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STATE OF CALIFORNIA
AIR RESOURCES BOARD

Proposed Amendments to	**)**	
Regulations for the Availability of	**)**	**Agenda Item: 06-6-3**
California Motor Vehicle Service	**)**	
Information; Title 13 CCR Chapter 1,	**)**	**Hearing Date: June 22, 2006**
Section 1969.	**)**	

STATEMENT OF THE ENGINE MANUFACTURERS ASSOCIATION

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ENGINE MANUFACTURERS ASSOCIATION

The Engine Manufacturers Association is the national trade association representing worldwide manufacturers of internal combustion engines. Among EMA's members are the major manufacturers of heavy-duty engines covered by the amendments to ARB's existing service information availability requirements (the "Proposed Rule").

ARB previously adopted certain limited service information provisions to be effective for heavy-duty engines in 2007, in conjunction with the engine manufacturer diagnostic requirements which also become effective in 2007. With the recent adoption of more comprehensive heavy-duty on-board diagnostics ("OBD") requirements, ARB now has proposed new service information provisions that would require heavy-duty engine manufacturers to provide enhanced tools and information to aftermarket service providers and tool manufacturers beginning in 2013.

EMA and its members have been actively working with Staff for the past three years to provide our specific input on and concerns with service information requirements ("SIR") for heavy-duty engines. EMA participated at the public workshop held in 2003, participated at the hearings held in 2004, and submitted written comments on heavy-duty service information issues, all of which are contained in the rulemaking record and are incorporated into these comments by reference (*See, EMA Letter to the Air Resources Board,* January 21, 2004; *Statement of the Engine Manufacturers Association*, May 19, 2004; *EMA Letter to Allen Lyons,* October 18, 2004).

EMA's previous comments outline in substantial detail EMA's concerns with service information for heavy-duty engines, including concerns that still apply to the Proposed Rule. In addition to EMA's previously filed comments noted above, which are hereby reiterated and incorporated herein by reference, EMA has a number of further comments on SIR as those regulations apply to the heavy-duty industry.

I. THE LEGAL AUTHORITY ON WHICH ARB RELIES WAS NOT DRAFTED WITH THE HEAVY-DUTY INDUSTRY IN MIND.

Although EMA has stated this fundamental concern many times, it bears repeating that the legal authority on which ARB is relying to impose costly service information requirements on heavy-duty engine manufacturers was not drafted or adopted with the heavy-duty industry in mind. California Senate Bill 1146 was a distinctly light-

duty effort negotiated between the light-duty industry and aftermarket service providers. The law was not developed in the context of the heavy-duty industry. Indeed, neither the intent nor the focus of the law was to address perceived problems in the provision of heavy-duty service information. SB 1146 was signed into law in response to the perceived concerns of independent service providers in the business of repairing emission-related malfunctions of passenger cars, light-duty vehicles, and medium-duty vehicles.

Moreover, the legislature directed ARB to adopt service information requirements for 1994 and later model year OBDII-equipped vehicles by January 1, 2002. Since OBDII requirements did not apply to heavy-duty engines by that date, nor were they even being considered for heavy-duty engines then, the legislature could not have intended that the law apply to heavy-duty. Even though the law uses the term "motor vehicles," there is no argument that heavy-duty engines and vehicles were not discussed and heavy-duty engine manufacturers were not part of the process when the law was negotiated.

If the law is used to justify service information requirements for heavy-duty engines, its provisions should, at most, only be applied in a broad way, not in any specific manner that requires the heavy-duty service industry to fit into a light-duty mold that does not apply. As we have explained numerous times, the heavy-duty service industry is distinctive. Because the heavy-duty industry is so much smaller and more individualized than the light-duty industry, and because much more individualized communication already occurs with respect to the servicing of heavy-duty engines and vehicles, the current heavy-duty service industry already is established and adequate to meet the needs of the heavy-duty engine and vehicle service industry.

As several in the heavy-duty service industry have noted, the Proposed Rule is a solution looking for a problem. If ARB proceeds with these heavy-duty SIR amendments, it must revise the Proposed Rule to make the requirements cost-effective and reasonable for the heavy-duty service industry.

II. THE COSTS OF THE PROPOSED RULE FOR HEAVY-DUTY SERVICE INFORMATION FAR OUTWEIGH ITS BENEFITS

The stated purpose of the Proposed Rule is to ensure that aftermarket service providers have access to service information. Over the past three years, EMA has discussed with Staff numerous times what requirements are necessary and reasonable to ensure such access to service information for heavy-duty engines. EMA does not support the Staff's proposal because it goes far beyond assuring that access, and it imposes costs that far outweigh any potential benefits.

Manufacturers of heavy-duty engines already make service information and tools available to the independent service industry. And as noted above, much more individualized communication already occurs with respect to the servicing of heavy-duty engines and vehicles. What ARB has proposed to apply to the heavy-duty service information industry would require complex, substantial, and time-consuming changes in the current heavy-duty service information infrastructure. In the Initial Statement of

Reasons For Proposed Rulemaking, Staff recognizes that a heavy-duty engine manufacturer's start-up costs under the Proposed Rule are likely to reach as high as $1.5 million per manufacturer, and yearly maintenance costs would be approximately $70,000 per year per manufacturer (*Staff Report: Initial Statement of Reasons For Proposed Rulemaking,* p.11) .

Staff suggests that engine manufacturers could recover those costs from the sale of tools and information. But considering the sales volumes in the heavy-duty industry, and the number of independent service outlets in the industry, heavy-duty engine manufacturers simply cannot recoup those costs by selling their tools and information.

Based on information available from public industry sources, light- to heavy-duty vehicle sales volume is approximately 40 to 1. In addition, compared to the light-duty industry, there are far fewer service facilities that engage in heavy-duty engine repair. At the same time, there are a limited number of heavy-duty engine products, but an enormous number of variations on how those products may be configured and calibrated. Adding together all those factors, heavy-duty engine manufacturers have little opportunities to spread out and recover the costs of the Proposed Rule.

Furthermore, engine manufacturers make their tools and information available now to anyone who wishes to purchase them, yet there is no great demand for them. And manufacturers do not anticipate any great increased demand for their tools and information. In fact, for purposes of comparison, we have recently obtained from light-duty manufacturers their experience with requests for service information. One light-duty vehicle manufacturer has received through its Web site over the course of one year only 43 requests for year-long subscriptions to service information and only 55 requests for month-long subscriptions from service providers nationwide. Another light-duty vehicle manufacturer has received only 147 year-long subscription requests and only 27 month-long requests nationwide. Those subscription unit sales are from two of the three primary U.S. manufacturers of light-duty vehicles reporting nationwide data.

Using that information, if there existed a heavy-duty engine manufacturer with the same volume of subscription sales as those two light-duty manufacturers combined, then calculating the 40 to 1 light- to heavy-duty volume ratio, and recognizing that California represents approximately 10% of the nationwide market, that heavy-duty engine manufacturer could be expected to sell just one year-long or month-long subscription per year in California. Yet ARB expects each individual engine manufacturer to incur costs of over a million dollars to implement service information for potentially one covered person. The costs of this Proposed Rule so outweigh its anticipated benefits that the Rule cannot be justified.

III. ARB MUST REVISE THE PROPOSED RULE TO ACCOUNT FOR THE UNIQUE NATURE OF THE HEAVY-DUTY INDUSTRY

If ARB proceeds to adopt amendments to SIR for heavy-duty, then numerous changes must be made to the Proposed Rule.

A. Engine Manufacturers Should Be Responsible To Provide Only Engine Emission-Related Service Information

Any heavy-duty service information rule that ARB adopts must be limited to engines and must ensure that engine manufacturers are responsible only for compliance with respect to emission-related engine system information, not vehicle, transmission or other powertrain component information.

1. ARB Must Require Heavy-Duty Engine Manufacturers To Provide Only Engine, Not Transmission, Information

Heavy-duty SIR must require heavy-duty engine manufacturers to provide only engine information, not transmission information, as ARB proposed in the rulemaking documents made available with the notice of the public hearing for the Proposed Rule. Engine manufacturers make engines and should only be required to provide engine service information under the Proposed Rule.

However, in a reversal that we are at a loss to explain, less than a week before the public hearing on the Proposed Rule, Staff advised engine manufacturers that it would propose new language to require engine manufacturers to provide transmission information. EMA opposes such a change.

EMA discussed with Staff numerous times why the requirements for engine manufacturers must be limited to engine information only. Representatives from the aftermarket service and tool industry were involved in several of those discussions. As we explained in great detail, engine manufacturers produce engines, not transmissions and not vehicles. When an engine is sold to a customer, the engine manufacturer has no control over what transmission it is paired with or what transmission information is available. That choice is up to the customer and the vehicle manufacturer. Engine manufacturers do not and cannot provide information for components over which they have no control.

At most, heavy-duty engine manufacturers may use input from a transmission to enable a diagnostic. If that input fails, the engine will receive and report a signal that the input has failed. In other words, the limit of the information to which the engine manufacturer has access is that the source of the information (i.e., the input from the transmission) is "bad." Engine manufacturers have no access to where the fault may be located, the cause of the fault from the input, or how the failure may be repaired. Moreover, engine manufacturers provide no such information to their service providers.

It simply is not appropriate – or even possible – to ask engine manufacturers to provide transmission information. The heavy-duty OBD rule, on which service information requirements are based, recognizes that fact. That is why heavy-duty OBD is an engine-only rule. The service information that heavy-duty engine manufacturers are required to provide must be limited to only engine information as well.

EMA reserves the right to comment further on any regulatory language or proposals that would require transmission information to be provided.

2. ARB Must Revise The Definition of "Emission-Related"

Although EMA supports including in the Proposed Rule a unique definition of "emission-related" for heavy-duty engines, ARB must revise the proposed definition to clarify that heavy-duty engine manufacturers are required only to provide service information that is truly emission-related.

ARB's proposed definition is as follows:

> (8) "Emission-related engine information" means 2007 and subsequent model year heavy-duty engine information regarding either:
>
> (A) Any original equipment system, component, or part that controls emissions, or
>
> (B) Any original equipment system, component or part <u>associated with the engine system including, but not limited to, the fuel system and ignition system,</u> but not including the transmission.

EMA supports the fact that ARB's Notice of the Proposed Rule included regulatory language that specifically excluded transmission information from heavy-duty engine emission-related information. But EMA objects to the underlined language as proposed above in that it is far too broad. ARB's proposed language does not focus on the components that are related to the engine from an emissions standpoint. Rather, it catches every possible component of the engine and reaches far beyond what was intended – and far beyond what is necessary – for emission-related service purposes.

Instead, ARB should adopt the following revised language in sub-section B of the definition:

> * * * (B) Any original equipment system, component or part that is part of the diagnostic strategy for an OBD monitor.

The need for and requirement to provide service information is based on implementation of diagnostics requirements, particularly emission-related diagnostics. In connection with certifying OBD systems, each manufacturer must provide to ARB -- and must obtain approval for during the OBD certification process -- its list of emission-related components on which diagnostics must be performed. That amounts to a limited list of components which are generally similar from manufacturer to manufacturer. Many engine components are not subject to emissions-related regulation, and thus are not properly included within the definition.

The need for service information is based on the existence of OBD requirements, and the above-proposed revision to the definition is consistent with how emission-related components are defined for OBD purposes. EMA's definition assures that service information is made available for all components that are used for emission control or emission-related diagnostics, which is the goal of the service information rule. By tying

the definition of emission-related service information to what is required for emission control or emission-control diagnostic purposes, ARB can successfully capture all emission-related service information and achieve the purposes of the service information rule. ARB must revise the definition of emission-related information.

B. ARB Must Allow Heavy-Duty Engine Manufacturers To Require Training As A Condition Of Sale Of Tools And Information, But It Must Revise The Training Provisions To Remove The Condition To Provide Training In California Locations

EMA supports provisions that would allow engine manufacturers to require training as a condition of sale of enhanced diagnostic, recalibration and reconfiguration tools and information to covered persons. Allowing manufacturers to require training as a condition of sale of their service tools is essential, as it provides some protection against misuse of those tools. Training can provide some assurance that purchasers and users of heavy-duty service tools will be knowledgeable regarding the proper use of the tools. With such knowledge, they can substantially avoid misuse that could result in improper engine configurations, possibly leading to increased emissions, engine damage, or other injury.

However, the conditions that the Proposed Rule would impose on engine manufacturers to allow that training are too burdensome. In particular, the Proposed Rule would require such training to be available at a minimum of one California location. Requiring manufacturers to make training available in California is unnecessary, burdensome and unreasonably costly.

Most, if not all, manufacturers currently provide training at centralized training locations. Those facilities are appropriately equipped and training classes of all types are offered. Requiring manufacturers who choose to require training on their tools to meet the hurdle of setting up special training locations simply for California service providers is not reasonable and it imposes unnecessary and additional cost burdens. Setting up special training in California would be far more costly, and potentially less effective, than the current training system. California-specific training would require engine manufacturers to seek to rent suitable space with both classroom and lab areas sufficient to hold demonstration equipment. It also could require costly freight transfer of engines and other equipment necessary for training, as well as travel and accommodations for trainers. And it would divert resources from making training readily available for service technicians in other parts of the country. Such costs are unnecessary and unreasonable.

Moreover, engine manufacturers require their own authorized service providers to attend training at manufacturers' centralized training centers, regardless of location. Requiring engine manufacturers to incur unnecessary costs and set up special training centers that they do not otherwise make available for authorized service providers is requiring special treatment for aftermarket service providers. That is not the intent of the Proposed Rule. ARB must delete from the Proposed Rule the condition to provide training at California locations.

C. ARB Must Include Language In The Rule That Specifically Limits Engine Manufacturers' Liability For Use Of Tools By Covered Persons

ARB must include language in the Proposed Rule that would specifically limit engine manufacturers' liability for use of tools by covered persons. Engine manufacturers have significant concerns with regard to the possibility for misuse that may arise when the service tools and information required by the Proposed Rule are provided to non-authorized service providers. As aftermarket providers are given the tools to service and reconfigure engines, there is a possibility that inadvertent or deliberate mis-configuring may occur (see, also, January 21, 2004 EMA Comments).

Engine manufacturers have control over potential misuse by their authorized dealers, but the proposal does not allow manufacturers to maintain that same control when tools are made available to third parties. Because of the unique and complex nature of the heavy-duty service industry, service tools are very powerful and have the capability to recalibrate and reconfigure engines. EMA has detailed in many of its previous comments the power of the tools and its concerns with their potential misuse. Allowing manufacturers to require training when those powerful tools are sold to third parties alleviates that concern in part. Even with training, however, independent service providers may service several different brands of engines and may have less "specialized" knowledge and be more likely to make mistakes than factory-authorized dealers that focus on servicing engines from a single manufacturer.

Of even greater concern are heavy-duty service tools sold by aftermarket tool makers to third parties without a training requirement. The Proposed Rule does not require aftermarket tool manufacturers to require training on tools they sell to service heavy-duty engines. As a result, engine manufacturers have no control over the service providers who use such "third party" tools. Specifically, section (h)(2)(A) would require engine manufacturers to make available to all equipment and tool companies all information necessary to read and format all emission-related data stream information and to activate all emission-related bi-directional controls. The provision is designed to ensure that independent tool manufacturers have the information necessary to produce and make available for sale to service providers diagnostic tools with bi-directional controls. Although bi-directional controls cannot be used to permanently change an engine calibration, they give a service technician the ability to temporarily control the engine.

If such tools are not designed or used properly, they have the potential to cause engine operation that may result in engine damage and/or personal injury. Typically, the engine manufacturer has no direct relationship with users of tools provided by aftermarket suppliers. As a result, the engine manufacturer has no opportunity to provide training or take other steps to avoid the occurrence of accidental or deliberate misuse of these tools.

ARB must include specific language in the regulatory text that confirms engine manufacturers will not be liable for the use and misuse of third party tools or for any damage caused by their own tools in the hands of independent service providers.

D. ARB Must Revise The Definition Of "Covered Person" To Ensure That Unqualfied Providers May Not Obtain Access To Heavy-Duty Information

ARB must revise the definition of "covered person" to clarify and ensure that unqualified service providers or entities may not obtain access to heavy-duty service information.

ARB's proposed definition provides as follows:

> Covered person" means: (1) any person or entity engaged in the business of service or repair of passenger cars, light-duty trucks, or medium-duty motor vehicles, engines or transmissions who is registered with the Bureau of Automotive Repair, pursuant to section 9884.6 of the Business and Professions Code, to conduct that business in California; (2) any person or entity engaged in the business of service or repair of heavy-duty motor vehicles, engines, or transmissions; (3) any commercial business or government entity that repairs or services its own California motor vehicle fleet(s); (4) tool and equipment companies; or (5) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle or engine parts for California motor vehicles and motor vehicle engines.

As written, the definition would allow any person or entity engaged in the business of service or repair of light- or heavy-duty vehicles, engines or transmissions to have "covered person" status and have access to all information, for the most part regardless of their qualifications or credentials. Under the proposed definition, a wholly unqualified or un-credentialed entity could claim access to heavy-duty service information. For example, an entity experienced only in transmission repair would become a covered person for all heavy-duty purposes and could claim access to engine and vehicle service information. As a further example, any entity with a Bureau of Automotive Repair license for light-duty repair would be a covered person and would have access to heavy-duty engine service information.

Requiring heavy-duty service information to be made available to entities without regard for their qualifications could lead to improper repairs by unqualified entities. EMA has outlined above and in previous comments to ARB the power of heavy-duty tools and the need for training in the use of those tools and liability protection for manufacturers. In that regard, ARB must include some threshold qualification for becoming a "heavy-duty covered person" that will ensure at least some measure of competence in repairing heavy-duty engines. Moreover, an entity's ability to access information by virtue of being a covered person should be limited to their area(s) of

competence (e.g., to light-duty vehicles, to heavy-duty engines) to ensure that appropriate repairs are completed.

To that end, ARB should adopt a definition of "covered person" that separately delineates qualifications applicable in the light-/medium-duty context and in the heavy-duty context, as follows:

"Covered person" means:

With respect to passenger cars, light-duty trucks and medium-duty motor vehicles:

(1) any person or entity engaged in the business of service or repair of passenger cars, light-duty trucks, or medium-duty motor vehicles, engines or transmissions who is registered with the Bureau of Automotive Repair, pursuant to section 9884.6 of the Business and Professions Code, to conduct that business in California;

(2) any commercial business or government entity that repairs or services its own fleet(s) of California passenger cars, light-duty trucks or medium-duty motor vehicles;

(3) companies manufacturing tools and equipment used to service passenger cars, light-duty trucks or medium-duty motor vehicles; or

(4) any person or entity engaged in the manufacture or remanufacture of emission-related parts for California passenger cars, light-duty trucks or medium-duty motor vehicles.

With respect to heavy-duty motor vehicle engines:

(1) any qualified person or entity engaged in the business of service or repair of heavy-duty motor vehicle engines;

(2) any commercial business or government entity that repairs or services heavy-duty engines used in its own California motor vehicle fleet(s);

(3) companies manufacturing tools and equipment used to service heavy-duty motor vehicle engines; or

(4) any person or entity engaged in the manufacture or remanufacture of emission-related engine parts for heavy-duty California motor vehicles.

The proposed revision creates separate tests for determining covered person status and ensures that light-duty entities cannot claim covered person status with respect to heavy-duty service repair if they are not engaged in, or do not have any expertise in the area of, heavy-duty service repair. It also provides some additional assurance that

covered persons will be qualified to provide applicable service. ARB should adopt EMA's proposed revision to the definition of "covered person."

E. ARB Must Revise The Compliance Flexibility Provisions

ARB has proposed in paragraph (b)(2) to allow engine manufacturers of "diesel-derived" engines used in medium-duty vehicles (8,500 to 14,000 lbs. GVWR) the option to comply with the heavy-duty service information requirements (which apply to engines in vehicles greater than 14,000 lbs. GVWR). EMA supports that provision, as it provides needed flexibility to manufacturers in cases where the same engines are used in similarly-sized vehicles. As Staff recognizes in the ISOR, the proposed flexibility would permit manufacturers to provide service information and tools that follow the industry standards and practices that are most familiar to the type of service providers that will work on the vehicles. There is no dis-benefit to providing this flexibility. However, ARB should clarify its intent, as stated in discussions with EMA, that the provisions cover diesel-fueled engines as well as diesel-derived engines by adding the phrase "diesel-fueled and" before the words "diesel-derived."

In paragraph (b)(1), ARB has proposed that manufacturers of gasoline-derived heavy-duty engines may alternatively comply with the light- and medium-duty service information requirements. In other words, ARB has proposed to limit this flexibility by providing it to manufacturers of only gasoline-derived heavy-duty engines. EMA does not support such an unnecessary limitation. Manufacturers of heavy-duty diesel engines also must be allowed the option to comply with the light- and medium-duty service information requirements for the same standard and industry practice reasons. There is no logical reason to limit flexibility in this way, and no dis-benefit to providing the flexibility. ARB must revise paragraph (b)(1) by deleting the phrase "gasoline-derived."

IV. CONCLUSION

ARB should not adopt a final rule for heavy-duty service information that imposes the significant costs of the Proposed Rule without clear justification for those costs and for the changes that the Proposed Rule would impose on the heavy-duty service industry. If ARB proceeds with heavy-duty SIR, ARB should require engine manufacturers to provide only information for the products which they sell – engines, not transmissions – and to provide truly "emission-related" engine information. ARB should allow training under reasonable conditions, and the regulation must clarify that manufacturers are not liable for the misuse of their tools and third party tools. Finally, ARB should clarify who is a covered person for heavy-duty purposes and provide needed compliance flexibility.

We will, of course, continue to work with Staff and the Board to provide further input in order to achieve reasonable heavy-duty service information regulations that account for the unique nature of the heavy-duty service industry.

Respectfully submitted,

ENGINE MANUFACTURERS ASSOCIATION

EMADOCS: 8838.1