

New York State Implementation Plan

Onondaga County

Carbon Monoxide Maintenance Plan

for 2003 – 2013

Appendix C – Part 218

Part 218 ^[1/1]

Revisions to Part 218 were adopted on 10/4/02; filed with the Department of State on 10/4/02; and are effective 11/3/02. [The Division of Air Resources](#) is the contact for administrative questions and the Bureau of Mobile Sources and Technology Development at (518) 402-8292 for technical questions pertaining to this rule. Please refer to the above disclaimer and legend links.

PART 218

EMISSION STANDARDS FOR MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301[2][N], 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105)

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SUBPART 218-1

APPLICABILITY AND DEFINITIONS

Sec.

218-1.1 Applicability

218-1.2 Definitions

§ 218-1.1 Applicability.

(a) This Part applies to all 1993, 1994, 1996 and subsequent model-year motor vehicles that are passenger cars and light-duty trucks, motor vehicle engines, and air contaminant emission control systems; to all 2004 and subsequent model-year motor vehicles which are medium-duty vehicles, motor vehicle engines, and air contaminant emission control systems; to all 2005 and subsequent model-year motor vehicles which are heavy-duty otto-cycle engines or vehicles which use such engines; and to all 2005 and subsequent model-year motor vehicles which are heavy-duty diesel engines or vehicles which use such engines offered for sale or lease, or sold, or leased, for registration in this State. In the 1993 model-year, this regulation will only be effective against those engine families that are first produced more than two years from November 22, 1990.

(b) The provisions of this Part also apply to motor vehicles of the United States or its agencies.

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§ 218-1.2 Definitions.

The following definitions govern the provisions of this Part:

(a) *Add-on part* means any aftermarket part which is not a modified part or a replacement part.

(b) *Aftermarket part* means any part of an air contaminant emission control system sold for installation on a vehicle after the original retail sale of the vehicle.

(c) *Air contaminant emission control system* means 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 a 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.

(d) *California Standards* means those standards for motor vehicles and motor vehicle engines that the State of California has adopted and is

permitted to adopt under 42 USC 7543 (see Table 1, section 200.9 of this Title) and that other states are permitted to adopt under 42 USC 7507 (see Table 1, section 200.9 of this Title).

(e) *CARB* means the California State Air Resources Board as defined in California's Health and Safety Code, section 39003 (1999) (see Table 1, section 200.9 of this Title).

(f) *Certification* means a finding by the California Air Resources Board that a motor vehicle, motor vehicle engine, or air contaminant emission control system has satisfied the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.

(g) *Certified device* means an air contaminant emission control system for which a certification has been issued by CARB or the department.

(h) *Consolidated part* means a part which is designed to replace a group of original equipment parts.

(i) *Diesel-cycle* means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

(j) *Emergency vehicle* means a vehicle as defined in section 165 of the California Vehicle Code (see Table 1, section 200.9 of this Title).

(k) *Emissions-related part* means any automotive part which affects any regulated emissions from a motor vehicle or motor vehicle engine which is subject to California or Federal emissions standards, as set forth in California Code of Regulations, title 13, section 1900(b)(3) (see Table 1, section 200.9 of this Title).

(l) *Emission standards* means specified limitations on the discharge of air contaminants into the atmosphere.

(m) *Engine family* means the basic classification unit of a manufacturer's product line used for the purpose of test fleet selection.

(n) *Established place of business*, as used in this Part, means a place actually occupied either continuously or at regular periods for business use.

(o) *Fuel evaporative emissions* means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

(p) *Fuel system* means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

(q) *Heavy-duty engine* means an engine which is used to propel a heavy-duty vehicle.

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

(s) *Intermediate volume manufacturer* means any pre-2001 manufacturer with California sales between 3,001 and 60,000 new light- and medium-duty vehicles per model-year based on the average number of vehicles sold by the manufacturer each model-year from 1989 to 1993; any 2001 through 2002 model-year manufacturer with California sales between 4,501 and 60,000 new light- and medium-duty vehicles per model-year based on the average number of vehicles sold by the manufacturer each model-year from 1989 to 1993; and any 2003 and subsequent model-year manufacturer with California sales between 4,501 and 60,000 new light- and medium-duty vehicles based on the average number of vehicles sold for the three previous consecutive model-years for which a manufacturer seeks certification. For a manufacturer certifying for the first time in California, model-year sales shall be based on projected California sales.

(t) *Large volume manufacturer* means any 2000 and subsequent model-year manufacturer that is not a small volume manufacturer or an intermediate volume manufacturer.

(u) *LEV* means a low-emission vehicle.

(v) *Light-duty truck* means any 2000 and subsequent model-year motor vehicle certified to the standards in California Code of Regulations, title 13, section 1961(a)(1) (see Table 1, section 200.9 of this Title) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle, rated at 6,000 pounds gross vehicle weight or less, that is designed primarily for 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.

(w) *Medium-duty vehicle* means any 1992 through 2006 model-year heavy-duty, low-emission, ultra-low emission, super-ultra-low emission or zero-emission vehicle certified to the standards in California Code of Regulations, title 13, section 1960.1(h)(2) (see Table 1, section 200.9 of this Title) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; any 1995 through 2002 model-year heavy-duty vehicle

certified to the standards in section 1960.1(h)(1) (see Table 1, section 200.9 of this Title) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, and any 2000 and subsequent model 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) (see Table 1, section 200.9 of this Title) or 1962 (see Table 1, section 200.9 of this Title) having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

(x) *Military tactical vehicles and equipment* means those vehicles defined by California Code of Regulations, title 13, section 1905 (see Table 1, section 200.9 of this Title).

(y) *Model-year* means the manufacturer's annual production period for each engine family which includes January 1st of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(z) *Modified part* means any aftermarket part intended to replace an original equipment emissions-related part and which is not functionally identical to the original equipment part in all respects which in any way affect emissions, excluding a consolidated part.

(aa) *Motor vehicle* is a vehicle which is self-propelled.

(ab) *New motor vehicle* means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

(ac) *New motor vehicle engine* means a new engine in a motor vehicle.

(ad) *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 (see Table 1, section 200.9 of this Title).

(ae) *Passenger car* means any motor vehicle designed with a capability for transportation of persons and having a design capacity of 12 persons or less.

(af) *Quarterly reporting* means reporting based upon the following calendar periods: January 1-March 31, April 1-June 30, July 1-September 30, October 1-December 31.

(ag) *Replacement part* means any aftermarket part which is intended to replace an original equipment emissions-related part and which is

functionally identical to the original equipment part in all respects which in any way affect emissions (including durability), or a consolidated part.

(ah) *Sale* means the transfer of title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

(ai) *Small volume manufacturer* means, except as otherwise provided in California Code of Regulations, title 13, sections 1960.1(g)(2), 1(h)(2) and (n) (see Table 1, section 200.9 of this Title), 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.

(aj) *Subgroup* means a set of motor vehicles within an engine family distinguishable by characteristics contained in the manufacturer's application for certification of the California standards.

(ak) *SULEV* means a super-ultra-low-emission vehicle.

(al) *Test group* means a grouping of vehicles as defined by 40 C.F.R. section 86.1827-01 (see Table 1, section 200.9 of this Title).

(am) *TLEV* means a transitional-low-emission vehicle.

(an) *ULEV* means an ultra-low-emission vehicle.

(ao) *Ultimate purchaser* means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

(ap) *Used motor vehicle* means any motor vehicle which is not a new motor vehicle.

(aq) *Useful life* means a period of use to be determined by the department consistent with the requirements of the California Code of Regulations, title 13, section 2112 (see Table 1, section 200.9 of this Title).

(ar) *Vehicle* means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

(as) *ZEV* means a zero-emission-vehicle.

(at) *PZEV* means partial *ZEV* as defined in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title).

(au) *Independent low volume manufacturer* means a manufacturer as defined in California Code of Regulations, title 13, section 1900(b)(21) (see Table 1, section 200.9 of this Title).

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SUBPART 218-2

CERTIFICATION AND PROHIBITIONS

Sec.

218-2.1 Prohibitions

218-2.2 Reporting

218-2.3 Enforcement

§ 218-2.1 Prohibitions.

(a) It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 1993, 1994, 1996 or subsequent model-year, new or used motor vehicle, new motor vehicle engine or motor vehicle with a new motor vehicle engine in the State of New York which is not certified to California emission standards and meets all other applicable requirements of California Code of Regulations, title 13, sections 1956.8, 1956.9, 1960.1, 1960.1.5, 1960.5, 1961, 1962, 1964, 1965, 1968.1, 1976, 1978, 2030, 2031, 2047, 2065, 2235 and article 1.5 (see Table 1, section 200.9 of this Title) and is otherwise not in compliance with the Environmental Conservation Law and these departmental regulations, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 USC 7521 (see Table 1, section 200.9 of this Title) and that are in the possession of a rental agency in New York that are next rented with a final destination outside of New York will not be deemed as being in violation of this prohibition.

(b) This Subpart does not apply to:

(1) a vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which 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; or

(2) a vehicle transferred by inheritance; or

(3) a vehicle transferred by court decree; or

(4) any vehicle sold after the effective date of this Subpart if the vehicle was registered in this State before such effective date; or

(5) any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*) (see Table 1, section 200.9 of this Title) and originally registered in another state by a resident of that state who subsequently establishes residence in this State and who upon registration of the vehicle in this State provides satisfactory evidence to the New York State Department of Motor Vehicles of the previous residence and registration; or

(6) emergency vehicles; or

(7) military tactical vehicles and equipment; or

(8) vehicles exempted by California Health and Safety Code, section 43656 (see Table 1, section 200.9 of this Title).

(c) *Transfer to ultimate purchaser.* For purposes of this Subpart, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

(d) In accordance with 42 USC 7507 (see Table 1, section 200.9 of this Title) under no circumstances will a New York State action require the conversion of a vehicle to a standard different from that to which it is certified for sale in California.

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§ 218-2.2 Reporting.

(a) *Certification 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 New York State to the department within 30 days of receiving the Executive Order from CARB.

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

(b) *Offset vehicle reporting.* Commencing with the 1996 model-year, by March 1st of the calendar year succeeding the end of the model-year, each manufacturer shall report to the department the number of offset vehicles, broken down by model type, delivered for sale in New York during such model-year. Such report shall also include the total number of manufacturer's fleet delivered for sale in New York.

§ 218-2.3 Enforcement.

(a) The commissioner or a designee may enter and inspect a facility operated by a party subject to the requirements of this Part, any property, premises, books, papers, documents, or records (written and/or electronic) of that facility, at all reasonable times, locations, and hours, whether announced or unannounced, for the purpose of ascertaining compliance or noncompliance with the ECL and this Title. The conduct of operations subject to the provisions of this Part in this State is deemed to constitute consent to such an inspection.

(b) For the purpose of developing or assisting in the development of any regulation or enforcing the provisions of this Part, any person subject to the provisions of this Part must, upon oral or written request of any officer or employee of the department, when properly identified and duly designated by the commissioner, furnish or permit such officer or employee at all reasonable times to have access to, and to copy all records relating to those parties which are subject to this Part.

(c) Unless otherwise specified in the ECL or regulations, any person subject to the provisions of this Part must retain all relevant records for at least three years from the creation of those records.

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SUBPART 218-3

FLEET AVERAGE

Sec.

218-3.1 Fleet average

218-3.2 Fleet average reporting and projection

218-3.3 Fleet average enforcement

§ 218-3.1 Fleet average.

The fleet average nonmethane organic gas exhaust emission values from passenger cars and light-duty trucks produced and delivered for sale in New York by a manufacturer each model-year must not exceed the numbers set forth in California Code of Regulations, title 13, sections 1960.1(g)(2) and 1961(b)(1), (see Table 1, section 200.9 of this Title) except as provided in section 1960.1(g)(2) and 1961(b)(1) (see Table 1, section 200.9 of this Title).

(a) A manufacturer that certifies vehicles equipped with direct ozone reduction technologies will be eligible to receive NMOG credits that can be applied to the NMOG exhaust emissions when determining compliance with the standard. In order to receive credit, the manufacturer must submit an Executive Order from CARB, obtained in accordance with the provisions in California Code of Regulations title 13, section 1960.1(g)(1) (see Table 1, section 200.9 of this Title), which determines the value of such credits for vehicles produced and delivered for sale in New York, when the manufacturer submits its annual year-end NMOG fleet average report.

(b) Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this Part in New York, pursuant to the provisions set forth in California Code of Regulations, title 13, sections 1960.1(g)(2) and 1961(b) (see Table 1, section 200.9 of this Title).

§ 218-3.2 Fleet average reporting and projection.

(a) Commencing with the 1996 model-year, each manufacturer must report, to the department, using the same format used to report this information to CARB, the average emissions of its fleet delivered for sale in New York. Reports must be submitted to the department by March 1st of the calendar year succeeding the end of the model-year.

(b) Commencing with the 1996 model-year, each manufacturer must provide, to the department, a projection of the fleet average emissions for vehicles to be delivered for sale in New York State during the upcoming model-year. Projections must be submitted to the department prior to the commencement of each model-year.

§ 218-3.3 Fleet average enforcement.

(a) If the report issued by a manufacturer under section 218-3.2(a) of this Subpart demonstrates noncompliance with the fleet average contained in this Subpart, during a model- year, the manufacturer must within 60 days file a fleet average enforcement report with the department documenting such noncompliance. Fleet average enforcement reports must identify all vehicle models delivered for sale in New York and their corresponding certification standards and the percentage of each model delivered for sale in New York and California in relation to total fleet sales in the respective state.

(b) Failure to submit an enforcement report may result in penalties as permitted under article 71 of the Environmental Conservation Law in addition to any other penalties permitted under article 71 for failure to comply with the fleet average.

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SUBPART 218-4

ZERO EMISSION VEHICLE SALES MANDATE

Sec.

218-4.1 ZEV percentages

218-4.2 Voluntary alternative compliance plan (ACP)

§ 218-4.1 ZEV percentages.

Commencing in model-year 2007, each manufacturer's sales fleet of passenger cars and light-duty trucks, produced and delivered for sale in New York, must, at minimum, contain at least the same percentage of ZEVs subject to the same requirements set forth in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title) using New York specific vehicle numbers.

§ 218-4.2 Voluntary alternative compliance plan (ACP).

An automobile manufacturer may implement a voluntary alternative compliance plan (ACP) to section 218-4.1 of this Subpart, provided such plan complies with the following and has been approved by the commissioner.

(a) *Core credit scheme.* The core vehicle credit values for the ACP shall be the same as California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title).

(b) *New York multiplier.* After the core credit value for a vehicle is established by CARB pursuant to California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title), a New York specific multiplier will be applied to that vehicle in accordance with Table 1. The New York 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 1
Northeast Phase In Multiplier

<i>Model Year</i>	<i>Requirement</i>	<i>PZEV Credit Multiplier</i>	<i>ATPZEV Credit Multiplier</i>	<i>ZEV Credit Multiplier</i>
2002	Voluntary Early Introduction	1.5		3
2003	Voluntary Early Introduction	1.5		3
2004	Voluntary Early Introduction	1.5	2.2.5	3
2005	Mandatory Compliance	1.3	1.7	2
2006	Mandatory Compliance	1.15	1.3	1.5
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

(c) *Percentage requirements.* An automobile manufacturer's ACP must comply with the following percentage phase-in requirements:

Table 2
Percentage Requirements for ZEVs, AT PZEVs, and PZEVs

<i>Model Year</i>	<i>Minimum Percent ZEV Credit</i>	<i>Minimum Percent AT PZEV Credit</i>	<i>Maximum Percent ZEV Credit</i>
2005	0	0	10
2006*	Combined	1	9
2007	1	2	7
2008	1	2	7

*In MY 2006, 1 percent of a manufacturer's sales must be ZEV, AT PZEV or some combination there of.

Intermediate volume manufacturers may meet the entire ZEV requirement with 100 percent PZEV credits. Small and independent low volume manufacturers are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

(d) *Infrastructure and transportation system projects.* Automobile manufacturers may meet a total of 25 percent of their 10 percent ZEV requirement by implementing infrastructure and transportation demonstration projects in accordance with the following requirements. Manufacturers may seek credits for projects that advance infrastructure to encourage full development of alternative vehicle programs. Such projects may include alternative fuel refueling, fuel cells and home recharging for electric vehicles. Manufacturers may also seek credits for projects that result in the placement of advanced technology vehicles in innovative transportation systems. The commissioner shall take into account associated project costs and the relationship to supporting increased usage of advanced technology vehicles.

(e) *Generation and use of credits.* Credit life, banking and trading will be calculated as per California Code of Regulations, title 13, section 1962. A manufacturer who generates twice as many credits from model-year 2005 or earlier PZEVs as required for model-year 2005 has through model-year 2008 to comply with the model-year 2006 AT PZEV/ZEV requirement. A manufacturer who qualifies for the 2005 AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year 2006 has through model-year 2009 to comply with the model-year 2007 AT PZEV/ZEV requirement.

(f) *Reporting.* (1) Projected compliance reports will be due by the commencement of the model year. This report will include projected

vehicle sales organized by engine family, marketing plans, dealerships targeted for advanced technology vehicle sales and support, plans for infrastructure and transportation system projects and credits proposed to be earned, and manufacturer projected compliance rates including potential credits or debits.

(2) Compliance reports will be required and due with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report will include vehicle sales organized by engine family, descriptions of infrastructure and transportation system projects, manufacturer compliance rates including credits or debits earned and the way the manufacturer plans to erase any debits.

(g) Such ACP shall include, at a minimum:

(1) a demonstration that the emissions reductions from the alternative program equal or exceed those which would result from the compliance with section 218-4.1 of this Subpart;

(2) a demonstration that the alternative compliance program will lead to full compliance with all elements of section 218-4.1 of this Subpart starting no later than model year 2009; and

(3) actions by the manufacturers that advance the sale and use of ZEV (including PZEV) and advanced technologies beyond that which would otherwise occur as a result of the fleet average requirements in Subpart 218-3 of this Part.

(h) Such ACP shall provide that advanced technology vehicle models, including ZEVs, sold or leased in California shall be available for purchase or lease in New York except for type III ZEVs placed in service pursuant to section 1962(b)(2)(B) of the California Code of Regulations (see Table 1, section 200.9 of this Title).

(i) Failure to meet the terms of the approved alternative compliance program will subject a manufacturer to all applicable penalties, and will require compliance with the ZEV mandate as prescribed in section 218-4.1 of this Subpart.

(j) A manufacturer shall notify the department of its intent to file an alternative compliance program within 60 days after the effective date of this regulation.

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SUBPART 218-5

TESTING

Sec.

218-5.1 Assembly-line quality audit testing and reporting for 1993, 1994, 1996 and subsequent model-years

218-5.2 Remedial action plans for model years 1993, 1994, 1996 and subsequent model-years

218-5.3 Compliance testing and inspection - new vehicle selection, evaluation, and compliance action

218-5.4 Assembly-line surveillance

§ 218-5.1 Assembly-line quality audit testing and reporting for 1993, 1994, 1996 and subsequent model-years.

(a) All manufacturers of new vehicles subject to this Part, certified for sale in California and produced and delivered for sale in New York, shall conduct quality audit testing until model year 2000 in accordance with California Code of Regulations, title 13, sections 2061, 2062, 2065, 2106, 2107 and article 1.5 (see Table 1, section 200.9 of this Title).

(b) All manufacturers of new vehicles subject to this Part, certified for sale in California and produced and delivered for sale in New York, shall conduct inspection testing in accordance with California Code of Regulations, title 13, sections 2061, 2062, 2065, and article 1.5 (see Table 1, section 200.9 of this Title).

(c) The department shall accept the results of quality audit testing and inspection testing determinations and findings made by CARB.

(d) *Quality audit testing reporting.* Vehicle manufacturers are required to provide quarterly reports on all quality audit and functional test results obtained as a result of compliance with this Subpart. Reports must be provided to the department or to the department's designee which will provide copies of such reports to the department upon request.

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§ 218-5.2 Remedial action plans for model years 1993, 1994, 1996 and subsequent model-years.

(a) *Remedial action plans for facilities covered under California's reporting requirement.* If the state of California requires a remedial action

plan based upon full calendar or partial calendar quarter testing, under the California Code of Regulations, title 13, sections 2109, 2110, 2065 and article 1.5 (see Table 1, section 200.9 of this Title), such plan will apply to all vehicles certified to the California standards intended for sale in New York State. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in New York.

(b) *Facilities not audited under California's reporting requirements.* (1) New vehicle assembly-line inspection testing. If reports required by an assembly-line test procedure under section 218-5.1 of this Subpart are not in accordance with reporting requirements or if surveillance under section 218-5.4 of this Subpart indicates that assembly-line inspection testing is being improperly performed, or that vehicles are being manufactured that do not comply with the assembly-line emission standards or functional test requirement at facilities that manufacture cars certified to California standards, but do not ship cars to California, the department may require corrections of reporting or test procedures in accordance with California Code of Regulations, title 13, section 2106 (see Table 1, section 200.9 of this Title).

(2) Remedial action plans for facilities not audited under California's reporting requirement.

(i) Remedial action for assembly line quality audit testing of a full or combined calendar quarter.

(a) When required by the department, the manufacturer must submit a remedial action plan to bring all new motor vehicles in possession of the manufacturer, distributors and dealers into compliance. The manufacturer must submit the plan within 30 calendar days after notification. The department may require execution of the plan with such changes and additions as necessary, including additional testing and reporting, consistent with the applicable assembly-line test procedures. The plan must

include a schedule for implementing actions to be taken, including identified increments of progress towards implementation, and deadlines for completing each such increment.

(b) The manufacturer may, within 15 calendar days of its receipt of the department's demand for remedial action, request a public hearing, pursuant to Part 622 of this Title on the necessity for or scope of any corrective action required by the department.

(c) Failure by a manufacturer to carry out all corrective actions required by the department pursuant to the remedial action plan constitutes a violation of that plan and of section 218-2.1 of this Part. The department may extend any deadline in the plan if it finds in writing that a manufacturer has demonstrated that such a deadline will create an unreasonable technological burden upon the manufacturer. Each vehicle required by the plan issued by the department (including any modifications made by the department) to receive remedial action that does not receive such action by the deadline(s) included in the plan constitutes a separate violation of the plan.

(d) Failure to comply with the remedial action plan or

any part of such plan required pursuant to this Subpart may result in penalties as permitted under article 71 of the Environmental Conservation Law.

(ii) Remedial action for assembly-line quality audit testing of less than a full calendar quarter of production.

(a) When required by the department, the manufacturer must submit a remedial action plan to bring all new motor vehicles in possession of the manufacturer into compliance. The manufacturer must submit the plan within 30 calendar days after notification. The department may require execution of the plan with such changes and additions as necessary, including additional testing and reporting, consistent with the applicable assembly-line test procedures. The plan must include a schedule for implementing actions to be taken, including identified increments of progress towards implementation, and deadlines for completing each such increment.

(b) The manufacturer may, within 15 calendar days of its receipt of the department's demand for remedial action, request a public hearing, pursuant to Part 622 of this Title on the necessity for or scope of any corrective action required by the department.

(c) Failure by a manufacturer to carry out all corrective actions required by the department pursuant to the remedial action plan constitutes a violation of that plan and of section 218-2.1 of this Part. The department may extend any deadline in the plan if it finds in writing that a manufacturer has demonstrated that such a deadline will create an unreasonable technological burden upon the manufacturer. Each vehicle required by the plan issued by the department (including any modifications made by the department) to receive remedial action that does not receive such action by the deadline(s) included in the plan constitutes a separate violation of the plan.

(d) Failure to comply with the remedial action plan or any part of such plan required pursuant to this Subpart may result in penalties as permitted under article 71 of the Environmental Conservation Law.

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§ 218-5.3 Compliance testing and inspection - new vehicle selection, evaluation, and compliance action.

(a) The department may, with respect to any new vehicle engine family, test group or subgroup being sold, offered for sale, or manufactured for sale in New York, require a vehicle manufacturer to make available for compliance testing and/or inspection a reasonable number of vehicles, and may direct that the vehicles be delivered to a specific location. Vehicles must be selected at random from sources specified by the department, which insofar as practical must exclude:

(1) vehicles manufactured pursuant to a specific requirement of an ultimate purchaser; and

(2) vehicles, the selection of which, if not excluded, would result in an unreasonable disruption of the manufacturer's distribution system. A subgroup may be selected for compliance testing only if the department has reason to believe that the emissions characteristics of that subgroup are substantially in excess of the emissions of the engine family as a whole.

(b) Selection and testing of vehicles and the evaluation of data must be made in accordance with the California Code of Regulations, title 13, section 2101 (see Table 1, section 200.9 of this Title).

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§ 218-5.4 Assembly-line surveillance.

(a) Each manufacturer offering new vehicles for sale in New York must make available to the department at reasonable times and upon reasonable written notice its facilities for the purpose of observing assembly-line testing conducted pursuant to section 218-5.1 of this Subpart.

(b) Upon request facilities at the assembly-line must be made available for the department to conduct its own assembly-line tests with the manufacturer's or the department's own equipment.

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SUBPART 218-6

SURVEILLANCE

Sec.

218-6.1 Surveillance of motor vehicle dealers

218-6.2 Prohibitions

§ 218-6.1 Surveillance of motor vehicle dealers.

(a) No dealer may sell, or offer or deliver for sale a new passenger car, light-duty truck or medium-duty vehicle which is required to meet emission standards unless such vehicle conforms to the following standards and requirements:

(1) ignition timing is set to manufacturer's specification with an allowable tolerance of plus or minus three degrees;

(2) idle speed is set to manufacturer's specification with an allowable tolerance of plus or minus 100 rpm;

(3) required exhaust and evaporative emission controls, such as Emission Gas Recirculator (EGR) valves, are operating properly;

(4) vacuum hoses and electrical wiring for emission controls are correctly routed and connected; and

(5) idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

(b) No dealer may sell, or offer or deliver for sale a used passenger car, light-duty truck, or medium-duty vehicle that is required to meet emission standards unless such vehicle conforms to the following requirements:

(1) ignition timing is set to retrofit device or vehicle manufacturer's specification with an allowable tolerance of plus or minus three degrees;

(2) idle speed is set to retrofit device or vehicle manufacturer's specification with an allowable tolerance of plus or minus 100 rpm;

(3) required exhaust and evaporative emission controls, such as EGR valves, are operating properly;

(4) vacuum hoses and electrical wiring for emission controls are correctly routed and connected; and

(5) idle mixture is set to retrofit device or vehicle manufacturer's specification or according to manufacturer's recommended service procedure.

(c) The requirements set forth in paragraphs (b)(1) through (5) of this section also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(d) For the purpose of enforcing or administering any Federal or State law, order, regulation, or rule relating to vehicular sources of emissions, the

department or an authorized representative of the department, has the right of entry to any premises owned, operated, used, leased, or rented by any new or used car dealer. This entry is for the purpose of inspecting any vehicle or vehicles for which emissions standards have been enacted or adopted or for which emissions equipment is required provided that the vehicle or vehicles to be inspected are situated on the premises for the purpose of emission-related maintenance, repair, or service, or for the purpose of sale, lease, or rental. This right of inspection applies whether or not the vehicle is owned by the dealer. The inspection may extend to all emission-related parts and operations of the vehicle or vehicles, and may require the on-premises operation of an engine or vehicle, the on-premises securing of samples of emissions from the vehicle, and the inspection of any records which relate to vehicle emissions required by the United States Environmental Protection Agency or by any State law, order, regulation, or rule to be maintained by the dealer in connection with the dealer's business.

(e) The right of entry for inspection under this section is limited to the hours during which the dealer is open to the public, except when the entry is made pursuant to warrant or whenever the department or an authorized representative has reasonable cause to believe that a violation of any Federal, State, or local law, order, regulation, or rule has been committed in his or her presence.

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§ 218-6.2 Prohibitions.

It is unlawful for any person to operate or leave standing upon any highway any motor vehicle that is required to be equipped with an air contaminant emission control system under this Part, or required to be equipped with an air contaminant emission control system pursuant to the Clean Air Act (42 U.S.C., section 7401 *et seq.*) (see Table 1, section 200.9 of this Title) and the standards and regulations promulgated thereunder, unless the motor vehicle is equipped with the required air contaminant emission control system which is correctly installed and in operating condition. Except when necessary to repair the vehicle air contaminant emissions control system or another part of the vehicle, it is unlawful for any person to disconnect, modify, or alter any such required device. Following such repair, the disconnected, modified or altered device must be correctly installed and in operating condition.

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SUBPART 218-7

AFTERMARKET PARTS

Sec.

218-7.1 Applicability

218-7.2 Prohibitions

218-7.3 Replacement parts

218-7.4 Add-on and modified parts

218-7.5 Surveillance

218-7.6 Corrective action

218-7.7 Repair station

§ 218-7.1 Applicability.

This Subpart applies to all aftermarket parts that are sold, offered for sale, or advertised for sale or use on 1993, 1994, 1996 and subsequent model-year vehicles which are subject to New York State or Federal emission standards.

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§ 218-7.2 Prohibition.

(a) It is unlawful for any person engaged in a business which involves the selling of air contaminant emission control systems, or parts thereof, to offer for sale, sell, or install, an air contaminant emission control system, or part thereof, unless it meets the regulations and standards as set forth in this Subpart.

(b) It is unlawful for any person to install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required air contaminant emission control system that alters or modifies the original design or performance of any such air contaminant emission control system. This section does not apply to an alteration, modification, or modifying device, apparatus or mechanism found by the department to either:

(1) not reduce the effectiveness of any air contaminant emission control system; or

(2) result in emissions from any such modified or altered vehicle which are at levels that comply with applicable State or Federal standards for that model-year of vehicle being modified or converted.

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§ 218-7.3 Replacement parts.

(a) (1) Any replacement part, including consolidated parts, offered for sale or sold in California and subject to the California Code of Regulations,

title 13, section 2221 or 2224, (see Table 1, section 200.9 of this Title) is presumed to be in compliance with this Subpart unless California makes a finding to the contrary pursuant to the California Code of Regulations, title 13, section 2221 or 2224 (see Table 1, section 200.9 of this Title).

(2) Any replacement part, including consolidated parts, not offered for sale or sold in California, will be presumed to be in compliance with this Subpart unless the department makes a finding to the contrary in accordance with California Code of Regulations, title 13, section 2224(a) (see Table 1, section 200.9 of this Title).

(b) The manufacturer of any replacement part subject to the provisions of this Subpart must maintain sufficient records, such as performance specifications, test data, or other information, to substantiate that such a replacement part is in compliance with this section. Such records must be open for reasonable inspection by the department or a designated representative of the department. All such records must be maintained for four years from the year of manufacture of the replacement part.

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§ 218-7.4 Add-on and modified parts.

(a) As used in this section, the terms *advertise* and *advertisement* include, but are not limited to, any notice, announcement, information, publication, catalog, listing for sale, or other statement concerning a product or service communicated to the public for the purpose of furthering the sale of the product or service.

(b) (1) It is unlawful for any person or company doing business solely in New York or advertising only in New York to advertise any device, apparatus, or mechanism which alters or modifies the original design or performance of any required air contaminant emission control system unless such part, apparatus, or mechanism has been exempted from the requirements of section 218-7.2(b) of this Subpart, and the limitations of the exemption, if any, are contained within the advertisement in type size to give reasonable notice of such limitations.

(2) (i) It is unlawful for any person to advertise, offer for sale, or install a part as an air contaminant emission control system or as an approved or certified device, when in fact such part is not an air contaminant emission control system or is not approved or certified by the department or by California.

(ii) It is unlawful for any person to advertise, offer for sale, sell or install an add-on or modified part as a replacement part.

(3) (i) Add-on and modified parts exempted in accordance with the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title) are deemed exempt for purposes of this Subpart.

(ii) The department may exempt add-on and modified parts, including consolidated parts, that are not subject to the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title). The department must make this determination in accordance with the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title).

(iii) Each person engaged in the business of retail sale or installation of an add-on or modified part that has not been exempted from section 218-7.2(b) of this Subpart must maintain records of such activity that indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records must be open for inspection by the department or a designated representative of the department. All such records must be maintained for four years from the date of sale or installation.

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§ 218-7.5 Surveillance.

(a) *Replacement parts.* The department may require the manufacturer of any replacement part subject to the provisions of section 218-7.3(a)(2) of this Subpart to submit any records relating to such part that are maintained pursuant to section 218-7.3(b) of this Subpart. The department may require the manufacturer of any replacement part subject to the provisions of section 218-7.3(a)(2) of this Subpart to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after a review of all records submitted by the manufacturer and of the results of any tests conducted by the department's staff, the department finds that such part is not in fact a replacement part, the department may invoke section 218-7.6 of this Subpart. Replacement parts evaluated

pursuant to this section must be compared with the specifications contained in the applicable vehicle manufacturer's application for certification.

(b) *Add-on parts and modified parts.* The department may require the manufacturer of any add-on or modified part subject to the provisions of section 218-7.4(b)(3)(ii) of this Subpart to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after review of the results of any test or evaluations conducted by the department's staff and of any information submitted by the manufacturer, the department finds that an add-on part or a modified part does not conform to California Code of Regulations, title 13, section 2222, (see Table 1, section 200.9 of this Title), the department may invoke section 218-7.6 of this Subpart.

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§ 218-7.6 Corrective action.

(a) When this section is invoked pursuant to other sections of this Subpart, the department may require the manufacturer to submit a plan for correcting any deficiencies found by the department. The manufacturer must submit the plan within 30 calendar days after notification. The department may require any of the actions contained in the plan, or may declare a part of the plan to be not in compliance with section 218-7.2(b) of this Subpart unless it finds the plan adequate to correct the deficiencies found by the department. The manufacturer may be required to include in the plan such corrective actions as the cessation of sale of noncomplying parts and corrective advertising to correct misleading information regarding the emission control capabilities of the device and to ensure compliance with New York laws. Nothing in this section prevents the department from also seeking fines for violations of section 218-7.2(b) of this Subpart, or other regulations or laws, as applicable.

(b) The manufacturer may, within 15 calendar days of its receipt of the department's demand for corrective action, request a public hearing on the necessity for or scope of any corrective action required by the department.

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§ 218-7.7 Repair station.

Any person holding a vendor's certificate of authority who sells or installs an air contaminant emission control system, or part thereof, in violation of section 218-7.2(b) of this Subpart will thereafter be required to install an air contaminant emission control system, or part thereof that is in compliance with the provisions of this Subpart, upon demand of the purchaser or registered owner of the vehicle concerned, or at the election

of the purchaser or registered owner to reimburse the purchaser or registered owner for the expense of replacement and installation of an air contaminant emission control system, or part thereof that is in compliance.

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SUBPART 218- 8

SEVERABILITY

§ 218-8.1 Severability.

Each section of this Part shall be deemed severable, and in the event that any section of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

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