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may seek reimbursement for reasonable expenses incurred in honoring the claim by following the warranty claim procedures listed in § 85.2107(c).

(b) Except as provided in § 85.2104(h), a vehicle manufacturer may deny an emission performance warranty claim on the basis of an uncertified aftermarket part used in the maintenance or repair of a vehicle if the vehicle manufacturer can demonstrate that the vehicle's failure to meet emission standards was caused by use of the uncertified part. A warranty claim may be denied if the vehicle manufacturer submits a written document to the vehicle owner that the vehicle owner is unable or unwilling to refute. The document must:

(1) Establish a causal connection between the emissions short test failure and use of the uncertified part, and,

(2) Assert that:

(i) Removal of the uncertified part and installation of any comparable certified or original equipment part previously removed or replaced during installation of the uncertified part will resolve the observed emissions failure in the vehicle, and/or

(ii) Use of the uncertified part has caused subsequent damage to other specified certified components such that replacement of these components would also be necessary to resolve the observed vehicle emissions failure, and,

(3) List all objective evidence as defined in § 85.2102 that was used in the determination to deny warranty. This evidence must be made available to the vehicle owner or EPA upon request, and

(c) A part not required to be replaced at a definite interval in accordance with the written instructions for maintenance and use shall be warranted for the full term of any warranty mandated by the Act. Instructions to replace a component only if checked and found to be operating below specification shall have no bearing on warranty coverage, unless an owner did not follow such an instruction prior to the short test failure and non-compliance with that instruction caused the failure of another vehicle

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component relevant to the nonconformity.

[45 FR 34839, May 22, 1980, as amended at 54 FR 32587, Aug. 8, 1989]

§ 85.2106 Warranty claim procedures.

(a) A claim under the emission performance warranty may be raised immediately upon the failure of an EPA-approved emission test if, as a result of that failure, an owner is required to take action of any kind in order to avoid imposition of a penalty or sanction. An owner need not suffer the loss of the right to use a vehicle, be fined, incur repair expenses, or actually bear any penalty or sanction to satisfy the requirement of § 85.2103(a)(3). That requirement shall be met if a test failure sets a procedure in motion under which the owner will bear a penalty or sanction if a vehicle is not brought into conformity or repaired to some specified extent within some specified period of time.

(b) A warranty claim may be submitted by bringing a vehicle to:

(1) Any repair facility authorized by the vehicle manufacturer to service that model vehicle, or

(2) Any repair facility authorized by the vehicle manufacturer to perform emission performance warranty repairs for that model vehicle.

(c) To the extent required by any Federal or State law, whether statutory or common law, a vehicle manufacturer shall be required to provide a means for non-franchised repair facilities to perform emission performance warranty repairs.

(d) The manufacturer of each vehicle to which the warranty is applicable shall establish procedures as to the manner in which a claim under the emission performance warranty is to be processed. The procedures shall:

(1) Provide for a final decision by the vehicle manufacturer within a reasonable time, not to exceed 30 days from the time at which the vehicle is initially presented for repair or within the time period during which an owner is required by local, State or federal law to have the vehicle repaired without incurring further penalties or sanctions (whichever is shorter), unless a delay

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(i) Is requested by the vehicle owner, or

(ii) Is caused by an event not attributable to the vehicle manufacturer or the warranty repair facility; and

(2) Require that if the facility at which the vehicle is initially presented for repair is unable for any reason to honor the particular claim, then, unless this requirement is waived in writing by the vehicle owner, the repair facility shall forward the claim to an individual or office authorized to make emission performance warranty determinations for the manufacturer.

(e) Within the time period specified in paragraph (d) of this section the manufacturer shall:

(1) Notify the owner that it will honor the claim; or

(2) Provide the owner, in writing, with an explanation of the basis upon which the claim is being denied; or

(3) If the basis of the claim denial involves use of an uncertified part, provide the owner in writing with an explanation of the basis upon which the claim is being denied according to all criteria specified in §85.2105(b).

(f) Failure to notify an owner within the required time period (as determined under paragraph (d) of this section) for reasons that are not attributable to the vehicle owner or events which are not beyond the control of the vehicle manufacturer or the repair facility, shall result in the vehicle manufacturer being responsible for repairing the warranted items free of charge to the vehicle owner.

(g) The vehicle manufacturer shall incur all costs associated with a determination that an emission performance warranty claim is valid.

[45 FR 34839, May 22, 1980, as amended at 54 FR 32588, Aug. 8, 1989]

§85.2107 Warranty remedy.

(a) The manufacturer's obligation under the emission performance warranty shall be to make all adjustments, repairs or replacements necessary to assure that the vehicle complies with applicable emission standards of the U.S. Environmental Protection Agency, that it will continue to comply for the remainder of its useful life (if proper maintenance and operation are continued), and that it will operate in a

safe manner. The manufacturer shall bear all costs incurred as a result of the above obligation, *except that* after the first 24 months or 24,000 miles (whichever first occurs) the manufacturer shall be responsible only for:

(1) The adjustment, repair or replacement of those components which have been installed in or on a vehicle for the sole or primary purpose of reducing vehicle emissions, and which were not in general use prior to model year 1968; and

(2) All other components which must be adjusted, repaired or replaced to enable a component repaired or replaced under paragraph (a)(1) of this section to perform properly.

(b) Under the Emissions Performance Warranty, the manufacturer shall be liable for the total cost of the remedy for any vehicle validly presented for repair to any authorized service facility authorized by the vehicle manufacturer. State or local limitations as to the extent of the penalty or sanction imposed upon an owner of a failed vehicle shall have no bearing on this liability.

(c) The remedy provided under paragraph (a) of this section shall include the repair or replacement of certified parts as required in §85.2105(a). To seek reimbursement from the involved certified aftermarket part manufacturer for reasonable expenses incurred due to the certified aftermarket parts determined to be the cause of a performance warranty failure, the vehicle manufacturer must:

(1) Retain all parts replaced during the performance warranty repair, and

(2) Follow the procedures laid out in §85.2117.

(d) If a manufacturer is unable (for reasons not attributable to the vehicle owner or events beyond the control of the vehicle manufacturer or an authorized repair facility) to repair a vehicle within the time period specified under §85.2106(d) after the initial presentation of the vehicle to an authorized repair facility, then the owner shall be entitled to have the warranty remedy performed, at the expense of the manufacturer, by any repair facility of the owner's choosing.

(e) The vehicle manufacturer may deny warranty for a failure caused by