shall also include the total number of the manufacturer's fleet delivered for sale into the State of Connecticut.

(j) Warranty requirements.

(1) For all 2008 and subsequent model year vehicles subject to the provisions of this section, each manufacturer shall provide a warranty to the ultimate purchaser and each subsequent purchaser that complies with the requirements set forth in California Code of Regulations, Title 13, sections 2035 through 2038, 2040 and 2046.

(2) For all 2008 and subsequent model year vehicles subject to the provisions of this section, each manufacturer shall include the emission control system warranty statement that complies with the requirements set forth in California Code of Regulations, Title 13, sections 2039 modified as may be necessary to inform Connecticut vehicle owners of the applicability of the California warranty. The manufacturer shall also provide a telephone number on such statement appropriate for the State of Connecticut.

(k) Recalls.

(1) For all 2008 and subsequent model year vehicles subject to the provisions of this section, each manufacturer shall undertake an action equivalent to that required by any order or enforcement action taken by CARB, or any voluntary or influenced emission related recall initiated by any manufacturer pursuant to or required by California Code of Regulations, Title 13, sections 2101 through 2120, 2122 through 2133, and 2135 through 2149, unless within thirty (30) days of CARB approval of such recall, the manufacturer demonstrates to the commissioner that such recall is not applicable to vehicles registered in the State of Connecticut.

(2) For vehicles subject to an action pursuant to subdivision (1) of this subsection, each manufacturer shall send to owners of vehicles registered in the State of Connecticut a notice that complies with the

requirements set forth in California Code of Regulations, Title 13, sections 2118 or 2127, provided that such notice shall contain a telephone number appropriate for use by vehicle owners or operators in the State of Connecticut.

(l) Incorporation by reference. Availability and interpretation of referenced material.

(1) In accordance with the provisions of section 22a-174g of the Connecticut General Statutes, this section incorporates by reference certain sections of Title 13, California Code of Regulations. Table 36b-3 lists the sections of Title 13, California Code of Regulations incorporated by reference and the respective amended date for each section.

(2) Copies of the relevant sections of Title 13, California Code of Regulations incorporated by reference in this section are available by contacting:

Connecticut Department of Environmental Protection
Bureau of Air Management
Planning & Standards Division
79 Elm Street
Hartford, Connecticut 06106
(860) 424-3027

(3) For purposes of applying the incorporated sections of the California Code of Regulations, unless clearly inappropriate, "California" shall mean "Connecticut."

(m) Alternative compliance mechanisms.

(1) A manufacturer may, as an alternative means of compliance with the requirements of subsection (c)(2) of this section, proceed in accordance with the provisions of subdivision (2) or (3) of this subsection. A manufacturer who elects to follow an alternative compliance path set forth in either subdivision (2) or (3) of this subsection shall notify the commissioner of the elected compliance path by March 1, 2005.

(2) A manufacturer may earn Connecticut ZEV credits for the introduction into Connecticut of PZEVs, AT PZEVs and ZEVs beginning with 2004 model year provided that:

(A) The vehicle credit values for this alternative compliance path shall be the same as in the California Code of Regulations, Title 13, section 1962.

(B) After the credit value for a vehicle is established by CARB pursuant to California Code of Regulations, Title 13,

section 1962, a Connecticut multiplier will be applied to such credit value for that vehicle in accordance with Table 36b-2. The Connecticut multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for Large Volume Manufacturers as identified in the California Code of Regulations, Title 13, section 1962(b)(2)(B).

**Table 36b-2
Connecticut Multiplier**

| Model Year | Requirement | PZEV Credit Multiplier | AT PZEV Credit Multiplier | ZEV Credit Multiplier |
|-------------------|-------------------------------------|-------------------------------|----------------------------------|------------------------------|
| 2004 | Voluntary Early Introduction | 1.5 | 2.25 | 3 |
| 2005 | Voluntary Early Introduction | 1.5 | 2.25 | 3 |
| 2006 | Voluntary Early Introduction | 1.3 | 1.7 | 2 |
| 2007 | Voluntary Early Introduction | 1.15 | 1.3 | 1.5 |
| 2008 | Mandatory Compliance | 1.15 | 1.3 | 1.5 |
| 2009 | Equivalency with California Program | 1 | 1 | 1 |

- (C) Connecticut ZEV credit use, life, banking and trading will be calculated as per California Code of Regulations, Title 13, section 1962.
- (D) Each manufacturer operating under this alternative compliance path shall submit a compliance report to the commissioner along with annual sales reports no later than March 31st following the completed model year. The compliance report shall include vehicle sales organized by engine family and identify the number of Connecticut ZEV credits earned. Such report may be amended based on late sales.
- (E) Each manufacturer operating under this alternative compliance path shall make available for purchase or lease in Connecticut any advanced technology vehicle models, including all ZEVs except type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, section 1962(b)(2)(B), sold or leased in California.
- (F) The commissioner shall calculate the amount of credits earned based on the report received pursuant to subparagraph (D) of this subdivision. The commissioner shall establish a compliance account for each manufacturer and allocate the credits earned to such compliance account. In the event

that the number of credits earned under this subdivision is less than the number of credits that would have been awarded to a manufacturer under subdivision (3) of this subsection, the commissioner shall calculate the difference and apply a number of credits equal to such difference to such manufacturer's compliance account.

(3) The commissioner shall set aside a number of Connecticut ZEV credits proportionally equivalent to the number of ZEV credits possessed by the requesting manufacturer for use in the State of California on January 1, 2008. The commissioner shall notify such manufacturer of the number of ZEV credits available for use by May 31, 2008 and annually thereafter until such credits are fully consumed. Credits issued pursuant to this subdivision may only be used in Connecticut for compliance with the ZEV provisions of subsection (c)(2) of this section subject to the same requirements and limitations on credit use set forth in the California Code of Regulations, Title 13, section 1962 adjusted for Connecticut specific vehicle numbers. Furthermore, each manufacturer operating under this alternative compliance path shall:

- (A) By March 1, 2008, provide the commissioner with the total number of vehicles sold in Connecticut and California for a three-year period prior to January 1, 2008;
- (B) By March 1, 2008, provide the commissioner with the total number of banked California ZEV credits as of January 1, 2008;
- (C) Until such time as full compliance is achieved with the requirements of subsection (c)(2) of this section, make available for purchase or lease in Connecticut any advanced technology vehicle models, including all ZEVs except type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, section 1962(b)(2)(B), that are sold, leased or offered for sale in California.

(4) Any manufacturer who fails to meet the requirements of its respective alternative compliance path shall be subject to full compliance with the ZEV mandate provisions set forth in subsection (c)(2) of this section.

Sec. 2

Sections 22a-174-36 of the Regulations of Connecticut State Agencies is amended by adopting new subsection (i) as follows:

(New)

(i) Repeal provision. The California Low Emission Vehicle, National Low Emission Vehicle and all related provisions in this section shall

be repealed upon the implementation date of section 22a-174-36b of the Regulations of Connecticut State Agencies.

Statement of Purpose:

To repeal the provisions of section 22a-174-36 and to adopt the California Low Emission Vehicle II program, including all "zero emission vehicle" program elements, in accordance with section 177 of the Clean Air Act commencing with 2008 model year vehicles as required by Public Act 04-84.

IX. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, I recommend that section 36b and subsection 36(i), as set forth in Part VIII of this report, be submitted by the Commissioner of Environmental Protection for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, I also recommend these proposed regulations, upon promulgation, be submitted to the U.S. Environmental Protection Agency as revisions to the Connecticut State Implementation Plan for Air Quality together with the additional information requested by EPA in Part VI.A.1 of this report.

Paul E. Farrell
Hearing Officer

Oct. 13, 2004
Date

Attachment 1
List of Commenters

1. David B. Conroy, Acting Chief
Air Planning Branch
US EPA, Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023
2. Kelly M. Brown, Director
Vehicle Environmental Engineering
Environmental & Safety Engineering
Ford Motor Company
World Headquarters
One American Road
Dearborn, MI 48126-2798
3. Edward B. Cohen, Vice President
Government & Industry Relations
American Honda Motor Company
1001 G Street, N.W. Suite 950
Washington, D.C. 20001
4. David Sankar, Associate Director of
Community Relations
American Lung Association of
Connecticut
45 Ash Street
East Hartford, CT 06108-3272
5. Gregory Dana, Vice President for
Environmental Affairs
Alliance of Automobile
Manufacturers
1401 Eye Street N.W. Suite 900
Washington, D.C. 20005
6. David R. Brown, Sc.D.
Director of Public Health Toxicology
Environment and Human Health,
Inc.
1191 Ridge Road
North Haven, CT 06473
7. Charles Rothenburger, Legal Fellow
Connecticut Fund for the
Environment
205 Whitney Avenue, 1st Floor
New Haven, CT 06511
8. Anne Hulick, RN
Clean Cars Alliance
113 Blatchley Avenue
Southington, CT